



000002GD CCGPRO 201605

IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MICHAEL J. MCQUEARY : NO. 2012-1804
VS :
THE PENNSYLVANIA STATE :
UNIVERSITY :

Transcript of Proceedings
(Day 1 of jury trial - p.m. only)

Before: Thomas G. Gavin,
Senior Judge Specially Presiding
15th Judicial District

Date: October 17, 2016

Place: Centre County Courthouse
Courtroom Annex
108 South Allegheny Street
Bellefonte, Pa 16823

Appearances:

For the Plaintiff:
Elliott Strokoff, Esquire
William T. Fleming, Esquire

For the Defendant:
Nancy Conrad, Esquire
George Morrison, Esquire

Notes by: Elise A. Fitzgerald
Official Court Reporter
Room 208, Centre County Courthouse
Bellefonte, Pa 16823
814 355-6734 or fax 814 548-1158

2016 OCT 17 PM 12:56
CENTRE COUNTY, PA
PROTHONOTARY
MICHAEL J. MCQUEARY

ORIGINAL

1	Index to the Witnesses				
2		Direct	Cross	Redirect	Recross
3	Plaintiff:				
4	Fran Ganter	5	28	45	55
5	Wendell Courtney	58	77	79	83
6	Lisa Powers	85	132	146	--
7		152	--		
8					
9	Defendant:				
10	[None]				

12	Index to the Exhibits				
13					Admitted:
14	Plaintiff:				
15	No. 1				72
16	No. 2				75
17	No. 6				62
18	No. 7				76
19	No. 9				84
20	No. 15				15
21	No. 16				16
22	No. 17				17
23	No. 18				17
24	No. 21				19
25	No. 23				20

1	Index to the Exhibits	
2		Admitted:
3	Plaintiff:	
4	No. 30	91
5	No. 37	105
6	No. 38	106
7		
8	Defendant:	
9	No. 68	143
10	No. 135	35
11	No. 145	140
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

P R O C E E D I N G S

The Court: I neglected to ask earlier this morning, members of the jury, is there anyone on the panel who has childcare pick up issues or anything like that that we need to accommodate later in the afternoon? If not, we are going to try and go as close to 5:00 everyday as we can to keep things moving. So if anybody has such a need let me know and we will accommodate you.

Mr. Strokoff: Plaintiff calls Fran Ganter, Your Honor.

Ms. Conrad: Your Honor, may we approach?

The Court: Yes.

(Whereupon, the following conversation occurred at side bar:)

Ms. Conrad: Mr. Ganter is here with personal counsel.

Mr. Strokoff: I already spoke to him. He is not going to participate, Your Honor.

The Court: Okay.

Ms. Conrad: That took care of that. Thank you very much.

(End of side bar.)

1 Whereupon,

2 Fran Ganter

3 was called as a witness and having been duly
4 sworn, was examined and testified as follows:

5 Direct Examination

6 By Mr. Strokoff:

7 Q. Sir, will you state for the record your
8 name please?

9 A. Fran Ganter.

10 The Court: Spell your last name for the
11 record please.

12 The Witness: G-a-n-t-e-r.

13 The Court: Thank you.

14 By Mr. Strokoff:

15 Q. And can you tell us your current
16 occupation?

17 A. I am retired.

18 Q. Okay. Before you were retire what was
19 your occupation?

20 A. I was a football coach and an athletic
21 administrator at Penn State.

22 Q. Sir, when did you go to college?

23 A. I went to Penn State following three
24 sisters there and graduated in 1971.

25 Q. After 1971 what did you then do?

1 A. Started to study for my bachelor's
2 degree and as I did that I became what they call
3 a graduate assistant coach for the football team.
4 So I coached as I went to grad school.

5 Q. And after you went to grad school then
6 what?

7 A. Fortunately, a coach left the staff and
8 Coach Paterno asked me to come on as full time so
9 I became assistant coach.

10 Q. Do you remember what year that was?

11 A. '73 I would say.

12 Q. And from 1973 until when were you an
13 assistant coach?

14 A. Till 2003.

15 Q. And what happened in 2003?

16 A. I retired from coaching and become an
17 associated athletic director for football.

18 Q. And would you have been working under
19 Tim Curley?

20 A. Yes. Tim then became my immediate boss.

21 Q. And you retired when?

22 A. 2012.

23 Q. So you were employed by the University
24 for 39 years?

25 A. 39 years. Yep.

1 Q. And you also played football while you
2 were at the University?

3 A. Yes. I did.

4 Q. And you know Mike McQueary?

5 A. Yes.

6 Q. Do you recall when you first got to know
7 him?

8 A. I personally I knew of him because he
9 was growing up in State College because he was a
10 star athlete but I got involved in his
11 recruitment as a football player for Penn State
12 when he was a senior in high school.

13 Q. Okay. And then after high school he
14 then came to Penn State?

15 A. Yes, sir.

16 Q. And did you have any professional
17 relationship with him then at that point?

18 A. I coached offense on the same side of
19 the ball as Mike. Mike was quarterback so I was
20 the offensive coach so I had a lot of interaction
21 with him on the practice field. And then later
22 in my career I became an offensive coordinator
23 and so then him being quarterback expanded a
24 little bit but I had extensive contact with him
25 in regards to football.

1 Q. Did you have any nonprofessional contact
2 with him when he was at the University as a
3 player?

4 A. As a player?

5 Q. Yeah.

6 A. There was one incident his -- Mike's
7 brother coached little league and one of my sons
8 played for Mike's brother's team and I recall
9 vividly one day Mike came to practice, helped
10 coach, help coach -- help his brother coach the
11 team. So I remember that but other than that not
12 while Mike was a player.

13 Q. Okay. But then there came a point in
14 time when he wasn't a player but still had an
15 affiliation with Penn State, is that correct?

16 A. Yes.

17 Q. Tell us about that initial affiliation.

18 A. Well he began as a graduate assistant
19 just like I did. He was an offensive graduate
20 assistant. I coached offense. So we were in the
21 same room many hours of the day. A lot of the
22 work that Mike did helped prepare coaches for an
23 upcoming opponent. Graduate assistants
24 traditionally do most of the scouting. So they
25 are looking at future opponent and then when we

1 get to the Sunday before the opponent that let's
2 say Mike has been scouting he gives us all
3 scouting report, produces some computer
4 printouts, and that kind of thing. So he worked
5 for all of us but we worked together with seven
6 or eight other guys on offense.

7 Q. Now was this scouting in-person scouting
8 or reviewing film?

9 A. Reviewing tapes. Yes.

10 Q. And after Mike was a graduate assistant
11 did he continue to have a relationship with the
12 University?

13 A. Yes. Then I am not exactly sure when
14 but after his graduate assistant days he became
15 an assistant coach and so we were serving on the
16 same staff.

17 Q. Okay. Was he an assistant coach at the
18 same time you were?

19 A. Yes.

20 Q. And then you moved on to associate
21 athletic director, is that right?

22 A. Yes. Well I am not positive. I am
23 trying to decide when Mike was GA when he became
24 a full-time coach because his workload didn't
25 change. So I am not positive I was still

1 coaching when he actually became a full-time
2 coach.

3 Q. Okay. Well why don't you tell us what
4 your professional relationship was once you
5 became associate athletic director?

6 A. I was a liaison between the football
7 department and our athletic director, Tim Curley.
8 Our buildings are three quarters of a mile apart.
9 We are in what's called the Lasch Building. Tim
10 was in the Jordan Center. Coach Paterno felt he
11 needed a little more ability to get in touch with
12 the AD, to get a message to the AD, and when Tim
13 is across the street in meetings and that kind of
14 thing it was tough. So I acted as a liaison
15 between football and the athletic administration
16 and served a lot of other capacities. I don't
17 know if you want me to get into that or not.

18 Q. Please. It actually --

19 A. So I was liaison to a lot of different
20 organizations. The judicial system on campus,
21 Office of Judicial Affairs. If there was a jam
22 with any of our players I was the guy that they
23 would first come to and I would try to gather the
24 information and then report to Coach Paterno or
25 Tim on what I thought was right and then I ran a

1 football camps. We had football camps in the
2 summer. So I was camp director and we had three
3 weeks of camps where we have over 15 hundred to
4 200,000 kids in three weeks. Did that. I did
5 evaluations on the coaches and had to turn those
6 into Mr. Curley into the athletic department. I
7 was the high school assistant -- or not assistant
8 coach but the high school coach liaison to the
9 office. So if you were a high school coach,
10 Bellefonte High, and wanted to get tickets to a
11 game Saturday our coaches are in meetings rooms,
12 they are preparing for games, they are not
13 available to come to the phone, those guys would
14 call me and I would make arrangements for you to
15 get to a game or be able to get tickets if I
16 could. So any high school coach called our
17 office it would come to my desk if the coaches
18 were in meetings, which they were most of the
19 time. So I was kind of was the guy that you come
20 to in the office when you knew the coaches were
21 working hard.

22 Q. Thank you. You mention you did
23 evaluations of coaches?

24 A. Yes, sir.

25 Q. Did you do evaluations of Mike McQueary?

1 A. Yes.

2 Q. How frequently?

3 A. Once a year and I had probably 12, 14
4 people, including the coaches, that I was
5 requested, told to do evaluations on them,
6 year-end evaluations, and I can only guess -- I
7 couldn't tell you. I would say I did five or six
8 on Mike. I can't remember.

9 Q. Well we are going to go over them now.

10 A. Right.

11 Q. Sir, there is a binder that says
12 plaintiff's exhibits witness?

13 A. Witness Copy Plaintiff's Exhibits?

14 Q. Yes.

15 A. Yes.

16 Q. And I want to alert you we are going to
17 be starting with Plaintiff's Exhibit 15. There
18 are tabs there. Have you reached 15?

19 A. Yes, sir.

20 Q. Are you able to identify that document
21 for us?

22 A. Yes. This is what was called an SRDP, a
23 Staff Review and Development Plan, and this was
24 the form that I had to fill out on 12 to --
25 probably 10 or 15 people. I am not exactly sure

1 how many.

2 Q. And just generally describe what's in
3 the form.

4 A. It's a review of my impression on their
5 job for that year, what they did well, how they
6 could improve. It includes a section that you
7 give to the employee. They fill that out before
8 we meet at the end of this. They fill it out and
9 they kind of do the same. They try to evaluate
10 how they completed some of the things that they
11 hoped they would get better at from the previous
12 year. Some of the things that they thought they
13 did real well, what they achieved in that year,
14 that sort of thing, and then they also had to put
15 together a plan for the next year. So the very
16 end of the review they would say here is what I
17 want to do next year, here is how I want -- I
18 know I can get better. So it included a lot of
19 different things.

20 Q. Sir, could you take a look at number 15
21 and tell us for what year that evaluation is for?

22 A. 13?

23 The Court: 15.

24 By Mr. Strokoff:

25 Q. 15.

1 A. Oh, Plaintiff's Exhibit -- yeah. The
2 year? Oh-twelve. I don't see it on here.

3 Q. Well go to the if you would please next
4 to last page.

5 A. Okay. I see 4/15/05, 4/15/06.

6 Q. Where do you see '06?

7 A. Last page. '05 and '06 and this is one
8 Mike signed. That's the last page of my review.

9 Q. It's been a couple years since you have
10 worked with these things, right?

11 A. Yeah.

12 Q. Okay. That last page is called what?

13 A. Development Action Plan.

14 Q. Isn't that the plan for the following
15 year?

16 A. Yes.

17 Q. Okay. So if we go to the next to last
18 page the date that you signed your name was what?

19 A. Yes. 4/15/05, 4/16/05.

20 Q. So then again this would be the
21 evaluation for what year?

22 A. '04.

23 Q. Okay. And that was Mike's first year?

24 A. Okay. Yes.

25 Q. And how did you rate him overall?

1 A. Performance significantly exceeds
2 expectations.

3 Q. Now are there any rankings higher than
4 that?

5 A. No, sir.

6 Q. So you gave him the highest ranking for
7 his first year as an assistant coach?

8 A. Yes.

9 Q. Why?

10 A. I thought he deserved it.

11 Q. Well okay. What did he do that caused
12 to you say he deserve it?

13 A. Worked hard. He was punctual. He was a
14 good representative of the University. He was
15 excellent recruiter. In the office he was --
16 had no problems with anyone in the office. I
17 can't think of anything negative to be honest
18 with you.

19 Mr. Strokoff: Move for the admission of
20 15, Your Honor.

21 The Court: Any objection?

22 Ms. Conrad: No objection.

23 The Court: It's admitted.

24 By Mr. Strokoff:

25 Q. Sir, can you go to 16 and tell us for

1 what year that plan was for?

2 A. Could I tell you what?

3 Q. I am sorry. For what year that
4 evaluation is for. Number 16.

5 A. Review period is '05 to '06. 4/11/05 to
6 5/31/06.

7 Q. Okay. And what was the overall rating?

8 A. Performance significantly exceeds
9 expectations.

10 Q. Okay. Again the highest overall rating?

11 A. Yes.

12 Q. And you wrote some comments right above
13 that overall rating?

14 A. Mike McQueary is a great teacher, coach,
15 recruiter, and other -- ambassador for Penn State
16 football and Penn State University. Mine is very
17 hard to see. It's grey. It's very grey there.
18 It's tough to read. My eyes aren't great.

19 Mr. Strokoff: Move for admission of 16,
20 Your Honor.

21 Ms. Conrad: No objection.

22 The Court: It's admitted.

23 By Mr. Strokoff:

24 Q. Sir, can you identify 17 for us?

25 A. That's the SRDP and it is dated 4/11/07.

1 Well I don't know the second page but -- so this
2 would have been for five and six. First date I
3 see on here is Mike's -- when he did his staff
4 input. July 7th to July -- okay. Got it.
5 Review period April 1st, '06, to March 31, '07.

6 Mr. Strokoff: Okay. Move for admission
7 of 17, Your Honor.

8 Ms. Conrad: No objection.

9 The Court: It's admitted.

10 By Mr. Strokoff:

11 Q. Could you go to 18, sir, and tell us
12 what your -- what year was involved with respect
13 to that review?

14 A. April 1st, '07, to March 31, '08.

15 Q. And you signed this, right?

16 A. Yes, sir.

17 Mr. Strokoff: Move for admission of 18,
18 Your Honor.

19 Ms. Conrad: No objection.

20 The Court: It's admitted.

21 By Mr. Strokoff:

22 Q. Sir, if we go to the page on 17 -- I
23 should say two pages before the signature page.

24 A. On 17? Back to 17?

25 Q. Yes. Where it says unit specific

1 factors on 17.

2 A. Is that in the back? Unit specific?

3 Q. Factors.

4 A. What is the page?

5 Q. At the bottom it says PSU000079.

6 A. Okay. This is -- sorry. This is from
7 April 1st, '06, to March 31, '07, correct? You
8 said go back to 18.

9 Q. I have -- if you go to 000081 what is
10 the date you see on there?

11 A. You know what? I think I was on the
12 wrong page. Hold on. Okay. I got there.

13 Q. Okay. This is the performance review
14 for what year?

15 A. '07, '08.

16 Q. Okay. Now this is performance exceeds
17 expectations, not significantly?

18 A. Yes, sir.

19 Q. Okay. Do you recall any reason for
20 that?

21 A. I don't recall the reason.

22 Q. Okay. However, this is the next to
23 highest evaluation?

24 A. Yes.

25 Q. Okay. Will you go to 19 please. Can

1 you identify 19?

2 A. This is -- 19?

3 Q. Yep.

4 A. It's job responsibilities worksheet.

5 Q. Are you familiar with that document?

6 A. No.

7 Q. Okay. Then we are not going to have you
8 identify it.

9 A. Okay.

10 Q. How about 21, sir. Can you identify
11 that document?

12 A. It's another SRDP.

13 Q. For what year?

14 A. April 1, '08, to March 31st, '09.

15 Mr. Strokoff: Okay. Move for admission
16 of 21, Your Honor.

17 Ms. Conrad: No objection.

18 The Court: It's admitted.

19 By Mr. Strokoff:

20 Q. Can you go to 23?

21 A. April 2009 through March 2010, the next
22 SRDP.

23 Q. And again this is another one you
24 prepared?

25 A. Yes, sir.

1 Mr. Strokoff: Okay. Move for admission
2 of 23, Your Honor.

3 Ms. Conrad: No objection.

4 The Court: It's admitted.

5 By Mr. Strokoff:

6 Q. And, lastly, I ask you to go to 28. Ask
7 you if you can identify that document.

8 A. March 31, 2010, to April 31, 2011.

9 Q. And the overall rating there?

10 A. Performance significantly exceeds
11 expectations.

12 Q. And that was the last evaluation you did
13 of Mike, is that correct?

14 A. Yes, sir.

15 Q. Okay. Sir --

16 Mr. Strokoff: Oh, yes. I am sorry.
17 Move for admission of 28, Your Honor.

18 The Court: No objection. I apologize.
19 I am not echoing Ms. Conrad. I am just
20 acknowledging her head nod. It's admitted
21 without objection.

22 By Mr. Strokoff:

23 Q. So overall, sir, with these years from
24 2004 through 2011 how did you regard
25 Mr. McQueary's service as an assistant coach for

1 the University?

2 A. Excellent.

3 Q. And what were his strong suits?

4 A. Work ethic, way he presented himself.
5 He was -- got along in the office and he wasn't
6 an argumentative guy. When he was given an
7 assignment he jumped to it. All positive things.

8 Q. Sir, did there come a point in time in
9 2010 or 2011 when some investigators from the
10 Attorney General's Office showed up at your
11 office?

12 A. Yes.

13 Q. And did they have a request with respect
14 to reviewing a particular area of the Lasch
15 Building?

16 A. Yes.

17 Q. And can you tell us about that?

18 A. I have to rephrase what you said. They
19 did not exactly ask to see a specific area. They
20 asked if they could take a tour of the Lasch
21 Building, which is -- it's a pretty big building
22 and we gave tours often so that went an
23 extraordinary question. They just asked if they
24 could tour the Lasch Building, get a look at it
25 because they thought it was beautiful so.

1 Q. Now was this the first time to your
2 knowledge that some investigators from the
3 Attorney General's showed up at the Lasch
4 Building?

5 A. Yes.

6 Q. Okay. Well tell us about that tour.

7 A. Standard circle that you make through
8 the building and the significant thing is as we
9 were walking down a hallway facing the building I
10 said this is the coaches locker room right here
11 and this is the graduate assistants, and the
12 strength training coaches, and the doctors locker
13 room right here, and they said so that's where
14 the GA's dress, and I said yes, that's where
15 their lockers are. Can we take a look at that
16 and I said sure. Took them inside and once they
17 got into that locker room area then it was like I
18 wasn't even in the room. They just sprang into
19 action and started to take pictures. They
20 mentioned Mike's name, they mentioned Jerry's
21 name, and I realized something happened there
22 because that's -- just by the way they sprung
23 into action.

24 Q. At some point in time after you saw this
25 in the -- and this is the locker room?

1 A. It was a graduate assistants locker room
2 is what we call it.

3 Q. You said they were taking pictures?

4 A. Yes.

5 Q. Of what?

6 A. They mentioned -- they turned to one of
7 the lockers and said this is -- this must be
8 Mikes. This is Mikes. Then they turned from the
9 locker and looked into the mirror where the jury
10 is sitting and if you look into the mirror you
11 kind of can look into the shower, which is a --
12 we call them gang showers where there is -- six,
13 or seven, or eight people can shower. In most
14 locker rooms it's the same way. But any way you
15 could look into the mirror, look into the shower,
16 and they were making a big deal about that. I
17 remember that specifically and then that's about
18 it.

19 Q. They eventually left?

20 A. Yes.

21 Q. And after that what, if anything, did
22 you do?

23 A. I immediately went upstairs and called
24 Tim Curley. I told him exactly what I just told
25 you, how it went down, and that they had just

1 left the building.

2 Q. And do you remember about when this was?

3 A. I know it was in the spring I believe.
4 I am guessing 2010. '10 or '11. I don't know
5 exactly.

6 Q. Okay. But you did call Tim Curley?

7 A. Yes.

8 Q. Immediately?

9 A. Yes.

10 Q. And you told him what went on?

11 A. Exactly. Yes.

12 Q. Now at this point in time is there any
13 discussion in the football building about this
14 visit from the Attorney General's Office?

15 A. A lot of people saw them walking through
16 the building. There was one representative from
17 the Attorney General's Office and then there was
18 a state trooper. So that got everybody's
19 attention as they were walking through the
20 building and there was a scuttlebutt as to what
21 it was all about. So there is just what is going
22 on, that kind of talk, and basically something is
23 going on.

24 Q. All right. Was that just for one day or
25 did it last longer than that?

1 A. You mean one day after?

2 Q. Yeah. I mean, there was discussion one
3 day or did it last longer? This wondering what
4 they were doing?

5 A. I can't say in that I didn't participate
6 in any of those discussions. I just kept my
7 mouth shut and waited to hear from above.

8 Q. Now did there come a point in time when
9 it seemed to you that there was some kind of
10 turmoil between Jerry Sandusky and Mike McQueary?

11 Ms. Conrad: Objection. Leading.

12 The Court: Overruled.

13 You can answer the question.

14 The Witness: Yeah. Could you repeat
15 it?

16 By Mr. Strokoff:

17 Q. Yeah. Did there come a point in time
18 when you felt there was some kind of turmoil
19 between Mr. McQueary and Jerry Sandusky?

20 A. The day that I was in the locker room
21 and we -- the two guys were taking pictures I
22 believe they were measuring with a tape measurer
23 and looking in the mirror, mentioned Jerry's
24 name, mentioned Mike's name, that's the day I
25 realized there was something was going on between

1 Jerry and Mike and the Attorney General and state
2 policemen are here investigating it.

3 Q. Okay. From the year 2001 through the
4 present had you ever seen Mike McQueary and Jerry
5 Sandusky interacting in the Lasch Building?

6 A. No.

7 Q. Have you ever see them interacting
8 anywhere?

9 A. Not that I recall.

10 Q. Sir, I want to move to the week
11 beginning November 5, 2011, when the arrest and
12 criminal complaints were announced that Saturday.
13 Were you in town that week?

14 A. I am sure I was.

15 Q. And your office in the Lasch Building is
16 where in relationship to Mike's office at that
17 time?

18 A. There is a foyer, an interoffice, Coach
19 Paterno, Coach O'Brien's office was right across
20 from mine, so there was a secondary little alcove
21 where our offices were, and then the nine
22 assistant coaches had nine offices down the far
23 side of the building. So I was up front. Mike
24 and the other eight assistant coaches were in the
25 back down the hallway.

1 Q. On the same floor?

2 A. On the same floor.

3 Q. Okay. At any time that week did you see
4 any need to reach out to Mike?

5 A. I don't recall if I did.

6 Q. Well did you see any need to? Let me
7 rephrase it. How did he seem to be handling
8 things as far as his job duties were concerned?

9 A. There were I assume -- I don't know. I
10 mean, I assume he was doing his job fine because
11 I would have heard about it if he wasn't. You
12 will have to rephrase your question. I am not
13 sure what you are trying to figure out.

14 Q. Well did you see anything unusual in
15 terms of his job performance that week?

16 A. No.

17 Q. Okay. And you were working that week?

18 A. I was working but we could go two days
19 and not see each other. He would never come up
20 to my part of the building and I wouldn't be back
21 there.

22 Q. Okay. But that was a week where there
23 was a lot going on on the campus, wasn't it?

24 A. Yes.

25 Q. A lot of activity with the media, right?

1 A. Yes.

2 Q. And by Sunday Mr. McQueary had been
3 identified as the graduate assistant that had
4 seen Jerry Sandusky in the shower room?

5 A. Okay.

6 Q. And so far as you can tell there was no
7 reason for you to check in on him to see how he
8 was doing?

9 A. I don't recall doing it. I may have a
10 reason to. I don't recall. Check in on him? Go
11 to his office and talk to him?

12 Q. See how he is doing.

13 A. I don't recall.

14 Mr. Strokoff: Pass the witness, Your
15 Honor.

16 Cross-Examination

17 By Ms. Conrad:

18 Q. Good afternoon, Mr. Ganter.

19 A. Good afternoon.

20 Q. Will it be better if I stand so you can
21 see me? Is this better?

22 A. Yes.

23 Q. Mr. Ganter, as you know, my name is
24 Nancy Conrad and I represent the Pennsylvania
25 State University.

1 A. Yes, ma'am.

2 Q. I have some follow-up questions for you.
3 Attorney Strokoff asked you about the seven or
4 eight performance reviews. Didn't he?

5 A. Yes. He did.

6 Q. What was the purpose for these
7 performance reviews?

8 A. I turned them into my superior so I
9 assume that he may decide to evaluate my
10 evaluations to find out how guys on his staff
11 were doing and also to provide an opportunity for
12 the staff because they get to review it to see
13 how they might -- we may feel they can improve in
14 the job that they are doing. So it was really to
15 let them know what kind of job we thought they
16 were doing and also to give them some guidelines
17 and help to improve and become better.

18 Q. Do you know whether or not Coach Paterno
19 ever reviewed these performance reviews?

20 A. I do not.

21 Q. Now in November -- November of 2011
22 Dr. Spanier issued a statement. Did you have the
23 opportunity to review his statement?

24 A. I don't recall reading it.

25 Q. Did you attend a meeting in which

1 Dr. Spanier made remarks to the staff of the --
2 of intercollegiate athletics?

3 A. Yes.

4 Q. What do you remember about those
5 remarks?

6 A. Basically he met with all of the
7 intercollegiate athletic staff, that's coaches,
8 the administrator, assistants, everyone, and as
9 you can imagine there was all -- everybody was
10 just going crazy and he basically told us just to
11 stick together, that, you know, we are going to
12 do the right thing and everybody just hang in
13 there, don't be excited, we are going to -- we
14 are going to get through this and just stick
15 together. That was basically it.

16 Q. In that meeting with intercollegiate
17 athletics did Dr. Spanier make any reference to
18 Mike McQueary?

19 A. Not that I recall.

20 Q. Based on the statements that he made in
21 that meeting to the entire intercollegiate
22 athletic staff did you connect anything
23 Dr. Spanier said to Mike McQueary?

24 A. I did not.

25 Q. And based on the statements that

1 Dr. Spanier made in that meeting to the entire
2 intercollegiate athletic staff did you infer
3 anything about Mike McQueary?

4 A. No.

5 Q. Did you hear anybody talking about Mike
6 McQueary after the meeting?

7 A. No.

8 Q. After the meeting with Dr. Spanier and
9 the entire staff did you hear anybody referring
10 to Mr. McQueary?

11 A. No.

12 Q. And after the meeting with Dr. Spanier
13 and the entire staff did you hear any negative
14 statements about Mr. McQueary?

15 A. No.

16 Q. Now on or about November 9, 2011, do you
17 recall that Coach Bradley was appointed as
18 interim head coach?

19 A. Yes, ma'am.

20 Q. And then after his press conference in
21 the morning of November 10, 2011, did you have
22 any occasion to meet or speak with Mr. McQueary?

23 A. Repeat the question.

24 Q. On Thursday after Coach Bradley had his
25 press conference -- did you attend that press

1 conference by the way?

2 A. No. I did not.

3 Q. And what was your understanding of
4 whether or not Coach McQueary was going to be
5 coaching on the Saturday Nebraska game?

6 A. My understanding was that he was not
7 going to be coaching.

8 Q. And how did you come to that
9 understanding?

10 A. From Coach Bradley.

11 Q. And did Mr. McQueary speak to you at all
12 about that issue of him not coaching that
13 weekend?

14 A. Yes.

15 Q. And what was the nature of the exchange
16 between and you Mr. McQueary?

17 A. Mike came to my office and said that he
18 just wanted my opinion that the law enforcement
19 officers -- he became aware that there were death
20 threats against his wife, his child, himself,
21 that if he coached on Saturday horrible things
22 would happen and that the law enforcement people
23 wanted him to get out of town for his safety. He
24 told me that his wife and baby were going to
25 leave town and I remember Mike saying they want

1 me to go with them, what do you think, and so I
2 told him my opinion that he should. It's just a
3 football game and this is his family and his wife
4 and kid and it's just a football game compared to
5 that. So I suggested that he do -- that he gets
6 out of town with his wife and child.

7 Q. Was that out of concern for his safety?

8 A. I would say yes.

9 Q. Was that out of concern for the safety
10 of his family?

11 A. Yes.

12 Q. And I want to go back and break down a
13 little bit of what you said. I believe you said
14 that Mr. McQueary informed you that he had
15 received death threats, is that correct?

16 A. Yes.

17 Q. And that he had received the direction
18 from law enforcement to leave town that weekend
19 because of the death threats?

20 A. Yes.

21 Q. And that you provided advice to him that
22 you thought he should leave town for safety
23 reasons?

24 A. Yes.

25 Q. Do you know what Mr. McQueary did?

1 A. He left town.

2 Q. So he was not present or he did not
3 coach against that Saturday game against
4 Nebraska, did he?

5 A. Correct. He did not.

6 Q. Now did you have some exchanges with
7 Mr. McQueary during that weekend?

8 A. Yes.

9 Q. And what were the nature of those
10 exchanges?

11 A. Just I sent him an e-mail, maybe a text,
12 just to say are you doing okay, we are thinking
13 about you, and after the game I think I sent him
14 a text or an e-mail and said we missed you
15 Saturday and hope everything is okay.

16 Q. I want to pull up D-135.

17 The Court: Do you need the witness to
18 look at it or are you going to have it on the
19 scene?

20 Ms. Conrad: Can we just have the
21 witness look at it or -- it's going to come up on
22 your screen. Can it come up just the witness's
23 screen or does it have to be on the board?

24 By Ms. Conrad:

25 Q. Okay. Mr. Ganter, are you familiar with

1 the document that's been marked D-135?

2 A. Yes.

3 Q. What is it?

4 A. It's an e-mail I sent to Mike that
5 weekend that he missed the game.

6 Ms. Conrad: Move for the admission of
7 D-135.

8 Mr. Strokoff: No objection, Your Honor.
9 By Ms. Conrad:

10 Q. And as I understand your testimony,
11 Mr. Ganter, this is the e-mail that you sent to
12 Mike McQueary on the day of the Nebraska game, is
13 that correct?

14 A. Yes.

15 Q. And what is it that you said to
16 Mr. McQueary?

17 A. You doing okay? There it is. You doing
18 okay? Remember how lucky you are to have Barbie
19 and Claire.

20 Q. And then following that e-mail did you
21 have any other exchanges with Mr. McQueary?

22 A. I believe following the game I contacted
23 him also.

24 Q. And directing your attention to the next
25 page, do you recognize that document?

1 A. Yes.

2 Q. What is it?

3 A. Do you want me to read it?

4 Q. Well do you recognize it?

5 A. Yes. I do recognize it.

6 Q. And then just generally tell me what it
7 is.

8 A. It's an e-mail that I sent to Mike after
9 the game.

10 Q. And what do you tell Mr. McQueary in
11 that e-mail?

12 A. Missed you today. Two hundred guys at a
13 letterman's meeting before the game. Brad Jones
14 -- who is a friend of Mikes -- stood tall for the
15 Q. So many guys asked about you and care for
16 you. And many asked for your cell, which I need,
17 and e-mail. Should I give it?

18 Q. So let me break that down. What do you
19 mean when you said Jones stood tall for the Q?

20 A. One of Mike's teammates who is a real
21 good friend of his stood up and rallied. Tried
22 to rally everyone around Mike.

23 Q. And you go on to say so many guys asked
24 about you and care for you?

25 A. Yes.

1 Q. What does that mean?

2 A. Just because of my job with letterman's
3 club I knew and I coached all of those guys and
4 so they were coming to me -- and I also coached
5 with Mike. So they just came to me and said if
6 you see Mike, you know, tell him this and they
7 wanted to know when was the last time I talked to
8 him, how is he doing, where is he, all of that
9 kind of stuff, is he going coach next week. So
10 just a lot of people had questions about Mike. I
11 didn't know many answers but that was it.

12 Q. And, Mr. Ganter, when you say
13 letterman's club can you explain that group?

14 A. Yes. If you received a football letter
15 at Penn State you become a member of an
16 organization called the Penn State Football
17 Letterman's Club. It is a dues paying
18 organization, very inexpensive, but there are 16
19 hundred members, former players, and
20 traditionally they all get together two or three
21 times a year, golf tournaments, tailgates. So
22 it's just a fraternity of former football players
23 at Penn State.

24 Q. And this fraternity of former football
25 players was asking about Mike McQueary?

1 A. Yes.

2 Q. And you related that to Mr. McQueary
3 that they care for him?

4 A. Yes.

5 Q. You also indicate that many asked for
6 your cell and could you give it to them?

7 A. Right.

8 Q. You say that you need his cellphone
9 number, don't you?

10 A. Yes.

11 Q. And did you obtain that cellphone
12 number?

13 A. I don't recall.

14 Q. Now shortly after that last game Mike
15 McQueary was put on paid administrative leave.
16 Did you play any role in that decision to put him
17 on paid administrative leave?

18 A. No.

19 Q. Were you aware that he was on paid
20 administrative leave at that point in time?

21 A. Yes.

22 Q. And a search for the new head football
23 coach began later that year, didn't it?

24 A. Yes.

25 Q. The football team was aware that that

1 search was under way, weren't they?

2 A. Yes.

3 Q. Did you have any encounters with the
4 players about that search?

5 A. Yes.

6 Q. Can you describe that for us please?

7 A. Six or seven of the strongest leaders on
8 the team, couple seniors, couple juniors, a
9 sophomore, came to my office and asked me if I
10 could arrange a meeting with Dr. Joyner, who was
11 our athletic director at that time, and they said
12 we would like to get a meeting with Dr. Joyner.
13 So because I was in the football building, Joyner
14 is over in the Jordan Center I said I will have
15 to tell him what it's about and can I tell him
16 what it's about and they said we are very
17 concerned about the fact that it's our senior
18 year, we have -- we are a close knit team and
19 nine new coaches are going to come in here. We
20 don't know anybody, they don't know us, and they
21 said so we are going to ask Coach Joyner -- we
22 are going to ask Dr. Joyner to keep two of our
23 current assistant coaches on the staff, Larry
24 Johnson and Ron Vanderlinden, and that's
25 basically it. So I called Tim -- I am sorry.

1 Yeah. I called Joyner. I called Dr. Joyner's
2 office. I believe I talked to his administrative
3 assistant, told her that they wanted a meeting
4 with Dave, and then she got back to me and said
5 tell them that this is Dave's number, to call
6 Dave. So they arranged the meeting and that was
7 my part in it.

8 Q. Did anyone bring to your attention that
9 there was an interest in keeping Mike McQueary
10 under the new head coach?

11 A. No.

12 Q. And you made reference to the fact that
13 there would be nine new coaches under the new
14 head coach. What did you mean by that?

15 A. Well when a new head coach is hired
16 sometimes they come in and basically clean house.
17 They have their guys. They have guys that they
18 trust and they come in and bring their own staff
19 and if you are there you're not there. You are
20 out of there. So often times there are nine guys
21 that are out of work.

22 Q. Had you received any information after
23 it was announced that Coach O'Brien, who was the
24 new head football coach -- what his intentions
25 were with respect to the Penn State assistant

1 coaches?

2 A. I am not sure when I -- I found this out
3 but there was no question in his mind that he had
4 nine coaches and that all of our coaches were
5 going to be let go.

6 Q. How did you come to that realization?

7 A. He told me. This was after.

8 Q. When you say he, who are you referring
9 to?

10 A. Bill O'Brien.

11 Q. Coach O'Brien?

12 A. Coach O'Brien.

13 Q. Now were you aware that Coach O'Brien
14 did have meetings with some of the Penn State
15 assistant coaches?

16 A. I understood that he met with, yes, some
17 of the coaches.

18 Q. You say some of the coaches?

19 A. Yes.

20 Q. Was it your understanding he met with
21 all of the assistant coaches?

22 A. That was my understanding.

23 Q. That he had met with all of them?

24 A. Yes.

25 Q. But do you know that for certain?

1 A. Do I know that for certain? No.

2 Q. At the time Coach O'Brien didn't meet
3 with Michael McQueary. Were you aware of that?

4 A. Not till much later.

5 Q. Well at the time Coach O'Brien had these
6 courtesy meetings Mike McQueary was on
7 administrative leave, wasn't he?

8 A. Correct.

9 Q. He wasn't currently on active employment
10 as an assistant coach, was he?

11 A. He was not a current active assistant
12 coach. Yes.

13 Q. And while Coach O'Brien was conducting
14 these courtesy meetings did Coach O'Brien ask to
15 see any of these performance reviews that you had
16 completed on the assistant coaches?

17 A. Not to my knowledge.

18 Q. Did he ask to see the performance
19 reviews of Mike McQueary?

20 A. Not to my knowledge.

21 Q. Did you know that Coach O'Brien wanted
22 to bring Stan Hixon in with him to his team?

23 A. I knew he was one of the first guys he
24 hired when he got the job and Stan was there
25 within days after the announcement that Coach

1 O'Brien was coming.

2 Q. And what position?

3 A. Wide receivers.

4 Q. Was that the coaching position that
5 Mr. McQueary --

6 A. At that time yes.

7 Q. Let me finish my question.

8 A. I am sorry.

9 Q. That's okay. Was that the position that
10 Coach McQueary had held under Coach Paterno?

11 A. Yes.

12 Q. And did you know any of the history
13 between Coach O'Brien and Stan Hixon?

14 A. I know that they had coached together at
15 Georgia Tech for a few years.

16 Q. Now following the hiring of Coach
17 O'Brien and his naming of his staff did you have
18 any further contact with Mike McQueary?

19 A. Yes.

20 Q. What was the nature of that?

21 A. Mike was very, very common in our
22 profession. He had asked me to call a couple
23 people in the coaching profession who had
24 openings on their staff and would I make a call
25 for him.

1 Q. Do you recall any of those coaches whom
2 Mr. McQueary asked that you contact on his
3 behalf?

4 A. Specifically Matt Rhule, who is a head
5 coach at Temple, and Al Golden, who is the head
6 coach at Miami.

7 Q. And did you have any contact with any
8 other coaches or did any coaches contact you with
9 respect to Michael McQueary?

10 A. Yes.

11 Q. And who was that?

12 A. Well his name skips my mind for a
13 second. Not Herman. I can't think of his name
14 but it's a coach who called me. He was a GA at
15 our place for a long time and he had been gone
16 for a long time and he became the head coach at a
17 small school. I think it was a 1AA school in
18 Alabama or something. I am not sure. And he
19 called me and he said, you know, I have an
20 opening and I am thinking about hiring Mike and
21 he said -- and I gave Mike a plus. I said that
22 would be awesome, that would be good, he would do
23 a great job for you, and that was basically the
24 end of it.

25 Q. And was that consistent with the other

1 information -- with the information that you had
2 presented to the other coaches when you made
3 contact with them?

4 A. I didn't get into specifics with Al and
5 Matt. I told them that I am calling on Mike's
6 behalf, he would be a good addition, give me a
7 call if you would like to speak further, that
8 kind of thing.

9 Q. And did you receive a call back from
10 Coach Rhule?

11 A. No.

12 Q. Did you receive a call back from Coach
13 Golden?

14 A. No.

15 Ms. Conrad: Thank you. I have no
16 further questions.

17 Redirect Examination

18 By Mr. Strokoff:

19 Q. I do have a few, sir.

20 A. Yes, sir.

21 Q. Getting back to Thursday the 10th of
22 November.

23 A. You have to be more specific.

24 Q. Thursday the 10th after Tom Bradley's
25 press conference.

1 A. Okay.

2 Q. Now didn't Tom indicate to you initially
3 that Mike would be coaching Saturday?

4 A. I don't recall Tom coming to me and
5 saying Mike is going to coach.

6 Q. Okay. What do you recall him saying?

7 A. Him coming to me right after he found
8 out that Mike was not going to coach.

9 Q. So do you remember when that was during
10 the day?

11 A. Had to be Thursday or Friday. It could
12 have been the same day. I don't recall exactly
13 when.

14 Q. Did you think that Mr. Bradley made the
15 decision that Mike not coach?

16 A. No.

17 Q. Why didn't you think that?

18 A. That threw a pretty big cog into the
19 organization for the game on Saturday. Mike had
20 a really important position and he signaled in
21 plays. I mean, he was an integral part of our
22 game day operation. So on Wednesday or Thursday
23 losing that guy was pretty dramatic. So Tom came
24 in and said I can't believe, you know, I lost
25 Mike my first game as head coach, here is what I

1 am going to do, and then he proceeded to try and
2 tell me what his game plan was to make up for the
3 loss of Mike.

4 Q. Tell me about that integral role.

5 A. On game day?

6 Q. On game day.

7 A. Mike was the primary -- he wasn't the
8 play caller but he got the plays, the formations,
9 the personnel, to the quarterback and got the
10 right personnel into the game. That was his
11 responsibility and it was very difficult because
12 he is talking to one guy up in the press box. I
13 had the job so I know it's very difficult. He is
14 talking to one guy in the press box who might be
15 calling a play and in the middle of you getting
16 organized Coach Paterno might come down and
17 change the play. Now this guy is telling me one
18 thing, he is telling me the other, and there is a
19 technique to staying sane in that position and
20 Mike did that. He did a real good job. It's a
21 real hard job. So losing that guy -- you throw
22 someone else in there it's pretty wild.

23 Q. And there is only a finite period of
24 time to get the play in and get the right
25 personnel?

1 A. Right.

2 Q. So you also said that Mike came to you
3 to ask about whether or not he should go out of
4 town with his wife and daughter?

5 A. Yes.

6 Q. That was after he was told he wasn't
7 going to play -- I am sorry. Wasn't going to
8 coach on Saturday?

9 A. I thought that was part of the decision.
10 That's the way I took it. That he had to make a
11 decision that he leaves town for the sake of his
12 family and his own security or he stays and
13 coaches the game. That's the way I took it and
14 he had a decision to make.

15 Q. So this was before Tom Bradley told you
16 that Mike wasn't going to coach?

17 A. Yes.

18 Q. And his question to you is whether or
19 not you thought he should stay and coach or go
20 with his wife and daughter out of town?

21 A. Yes.

22 Q. Okay. Did he say to you that law
23 enforcement had spoken to him or had spoken to
24 his wife or where did the law enforcement come
25 from?

1 A. I can only say that I took what he said
2 to be that he was notified by law enforcement --
3 not sure who -- that there were death threats
4 made against him and his family and told me that
5 for sure Barbie and his baby were getting out of
6 town and that they felt that he should also for
7 his own safety.

8 Q. But he was originally inclined not to?
9 Is that what you are saying?

10 A. I couldn't say that. I don't know.

11 Q. Now you were aware, were you not, that
12 on Friday afternoon Dr. Erickson, who is now the
13 president or acting president, had held a press
14 conference and announced that Mike McQueary would
15 not be coaching Saturday? Isn't that correct?

16 A. Was I aware at the time?

17 Q. Let me withdraw because I misspoke
18 myself and I apologize for that. Were you aware
19 on Friday at 4:00 Rodney Erickson announced that
20 Mike McQueary is being placed on administrative
21 leave?

22 A. I was aware -- I can't say that I knew
23 Dr. Erickson made a statement. I knew that was
24 the deal. I knew that was what would happen.

25 Q. What do you mean you knew that was the

1 deal?

2 A. That Mike was not going to coach and he
3 was going to be out of town.

4 Q. But administrative leave is different
5 than not coaching one of the games, is that
6 correct?

7 A. I don't know what administrative leave
8 is. So he had left for his own safety and he was
9 being paid. So he was on leave, leave safety.

10 Q. Sir, are you saying on Saturday when you
11 sent him the text --

12 A. Yes.

13 Q. -- to see how he was doing --

14 A. Yes.

15 Q. -- you weren't aware that he was placed
16 on administrative leave by then?

17 A. I have to say no.

18 Q. When did you find out he was on
19 administrative leave, if at all?

20 A. I can't answer that.

21 Q. All right. Now this staff meeting that
22 you went to on the 7th where there a couple
23 hundred athletic departments there present?

24 A. Yes.

25 Q. Is that correct? How many of them did

1 you speak to after the meeting?

2 A. I don't recall.

3 Q. More than five?

4 A. I will guess that I walked right out of
5 there and didn't talk to anybody. That's what I
6 guess. I don't recall speaking to anyone.

7 Q. So if you didn't speak to anybody you
8 didn't hear anybody say anything about the
9 meeting?

10 A. About the meeting?

11 Q. Yeah.

12 A. No. Not that day. No. I don't recall
13 talking to anybody about it.

14 Q. Now the new coach, Bill O'Brien -- he
15 told you he was bringing in nine new coaches,
16 right?

17 A. I knew that afterwards.

18 Q. But, in fact, he only ended up bringing
19 in seven?

20 A. Yes, sir.

21 Q. Now these interviews, did he call them
22 just courtesy interviews?

23 A. No.

24 Q. Where did that term come from? Courtesy
25 interview?

1 A. I don't know. I just know he called
2 them interviews.

3 Q. But other than Ms. Conrad did anybody
4 else call these interviews courtesy interviews?

5 A. No.

6 Q. And these half a dozen -- six or seven
7 players who came to you, is that correct?

8 A. Yes, sir.

9 Q. That was in January you think 2012?
10 Before Christmas? When?

11 A. It was during the job search so it had
12 to be after the season. Now we are looking for a
13 head football coach, tons of rumors out there,
14 that's when the players --

15 Q. After the TicketCity Bowl?

16 A. I would say yes.

17 Q. Okay. So by this point in time in
18 January 2012 Mike McQueary has been on
19 administrative leave and absent from all football
20 facilities for six or seven weeks, right?

21 A. Yes.

22 Q. And did you understand that his
23 administrative leave meant he wasn't supposed to
24 contact anybody in the football program?

25 A. No.

1 Q. All right. Did you see him around --

2 A. No.

3 Q. -- any of the football facilities?

4 A. Not that I recall. No.

5 Q. Bill O'Brien's interviews -- were where
6 they held?

7 A. I am not positive. I think in his
8 office. I never saw a guy go into an interview
9 and I don't know. I would assume in his office.

10 Q. He had an office in the Lasch Building?

11 A. As soon as he got hired, yes.

12 Q. So if he had interviews in his office
13 and Mike McQueary wasn't allowed to be on any
14 football facilities he couldn't go to it, isn't
15 that correct?

16 A. If Mike was -- not in his office. No.
17 If Mike wasn't allowed.

18 Q. And these six or seven seniors or
19 leaders of the team had came in -- this is after
20 the TicketCity, right?

21 A. Yes.

22 Q. So when you said seniors these are guys
23 that are going to be seniors next year?

24 A. Going to seniors.

25 Q. Rising seniors?

1 A. Yes, sir.

2 Q. And how many of them were wide
3 receivers?

4 A. I can only remember three guys that
5 really stood out. I have a small office and they
6 were all there in front of me and two guys did
7 the talking and they were representatives from
8 each class. So honestly I remember the two main
9 strongest leaders of that group and I probably
10 can't think of two other guys.

11 Q. Were any of them wide receivers?

12 A. No.

13 Q. Did anybody in that group say they
14 wanted Hixon to come in as a wide receiver coach?

15 A. No, sir.

16 Q. Were you aware of the relationships that
17 Mike had with his receivers?

18 A. I would say I had a pretty good feel.

19 Q. And what is your pretty good feel?

20 A. They respected him. They knew he would
21 work hard for him, that he was a good football
22 coach, cared about them.

23 Q. What was the last thing you said, sir?

24 A. He cared about them.

25 Q. And he had some good success as a wide

1 receiver coach, did he not?

2 A. Yes. Yes. He did.

3 Q. Several of his athletes set Penn State
4 records?

5 A. Yes.

6 Q. Couple went on to the National Football
7 League, is that correct?

8 A. Yes.

9 Q. Mike also coached kickers as well as
10 wide receivers, right?

11 A. Yes. He did.

12 Q. Couple of them ended up in the NFL?

13 A. Yes.

14 Q. One or two of them set Penn State
15 records, right?

16 A. Yes.

17 Q. And O'Brien never asked your opinion
18 about incumbent assistant football coaches?

19 A. No.

20 Mr. Strokoff: Nothing further, Your
21 Honor.

22 Recross-Examination

23 By Ms. Conrad:

24 Q. Just a very brief follow up, Mr. Ganter,
25 and I am going to say here if that's okay. Thank

1 you. After that staff meeting in which
2 Dr. Spanier spoke to the entire staff of
3 intercollegiate athletics did anyone come to you
4 after that meeting and make any statement about
5 Mike McQueary?

6 A. Not that I recall.

7 Q. Did anyone raise any issue that they
8 thought Dr. Spanier was making an inference about
9 Mike McQueary with his statements?

10 A. No.

11 Q. And then I believe that Attorney
12 Strokoff asked you about Mr. McQueary's I think
13 he said integral role as a coach in the football
14 games?

15 A. Yes.

16 Q. Despite that role that Mr. McQueary
17 played was it your advice to him that he should
18 leave town that weekend?

19 A. Yes.

20 Q. Thank you. And miss the football game?

21 A. Yes.

22 Ms. Conrad: I have no further
23 questions.

24 Mr. Strokoff: Nothing further, Your
25 Honor.

1 The Court: Thank you, sir. You are
2 free to go about your business.

3 The Witness: Thank you.

4 Mr. Strokoff: Wendell Courtney, Your
5 Honor.

6 Ms. Conrad: May we approach?

7 (Whereupon, the following conversation
8 was held at side bar:)

9 Mr. Strokoff: Do you want us to ask his
10 lawyer? I don't think his lawyer --

11 Ms. Conrad: I don't know. I know he
12 has a lawyer here representing him.

13 The Court: Ask the lawyer. Ask him
14 what basis he wants to participate.

15 Mr. Strokoff: He has no interest in
16 trying to participate.

17 The Court: I didn't think he would.

18 (End of side bar.)

19 The Court: Who is the next witness?

20 Mr. Strokoff: Wendell Courtney, Your
21 Honor.

22 Whereupon,

23 Wendell Courtney

24 was called as a witness and having been duly
25 sworn, was examined and testified as follows:

1 Direct Examination

2 By Mr. Strokoff:

3 Q. Will you state for the record please
4 your name?

5 A. Wendell Courtney.

6 Q. And we have been asking everybody to
7 spell their last name.

8 A. C-o-u-r-t-n-e-y.

9 Q. And your profession, Mr. Courtney?

10 A. I am an attorney.

11 Q. And for how long have you been an
12 attorney?

13 A. Since 1980.

14 Q. And where are you practicing now?

15 A. Currently in the Harrisburg area.

16 Q. And before you came to Harrisburg where
17 were you practicing?

18 A. State College.

19 Q. Okay. And until what time were you
20 practicing in State College approximately?

21 A. April of 2012.

22 Q. And did you render any legal services at
23 any time to the Pennsylvania State University?

24 A. Yes. I did.

25 Q. And what services did you render over

1 what period of time?

2 A. Well I graduated from law school in 1980
3 and my first job was with McQuaide Blasko law
4 firm in State College and at the time the firm
5 was the outside general counsel for Penn State.
6 So I was hired from the get go to be responsible
7 primarily for assisting the firm and performing
8 services for Penn State University.

9 Q. And did there come a period of time when
10 you became primary counsel for the University?

11 A. Yes.

12 Q. And about what period of time was that?

13 A. It was approximately 1995. Coincident
14 with my good friend and partner Dell McQuaide
15 becoming really ill and dying and that was about
16 the same time that President Spanier was
17 transitioning as the replacement for Joab Thomas.

18 Q. And it was from '95 till about when?

19 A. Till Cynthia Baldwin became general
20 counsel of Penn State in I think January of 2010.

21 Q. During that period of time did you have
22 any professional interactions with Gary Schultz?

23 A. I did.

24 Q. And tell us who Gary Schultz was?

25 A. He was the senior vice president for

1 finance and business at Penn State.

2 Q. Okay. And what were the nature of your
3 interactions with him?

4 A. It was multiple types of interactions.
5 Even though we were outside counsel and even
6 though I was not employed directly by Penn State
7 I viewed myself as reporting to Gary and fellow
8 members of my firm also reporting to Gary on a
9 dotted line type basis. So I would be involved
10 in all manner of different legal issues. I had a
11 number of colleagues of mine that did other
12 matters. So I would do everything from labor, to
13 athletics, to business related matters, and the
14 list would go on and on.

15 Q. Sir, can you tell the jury in the year
16 2001 how, if at all, you maintain records of the
17 professional services which you rendered to the
18 University?

19 A. It's the same way I maintained records
20 throughout my career at McQuaide Blasko. We had
21 a timesheet. It was a piece of paper that had
22 lines on it and columns on it and at the top
23 would have been a date line and also a name line
24 where I would put my name, Courtney, and down the
25 left-hand column would be a number of different

1 blocks, as well as smaller blocks where there
2 would be a client number put in. So if I was
3 handling a Penn State matter -- let's say it's
4 Penn State labor I would put Penn State labor and
5 then there would be a section in the middle part
6 of the document for the narrative, which is how I
7 would describe what it is that I was doing in
8 that particular matter.

9 Q. Sir, there is a -- there is more than
10 one loose leaf binder in front of you but one
11 should be marked Plaintiff's Exhibits, Witness
12 Copy Plaintiff's Exhibits.

13 A. This says exhibits. Yes.

14 Q. Can you please turn to Exhibit 6 please.
15 Do you have that in front of you, sir?

16 A. I do.

17 Q. Are you able to identify that document?

18 A. It looks like a document that would have
19 been prepared within my firm of McQuaide Blasko.

20 Q. And what kind of document, sir?

21 A. Well it's entitled McQuaide Blasko, and
22 it says applied and unemployed timesheet by
23 working attorney, and is working attorney select
24 number nine, and to the best of my knowledge this
25 references items that I worked on because I was

1 attorney number nine within McQuaide Blasko.

2 Q. That was your number within the billing
3 system?

4 A. Correct.

5 Mr. Strokoff: Move for admission of
6 Number 6, Your Honor.

7 The Court: Any objection?

8 Ms. Conrad: No, sir.

9 The Court: It's admitted.

10 By Mr. Strokoff:

11 Q. So all of these entries on this page are
12 your time entries for February 8th and February
13 9, 2001, and there is also one entry for February
14 11, 2001, is that correct?

15 A. That is correct.

16 Q. And there are no entries for February
17 10?

18 A. None appear here. No.

19 Q. Okay. Sir, do you have a recollection
20 as to what day of the week February 11th was?

21 A. I do now. It was a Sunday.

22 Q. And can you read to the jury each line
23 on this entry for you of February 11, 2001,
24 including all of those numbers?

25 A. It says 4000-450061

1 PSU-general-finance/business - central.

2 Q. And what does that line mean?

3 A. Pardon me?

4 Q. What does that line mean?

5 A. That's just the number designating the
6 arm of the University to which this particular
7 matter was being billed.

8 Q. Okay. So 4000-450061 is where this
9 particular matter is to be paid for?

10 A. It's all paid by Pennsylvania State
11 University. So the 4,000 number is Penn State
12 and then we have a number of different
13 sub-numbers depending upon the subject matter.
14 If it was real estate it would be a different
15 number. If it was risk management it would be a
16 different number and this particular item, Penn
17 state general, had it's own designated number.

18 Q. So 450061 was general?

19 A. Well that's what it appears based on
20 this select. I don't have those numbers
21 memorized. Never did. My assistant filled in
22 those particular blanks once I gave her the
23 timesheet.

24 Q. How about the text, sir? The next line?

25 A. Conference with G. Schultz, re reporting

1 of suspected child abuse, legal research, re
2 same, conference with G. Schultz.

3 Q. Now who is the G. Schultz?

4 A. Gary Schultz.

5 Q. Okay. So the first entry, which is the
6 longest entry, references to a conference, re
7 reporting of suspected child abuse. Now what
8 kind of conference was that? Do you remember?

9 A. I do.

10 Q. Okay. What kind of conference was that?

11 A. This calls for me to disclose privileged
12 information and I will be happy to answer your
13 question but I do need to know that the privilege
14 is being waived with respect to my responses.

15 Q. Well you do recall it was waived at your
16 deposition?

17 A. I do recall that and if that waiver
18 continues then I will be more than happy to
19 answer your question.

20 Ms. Conrad: Yes. It does.

21 The Court: One second.

22 Counsel want to come up here a moment
23 please? Let's activate the sound.

24 (Whereupon, the following conversation
25 was held at side bar:)

1 The Court: So with this witness the
2 position that the client was Penn State
3 University.

4 Ms. Conrad: Yes, sir.

5 The Court: And Penn State University is
6 waiving its client -- attorney/client privilege?

7 Ms. Conrad: With respect to this
8 communication.

9 The Court: Okay. Should I tell the
10 jury that as to what's going on? What do you
11 want me to say?

12 Mr. Strokoff: I don't know that you
13 need to say anything.

14 Ms. Conrad: I agree.

15 Mr. Strokoff: If it's waived.

16 (End of side bar.)

17 The Court: All right. Mr. Courtney,
18 the attorneys are in agreement that any
19 attorney/client privilege is waived and that the
20 entity that had the right to assert the privilege
21 has waived the privilege.

22 The Witness: Thank you, Your Honor.

23 By Mr. Strokoff:

24 Q. So I guess my question at the time was
25 what kind of conference was this?

1 A. Gary called me.

2 Q. So it was a telephone conference?

3 A. It was a telephone call that I received
4 from Mr. Schultz. I don't know if I was at home
5 or at the office. He called me to ask for my
6 assistance and he indicated that the University
7 had received a report from an unnamed graduate
8 assistant regarding Jerry Sandusky and young boy
9 unnamed being in the Lasch Building on campus
10 engaging in horseplay in the shower area and that
11 made the graduate assistant feel uncomfortable.

12 Q. I am sorry. Go ahead.

13 A. And that made the grad assistant feel
14 uncomfortable and Gary asked me what the
15 University should do about it.

16 Q. And your response, sir?

17 A. Well I told him -- I asked him a number
18 of questions. I don't recall the specific
19 questions that I asked him to get more detail and
20 then I told him I needed to look into it and I
21 would get back to him.

22 Q. And did you look into it?

23 A. Yes. That's the second line or the
24 second reference in this timesheet that I did
25 some legal research regarding what I thought

1 needed to be researched.

2 Q. And after you did the legal research
3 then what did you do?

4 A. I called Gary Schultz back.

5 Q. And did you give him advice?

6 A. I did.

7 Q. And your advice was?

8 A. I advised him that I thought it would be
9 the smart thing, the prudent thing, to have this
10 reported to the Department of Public Welfare.

11 Q. And to your knowledge did anybody ever
12 report this to public welfare?

13 A. I don't know.

14 Q. Well you don't know if anybody did,
15 right?

16 A. I do not know if anybody did. Correct.

17 Q. Is there anything else that you can
18 recall about this advice which you rendered about
19 reporting the matter to DPW?

20 A. Nothing beyond the general nature of
21 what was reported to me which I have testified to
22 was horseplay in the shower, Sandusky and a
23 younger boy, Lasch Building, and that the grad
24 assistant who witnessed it felt uncomfortable
25 about the situation.

1 Q. And you said that Mr. Schultz said that
2 he had received a report that grad student had
3 made this complaint?

4 A. Yes.

5 Q. So at that point in time Mr. Schultz did
6 not indicate to you that he had actually spoken
7 to the grad student?

8 A. I am not sure if he told me that he had
9 actually spoken with someone but he did indicate
10 that it had been reported to him and I don't
11 recall if it was a direct report or secondhand
12 report.

13 Q. Sir, to your knowledge did Penn State
14 pay this bill that contained this 2.9 hours of
15 professional time on February 11, 2001?

16 A. I don't know specifically but I can tell
17 you that when we billed Penn State for work that
18 we did they paid for it. So I would assume that
19 this was paid for like any other bill would be
20 paid for.

21 Q. Sir, in working with Mr. Schultz over
22 the years did you become familiar with his
23 handwriting?

24 A. Yes.

25 Mr. Strokoff: Your Honor, Number 6 has

1 been admitted? Do you have that?

2 The Court: It's been admitted.

3 Mr. Strokoff: Okay.

4 By Mr. Strokoff:

5 Q. Sir, I will ask you in that book if you
6 would please to take a look at Plaintiff's
7 Exhibit Number 1.

8 A. Pardon me.

9 Q. Plaintiff's Exhibit Number 1.

10 A. One.

11 The Court: Mr. Strokoff, I think it
12 would help if you kept that microphone a little
13 bit closer to you.

14 Mr. Strokoff: I have a mic phobia but I
15 will do my best, Your Honor.

16 By Mr. Strokoff:

17 Q. Are you able to identify Number 1?

18 A. It appears to be the handwriting of Gary
19 Schultz.

20 Mr. Strokoff: Move for admission of
21 Number 1, Your Honor.

22 Ms. Conrad: Your Honor, I would object.
23 The witness has said it appears. He is not been
24 qualified as a handwriting expert and while he
25 has testified to some familiarity with

1 Mr. Schultz's handwriting that does not qualify
2 him to authenticate a document unless he was
3 present when he saw Mr. Schultz write the
4 document.

5 The Court: Do you want to ask another
6 question to qualify him as to how many times he
7 has seen the handwriting of Mr. Schultz?

8 By Mr. Strokoff:

9 Q. Sir, over what period of time did you
10 deal with Mr. Schultz and witness his
11 handwriting?

12 A. Those are two different questions but I
13 dealt with Mr. Schultz for -- since '95 till
14 2010.

15 Q. And over that period of time how
16 frequently, if at all, did you see notes or other
17 documents which he had handwritten?

18 A. Numerous times. I can't quantify the
19 number but, you know, I would see him next to me
20 taking notes about something or meeting together
21 he is taking notes about what we are -- what I am
22 talking about and so I became familiar with his
23 handwriting through that process.

24 Ms. Conrad: Same objection.

25 The Court: Overruled.

1 Ms. Conrad: To the extent --

2 The Court: Pardon me. Go ahead.

3 Ms. Conrad: To the extent that
4 Mr. Courtney may have glanced over and seen
5 Mr. Schultz taking notes is very different than
6 sitting and reading an entire page and
7 determining that that writing is Mr. Schultz. He
8 has simply not presented any evidence to
9 authenticate this document. He did not see
10 Mr. Schultz -- at least he has not testified --
11 write this document, nor has he produced any
12 evidence of any documents that he saw, witnessed,
13 and knew that were written by Mr. Schultz.

14 The Court: Mr. Courtney, with regard to
15 this exhibit is it consistent with the
16 handwriting exemplars that you have seen from
17 Mr. Schultz in the past?

18 The Witness: Yes. It is, Your Honor.

19 The Court: And other than from a
20 document examination standpoint is there any
21 doubt in your mind that that's Mr. Schultz's
22 handwriting?

23 The Witness: No. It is not, Your
24 Honor.

25 The Court: Objection is overruled.

1 Mr. Strokoff: So then 1 is in, Your
2 Honor?

3 The Court: Exhibit 1 is in over
4 objection.

5 By Mr. Strokoff:

6 Q. Similarly, sir, are you able to identify
7 Plaintiff's Exhibit Number 2?

8 A. Without reading it, I mean, as I
9 mentioned with respect to Exhibit Number 1 this
10 appears to be Gary Schultz's handwriting.

11 Ms. Conrad: Objection. The question
12 was whether he was familiar with the document. I
13 believe the witness has testified he is not
14 familiar with either of these two documents.

15 Mr. Strokoff: Let me rephrase.

16 The Court: Excuse me. Counsel, I told
17 you both before when there is an objection you
18 rise and you address the Court. You state the
19 grounds. If I want an argument I will ask for
20 that.

21 Sir, take a moment and read P-2 please.

22 The Witness: Yes, Your Honor.

23 The Court: Have you had an opportunity
24 to look at the exhibit?

25 The Witness: Yes, Your Honor.

1 The Court: Okay. Ask him the
2 qualifying questions.

3 By Mr. Strokoff:

4 Q. Sir, are you able to identify what has
5 been marked as Plaintiff's Exhibit Number 2?

6 A. The only basis for identification is as
7 with respect to Exhibit 1 this appears to be Gary
8 Schultz's handwriting on a document that I do not
9 recall ever having seen.

10 Ms. Conrad: On that basis I would
11 object as to relevancy, authentication, and it's
12 admission. I apologize, Judge. I object as to
13 relevancy. I object as to authentication and I
14 object that this witness is qualified as to
15 identify this witness. All this witness can do
16 is state that it appears to be the handwriting of
17 Gary Schultz.

18 The Court: So from the moment we have
19 ruled that he is previously permitted to
20 authenticate the handwriting and the ruling would
21 be the same. As to whether or not it is relevant
22 at some point in time I have to read it to
23 determine what the relevance is. Consistent with
24 the opening statement of counsel for the
25 plaintiff that I heard this relates to I believe

1 the earlier incident from 1998 or 1999, which, of
2 course, would be relevant on the issue of the
3 misrepresentation count.

4 So you can go ahead and qualify the
5 document in any manner you chose.

6 Mr. Strokoff: Your Honor, in the
7 interest of perhaps clarifying something that
8 might come up may we approach just for a second?

9 The Court: Fine.

10 (Whereupon, the following conversation
11 was held at side bar:)

12 Mr. Strokoff: These documents, Your
13 Honor, have been produced by the defendant as
14 being true and correct copies of the confidential
15 file that was maintained by Mr. Schultz so -- I
16 mean, they will be authenticated that way in just
17 getting people to identify it. Joe Koval will be
18 the other one. These are his handwritten notes.

19 The Court: All I can do is go down one
20 rabbit hole at a time.

21 Mr. Strokoff: No. I understand. I
22 just want you to know that this is going to keep
23 coming up.

24 Ms. Conrad: And we will consistently
25 take the position that these documents have not

1 been authenticated, nor have they been identified
2 by a witness as to their origin.

3 The Court: I understand your position.

4 Ms. Conrad: Thank you.

5 (End of side bar.)

6 Mr. Strokoff: So Number 2 is in, Your
7 Honor?

8 The Court: Exhibit Number 2 is admitted
9 over the objection of Penn State.

10 By Mr. Strokoff:

11 Q. Sir, I would now ask if you can go to
12 Number 7, Plaintiff's Exhibit Number 7.

13 A. Okay.

14 Q. Have you read it, sir?

15 A. I have.

16 Q. Again I would ask you if you are able to
17 identify that document?

18 A. As with the other two exhibits that you
19 have talked about or asked me about this appears
20 to be Gary Schultz's handwriting.

21 Ms. Conrad: Same objection, Your Honor.

22 The Court: Yes. Same ruling.

23 Overruled.

24 By Mr. Strokoff:

25 Q. Sir, I would ask you to turn to

1 Plaintiff's Exhibit Number 9 and ask if you can
2 identify that document?

3 A. As with the previous exhibits that you
4 have asked me about this too appears to be a
5 document with the handwriting of Gary Schultz.

6 Ms. Conrad: Same objection.

7 The Court: Same ruling. Overrule the
8 objection.

9 Mr. Courtney, go back to P-7. Is there
10 anything about P-7 that your mind helped you in
11 deciding whose handwriting is on the document?

12 The Witness: Well the -- it's a Penn
13 State apparently notepad of some sort and there
14 is typewritten on that document Gary C. Schultz
15 on the front line and at the bottom of the page
16 it says senior vice president for finance and
17 business/treasurer together with the address of
18 that office at Penn State's Old Main Building.

19 The Court: Go ahead.

20 By Mr. Strokoff:

21 Q. Sir, I believe you said that you
22 recommended it be reported to DPW?

23 A. I did.

24 Q. Why was that?

25 A. It was my belief that that was the

1 prudent smart thing to do out of an abundance of
2 caution given that there were circumstances that
3 apparently made an unnamed grad student feel
4 uncomfortable about seeing Jerry Sandusky in
5 Lasch Building with a young boy and it was my
6 assessment that the appropriate course of conduct
7 would be to report it and allow Department of
8 Public Welfare to investigate in the manner it
9 deemed appropriate.

10 Mr. Strokoff: Pass the witness, Your
11 Honor.

12 The Court: Go ahead.

13 Cross-Examination

14 By Ms. Conrad:

15 Q. Mr. Courtney, based on the information
16 that you have received from Mr. Schultz and the
17 research that you had done as reflected in your
18 timesheet you concluded I believe you said that
19 it was the smart thing to do that is to report,
20 is that correct?

21 A. That was my assessment. Correct.

22 Q. Had you reached a conclusion as to
23 whether or not it was required to be reported?

24 A. I do not believe that I had reached the
25 conclusion that this was a mandated report under

1 the Child Protective Services Law. When I did
2 the research on this law it was the very first
3 time that I had ever had occasion to take a look
4 at this law and at the end of the analysis that I
5 engaged in I thought that it was the appropriate
6 thing to do and the smart thing to do to tell
7 someone about it and that would be the Department
8 of Public Welfare, but I do not recall,
9 Ms. Conrad, ever having reached a conclusion that
10 you must tell DPW because it's a legal duty. I
11 thought it was the smart thing to do.

12 Q. And, in fact, you did not come to a
13 conclusion that it was a mandated reporting
14 situation, correct?

15 A. I do not believe I did. No.

16 Q. So your conclusion was you did not draw
17 a conclusion or it was not a mandated reporting
18 incident?

19 A. I do not recall having drawn that
20 conclusion. Had I drawn that conclusion I
21 probably would have framed my response to Gary
22 slightly different. I would have not said it's
23 the smart thing, the prudent thing to do, or out
24 of an abundance of caution. So to the best of my
25 recollection, Ms. Conrad, I never drew a

1 conclusion that this was a mandated report. I
2 just thought it was a good thing to do to report
3 it.

4 Q. And, Mr. Courtney, you did not reach a
5 conclusion that there had been child abuse
6 reported to Mr. Schultz, correct?

7 A. That is correct.

8 Q. And, in fact, you concluded that nothing
9 that had been reported to you led you to believe
10 that there was any sexual activity going on in
11 that shower or locker room, correct?

12 A. That is correct.

13 Q. Thank you.

14 Redirect Examination

15 By Mr. Strokoff:

16 Q. Sir, going back to Exhibit 6 again does
17 not the initial comment that you wrote say
18 conference with G. Schultz re reporting of
19 suspected child abuse?

20 A. That's what it says.

21 Q. So Mr. Schultz was inquiring of what the
22 reporting obligations were for suspected child
23 abuse, wasn't he?

24 A. No. He wasn't.

25 Q. So when was he asking? Why is there

1 suspected child abuse in your timesheet?

2 A. As I have testified Mr. Schultz advised
3 me that there had been a report by an unnamed
4 grad assistant and this grad assistant was
5 uncomfortable because he saw Jerry Sandusky and a
6 young boy in Lasch Building engaging in horseplay
7 in the shower area and he asked me what should we
8 do about it, meaning what should Penn State do
9 about it. And what I did was to research the
10 Child Protective Services Law and this is my
11 narrative reporting of suspected child abuse. If
12 I am going to put down on my billing sheet what
13 it was that I was actually looking at what I was
14 looking at is how does one go back reporting what
15 might be child abuse because the Child Protective
16 Services Law speaks to reporting of possible
17 child abuse. Gary at no time told me that he
18 suspected that child abuse was taking place in
19 the shower. He reported to me what I indicated
20 what was reported to him and it was my obligation
21 then to give the best advice I could and after
22 researching the law I advised him to make a
23 report because I thought it was the proper,
24 smart, prudent thing to do under the
25 circumstances.

1 Q. Right. Did you have any details
2 provided to you by Mr. Schultz as to what the
3 exact activity was in the shower room?

4 A. I can tell you there was no report of
5 sexual activity. I don't recall the specific
6 questions back and forth that Gary and I had but
7 I am absolutely positive that I would have asked
8 him whether this so-called horseplay would have
9 involved sexual activity and if it would have
10 involved sexual activity it certainly wouldn't
11 have been described to me by Mr. Schultz as
12 horseplay. Those are two completely different
13 things.

14 Q. And do you recall it being described to
15 you as between a naked man and naked 10- or
16 12-year-old boy?

17 A. It was not described to me in that
18 manner.

19 Q. Was the place in the shower room
20 described to you?

21 A. What was described to me was horseplay
22 in the shower that may have involved some sliding
23 and my vision of that was that there might have
24 been kids, you know, running and sliding in the
25 shower with a bunch of water flowing around.

1 Q. Say that again, sir? There would have
2 been sliding around by who?

3 A. My vision of sliding in the shower would
4 be there is a bunch of showers on and a young man
5 might have been just, you know, running and
6 sliding in the water like you would be sliding
7 down the hill or something like that.

8 Q. But you had no details from Mr. Schultz?

9 Ms. Conrad: Objection. Asked and
10 answered.

11 The Court: Overruled.

12 Go ahead.

13 The Witness: I had the details that I
14 think I have testified to. There is probably
15 other details that may have been in the mix that
16 I am not recalling given the substantial period
17 of time between then and now but I do know the
18 big picture of what was described to be -- to me
19 by Mr. Schultz when he called that being horse
20 playing, made an unnamed grad student feel
21 uncomfortable, and it involved Mr. Sandusky and a
22 young boy in the locker room shower area in Lasch
23 Building.

24 By Mr. Strokoff:

25 Q. And did you ever ascertain what it was

1 that made the grad student feel uncomfortable?

2 A. No. I figured that once it was reported
3 the Department of Public Welfare would do exactly
4 that.

5 Q. So you felt this was something that
6 should be investigated?

7 A. I felt it should be reported to the
8 Department of Public Welfare and then that agency
9 would decide using its policies and procedures
10 what to do based on the report.

11 Mr. Strokoff: No further questions,
12 Your Honor.

13 Recross-Examination

14 By Ms. Conrad:

15 Q. But you thought it should be reported
16 because it was I think you said the smart thing
17 to do?

18 A. Correct. Smart, prudent, out of
19 abundance of caution that's how I was analyzing
20 the situation. Correct.

21 Q. Not because it was required under the
22 Child Protective Services Law that you had
23 researched?

24 A. Correct.

25 Ms. Conrad: Thank you. I have no

1 further questions.

2 The Court: Thank you, sir. You are
3 free --

4 Mr. Strokoff: Your Honor, I just want
5 to make sure that Number 9 is in.

6 The Court: You are free to go about
7 your business.

8 Nine was admitted over objection. Yes.

9 Mr. Strokoff: Thank you.

10 The Court: Why don't we take our
11 afternoon break.

12 Members of the jury, we will take a
13 break until 3:30. Please leave your notepads
14 there.

15 (Whereupon, the jury was escorted to the
16 jury room.)

17 (Whereupon, the following conversation
18 occurred at side bar:)

19 The Court: I like tennis matches but
20 the constant back and forth when we ask the
21 witness, and come back, and ask more redirect --
22 get it all in the first time around because the
23 purpose of redirect is to clear up minor things,
24 not to restate your position again, okay? Thank
25 you. When you do speak stand up. I have been

1 trying get my wife to do it for year. She
2 refuses.

3 (End of side bar.)

4 (Whereupon, a break was taken.)

5 The Court: Take a seat, everyone,
6 please.

7 Mr. Strokoff: Lisa Powers, Your
8 Honor.

9 Whereupon,

10 Lisa Powers
11 was called as a witness and having been duly
12 sworn, was examined and testified as follows:

13 Direct Examination

14 By Mr. Strokoff:

15 Q. Would you state for the record your name
16 please?

17 A. It's Lisa Powers, P-o-w-e-r-s.

18 Q. And your current occupation?

19 A. I am the director of news and media
20 relations for Penn State.

21 Q. And for how long have you served in that
22 position?

23 A. Since 2007.

24 The Court: Stop a second.

25 Can everybody hear? Okay. Fine.

1 By Mr. Strokoff:

2 Q. How long have you been employed by the
3 Pennsylvania State University?

4 A. Since 1991.

5 Q. What is your educational background,
6 ma'am?

7 A. I have a degree in journalism and a
8 degree in student affairs.

9 Q. And your degree in journalism is from
10 where?

11 A. Indiana University of Pennsylvania.

12 Q. And the student affairs?

13 A. Same.

14 Q. And did you have any employment prior to
15 1991 when you came to the University?

16 A. Yes.

17 Q. Where was that?

18 A. I was a marketing manager for a civil
19 engineering firm and prior to that I was a report
20 for Altoona Mirror.

21 Q. Okay. When you came to the University
22 in 1991 what was your position?

23 A. I was writer editor.

24 Q. A writer editor for what?

25 A. The College of Agricultural Sciences

1 within the Department of Public Information.

2 Q. Okay. And what was the next position
3 that you obtained at the University?

4 A. I was the editor of the facility staff
5 newspaper.

6 Q. I am sorry. I didn't hear that.

7 A. The editor of the facility staff
8 newspaper at the time.

9 Q. Okay. For how long were you editor of
10 the facility staff newspaper?

11 A. Probably about five years.

12 Q. And then what position did you assume?

13 A. Then I became the speech writer for
14 Graham Spanier.

15 Q. And for how long were you the speech
16 writer for Dr. Spanier?

17 A. From 2001 to 2007.

18 Q. And as speech writer what were your
19 duties?

20 A. President Spanier gave somewhere in the
21 neighborhood of 100 speeches per year and it was
22 my job to write the speeches and have them
23 approved by him. They could range from a welcome
24 to a full blown 20 minute international talk.

25 Q. And when you were his speech writer

1 physically where were you working in connection
2 with his office?

3 A. I was in a different office on the same
4 floor.

5 Q. But in the same building?

6 A. Yes.

7 Q. And if you were writing up to 200
8 speeches a year what kind of frequency would you
9 have contact with Dr. Spanier?

10 A. Probably weekly and we would talk about
11 his next and upcoming speaks.

12 Q. And then in 2007 you came to your
13 present position?

14 A. Correct.

15 Q. In your present position in 2007 were
16 the duties the same as they are today?

17 A. Pretty much.

18 Q. And what are those duties?

19 A. I oversee a staff of writers and
20 editors, as well as a couple of visual,
21 videographer, photograph, and it's our job to
22 promote or publicize the work of the University,
23 research, teaching, service.

24 Q. Okay. And how large a staff in 2011 in
25 November were you supervising?

1 A. Probably 14.

2 Q. And those 14 again would encompass what
3 kind of job levels?

4 A. Writers, editors, visual people.

5 Q. Okay. Did you have any duties in 2011
6 as being a spoke person for the institution?

7 A. I did.

8 Q. Under what circumstances?

9 A. General every day circumstances.

10 Q. Well who would you speak to on behalf of
11 the University?

12 A. The media.

13 Q. Somebody would contact the University
14 and ask for a spokesperson? Is that how that
15 would work?

16 A. The media generally contacts my office
17 and asks questions about an issue that they are
18 interested in and we consult with the people who
19 may be in charge of those issues and then we
20 respond.

21 Q. Okay. In November of 2011 who was your
22 boss?

23 A. Bill Mahon.

24 Q. And do you recall what Bill Mahon's
25 title was in November of 2011?

1 A. He was Vice President for University
2 Relations.

3 Q. And where was his office located in
4 related to your office at that time?

5 A. Down the hall same floor.

6 Q. Same floor. And in what building was
7 that?

8 A. Old Main.

9 Q. Old Main?

10 A. Yes.

11 Q. And in relation to the president's
12 office in Old Main where was your office?

13 A. A floor above.

14 Q. Yours was a floor above or his was a
15 floor above?

16 A. Ours was a floor above.

17 Q. Okay. Ma'am, there is a loose leaf book
18 in front of you that's labelled Plaintiff's
19 Exhibits. Do you see that?

20 A. I do.

21 Q. I am going to ask you if you would
22 please to turn to Plaintiff's Exhibit Number 30.
23 Have you done so?

24 A. I have.

25 Q. Are you able to identify Plaintiff's

1 Exhibit Number 30?

2 A. I can.

3 Q. And what is Plaintiff's Exhibit Number
4 30?

5 A. It is an e-mail from me to Bill Mahon
6 with a statement related to grand jury
7 indictments.

8 Mr. Strokoff: Move for admission of
9 Plaintiff's Exhibit 30, Your Honor.

10 Ms. Conrad: No objection.

11 The Court: It's admitted.

12 Mr. Strokoff: Can you put that on the
13 screen please.

14 By Mr. Strokoff:

15 Q. Now that should be on the monitor in
16 front of you. Do you see it?

17 A. Yes.

18 Q. Okay. Now what were the circumstances
19 of you sending this e-mail to Mr. Mahon on Friday
20 afternoon, October 28, 2011?

21 A. I believe this was a final version of a
22 statement that President Spanier wanted to issue.

23 Q. And how did this final statement --
24 what was the genesis of this final statement?

25 A. Both Bill and I were called to a meeting

1 in President Spanier's office on that morning,
2 along with Cynthia Baldwin and Steve Garbin.

3 Q. Can you identify for the jury who
4 Cynthia Baldwin was?

5 A. She is general counsel for the
6 University.

7 Q. And Mr. Garbin?

8 A. He at the time was chairman of the board
9 of trustees.

10 Q. And when you were summoned to the
11 meeting did you know why you were being summoned?

12 A. No.

13 Q. Well what was explained to you when you
14 arrived at the meeting?

15 Ms. Conrad: Your Honor, to the extent
16 that there is testimony that relates to legal
17 advice that is being rendered by Cynthia Baldwin
18 or alternatively to the extent that information
19 is provided for the purposes of getting legal
20 advice we would assert privilege. However, to
21 the extent the information exchanged is for the
22 -- in the course of the normal business
23 operations and not for legal advice we would not
24 be asserting the privilege. So I would address
25 that in a statement-by-statement basis if needed.

1 The Court: So do you have law degree
2 also so you will be able to parse this out?

3 The Witness: I do not.

4 The Court: Okay. So the jury
5 understands that Penn State's position is that
6 the people who work for it are its agents and
7 that Penn state has the attorney/client
8 privilege. Ms. Baldwin is general counsel and to
9 the extent that there are legal matters being
10 discussed during the meeting Penn State as the
11 client, meaning Penn State through all of the
12 people that it's acting through at the meeting,
13 is capable of asserting attorney/client privilege
14 because they stay the privilege is theres, not
15 Ms. Powers or any other person there, and that
16 privilege is capable of being asserted when the
17 purpose of the communication has to deal with
18 legal matters. To the extent that it's not
19 dealing with legal matters then there would be no
20 attorney/client privilege. So what we are
21 essentially saying is we will have to take each
22 one of these questions one at a time, determine
23 whether or not it is of a legal nature, in which
24 case Penn State is going to assert the
25 attorney/client privilege meaning the witness is

1 not going to answer the question, and if not then
2 the witness can answer the question.

3 Does that fairly state it?

4 Ms. Conrad: Yes, sir.

5 The Court: So, Mr. Strokoff, you are
6 going to have to break them down question by
7 question.

8 By Mr. Strokoff:

9 Q. Ma'am, when you were asked to come to
10 the meeting did you know what the purpose of the
11 meeting was?

12 A. I did not.

13 Q. Were you aware that Mr. Mahon was also
14 asked to also come to the meeting?

15 A. Yes.

16 Q. And when you arrived at Dr. Spanier's
17 office you saw other people there?

18 A. I did.

19 Q. Cynthia Baldwin?

20 A. Correct.

21 Q. And Steve Garbin?

22 A. Correct.

23 Q. And Dr. Spanier, of course?

24 A. Yes.

25 Q. Were you told when you got there what

1 the purpose of the meeting was?

2 A. Yes.

3 Q. And who told you what the purpose of the
4 meeting was?

5 A. Dr. Spanier.

6 Q. And what do you recall Dr. Spanier
7 saying?

8 A. He said that we had to prepare for
9 something, that two senior leaders were going to
10 be charged with crimes, and that he had a
11 statement that he had written out that he would
12 like us to review.

13 Q. Had you ever come to a meeting before in
14 Dr. Spanier's office with the general counsel
15 there and chairman of the board there?

16 A. Not that I recall.

17 Q. So after he gave you that introduction
18 -- and that was to all of you, is that correct?

19 A. Yes.

20 Q. Then what happened?

21 A. He slid a piece of paper cross the table
22 to both Bill and I and it was a statement that he
23 had crafted.

24 Q. Okay. Now is everybody sitting around a
25 conference room table?

1 A. Yes.

2 Q. And was this one piece of paper that you
3 and Mr. Mahon were provided to share or did you
4 each get the same piece of paper?

5 A. We shared.

6 Q. Okay. And when he passed it across
7 Dr. Spanier said what to you?

8 A. Just that we should read it.

9 Q. Okay. What happened next?

10 A. We read it.

11 Q. This Exhibit 30 is not the paper that he
12 passed across?

13 A. No. It is not.

14 Q. Okay. So after you and Mr. Mahon read
15 it you indicated Steve Garbin was there. Did he
16 also have a draft to look at?

17 A. Not that I recall.

18 Q. What about Cynthia Baldwin?

19 A. No.

20 Q. Was she seated at the table?

21 A. She was.

22 Q. So you and Mr. Mahon read the draft.
23 What happened next?

24 A. Bill indicated that he felt like there
25 was something missing from the statement, that he

1 felt like there was nothing about the victims or
2 alleged victims, and that that should be added.

3 Q. Okay. Did you say anything?

4 A. I agreed.

5 Q. All right. Did anybody else say
6 anything?

7 A. No.

8 Q. So after Mr. Mahon said what he said and
9 you said you agreed what happened next?

10 A. President Spanier took the paper back
11 and scribbled a few lines, which are the first
12 two lines of this document.

13 Q. So the initial draft did not have the
14 first two lines that are on this document?

15 A. It did not.

16 Q. So Dr. Spanier scribbled these two lines
17 and then what happened?

18 A. Then we reread them and read it again
19 and he told us that we needed to be prepared for
20 whenever the presentment came out and we left the
21 office.

22 Q. Now the second paragraph specifically
23 refers to Tim Curley and Gary Schultz. When did
24 Dr. Spanier identify that they were the two
25 senior leaders who were charged with crimes?

1 A. During this meeting.

2 Q. So it wasn't initially? It was only
3 during the meeting?

4 A. Excuse me?

5 Q. Did he initially say that Tim and Gary
6 were going to be charged with crimes and we have
7 to be prepared?

8 A. During that meeting at some point he did
9 indicate it was Tim and Gary.

10 Q. And is Plaintiff's Exhibit 30 the final
11 draft that was produced that day?

12 A. We did post it. Yes.

13 Q. Okay. Well it was posted November 5,
14 right?

15 A. I am sorry. Yes. But, yes, we walked
16 away with a draft. I don't know that this was
17 the final. I think it was tweaked a bit.

18 Q. Okay. And do you know where earlier
19 drafts of this statement would be located?

20 A. No. I don't.

21 Q. Okay. Did you and Mr. Mahon voice any
22 other comments concerning this statement other
23 than the fact that there was nothing about the
24 victims?

25 A. I did.

1 Q. And you did to Mr. Mahon?

2 A. No. I did to President Spanier.

3 Q. And what did you say to President
4 Spanier?

5 A. I asked questions about why he would use
6 the term unconditional support.

7 Q. Okay. And do you recall his response?

8 A. Yes.

9 Q. And his response was?

10 A. He said to me if I was doing my job and
11 doing it correctly and had done nothing wrong
12 would I not want him to support me as his
13 supervisor.

14 Q. Did you question any other wording in
15 this statement?

16 A. No.

17 Q. You did not question this statement on
18 the next to last line, quote, that these changes
19 are groundless. I am sorry. These charges are
20 groundless, end quote?

21 A. He had already indicated that he knew
22 that the charges were groundless and that he knew
23 that Gary and Tim had acted appropriately and
24 that he felt it was an attack on his leadership
25 team and nothing more.

1 Q. Did you know what the charges were at
2 the time this draft was developed?

3 A. Specifically?

4 Q. Yes.

5 A. No. Not specifically.

6 Q. All right. In the second paragraph it
7 says, quote, with regard to the other
8 indictments, end quote. Did you know what the
9 indictments were?

10 A. Specifically?

11 Q. Yes.

12 A. Not specifically.

13 Q. Well what did you -- what did you know
14 about the charges?

15 A. President Spanier told us that two
16 senior leaders were being charged with lying to
17 the grand jury and also with child endangerment.

18 Q. Did you ask any further questions about
19 the nature of the allegations?

20 A. He provided to us that he, President
21 Spanier, knew nothing about the 1998 report and
22 that there was a later report in which he had
23 been told there was horseplay in the showers and
24 he further went on to explain he saw horseplay as
25 towel snapping and running around and just

1 general horseplay.

2 Q. After Dr. Spanier gave you his
3 explanation about why he used a term like
4 unconditional support did you have any follow-up
5 questions?

6 A. Not that I recall.

7 Q. Do you recall anything else that
8 happened at this meeting where this draft
9 Plaintiff's Exhibit 30 was produced?

10 A. Yes.

11 Q. What else happened?

12 A. I recall that President Spanier also
13 indicated that no one had ever told him about
14 rape of a child, or sodomy, or anything along
15 those lines, anything sexual. He said he had
16 been told it was horseplay.

17 Q. So at that meeting he made reference to
18 sodomy of a child?

19 A. And said he had never heard it. Yes.

20 Q. But he knew that had something to do
21 with the charges?

22 A. I don't know that.

23 Q. Well did you ask him what are you
24 referring to when you say --

25 A. I did not.

1 Q. Did anything else happen at this meeting
2 other than the statement about sodomy of a child
3 and no one ever told him about that?

4 A. Not that I recall.

5 Q. Did you have any reservations about
6 issuing a statement like this?

7 A. No. I felt it was his opinion and he
8 was the president and after I and Bill had
9 questioned him it was still his opinion.

10 Q. And what questions did Bill raise?

11 A. Just the initial one that I recall about
12 providing a line about the alleged victims.

13 Q. After the meeting did you discuss this
14 statement with Bill?

15 A. No. I don't think I did. Not face to
16 face any way.

17 Q. Do you recall whether or not Mr. Garbin
18 said anything at this meeting?

19 A. I do not think he said anything.

20 Q. What about General Counsel Baldwin?
21 Don't tell us what she said. First question is
22 did she say anything?

23 A. Yes.

24 Q. Okay. Did she say anything in the
25 nature of rendering legal advice?

1 A. No. I don't think so.

2 Q. Okay. Then what did she say?

3 A. She had indicated that she learned that
4 there would be these indictments from a colleague
5 in Harrisburg.

6 Q. Did she utilize the term sodomy of a
7 child?

8 A. Not that I recall.

9 Q. Okay. Well what charges was she
10 referring to that she had learned of from a
11 colleague?

12 A. She allowed Dr. Spanier to elaborate.

13 Q. So she said Dr. Spanier will elaborate?

14 A. She pretty much turned the meeting over
15 to Dr. Spanier. Yes.

16 Q. Did you do any investigation to
17 determine whether or not the charges were
18 groundless?

19 A. That was his opinion. I don't know that
20 I would research his opinion.

21 Q. My question is did you make any effort
22 to find out whether or not the charges were
23 groundless?

24 A. No.

25 Q. And you didn't know what they were?

1 A. Not specifically. No.

2 Q. I will now ask you to turn to 37. Do
3 you have that, ma'am?

4 A. I do.

5 Q. Are you able to identify this document?

6 A. It's an e-mail from Graham Spanier.

7 Q. Okay. And the date of the e-mail?

8 A. November 5th.

9 Q. Okay. Now the question I have is this
10 is eight days after Plaintiff's Exhibit 30 was
11 developed?

12 A. Right.

13 Q. Is that correct?

14 A. I will trust you.

15 Q. Well Plaintiff's Exhibit 30 says October
16 28th, Friday, October 28th, and this is Saturday,
17 November 5. So during that interim eight days
18 did you learn anything else about the charges
19 against Mr. Curley and Mr. Schultz?

20 A. Not that I recall.

21 Q. Okay. Did you read any presentment as
22 to what the charges were against Mr. Curley and
23 Mr. Schultz before November 5, 2011?

24 A. Honestly I cannot recall if it was the
25 4th or the 5th that I read anything.

1 Q. When you read whatever it is that you
2 read was that before or after the statement was
3 posted on Penn State Live?

4 A. I honestly don't recall.

5 Q. Okay. What did you read?

6 A. The presentment.

7 Q. Okay. And how did you come to read the
8 presentment?

9 A. I believe it was leaked on a Friday and
10 it was released on a Saturday.

11 Q. So you read it on Friday or you read it
12 after it was released on Saturday?

13 A. I don't recall which day.

14 Mr. Strokoff: Move for admission of 37,
15 Your Honor.

16 Ms. Conrad: No objection.

17 The Court: It's admitted.

18 By Mr. Strokoff:

19 Q. Now there is a change here on 37 from 30
20 in that one, two, three, four, five, the sixth
21 word in the second paragraph has been changed
22 from indictments to presentments. Do you recall
23 that?

24 A. I do not.

25 Q. You don't know how that change came

1 about?

2 A. I don't recall.

3 Q. Okay. Now I would ask you to turn if
4 you would please to 38. Are you able to identify
5 38?

6 A. I am.

7 Q. And what is 38?

8 A. It's a screen capture from our news site
9 with the president's statement on it.

10 Mr. Strokoff: I move for admission of
11 38, Your Honor.

12 Ms. Conrad: No objection.

13 The Court: It's admitted.

14 By Mr. Strokoff:

15 Q. Now it should be up on your monitor. Do
16 you see it?

17 A. Yes.

18 Q. Okay. Who actually posted this on Penn
19 State Live?

20 A. I believe it was Annemarie Moutz.

21 Q. Who is Annemarie Moutz?

22 A. At the time she was an assistant
23 director in the office.

24 Q. Was she someone who worked in your
25 office?

1 A. Yes.

2 Q. And as assistant director she worked
3 under you?

4 A. Yes.

5 Q. Do you know who gave the order to her to
6 post this on Penn State Live?

7 A. I believe Bill Mahon.

8 Q. And can you tell the jury exactly what
9 Penn State live is?

10 A. It's our news site where we publish news
11 about Penn State.

12 Q. So it's an internet website?

13 A. Correct.

14 Q. And to your knowledge had a statement
15 providing support for somebody who was charged
16 with criminal activity ever been posted on Penn
17 State Live before?

18 A. Not to my knowledge.

19 Q. Do you recall whether or not there was
20 any discussion about posting this statement on
21 Penn State Live?

22 A. I don't believe there was any
23 discussion.

24 Q. That was the intent all along when the
25 statement was being drafted?

1 A. Yes.

2 Q. Now will you turn please to 39, which
3 according to my records has already been
4 admitted.

5 Mr. Strokoff: So we want to post that,
6 Your Honor.

7 By Mr. Strokoff:

8 Q. Now with respect to Exhibit 39 there is
9 an addendum to Dr. Spanier's statement. Do you
10 see that?

11 A. Correct.

12 Q. Okay. What were the circumstances of
13 posting that addendum on Penn State Live?

14 A. We were asked to post the statements
15 from Gary and Tim's attorneys.

16 Q. You were asked by whom?

17 A. Bill Mahon.

18 Q. And Bill Mahon is your boss?

19 A. Correct.

20 Q. Did he ask you to post those giving you
21 the opportunity to say no?

22 A. He said that we were to post these
23 addendums and I indicated that I didn't think
24 that was appropriate.

25 Q. And did you elaborate to Mr. Mahon why

1 you didn't think it was appropriate?

2 A. I can't recall.

3 Q. And do you recall Mr. Mahon's response?

4 A. Do it.

5 Q. When he told you to do it did he make
6 any reference to anybody else wanting it done?

7 A. He did say that it was what the
8 president wanted.

9 Q. Okay. President being Graham Spanier?

10 A. Correct.

11 Q. Why didn't you think this is
12 appropriate?

13 A. It seemed awkward. It's not something
14 that we do. We don't really post things from
15 outside sources. This is really Penn State news
16 that is generated by our office or other
17 communicators. So it just seemed a little odd.

18 Q. To your knowledge had it ever been done
19 before?

20 A. No. Not that I know of.

21 Q. How long has Penn State had Penn State
22 Live?

23 A. Honestly I don't know.

24 Q. I am sorry?

25 A. I really don't know. 2000-something.

1 Q. Okay. It's been around since you have
2 been the director of public information?

3 A. Correct.

4 Q. Okay. And for the time you have been
5 director of public information you have been in
6 charged of that Penn State Live website?

7 A. Yes.

8 Q. Now I want to look at some of the
9 references on the periphery of this document on
10 the first page and then we are going to get to
11 the second page. When I say periphery let's look
12 first at maybe one-third way down from the top to
13 the right of the body of the statement from
14 President Spanier. There is a statement -- I
15 think I shared -- share this story Tweet. What
16 is that?

17 A. That appears on every story that we post
18 to make it easier for people to share information
19 about Penn State. It's pretty much standard.

20 Q. And how does it make it easy for people
21 to share the information?

22 A. You can click on it and decide whether
23 you want to e-mail it, or post it to Facebook, or
24 Tweet out, or any number of ways.

25 Q. Okay. So at the top right it says share

1 this story Tweet. It's a convenient way to get
2 this statement up on Twitter?

3 A. Yes.

4 Q. Okay. Now let's go to the bottom on the
5 left. Submit to Reddit. What does that mean?

6 A. Reddit is also a news aggregator website
7 and people who are reading news, any news, on
8 Penn State's news site have the opportunity to
9 share it.

10 Q. And this is the idea to make it easy for
11 people to share this news, is that correct?

12 A. It's standard news practice on just
13 about any news website.

14 Q. And we go down to the next one,
15 LinkedIn?

16 A. Same.

17 Q. Same thing being --

18 A. Uh-huh. That it's another platform
19 where people can share information.

20 Q. Okay. Submit this story to StumbleUpon?

21 A. Similar to Reddit.

22 Q. Pin this story on Pinterest. We need a
23 verbal response.

24 A. Excuse me?

25 Q. We need a verbal response.

1 A. Yes. Same.

2 Q. Okay. E-mail this article?

3 A. Correct.

4 Q. So just as an example if I just click on
5 e-mail this article then it becomes an attachment
6 to an e-mail?

7 A. Something along those lines. Yes.

8 Q. So when this statement was posted on
9 Penn State Live, first just Graham Spanier's
10 statement and then with the attorney's comments,
11 it was with the idea that it could be shared on
12 Twitter?

13 A. As all news articles. Yes.

14 Q. And could be submitted to Reddit?

15 A. Correct.

16 Q. And LinkedIn and StumbleUpon and
17 Pinterest?

18 A. Correct.

19 Q. Somewhere in here is there anything
20 about Facebook?

21 A. I would assume so. We do have a
22 connection to Facebook when we post our news so.

23 Q. Okay. So can we go to the second page
24 the right-hand column under social media. Do you
25 see that on the right-hand column?

1 A. I do.

2 Q. And that's where the connection to
3 Facebook is?

4 A. Well those are our platforms.

5 Q. What do you mean by that?

6 A. Those are ones that we run on behalf of
7 the University. Penn State's Facebook page, Penn
8 State's Twitter account.

9 Q. Was this statement posted on Penn
10 State's Facebook page do you know?

11 A. I do not know.

12 Q. Now after this statement was posted did
13 you receive any feedback concerning the posting?

14 A. Yes.

15 Q. And from whom did you receive feedback?

16 A. It felt like the world but --

17 Q. It felt like the world?

18 A. Yes.

19 Q. What do you mean by that?

20 A. We were inundated with media calls and
21 just general calls from public. There was
22 outrage and there were tv cameras everywhere.

23 Q. I am sorry. What cameras everywhere?

24 A. TV cameras. My e-mail box exploded. I
25 could not answer the phones. I could not answer

1 my e-mails. Our social media -- Twitter I recall
2 just ran, and ran, and ran with comments.

3 Q. Ran, and ran, and ran?

4 A. With comments. It came in so fast you
5 couldn't read them. So, yes, there was an awful
6 lot of activity after this statement went out.

7 Q. Now you said media calls?

8 A. Correct.

9 Q. And what specifically are you referring
10 to?

11 A. I am referring to the presentment and
12 the combination of this statement --

13 Q. I am sorry. I wasn't clear. Which
14 media or members of the media or types of media
15 were contacting you about this statement?

16 A. About the statement specifically or the
17 issue in general?

18 Q. The statement.

19 A. They were all wrapped into one. I don't
20 know that I can divide the two.

21 Q. Okay. Well then don't divide the two.
22 Which media were contacting you?

23 A. National, international, local,
24 regional.

25 Q. Now when you say national what do you

1 mean?

2 A. CNN, ESPN, New York Times.

3 Q. International, what do you mean?

4 A. Papers -- everywhere. China.

5 Everywhere. India.

6 Q. Well, for example, Reuters?

7 A. Yes.

8 Q. And do you want to explain to the jury
9 what Reuters is?

10 A. It's a service. It's a news service
11 that can provide stories on an international
12 basis to other news outlets if they are
13 subscribed.

14 Q. Okay. Did the BBC contact you?

15 A. At some point. Yes.

16 Q. You said national, international. I
17 think you also said regional. What regional
18 media was contact you?

19 A. Harrisburg, Philadelphia, Pittsburgh,
20 Altoona. Everyone in the state practically.

21 Q. Okay. Now there is still was in 2011 I
22 believe print media?

23 A. Correct.

24 Q. And there also was TV media?

25 A. Correct.

1 Q. And I think radio media?

2 A. Yep.

3 Q. Are you talking about in terms of
4 regional media -- which one of those or maybe all
5 of them?

6 A. All.

7 Q. And you were the spokesperson who is
8 supposed to respond to these things, right?

9 A. Correct.

10 Q. And too many were coming in to enable
11 you to respond?

12 A. Correct.

13 Q. Now you said your e-mail exploded. What
14 do you mean by that?

15 A. Thousands. Thousands of incoming
16 e-mails.

17 Q. To?

18 A. Me.

19 Q. The website or to your personal e-mail?
20 What?

21 A. To my work e-mail.

22 Q. And how long did that last?

23 A. Probably a week.

24 Q. And you told me there was some kind of
25 overload on Twitter?

1 A. Yes.

2 Q. And what did you specifically mean by
3 that?

4 A. In Twitter you can post comments and tag
5 Penn State and our Twitter account was going so
6 fast with comments that you couldn't even read
7 them. It was just sort of scrolling by.

8 Q. Well ordinarily who would read the
9 Twitter comments?

10 A. Our manager of social media.

11 Q. So that wasn't something that you did?

12 A. No.

13 Q. Okay. So how did you know the Twitter
14 account was --

15 A. My staff was reporting back to me that
16 all hell was breaking loose.

17 Q. And did that also last for a week?

18 A. I am assuming at some point it slowed
19 down but I really can't tell you when.

20 Q. Telephones?

21 A. Yes.

22 Q. Tell me about calls that you answered
23 the day that this statement was issued.

24 A. I don't know if it was the day it issued
25 since that was a Saturday I believe but the

1 following week we received plenty of phone calls
2 of anger with words that I probably cannot say in
3 court.

4 Q. And was anybody keeping track of these
5 calls?

6 A. I don't think so.

7 Q. Was anybody keeping track of the Twitter
8 activity?

9 A. Yes.

10 Q. And that was who?

11 A. The social media manager.

12 Q. And was there activity on Penn State's
13 Facebook account?

14 A. Yes.

15 Q. And was anybody keeping track of that?

16 A. I believe they were. Yes.

17 Q. And the years since 2007 when you have
18 been responsible for this web page was there any
19 other event that was comparable to the response
20 you received after the statement from President
21 Spanier was posted?

22 A. No. Not that I recall.

23 Q. Now you said I believe that you read the
24 presentment Friday, Saturday, something like
25 that?

1 A. Correct.

2 Q. Okay. After you read the presentment
3 did you have any second thoughts about
4 withdrawing this statement from President Spanier
5 off Penn State Live website?

6 A. No. It was still his opinion.

7 Q. So you, yourself, never thought to
8 recommend that it be withdrawn?

9 A. I don't know what I would recommend of
10 someone's opinion.

11 Q. All right. Did there come a point in
12 time when you became aware that the grad
13 assistant mentioned in the presentment was Mike
14 McQueary?

15 A. Yes.

16 Q. When you became aware of that fact did
17 you give any thought to withdrawing -- or
18 recommending that the president's statement be
19 withdrawn?

20 A. No.

21 Q. When President Spanier was terminated on
22 Wednesday November 9, 2011, did you recommend
23 that this statement from now ex-President Spanier
24 be withdrawn from the Penn State Live website?

25 A. No.

1 Q. At any time did you recommend that the
2 statement be withdrawn?

3 A. No.

4 Q. At any time were you aware of any
5 discussion that the statement be withdrawn?

6 A. No.

7 Q. Do you know who Matt McClear is?

8 A. Mac McNeer.

9 Q. Matt McClear?

10 A. No. I know a Mac McNeer.

11 Q. Well who is that individual?

12 A. He works for Ketchum or did work for
13 Ketchum.

14 Q. Okay. And who is Ketchum?

15 A. They are a public relations consulting
16 firm.

17 Q. And how did you come to know -- and why
18 don't you spell his name so that I don't
19 mispronounce it.

20 A. I think it's McNeer, M-c-N-e-e-r.

21 Q. And his first name is Matt or Mac?

22 A. Mac is what I've known him as.

23 Q. Okay. And how did he come into the
24 picture here?

25 A. He came in front of members of the board

1 of trustees I believe at some point and they
2 hired Ketchum as a consulting firm.

3 Q. And this was before or after the Spanier
4 statement was published?

5 A. After.

6 Q. And did he have any responsibilities
7 with respect to the Spanier statement?

8 A. Not that I am aware of.

9 Q. Do you recall what his responsibilities
10 were?

11 A. I believe to provide some type of
12 guidance and advice on crisis management.

13 Q. Ma'am, do you recall a discussion about
14 removing President Spanier's statement and the
15 attorneys attendant thereto with legal counsel?

16 A. I don't recall that.

17 Q. Okay. I am going to show you --

18 Mr. Strokoff: If I may, Your Honor,
19 page 33 of the deposition which Ms. Powers gave
20 on June 19, 2014, to see if this might refresh
21 her memory please.

22 Ms. Conrad: I would like to review it
23 first for purposes of privilege.

24 Mr. Strokoff: I am not going to ask her
25 what was said.

1 Ms. Conrad: May we approach?

2 (Whereupon, the following conversation
3 was held at side bar:)

4 Ms. Conrad: Based on my review of the
5 transcript there was outside counsel involved on
6 this issue.

7 Mr. Strokoff: I am not going to ask
8 what was said. I just want to know -- she said
9 it wasn't later discussed. Here she says it was
10 discussed.

11 The Court: I don't know what you are
12 talking about so I am going to --

13 Ms. Conrad: You are trying to now raise
14 a question to her with respect to a privileged
15 conversation and you can't do that.

16 Mr. Strokoff: I don't want to know what
17 the conversation -- just I am seeking what she
18 testified before and that is that it was
19 discussed but it wasn't removed. This is a
20 defamation case and one of the ways you can limit
21 damages is by taking down the defamatory
22 statement.

23 The Court: So did she have independent
24 counsel on this?

25 Ms. Conrad: It was outside counsel

1 there so the University had retained outside
2 counsel at this point and that was who was
3 present at the meeting in which this discussion
4 took place.

5 The Court: And that outside counsel
6 would still be an employee of Pennsylvania State
7 University?

8 Ms. Conrad: No. Outside counsel is
9 like me. I am outside counsel to the University
10 and outside counsel -- in-house counsel can
11 assert privilege and here the question was asked
12 for advice and counsel from counsel.

13 The Court: Then are we going to be --
14 are we going to be revisiting the same issue that
15 there is an adverse inference to be drawn by you
16 invoking the right or counsel or is he asking is
17 was there a discussion to withdraw it?

18 Ms. Conrad: Discussion took place --
19 the question was directed to counsel for purposes
20 of obtaining legal advice.

21 The Court: Let me see. What page and
22 what line?

23 Ms. Conrad: Right where it is circled.

24 The Court: Well she says so any
25 discussion about the removing of President

1 Spanier's statement and the attorney's addendum
2 would discuss with University counsel of some
3 kind. So other than University counsel who else
4 was involved with that discussion to remove or
5 not remove President Spanier's statement?
6 Mr. Mahon. Anybody else? Not that I would
7 recall. So if it's University counsel -- I don't
8 know where you are drawing the distinction with
9 outside counsel --

10 Ms. Conrad: I am sorry. I thought it
11 said outside counsel. I misread it. So it's
12 University counsel. The privilege still applies.

13 The Court: And are you waiving the
14 privilege or are you asserting the privilege?

15 Ms. Conrad: I am asserting the
16 privilege.

17 The Court: Okay. So if you are assert
18 the privilege then they get the adverse
19 inference?

20 Ms. Conrad: From the assertion of the
21 attorney/client privilege?

22 The Court: What he is trying to prove
23 is you had the opportunity to perhaps withdraw
24 it.

25 Ms. Conrad: Understood.

1 The Court: Okay. And you are
2 preventing her from responding to whether or not
3 there was a discussion to be brought on the
4 attorney/client privilege.

5 Ms. Conrad: Right.

6 The Court: Okay. So then one of two
7 things would have happened as a result of that
8 discussion. Either they said we are not going to
9 withdraw it or we are going to withdraw it and,
10 of course, we know it wasn't withdrawn. So the
11 only thing could be is they are not going to
12 redraw it. So the adverse inference would be
13 that they were given the chance to withdraw it
14 and they didn't.

15 Ms. Conrad: Judge, this whole issue
16 could be resolved by him simply asking the
17 question was the statement withdrawn. We don't
18 have alert privilege into it.

19 The Court: I gave up a long time ago
20 trying other people's cases for them so I just
21 have to go along with what the question in the
22 moment is. So, yeah, you can skip down a line
23 and ask her was Mr. Mahon at the meeting and did
24 you have a conversation with him and Mr. Mahon is
25 going to say no, the decision is not to withdraw.

1 Mr. Strokoff: All I am going to ask her
2 is was there a discussion about withdrawing and
3 then it wasn't withdrawn. I am not even going to
4 ask her what did the lawyers say or anything
5 else. So they won't have to invoke the
6 attorney/client privilege. It was considered and
7 leave it up.

8 The Court: Make it easy and don't throw
9 anymore error in the record than might already be
10 there and simply ask her was there ever a
11 discussion about withdrawing the article and she
12 can say yes or no and was it withdrawn and that's
13 it.

14 Mr. Strokoff: That's all I intend to
15 do.

16 Ms. Conrad: All right. Leave counsel
17 out.

18 The Court: Come back here.

19 Ms. Conrad: I am sorry.

20 The Court: Does the court reporter pick
21 this up?

22 Ms. Conrad: Yes. On this mic.

23 The Court: Okay. So now the other
24 problem that I have here since part of the case
25 is being tried nonjury part of it's being tried

1 jury there are questions that I would want to ask
2 if I were sitting nonjury but if I ask may not be
3 happy to you in the jury aspect of the trial. So
4 how do I get to ask my questions that are
5 relevant in my mind that you folks didn't ask but
6 as a judge who indicates nonjury I would ask.

7 Ms. Conrad: I would propose they have
8 to be asked outside the presence of the jury.

9 The Court: Okay. So then I have to at
10 this point in time perhaps tell the jury that,
11 you know, you guys are only in for rounds two and
12 three and I am in for round one.

13 Ms. Conrad: I don't see where that
14 would be necessary. Simply excuse the jury and
15 ask the witness the questions outside of their
16 presence.

17 The Court: So how much more do you
18 have?

19 Mr. Strokoff: 10 minutes.

20 The Court: 10 minutes.

21 And then you have?

22 Ms. Conrad: About 20 maybe 30.

23 The Court: And then they can go home
24 and I will ask my questions. Okay.

25 (End of side bar.)

1 By Mr. Strokoff:

2 Q. Ms. Powers, having shown you that
3 deposition I would ask you again did there come a
4 point in time when there was some discussion
5 about withdrawing the statement from President
6 Spanier?

7 A. I still don't recall. Despite the fact
8 that I am reading this I don't recall.

9 Q. But you do accept the fact that you
10 testified in a deposition two years ago or so
11 that there was a discussion?

12 A. Yes. I do accept that fact.

13 Q. And, in fact, however, the statement
14 from President Spanier was never withdrawn?

15 A. Correct.

16 Q. Okay. Now prior to the notification by
17 General Counsel Baldwin that criminal charges
18 were going to be forthcoming did you have any
19 other notice about criminal investigation
20 concerning Jerry Sandusky and/or administrators?

21 A. Yes.

22 Q. And what was that prior notice?

23 A. In September of 2010 we received an
24 inquiry from a reporter asking -- actually
25 President Spanier received an inquiry asking if

1 we had any knowledge of an investigation
2 involving Jerry Sandusky.

3 Q. And how did you get that information?

4 A. When President Spanier replied no, I had
5 not heard, what do you know, something along
6 those lines, he blind copied Bill Mahon, and me,
7 and a few others.

8 Q. And that was it in terms of your
9 knowledge?

10 A. Then later in -- after that went around
11 the office, that particular e-mail, someone in
12 our office Googled I guess Sandusky and found
13 that he was mentioned on a body building website
14 and so that became part of the conversation and
15 then that's all we knew until -- that's all that
16 I knew until February I believe of 2011 when Eric
17 Warnbath (ph.), who he had replaced Gary Schultz,
18 told me that a reporter had camped out outside of
19 the former police chief, Tom Harmon's house.

20 Q. And you were told more than just the
21 reporter had camped outside of Horman's house,
22 didn't you?

23 A. He said that the reporter was looking to
24 find out information about a former employee who
25 had been retired from the University for 10

1 years, Jerry Sandusky.

2 Q. And did you speak to that reporter?

3 A. Not that day. No.

4 Q. Well subsequently concerning that
5 inquiry?

6 A. In March -- March 28th I believe of
7 2011, the reporter wrote to intercollegiate
8 athletics communicators and asked questions as
9 well about an investigation into Jerry Sandusky
10 and that request was forwarded to our office and
11 we respond that we had no knowledge.

12 Q. So that was -- those communications were
13 the only pieces of information that you had prior
14 to October 28th of 2011 that some University
15 officials might be charged with criminal
16 activity?

17 A. No. I also -- March 31st is when a
18 story came out from -- I think it was the Patriot
19 News. I am not sure. March 31st in which they
20 said that three Penn State leaders had testified
21 before a grand jury. And so I -- not only did I
22 Google Jerry Sandusky at one point because I
23 didn't know who he was but I also Googled grand
24 jury at one point to find out what that entailed.

25 Q. Did the article identify the Penn State

1 officials?

2 A. Yes. It did.

3 Q. And who did the article identify?

4 A. I believe it was Tom Harmon, Gary
5 Schultz, and Tim Curley.

6 Q. And did you believe that it was part of
7 your job to find out more about their being
8 called to the grand jury?

9 A. I think I thought there would be more
10 questions from media, so, yes, I thought I should
11 probably figure out what a grand jury was doing.

12 Q. Well did you figure out maybe you should
13 contact the individuals who were summoned to see
14 what that was all about?

15 A. No. I contacted Cynthia Baldwin.

16 Q. Okay. General counsel for the
17 University?

18 A. Correct.

19 Q. And whatever information you obtained
20 you obtained from her?

21 A. Correct.

22 Q. Okay. Anything else in terms of
23 information which you received prior to October
24 28th of 2011?

25 A. There was a lot of media speculation,

1 particularly in the sports press, about what this
2 might mean for Coach Paterno and what it meant
3 for the athletic program. So both Bill Mahon and
4 I discussed whether he should go have a
5 conversation with the president and find out what
6 exactly was happening and so Bill went to have a
7 conversation with the president and Cynthia
8 Baldwin.

9 Q. And did Bill report back to you the
10 results of that conversation?

11 A. He did. He said that the less we knew
12 the better.

13 Q. And was that the end of that?

14 A. Yes. Until October I believe.

15 Q. I am sorry?

16 A. Until October.

17 Q. October 28th?

18 A. Uh-huh.

19 Mr. Strokoff: Pass the witness, Your
20 Honor.

21 Ms. Conrad: Thank you.

22 Cross-Examination

23 By Ms. Conrad:

24 Q. Ms. Powers, I am going to walk back to
25 the podium here so I can see you better. Now I

1 want to start by going back to that meeting that
2 was held in late October of 2011. At any time
3 during that meeting was the name of Michael
4 McQueary referenced?

5 A. No.

6 Q. And at the time of that October 28th
7 meeting did you know who Mike McQueary was?

8 A. No.

9 Q. As of October 28, 2011, did you -- were
10 you aware of the 2001 incident involving a
11 graduate assistant and Jerry Sandusky?

12 A. Not till that day. I don't think I was
13 until -- nope. It was either in the paper or --

14 Q. I am focussing on October 28th.

15 A. Honestly I can't recall if I knew before
16 I went in or not.

17 Q. Okay. So October 28th the presentment
18 hasn't been released yet?

19 A. Correct.

20 Q. Okay. So again same question. Did you
21 have any information about the 2001 incident?

22 A. Dr. Spanier provided that at the
23 meeting.

24 Q. What information did he provide?

25 A. He said that he had heard that the 2001

1 incident was horseplay in which he interpreted to
2 be towel snapping and just general goofing around
3 in the shower.

4 Q. And did he reference the graduate
5 assistant at all in conjunction with that
6 description?

7 A. Never.

8 Q. And did he reference Mr. McQueary?

9 A. No.

10 Q. So pulling up D-12 to it witness. This
11 is a document that's been marked as P-30. Are
12 you familiar with this document?

13 A. Yes.

14 Q. What is it?

15 A. It was e-mail from me to Bill Mahon and
16 it says statement related to grand jury
17 indictments and it's dated October 28, 2011.

18 Q. And you have already testified that the
19 first paragraph was added to this draft, correct?

20 A. Correct.

21 Q. And that that paragraph, the allegations
22 about a former coach are troubling and it is
23 appropriate that they be investigated thoroughly,
24 protecting children requires the up most
25 vigilance. Did you agree with addition of that

1 paragraph?

2 A. Yes.

3 Q. And did everyone in the room agree with
4 the addition of that paragraph?

5 A. Yes.

6 Q. And then the second paragraph with
7 respect to Dr. Spanier stating that he wishes to
8 say that Tim Curley and Gary Schultz have my
9 unconditional support did Dr. Spanier provide any
10 basis for offering his condition --
11 unconditional support?

12 A. Just that he had worked with him for 16
13 years and that he knew how they operated and he
14 knew that they had integrity.

15 Q. And in the third paragraph -- and he
16 says that, doesn't he, in the second part of that
17 second paragraph?

18 A. Yes.

19 Q. And then in the third paragraph when
20 Dr. Spanier expresses his opinion that Tim Curley
21 and Gary Schultz operate at the highest level of
22 honesty, integrity, and compassion, did
23 Dr. Spanier provide in that meeting a reason upon
24 which he based that opinion that Curley and
25 Schultz operated the highest level of honesty,

1 integrity, and compassion?

2 A. Again because he had worked with them
3 for a number of years.

4 Q. And then in that following sentence when
5 Dr. Spanier expresses the opinion I am confident
6 that the record will show that these charges are
7 groundless and that they conducted themselves
8 professionally and appropriately, on what did he
9 base that opinion?

10 A. He said he knew how they handled
11 situation and he trusted their judgment and new
12 what they had done.

13 Ms. Conrad: Your Honor, I move for
14 admission of D-12 even though it has previously
15 been admitted as P-30.

16 The Court: Okay. We are not going to
17 have duplicate exhibits. Exhibit is P-30.

18 Ms. Conrad: Yes, sir. Going forward I
19 will refer to the plaintiff's exhibits then.

20 The Court: Okay. Please.

21 By Ms. Conrad:

22 Q. Moving forward then to November 4, 2011,
23 I believe you testified that this was the date
24 that the presentment had been leaked?

25 A. Correct.

1 Q. And do you recall when you read the
2 presentment?

3 A. I do not.

4 Q. Was it at or near the time that it was
5 released?

6 A. Yes.

7 Q. And when you read the presentment did
8 you recognize that it referred to a graduate
9 assistant with respect to that 2011 incident?

10 A. That never really logged in my head.

11 Q. So you didn't focus on the graduate
12 assistant at that time?

13 A. It did not register with me. No.

14 Q. Following then the release of the
15 presentment you mentioned that I believe all hell
16 broke loose, is that correct?

17 A. Correct.

18 Q. What did you mean by that?

19 A. It became impossible to do our jobs. It
20 was constant phones ringing probably for almost
21 every office. In particular the president's
22 office and our office. It was thousands of
23 e-mails. The media were in the hallways. They
24 were on campus. They were everywhere and it just
25 -- it was an impossible scene. Something I have

1 never experienced before.

2 Q. And were you following media reports
3 during this time that is right after the release
4 of the presentment?

5 A. Yes.

6 Q. And were you familiar with the report
7 that appeared in the New York Times?

8 A. There were several.

9 Q. Okay. There was -- do you remember any
10 of the reports that you reviewed from the New
11 York Times?

12 A. Yeah. Uh-huh. Sure.

13 Q. I would like to present to the witness
14 D-145. The machine was off. I apologize. And
15 while we are pulling that up for your screen did
16 your -- in your position as -- was it director of
17 public information?

18 A. Correct.

19 Q. Did your office follow the news reports?

20 A. We did.

21 Q. And did your office follow the news
22 reports shortly after the release of the
23 presentment in November of 2011?

24 A. We did.

25 Q. And what it was the purpose for

1 following those news reports?

2 A. It was general practice of our office to
3 follow issues that involve Penn State either
4 through the media or on social media.

5 Q. Pulling up D-145. Let me show you a
6 hard copy of it before we publish it.

7 The Court: Just a second. Mr. Strokoff
8 does not seem to have a copy.

9 Ms. Conrad: I believe it's in your
10 binder.

11 Mr. Strokoff: Oh, it's in binder three?
12 By Ms. Conrad:

13 Q. Ms. Powers, I have handed you a document
14 that's been marked D-145. Are you familiar with
15 it?

16 A. I am.

17 Q. What is it?

18 A. It is a report in the New York Times
19 about -- well it's on November 5th. So it's
20 about the presentment and it's written by Mark
21 Vera (ph.).

22 Q. And is it one of those articles that
23 your office was following after the release of
24 the presentment?

25 A. Yes.

1 Ms. Conrad: Move for the admission of
2 D-145.

3 Mr. Strokoff: No objection, Your Honor.

4 The Court: It's admitted.

5 By Ms. Conrad:

6 Q. What was the headline of New York Times
7 article that was published on November 5, 2011?

8 A. Former coach at Penn State is charged
9 with abuse.

10 Q. And what was the substance if you
11 remember of this article?

12 A. It went through the presentment in
13 somewhat graphic detail of what happened and what
14 the Attorney General's Office was saying.

15 Q. And directing your attention to the
16 third page of the document.

17 A. Yes.

18 Q. In the fourth paragraph who does it
19 refer to?

20 A. A graduate assistant.

21 Q. And is the graduate assistant named?

22 A. No.

23 Q. In this article?

24 A. He is not.

25 Ms. Conrad: I believe I moved for the

1 admission of D-145.

2 By Ms. Conrad:

3 Q. Now taking you through that week,
4 Ms. Powers, by mid week you may recall there was
5 the announcement of the removal of two
6 administrators from Penn State. Do you recall?

7 A. I do.

8 Q. And what do you recall from that
9 particular point in time?

10 A. The board of trustees had determined
11 that Graham Spanier needed to step down and that
12 Joe Paterno needed to step down as well.

13 Q. And following the removal of the
14 president from his office and the removal of
15 Coach Paterno from his position did your office
16 track other media activity?

17 A. Absolutely.

18 Q. And what happened following those two
19 events?

20 A. There was a riot in downtown State
21 College following the removal of Joe Paterno. I
22 was going to say I don't think that the removal
23 of those two were enough. I think that the
24 general public was very, very angry and wanted to
25 know who was responsible.

1 Q. What about the reports in the media that
2 your office was tracking?

3 A. We found out either Thursday or --
4 Wednesday or Thursday that the graduate assistant
5 was Mike McQueary and we began to receive
6 telephone calls in our office and in the
7 president's office, threatening calls, telling us
8 that he should not still remain at Penn State and
9 should not be a coach.

10 Q. Is that when all hell broke loose?

11 A. It was hell the whole week. I don't
12 know if I can measure it.

13 Q. And did it increase as the week went on?

14 A. Nasty phone calls, yes, ratchet it up,
15 as did posts to our social media site and most of
16 them were disturbed that Mike McQueary would be
17 allowed to coach.

18 Q. And, in fact, it was that Thursday
19 morning, November 10th, that Coach Bradley had
20 had a press conference. Did you attend Coach
21 Bradley's press conference?

22 A. I did not.

23 Q. Were you aware of what he said at that
24 press conference with respect to Coach McQueary?

25 A. I was.

1 Q. And what did you understand?

2 A. I understood that Mike McQueary would be
3 on the sidelines for the game.

4 Q. And following Coach Bradley's
5 announcement did your office track or receive any
6 increase in calls or media coverage?

7 A. Definitely.

8 Q. And what was the nature of the coverage
9 at that point in time?

10 A. There was outright anger that a grown
11 man had left a child in the shower thinking that
12 he was being abused and there were people who
13 felt that Mike McQueary did not do due diligence.

14 Q. Let me show you a document that's been
15 marked D-68 and ask if you are familiar with it.

16 A. I am.

17 Q. What is it?

18 A. It is from the Altoona Mirror.

19 Q. And is it one of the articles that your
20 office was tracking?

21 A. Yes.

22 Ms. Conrad: Move for admission and
23 publication of D-68.

24 Mr. Strokoff: No objection, Your Honor.

25 The Court: Okay.

1 By Ms. Conrad:

2 Q. And what is the headline of this
3 article?

4 A. Geiger's Live Blog Monday. McQueary
5 failed to act like responsible human being.

6 Q. And what about the other articles or
7 messages that you were receiving on Thursday,
8 November 10th?

9 A. They were along the same lines that he
10 should have done something more.

11 Q. Now the week that followed then later
12 that night it was announced that Coach McQueary
13 would not be coaching at the Nebraska game. Did
14 your office track any of those -- did your office
15 receive any information or track any of those
16 articles?

17 A. Yes.

18 Q. And what information, if any, did you
19 obtain with respect to that announcement?

20 A. I don't know that we got any pushback
21 related it to. I think that in general the
22 thought was that that whole game was going to be
23 in turmoil and that there was some threat or
24 danger with having Coach McQueary on the
25 sidelines.

1 Q. And, in fact, did you or your office
2 cover the Saturday game?

3 A. Cover it in what way?

4 Q. With respect to what the media was
5 reporting in terms of the game?

6 A. As a general practice we collect all
7 types of information related to issues so yes.

8 Q. And what information, if any, did you
9 obtain with respect to the events that occurred
10 at the Nebraska game?

11 A. I only remember overwhelming sorrow. I
12 don't really remember the articles. I just
13 remember that it was tremendously sad. A sad
14 game.

15 Q. And do you recall whether or not there
16 was any media coverage about security at the
17 game?

18 A. I do know that security was, in fact,
19 increased at the game. Not through the media but
20 generally when we have an issue sort of brewing
21 the security at games is usually increased.

22 Q. And, finally, you were asked whether
23 there had been any recommendations that the
24 Spanier statement be withdrawn. Do you recall
25 those questions?

1 A. I do.

2 Q. Did you recommend that the Spanier
3 statement be withdrawn or taken down from the
4 website?

5 A. No. I felt it's a part of history. No.

6 Q. And did anyone else you know recommend
7 that it be taken down?

8 A. I don't recall.

9 Ms. Conrad: Thank you. I have no
10 further questions.

11 Redirect Examination

12 By Mr. Strokoff:

13 Q. Ma'am, I just want to give you an
14 opportunity to reflect on something. Are you
15 saying that the media did not identify Mike
16 McQueary as the grad student until Wednesday of
17 that week?

18 A. I can't remember the timeline but it was
19 the media that, in fact, identified Mike
20 McQueary.

21 Q. And the media identified Mike McQueary
22 on Sunday, November 6th, did it not?

23 A. I don't know that.

24 Mr. Strokoff: Nothing further, Your
25 Honor.

1 The Court: You can step down, ma'am.

2 The Witness: Thank you.

3 The Court: Please do not leave, ma'am.

4 Members of the jury, we have gone as far
5 as \$9 gets us for one day so we are going to call
6 it quits. We will pick it up tomorrow morning at
7 9:00.

8 Please remember my admonition that you
9 are not to discuss the matter with anyone, not
10 among yourselves, or with anyone else. Clearly
11 in the newspaper -- you can wait until the trial
12 is over to read the news about it. There is
13 likely to be media accounts, print, audio,
14 whatever kind. Just ignore it until the trial is
15 over.

16 Having said that, have a safe trip home
17 and we will see you tomorrow morning.

18 (Whereupon, the jury was escorted to the
19 jury room and the following conversation
20 was held outside of their presence:)

21 The Court: Do you want to retake the
22 stand, Ms. Powers. Counsel and I had a
23 discussion at side bar and agreed to proceed in
24 this manner because the Whistleblower claim as a
25 matter of law is decided by the Court essentially

1 in a nonjury trial but the Court is sitting
2 obviously with the jury who is going to have to
3 decide the defamation and the misrepresentation
4 claims. So jurors don't get to ask questions but
5 judges hearing cases nonjury -- they get to ask
6 questions that they want to ask even when the
7 attorneys haven't asked the questions for them.
8 So to avoid any pollution of the jurors we have
9 decided that if I have questions of witnesses we
10 will take it outside the presence of the jury.

11 So, ma'am, did I hear you correctly that
12 at some point in your career you were the
13 reporter?

14 The Witness: Yes.

15 The Court: And a reporter for whom?

16 The Witness: The Altoona Mirror.

17 The Court: Pardon me?

18 The Witness: The Altoona Mirror.

19 The Court: The Altoona Mirror. And
20 what was the general nature of your reporting?

21 The Witness: I covered a certain area
22 of the county and those municipalities in that
23 county.

24 The Court: Okay. Did you do any
25 criminal reporting?

1 The Witness: I did not.

2 The Court: Did not. Did you work with
3 people who did?

4 The Witness: Yes.

5 The Court: Do you have any familiarity
6 in that area as a result of working with people?

7 The Witness: Not really.

8 The Court: Okay. Now I am not a
9 hundred percent straight. Your position is, if I
10 understood you, you read the grand jury
11 presentment but you don't know if you read it
12 before the statement of President Spanier was put
13 out or after?

14 The Witness: That is correct.

15 The Court: Okay. But you did read it?

16 The Witness: I did.

17 The Court: Okay. I want you to look at
18 Exhibit P-35 and go to page 12. P-35. That
19 should be the plaintiff's book. It should say
20 plaintiff's exhibits on it.

21 The Witness: Yeah. Just 35 then?

22 The Court: P-35 and go to page 12.

23 The Witness: This?

24 The Court: You have to page back and
25 actually just begin at page one and the question

1 is is this, in fact, a copy of the presentment
2 that you read? So if you look at page one on is
3 that generally the presentment that you read?

4 The Witness: Yes.

5 The Court: Yes. So then you go to page
6 12 and read the second full paragraph to yourself
7 and third paragraph. Is it your testimony after
8 reading those paragraphs that the grand jury had
9 found that Mr. Curley and Mr. Schultz made
10 materially false statements under oath that that
11 did not give you any cause about the Spanier
12 e-mail and any thought about retracting that?

13 The Witness: No. I am told that a
14 presentment is what the Attorney General's Office
15 brings against people and that it has a lot of
16 opinion in it.

17 The Court: Who told you that?

18 The Witness: I don't recall. It was
19 during that time period.

20 The Court: And with regard to the
21 Spanier e-mail do you know if at the time it was
22 published the other people involved had read it?
23 The presentment? Had read the presentment?

24 The Witness: I honestly do not know.

25 The Court: And were you aware that

1 Ms. Baldwin as general counsel was present for
2 much of the testimony before the grand jury?

3 The Witness: At that time no, I did
4 not.

5 The Court: Okay. Thank you.

6 Either side can ask whatever questions
7 they want, if any.

8 Mr. Strokoff: May I have just 30
9 seconds -- may I have just 30 seconds?

10 The Court: Yes.

11 Mr. Strokoff: Your Honor, may I refer
12 her to page 53 of her deposition?

13 Ms. Conrad: I am sorry. What?

14 Mr. Strokoff: Page 53.

15 Ms. Conrad: Judge, I presume this is
16 limited to the scope of your questions.

17 The Court: Yes. I don't have a copy of
18 53 in front of me. What are you going to be
19 asking on 53?

20 Mr. Strokoff: Just whether she
21 testified previously that she didn't read the
22 presentment until after the statement was posted.

23 The Court: Okay. So do you have page
24 53 in front of you, ma'am?

25 The Witness: I do.

1 The Court: Your question is?

2 Direct Examination

3 By Mr. Strokoff:

4 Q. Ma'am, do you remember testifying at
5 your deposition that you didn't read the
6 presentment until after the statement was posted?

7 A. I don't recall that but it says it here
8 and I said I was not sure if it was before or
9 after.

10 Mr. Strokoff: Nothing further, Your
11 Honor.

12 Ms. Conrad: No questions.

13 The Court: Thank you, ma'am. You are
14 free to go about your business.

15 The Witness: Thank you.

16 The Court: We will see you tomorrow
17 morning 9:00, counsel. Have a nice evening.

18 Mr. Strokoff: Thank you.

19 E N D O F P R O C E E D I N G S

20

21

22

23

24

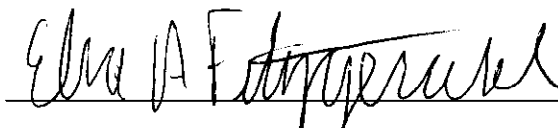
25

C E R T I F I C A T E

I HEREBY CERTIFY THAT THE PROCEEDINGS AND
EVIDENCE ARE CONTAINED FULLY AND ACCURATELY IN
THE NOTES TAKEN BY ME UPON THE HEARING OF THE
WITHIN MATTER AND THAT THIS COPY IS A CORRECT
TRANSCRIPT OF THE SAME.

11/2/16

DATE



ELISE A. FITZGERALD

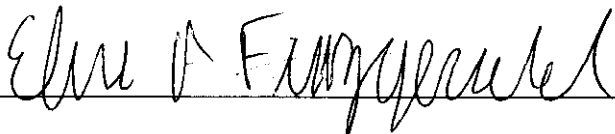
OFFICIAL COURT REPORTER

C E R T I F I C A T E

I HEREBY CERTIFY THAT A COPY OF THIS
TRANSCRIPT WAS MADE AVAILABLE TO COUNSEL OF
RECORD FOR THE PARTIES, ADVISING THEM THAT THEY
HAD UNTIL _____ IN WHICH TO FILE
ANY OBJECTIONS OR EXCEPTIONS TO THE SAME. THAT
TIME PERIOD HAVING ELAPSED WITHOUT RECORDING OF
OBJECTIONS OR EXCEPTIONS, THE TRANSCRIPT IS
THEREFORE LODGED WITH THE COURT FOR FURTHER
ACTION.

11/2/16

DATE



ELISE A. FITZGERALD

OFFICIAL COURT REPORTER

ACCEPTANCE BY COURT

UPON COUNSEL'S OPPORTUNITY TO REVIEW AND TO
OFFER CORRECTIONS TO THE RECORD, THE FOREGOING
RECORD OF PROCEEDINGS IS HEREBY ACCEPTED AND
DIRECTED TO BE FILED.

11-2-16

DATE

Thomas G. Gavin

JUDGE