



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

MICHAEL J. MCQUEARY

: NO. 2012-1804

VS

THE PENNSYLVANIA STATE UNIVERSITY

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ORIGINAL

TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL A.M. DAY 2)

BEFORE: THOMAS G. GAVIN, SENIOR JUDGE
SPECIALLY PRESIDING
15TH JUDICIAL DISTRICT

DATE: OCTOBER 18, 2016

PLACE: CENTRE COUNTY COURTHOUSE ANNEX
ANNEX COURTROOM
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
KIMBERLY HAVEAR, ESQUIRE

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PROTHONOTARY
CENTRE COUNTY, PA



ORIGINAL

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Direct Cross Redirect Recross

For Plaintiff:

William Mahon	3	35	73, 91	88
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For Defendant:

(None)

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Plaintiff:

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Defendant:

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P R O C E E D I N G S

THE COURT: Good morning, everybody, and have a seat. Go ahead, Mr. Strokoff.

MR. STROKOFF: Call William Mahon, please.

WILLIAM MAHON

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

THE COURT: Take a seat, please. Try and stay on that microphone, it will help everybody hear better.

D I R E C T E X A M I N A T I O N

BY MR. STROKOFF:

Q. Sir, would you please state for the record your full name?

A. It's William Mahon, M-A-H-O-N.

Q. Thank you. And sir, your current occupation?

A. I'm an instructor in Penn State's College of Communications.

Q. And what do you teach?

A. I teach classes in public relations and journalism.

Q. And for how long have you been employed by The Pennsylvania State University?

A. About 32 years.

Q. Sir, could you tell us what your educational

1 background is?

2 A. Sure. I have a Bachelor's Degree from Lock
3 Haven State in English and journalism and a graduate
4 degree, a Master's Degree in speech communications
5 from Penn State.

6 Q. And in what year did you obtain your
7 Bachelor's?

8 A. 1976.

9 Q. And in what year did you obtain your
10 Master's?

11 A. 1994.

12 Q. Sir, upon the graduating from Lock Haven,
13 what was your employment?

14 A. I worked as a newspaper reporter and editor
15 for about seven and a half years.

16 Q. And was that for a newspaper in this area?

17 A. Yes. It was The Lewistown Sentinel.

18 Q. So that brings us up to about 1983 or 1984?

19 A. '84, yes.

20 Q. Okay. Where did you then go to work?

21 A. I took a position at Penn State as assistant
22 manager of the news bureau.

23 Q. So, you've been employed by Penn State ever
24 since?

25 A. Yes.

1 Q. Okay. How long did you remain assistant news
2 bureau manager?

3 A. Six months.

4 Q. And then what did you become?

5 A. Then I became manager of the news bureau for
6 about a year.

7 Q. Now back in 1984, what was the news bureau?

8 A. It was a group of probably three or four
9 writers that wrote stories or press releases about
10 activities at Penn State. It might be faculty
11 research or student accomplishments.

12 Q. And where would these articles be published?

13 A. They were distributed to the news media
14 primarily within the state, but some national.

15 Q. Okay. And how long were you the news bureau
16 manager?

17 A. That was about a year.

18 Q. And then what did you become?

19 A. And then I became director of the Department
20 of Public Information.

21 Q. Now, how does the Department of Public
22 Information relate to the news bureau?

23 A. It expanded a little bit further and the
24 staff size increased. Probably the biggest addition
25 was overseeing Penn State at the time had a weekly

1 faculty staff newspaper, so there were about three
2 people on that staff, and a photographer.

3 Q. And did the -- I'm sorry. How long did you
4 remain director of public information?

5 A. Probably until about the year 2000.

6 Q. So from '85 or '86 to 2000, did the
7 Department of Public Information remain basically
8 the same?

9 A. Yes.

10 Q. Okay. What happened then in the year 2000?

11 A. I became assistant vice president for
12 University Relations.

13 Q. And what did that position signify?

14 A. Expanded duties, some additional staff, and
15 filled in for the vice president in his absence.

16 Q. And what additional, if any, or areas of
17 responsibilities were there in University Relations
18 as opposed to Public Information?

19 A. I would have had more exposure to senior
20 administrators and broader issues involving the
21 University.

22 Q. Okay. And what was your next position after
23 that?

24 A. Then I became vice president for University
25 Relations.

1 Q. And about what year was that?

2 A. Probably about two thousand -- 2005, 2006.

3 Q. As vice president for University Relations,
4 what responsibilities did that entail?

5 A. Then I oversaw a number of related
6 departments, so it would have been the Department of
7 Public Information where I had started, the
8 Department of Marketing and Advertising, Department
9 of Publications, Special Events. I guess that was
10 about it.

11 Q. And how long did you remain vice president
12 for University Relations?

13 A. About six years.

14 Q. And then what happened after six years?

15 A. In around August of 2012, I took the position
16 with the College of Communications to teach.

17 Q. Okay.

18 A. I am sorry, that's when I announced I was
19 going to take the position. I took the position
20 five months later.

21 Q. Okay. As vice president for University
22 Relations, did you know Lisa Powers?

23 A. Yes. She worked for me.

24 Q. Okay. What was her position in 2011? If you
25 recall.

1 A. At that time, she had the position I held
2 years earlier. She was the director of Public
3 Information.

4 Q. Okay. Sir, are you familiar with the website
5 Penn State Live?

6 A. Yes.

7 Q. Could you tell the jury what Penn State Live
8 is?

9 A. The concept was mine to have a single place
10 where we could collect all the press releases, news
11 stories, photographs, videos that were developed by
12 my staff and also by other writers and Public
13 Relations staff spread throughout the University and
14 all of its campuses. In a typical month, we might
15 have 600 to 800 stories posted on that website.

16 Q. You say that the concept was yours. When did
17 Penn State Live go live?

18 A. I couldn't tell you the exact date. It was
19 probably -- probably around 2005, 2004.

20 Q. And the purpose of having this one website
21 was what, again?

22 A. Well, we wrote all these stories trying to
23 focus on the news that occurred at Penn State. A
24 lot of traditional news media had pulled back on
25 coverage of higher education issues and I saw an

1 opportunity for us to post our own stories and
2 information and deliver it more directly to the
3 public.

4 Q. Okay. Was Penn State Live the one central
5 website that people could go to to get Penn State
6 news?

7 A. Yes.

8 Q. Okay. Were there any other central websites?

9 A. There would have been thousands of Penn State
10 websites, but it was the single main website that
11 you would go to find out what was happening today at
12 Penn State, or you would do a search of to find out
13 information from the past.

14 Q. Okay. But if you wanted -- I should say if a
15 Penn State student or alum wanted to know what was
16 happening at Penn State today, this was the website
17 to go to?

18 A. In terms of website delivery of news, yes.
19 But there were a lot of other platforms we were
20 using as well.

21 Q. Okay. Such as?

22 A. Well, we had an email news delivery service
23 called Penn State Newswire, which had I believe
24 probably about a hundred thousand or so subscribers
25 around the world. So you could subscribe to

1 receiving basic news or just news about the Altoona
2 campus or just news about science. And if you
3 subscribed to that, we set the system up so you
4 would be delivered those Penn State stories each day
5 or each week.

6 Q. Is this a free service?

7 A. Yes.

8 Q. Okay. So with respect to this email news
9 service, would that be something that would
10 automatic on something that was posted on Penn State
11 Live?

12 A. No. Somebody would make a decision if a
13 story was -- perhaps, research on climate change,
14 somebody would make a decision, should we put that
15 on the main newswire? Should we also send it to the
16 science newswire? Maybe alumni would like it? So,
17 we would send it to those who subscribed to the
18 alumni newswire. So decisions were made, what were
19 the particular audiences that would receive any give
20 story.

21 Q. Okay. So that's email news. But you
22 indicated that maybe there are other platforms as
23 well?

24 A. Yeah. We had very large social media
25 platforms, Facebook and Twitter in particular, and

1 people subscribed to those. And we delivered news
2 and information through those systems as well.

3 Q. And again, would somebody be making a
4 decision as to what would go on the Facebook page
5 and what would go on Twitter?

6 A. Yes.

7 Q. And in November of 2011, who was that
8 decisionmaker?

9 A. It could be a number of different staff had
10 the authority in the passwords to make those
11 decisions and post stories in different places.

12 Q. Okay. Sir, do you recall in the spring of
13 2011 there being a news story in traditional print
14 out of Harrisburg that three or so senior Penn State
15 administrator had been summoned to testify before a
16 statewide investigating grand jury?

17 A. Yes.

18 Q. And do you recall, after that story broke,
19 having a discussion with Lisa Powers concerning that
20 story?

21 A. Yes.

22 Q. And do you recall if she was inquiring what
23 you knew about that story?

24 A. Yes.

25 Q. And do you remember what you told her?

1 A. That I didn't know much at all.

2 Q. Do you remember specifically stating that the
3 less we know the better?

4 A. Legal issues, that was typical. Penn State,
5 on any given day, was involved in a lot of different
6 legal issues. We were typically brought in on it if
7 it looked like it was going to be something that
8 needed addressed in one of our public information
9 channels. But typically stayed more distant from
10 the attorneys at the University.

11 Q. Well, my question is, do you remember telling
12 her the less we know the better?

13 A. I don't recall in particular five and a half
14 years ago.

15 Q. Sir, I'd like to direct your attention to
16 Friday, October 28th, 2011. And to help you, I'm
17 going to refer you to an exhibit book, it's
18 Plaintiff's exhibit book and Plaintiff's Exhibit
19 Number 30. So that should be fairly --

20 A. There's one in front of me?

21 THE COURT: I think that's it. Look at the
22 sign, it will tell you what exhibits they are.

23 THE WITNESS: Witness copy exhibits.

24 MR. STROKOFF: Yes, I think that's it.

25 Number 30?

1 THE WITNESS: Yes.

2 MR. STROKOFF: Your Honor, I believe this has
3 already been admitted.

4 THE COURT: It has.

5 BY MR. STROKOFF:

6 Q. Sir, this document, are you familiar with it,
7 sir?

8 A. Yes.

9 Q. Okay. This is an email which Lisa Powers
10 sent you?

11 A. Yes.

12 Q. October 28th, 2011; is that correct?

13 A. Yes.

14 Q. What were the circumstances of her sending
15 you this email?

16 A. Lisa and I went to President Spanier's office
17 that day. Present was Cynthia Baldwin, general
18 counsel, and Steve Garban, the chair of the Board of
19 Trustees. President Spanier had developed this
20 statement he wanted to put out to the press if he
21 thought we would need it in the coming days.

22 Q. Okay. Didn't President Spanier explain why
23 he thought it might be necessary?

24 A. He said that Cynthia Baldwin had heard from
25 sources in Harrisburg that charges were going to be

1 filed, I don't know if that's the correct legal
2 term, involving Curley and Schultz. And he felt if
3 that occurred, that it was a mistake.

4 Q. I'm sorry, I didn't hear that. He felt what?

5 A. He said that this must be a mistake and said
6 that Cynthia Baldwin would call Harrisburg and try
7 to straighten this out.

8 Q. Did he indicate why he felt this was a
9 mistake?

10 A. Yeah. He said that he had worked for many
11 years with Curley and Schultz and he knew they would
12 not have done anything inappropriate. And he wanted
13 to make it clear that he would stand up for them.

14 Q. Didn't he refer to the accusations that were
15 being leveled against him?

16 A. I don't think in any detail. As I recall, it
17 was just framed in terms of Cynthia Baldwin had
18 heard from sources. I don't believe there was any
19 detail at that point.

20 Q. No reference to sodomy?

21 A. No.

22 Q. No reference to sexual molestation of a young
23 boy?

24 A. I don't recall any of that.

25 Q. Okay. Sir, with respect to the very first

1 two sentences in Plaintiff's Exhibit 30, do you
2 recall how they got put into the statement?

3 A. Yeah. As is common, we would go to the
4 president's office often during the month, and the
5 people that might have some relationship to the
6 topic that was being discussed would be part of
7 that. When I looked at this particular statement
8 that the president shared with us, I felt it was
9 missing a recognition of the allegations and that it
10 was important to put something with that sentiment
11 at the beginning of the statement. My recollection
12 is everybody in the room agreed to that and
13 President Spanier went over to his computer and
14 typed those words up. So the words were not mine
15 specific, but it was my sentiment.

16 Q. So, do we gather that before these two
17 sentences were put in, the initial draft was
18 basically the second and third paragraphs of this
19 email?

20 A. Yes.

21 Q. With respect to the first paragraph that was
22 put in, there is a statement that says, quote,
23 protecting children requires the utmost vigilance,
24 end quote?

25 A. Mm-hmm.

1 Q. Isn't that correct?

2 A. Yes.

3 Q. So somebody knew this had something to do
4 with sexual molestation of children; isn't that
5 correct?

6 A. I think it was --

7 MS. CONRAD: Objection as to form.

8 MR. STROKOFF: I think it's proper, Your
9 Honor.

10 THE COURT: Excuse me. Just rephrase the
11 question.

12 BY MR. STROKOFF:

13 Q. Do you recall who suggested the words
14 "protecting children require the utmost vigilance"?

15 A. That would have been me.

16 Q. Why did you suggest that?

17 A. Because of the earlier news coverage, it was
18 clear that this case was related to allegations
19 against Sandusky.

20 Q. You're saying then you still don't recall
21 that there was discussion about the sexual nature of
22 the charges?

23 A. Involving Sandusky, I don't recall anything
24 specific at that point.

25 Q. And there's nothing you recall about Curley

1 and Schultz being advised of the sexual nature of
2 what had been witnessed?

3 A. No.

4 Q. Sir, there's a version of the draft -- let me
5 rephrase this. The last sentence, "I am confident
6 the record will show that these charges are
7 groundless and that they conducted themselves
8 professionally and appropriately." Do you see that
9 sentence?

10 A. Yes.

11 Q. Do you recall how the words "these charges
12 are groundless" got put into the statement?

13 A. No, I don't.

14 Q. Okay. There is a version of this draft
15 floating around that doesn't have these words. Are
16 you aware of that?

17 A. No.

18 Q. Do you recall ever seeing a draft that didn't
19 have the words "these charges are groundless" in
20 them?

21 A. No, I don't. It would be typical for
22 statements to be shared by a number of people and
23 different administrators or the general counsel or
24 the chair of the board to suggest changes as its
25 being edited.

1 Q. Okay. So that this version, which is
2 Plaintiff's Exhibit 30, was a product of input from
3 you and Lisa Powers?

4 A. And the others. Yes. And the others in the
5 room.

6 Q. Do you remember if Chairman Garban had any
7 input or suggested changes?

8 A. Nothing specific.

9 Q. And what about General Counsel Baldwin?

10 A. I don't recall anything specific from her.

11 Q. All right. But with respect to Plaintiff's
12 Exhibit 30, this was a document that met with your
13 approval?

14 A. In what sense do you mean?

15 Q. Well, you had this meeting and this was an
16 approved draft; is that correct?

17 A. Approved by the president of the University,
18 yes.

19 Q. Okay. Well, did you have any problems with
20 this statement?

21 A. It's not my job to make a statement like
22 this. It was written as the opinion of the
23 president with the presence of the chair of the
24 board and general counsel. It was clear to me they
25 knew far more about this than I was aware of. And

1 so, my role was to advise them to add those first
2 two sentences or that sentiment to the document.

3 Q. So after those first two sentences were
4 added, then you had no further comment about the
5 statement?

6 A. No.

7 Q. No, you hadn't?

8 A. No, I did not have any further comment.

9 Q. Okay. Sir, I'm now going to ask you to flip
10 to Plaintiff's Exhibit 37.

11 A. (The witness complied.)

12 Q. Sir, are you able to identify 37?

13 A. Yes.

14 Q. And what is that, sir?

15 A. That looks like probably the final or near
16 final version of the statement that the University
17 would have posted that day.

18 Q. Okay. And do you recall that there was a
19 change from 30 in that the second sentence -- and 30
20 says with regard to the other indictments, that this
21 final version changes indictments to presentments?

22 A. What is your question again?

23 Q. Do you recall that change?

24 A. I don't recall that particular change.

25 Q. Do you recall whether or not any consultation

1 was made with the attorneys for Mr. Curley and Mr.
2 Schultz concerning the statement?

3 A. I'm not aware of anything in particular, no.

4 Q. Okay. Now, sir, if you would, turn to 38.

5 A. (The witness complied.)

6 Q. And could you tell the jury what 38 is?

7 A. That looks like the version of the statement
8 as it would have been posted on Penn State's news
9 website which at the time was called Penn State
10 Live.

11 Q. It's no longer called Penn State Live?

12 A. No, I think the name changed a few years ago.

13 Q. Okay. And finally, could you turn to 39?

14 A. (The witness complied.) Yes.

15 Q. Okay. Can you identify what 39 is?

16 A. Yes. I believe that was an addition that was
17 sent up to our office later in the day from the
18 president's office.

19 Q. Later in the day being later on November 5?

20 A. Yes.

21 Q. Okay. And the addition was what, sir?

22 A. It's a statement from, apparently, the
23 attorney for Gary Schultz and the attorney for Tim
24 Curley, which President Spanier asked us to add to
25 the statement that appeared on Penn State Live.

1 Q. Okay. And when you say asked us, were you
2 part of that discussion?

3 A. Yes.

4 Q. Okay. And what did President Spanier -- how
5 did he ask you to put this on?

6 A. I don't recall the specifics, but he asked us
7 to put it on. I couldn't tell you if he talked to
8 me by phone or in person or set it up by email.

9 Q. Okay. And do you remember Lisa Powers
10 objecting to putting this on Penn State Live?

11 A. Yes. It was out of character to post
12 something this way.

13 Q. That's what she said?

14 A. I don't know what she said, but I agreed with
15 her, that it felt odd. We didn't normally post
16 material this way.

17 Q. Well, had you ever done it before?

18 A. Adding something after the fact, I don't
19 recall that.

20 Q. Okay. But she did, that is Lisa Powers, did
21 say I don't think we should be doing this, right?

22 A. Yeah. That would have been my sense as well.

23 Q. Okay. And and after she expressed that
24 sentiment, what did you tell her?

25 A. We need to follow the instructions of the

1 president.

2 Q. Now, with respect to Plaintiff's Exhibit 39,
3 is this a news item that would have gone out to the
4 automatic newswire that you testified about a few
5 minutes ago?

6 A. That's what it looks like to me.

7 Q. So that aside from posting this on Penn State
8 Live, this statement from President Spanier with the
9 statements from Attorney Farrell and Attorney
10 Roberto representing Curley and Schultz
11 automatically went out to a hundred thousand people
12 or so?

13 A. I don't know a lot about the back end of the
14 system, how stories or information like this get
15 posted. In looking at this, my guess is it was
16 added to the original story that had already been
17 posted, so that if somebody visited that URL, that
18 web address, they would see that. I'm not sure the
19 mechanics of how the system works, that it would
20 have been sent out again to other people.

21 Q. Well, I just want to get back to the
22 newswire. Somebody, and you said there were over a
23 hundred thousand subscribers through automatic news.

24 A. Yeah. The hundred thousand would be for two
25 dozen different newswires. Individual newswires

1 like the science newswire or the sports wire would
2 have a smaller audience.

3 Q. But this statement would have gone out on the
4 electronic news, at least in the general news?

5 A. Yeah. I couldn't tell you the specifics, if
6 this particular story went out on a particular
7 newswire. I didn't manage the newswires personally,
8 staff would have done that work. It's possible that
9 the story was posted on the website and possible it
10 went to the main general newswire. If that
11 occurred, it likely would not have been sent out a
12 second time with the additional quotes. But again,
13 I didn't manage the specifics of the newswire. So I
14 can't tell you that.

15 Q. All right. But in terms of the initial
16 statement without the attorneys' comments, was there
17 any bigger story on November 5, 2011 on Penn State
18 Live's website than the statement from President
19 Spanier?

20 A. My guess is not.

21 Q. And would at least the base statement from
22 President Spanier gone out automatically to the
23 electronic newswire subscribers?

24 A. Not necessarily. We didn't typically send
25 newswires out on a Saturday, so I'd have to do some

1 research to find out if there was a newswire sent
2 out on a Saturday.

3 Q. Looking at the 39, sort of about a third of
4 the way down on the right, it says share this story,
5 tweet. What does that refer to?

6 A. Oh, yes. Okay. I think that was something
7 that was probably -- that could be one of two
8 things. It's common for news websites to have icons
9 that appear next to stories that encourage readers
10 that like a story to share it to their friends on
11 Twitter, on Facebook, on Pinterest or other social
12 media platforms. The way our system was set up in
13 2011, and from this document, I can't tell you if
14 that was automatically generated for a reader to
15 share, or if these were choices that the editor in
16 my office had to click and make a choice to share in
17 some way.

18 Q. Well, if I am visiting the website on
19 November 5, 2011, was this something that I could
20 click on, share this story, and Tweet it?

21 A. In 2011? I just don't know if we had those
22 automatically generated icons on the site five and a
23 half years ago. It's very common today. I can't
24 tell you if we had that system in place back then.

25 Q. Going to the bottom of the page on the left,

1 it says submit to reddit, LinkedIn, StumbleUpon,
2 Pniterest. Were these automatic features of the
3 website back then?

4 A. My guess, and again, I didn't manage the
5 technical part of the system, that some of those
6 were only seen by the editor in the office. Reddit
7 is kind of a news aggregator. StumbleUpon is kind
8 of a search engine. My guess, my guess, I do not
9 know for sure, is some of those links were only seen
10 by the editor who was deciding where to put this
11 story. Some of them may have been visible to the
12 public.

13 Q. Let's talk about reddit for a moment. You
14 said it's a new aggregator?

15 A. Yeah. I don't use it, so I'm not that
16 familiar with it.

17 Q. Okay. Well, that's not a term I'm familiar
18 with. What does a news aggregator mean?

19 A. I believe it's a platform where somebody
20 could set up the kinds of information they would
21 like to receive from many different sources on the
22 web. And you probably have some say in the kinds of
23 stories that would come to you if you were
24 interested in sports or interested in movie reviews,
25 that sort of thing.

1 Q. Okay.

2 A. But again, I've never used it, I don't know a
3 lot about it.

4 Q. Sir, at the time this statement from
5 President Spanier was posted on November 5, 2011,
6 had you read the presentments?

7 A. At that exact moment, I couldn't tell you. I
8 believe the presentment -- the presentment, as I
9 recall, was accidentally posted on Friday the 4th
10 and then formally released by the Attorney General's
11 Office on Saturday morning. My guess is this
12 statement went out late morning, early afternoon. I
13 may have read the full presentment before this went
14 out or an hour or two after it went out. I don't
15 recall the specifics.

16 Q. Sir, I'd like to show you pages 38 and 39 of
17 the deposition which you gave on May 4th, 2016. I'd
18 ask you to read that and then I'm going to ask you
19 some questions about what we were just talking
20 about.

21 MR. STROKOFF: I'll get one for Your Honor in
22 a moment.

23 THE COURT: What pages do you want him to
24 read?

25 MR. STROKOFF: Was it 38?

1 THE COURT: Just read it to yourself, sir.

2 THE WITNESS: (The witness complied.)

3 BY MR. STROKOFF:

4 Q. And that would carry over. 38 carry over to
5 39.

6 A. Okay. Yes, sir.

7 Q. Sir, having read your deposition, again I ask
8 you, at the time a statement from President Spanier
9 was posted on Penn State Live, had you read the
10 presentments?

11 A. I can't tell you with any certainty whether I
12 was reading the news coverage of the leaked
13 presentment or the news coverage of the presentment
14 that morning or the actual presentment at the time
15 this was released. Around that time, within a few
16 hours, I had read the presentment.

17 Q. At the time the statement was initially
18 drafted on October 28th, 2011, certainly you hadn't
19 read the presentments at that point?

20 A. No, I didn't read anything about a
21 presentment.

22 Q. Okay. Sir, I'm going to ask you to go to
23 Plaintiff's Exhibit 35, if you would, please.

24 A. (The witness complied.)

25 Q. And specifically, attached to that complaint

1 is the presentment. Do you see that, sir?

2 A. This is titled Police Criminal Complaint?

3 Q. That's correct.

4 A. Okay.

5 Q. And attached to Police Criminal Complaint,
6 which is Plaintiff's Exhibit 35 is the presentment.
7 And I would ask you to turn to page 12 and 13 of the
8 presentment?

9 MR. STROKOFF: Your Honor, I believe this is
10 in evidence also.

11 THE COURT: Yes.

12 MS. CONRAD: Your Honor, I'm going to object,
13 though, to the reference of its attachment to
14 Plaintiff's 35. If counsel is asking his questions
15 related to the presentment that was released on that
16 Friday or Saturday, I just want to make that point
17 clear that this witness has provided no testimony
18 that he had any knowledge about the pages that begin
19 at Plaintiff's 35.

20 THE COURT: I thought the question was had he
21 read the presentment?

22 MS. CONRAD: Yes, sir.

23 THE COURT: So sir, with regard to the
24 document that you're looking at now, is that the
25 document you read at some point in time?

1 THE WITNESS: At some point, I read something
2 I believe to be the presentment. I have not read
3 this document in front of me.

4 THE COURT: Is there any disagreement that
5 this is, in fact, a copy of the presentment?

6 MS. CONRAD: I would need a moment to check
7 to see.

8 THE COURT: Okay. Go ahead and take a moment
9 to check.

10 MS. CONRAD: Thank you. Your Honor, it
11 appears on very quick review that pages 1 through 23
12 of the document which is contained in P34 was the
13 presentment that was leaked on November 4th and then
14 posted on the next day. However, pages one through
15 four and the final page is not contained in the
16 presentment, as I understand it.

17 THE COURT: Number four is the criminal
18 complaint that is a result of the presentment.

19 MS. CONRAD: Well, there's no evidence that
20 this witness had any knowledge --

21 THE COURT: Objection overruled.

22 BY MR. STROKOFF:

23 Q. Sir, did you read on page 12 of the
24 presentment prior to the posting of President
25 Spanier's statement on Penn State Live?

1 A. As I said earlier, at some point in the
2 middle of that day, I believe I read this document.
3 I cannot tell you if I read it before that was
4 posted or an hour or two afterwards.

5 Q. So if you had read this before, what the
6 grand jury found with respect to material false
7 statements from Tim Curley and Gary Schultz, before
8 this was posted, wouldn't you have taken any action?

9 A. As I said, I don't know what I did read
10 before then. I was following the instructions of my
11 superior, President Spanier, who believed strongly
12 that these two men were innocent and wanted his
13 opinion out there for the public to see.

14 Q. Regardless of what was in the presentment?

15 A. As I said, again, I don't know if I read the
16 presentment before or after the statement went out.

17 Q. Did you have any knowledge if President
18 Spanier had read the presentment?

19 A. I can't recall. Presumably he, did not on
20 October 28th when this was first started, the
21 initial version of the statement.

22 Q. Sir, I'd ask you to turn to Plaintiff's
23 Exhibit 40.

24 A. (The witness complied.)

25 Q. And ask you to take a look at that document,

1 please.

2 A. (The witness complied.) Yes.

3 Q. Are you able to identify this document, sir?

4 A. Yeah. It looks like an email from me to
5 reporter Adam Smeltz.

6 MR. STROKOFF: Move for admission of
7 Plaintiff's 40, Your Honor.

8 MS. CONRAD: No objection.

9 THE COURT: It's admitted.

10 BY MR. STROKOFF:

11 Q. And who's Adam Smeltz?

12 A. Adam Smeltz was a local resident who had
13 worked for a number of news outlets. At the time, I
14 believe he was working for State College dot com.

15 Q. So he was working for outside media?

16 A. Yes.

17 Q. And why were you emailing him on November 5?
18 I'm sorry, on November 6.

19 A. Well, Adam had been trying to get in touch
20 with me. And so, I did not get his voicemail right
21 away. And when I had gotten it, I believed it
22 passed his deadline. But I sent him a note.

23 Q. Okay.

24 A. Apologizing for missing his deadline.

25 Q. Well, did you not, sir, on Saturday, November

1 5 at 12:23 p.m. email Mr. Smeltz the statement from
2 President Spanier?

3 A. Yes. It looks like I tried to, but I
4 apparently had an incorrect email address for Adam.

5 Q. Okay. And why were you trying to email the
6 statement to Mr. Smeltz?

7 A. I don't recall if he had tried to contact me
8 earlier that day, or he was just one of the local
9 media I would have thought to make sure had this
10 statement.

11 Q. So there were some local media that you
12 actually were proactive and sent -- or wanted to
13 send the statement to?

14 A. Well, putting up a statement on the news
15 website's proactive in and of itself. I can't tell
16 you five years later if I was searching for
17 particular news media. Adam's somebody who was in
18 touch with me normally a couple times a week on
19 stories.

20 Q. Are you saying that there weren't any other
21 news media people who you emailed President
22 Spanier's statement to on November 5?

23 A. I'm not saying that, I'm just saying I don't
24 recall five years later.

25 Q. Sir, at the time the statement was posted on

1 Penn State Live, did you know that the graduate
2 assistant who had witnessed this abuse was Mike
3 McQueary?

4 A. No, I did not.

5 Q. When did you find out that it was Mike
6 McQueary?

7 A. My recollection is it was a day or two or
8 three later in news coverage that the name came out.

9 Q. Sir, did you at any point consider removing
10 President Spanier's statement from the website?

11 A. No.

12 Q. Why not?

13 A. Once you put a statement on the World Wide
14 Web, it's there. You wouldn't normally remove
15 something like that.

16 Q. What do you mean it's there, sir?

17 A. Well, once it appears on the web and news
18 media are covering it, they all have copies of it.
19 I'm not sure what the motivation would be for
20 removing it.

21 Q. You're not sure of what, sir?

22 A. What would the motivation be for removing it.

23 Q. Well, you're saying once it's on the web and
24 the news media have it, there's no sense on removing
25 it?

1 A. I'm not sure why you would remove it. Nobody
2 that I could recall suggested removing it. This was
3 the president of the University's opinion. Once you
4 post it there, an act of removing it would not look
5 very transparent. His opinion had not changed in a
6 day or two or three, it was his opinion.

7 Q. So once it's on the web and the news media
8 have it, what's the consequence of that?

9 A. I'm not sure I understood the question.

10 Q. When this statement was posted on Penn State
11 Live, it was with the expectation that the media
12 would pick it up; isn't that correct?

13 A. Yes.

14 Q. And it was with the expectation that the
15 media would publish it and republish it, right?

16 A. Correct.

17 Q. And that within an unsure period of time,
18 many people would be seeing this document way beyond
19 the Penn State Live website, right?

20 A. Yes.

21 Q. And these would be news media all over the
22 world?

23 A. Potentially.

24 Q. But certainly all over the country?

25 A. Yes.

1 Q. And these news media would be print media,
2 right?

3 A. Print and television and radio and digital
4 news media.

5 Q. Okay. Potentially millions of readers,
6 viewers, and watchers, right?

7 A. Potentially, yes.

8 Q. Okay. Sir, do you recall getting a very
9 large number of media requests for further
10 information following posting of this statement on
11 Penn State Live?

12 A. Just on that Saturday in particular, I don't
13 recall. There were certainly a lot of news media
14 that wanted a lot of different kinds of informations
15 -- information related to the case that week. In
16 fact, it grew later in the week. But I'm not sure I
17 would tie it in particular to this statement.

18 MR. STROKOFF: Pass the witness, Your Honor.

19 THE COURT: Go ahead.

20 MS. CONRAD: Thank you.

21 CROSS EXAMINATION

22 BY MS. CONRAD:

23 Q. Mr. Mahon, I'm going to move to the podium so
24 I could see you better.

25 A. Sure.

1 Q. Just give me one minute. Thank you. Good
2 morning.

3 A. Good morning.

4 Q. My name is Nancy Conrad and I represent the
5 Pennsylvania State University. I have some follow
6 up questions for you with regard to your testimony.
7 I want to first direct your attention to that
8 meeting that was held in late October, I believe you
9 testified October 28th?

10 A. Yes.

11 Q. Now, in that meeting I believe that you as
12 well as the other individuals you testified met with
13 Dr. Spanier with regard to a draft statement that he
14 had prepared; is that correct?

15 A. Yes.

16 Q. And I believe that you testified that based
17 on your review of the president's draft statement,
18 you offered some suggestions for that statement; is
19 that correct?

20 A. Yes.

21 Q. And I 'd like to bring up Defendant 12 which
22 was previously marked as Plaintiff's 30. I believe
23 you have the binder right in front of you with
24 Plaintiff's 30 in it.

25 A. 30.

1 Q. I showed you a document that's marked D12,
2 previously Plaintiff's 30. Are you familiar with
3 this document?

4 A. Yes.

5 Q. And what is it?

6 A. This is the draft statement that we discussed
7 in that meeting on October 28th.

8 Q. And I believe you testified that it was the
9 first two statements that were discussed and
10 ultimately added by Dr. Spanier; is that correct?

11 A. Yes.

12 Q. Okay. With regards to the second paragraph
13 then, was there any discussion with respect to Dr.
14 Spanier's draft statement?

15 A. I'm sorry, can you say that again?

16 Q. With regards to the information contained in
17 this second paragraph, during the course of that
18 meeting, was there discussion among the group about
19 that particular paragraph? The second paragraph.

20 A. I can't recall specific discussion. It would
21 be typical in this kind of a meeting, which we held
22 all the time in his office, for the people around
23 the table to offer their opinions about things that
24 were being said, particular lines, particular word
25 choices. I don't remember anything in particular in

1 those discussions that day.

2 Q. When Dr. Spanier presented this draft that
3 contained the statement, "I wish to say that Tim
4 Curley and Gary Schultz have my unconditional
5 support," did he provide you any information about
6 the basis for that statement?

7 A. Not that I recall. It was his opinion. He
8 was talking about his opinion of these two people he
9 had worked with for many years.

10 Q. And in fact, doesn't he provide that basis in
11 that next sentence in that paragraph? What does
12 that paragraph -- the second sentence provide?

13 A. Yeah. He says, "I've known and worked daily
14 with Tim and Gary for more than 16 years."

15 Q. And did you know that to be an accurate fact,
16 that he had worked with Tim and Gary for more than
17 16 years?

18 A. Yes. Very closely.

19 Q. And then when he goes on to state his
20 opinion, "I have complete confidence in how they
21 handled the allegations about a former University
22 employee," did he provide any information upon which
23 he based that opinion?

24 A. Not that I recall, it was just his feelings
25 about Gary Schultz and Tim Curley, that he had

1 confidence in them.

2 Q. And did he relate at any time that he had
3 confidence in them and formed that opinion because
4 he had worked with them for 16 years?

5 A. Yeah, that's what I would understand. He was
6 close to them, they worked every day.

7 Q. Going on then to the third paragraph where
8 Dr. Spanier expressed his view that Tim Curley and
9 Gary Schultz operate at the highest level of
10 honesty, integrity, and compassion, did you obtain
11 any information upon which you learned and
12 understood that Dr. Spanier based that opinion?

13 A. No. No. He worked with them every day for
14 years. I had no reason to doubt his opinion.

15 Q. So you understood his opinion that Curley and
16 Schultz operate at the highest levels of honesty,
17 integrity, and compassion was based on Dr. Spanier's
18 working with them for 16 years?

19 A. Yes. I would have no reason to doubt his
20 opinion.

21 Q. And then finally, Dr. Spanier goes on in the
22 last sentence and states his view that he is
23 confident that the record will show these charges
24 are groundless and they conducted themselves
25 professionally and appropriately. Did you obtain

1 any information or form an understanding upon the
2 basis that Dr. Spanier premised that opinion that he
3 was confident that the record will show, that is in
4 the future, that these charges are groundless?

5 A. I had no reason to doubt his opinion. It was
6 his opinion.

7 Q. And it was his opinion based on what
8 information?

9 A. Years of working with these two
10 administrators.

11 Q. Okay. Now during the course of that October
12 28th meeting where you're working on this draft
13 statement and understanding the opinions of the
14 president, at any time, was Mr. McQueary's name
15 stated?

16 A. I don't recall his name coming up at all.

17 Q. At any time, did somebody refer to Mike
18 McQueary?

19 A. No.

20 Q. Did you know who Mike McQueary was as of
21 October 28th?

22 A. I am not a big football fan, but I've watched
23 it on TV and I've seen his photo on TV on the
24 sideline, I knew the name. I couldn't tell you what
25 position he coached.

1 Q. Okay. So the only knowledge or information
2 that you had about Mr. McQueary was that he was an
3 assisting coach on the football team; is that
4 correct?

5 A. Yes.

6 Q. So on October 28th, did you have any
7 knowledge or information that Mr. McQueary was in
8 any way related to the information and opinions that
9 were being expressed in this draft statement?

10 A. No.

11 Q. I'm going to direct your attention now to
12 November 4th, 2011. I believe that you testified
13 that the presentment had been released about that
14 time. Do you recall that testimony?

15 A. Yes. It was very confusing that afternoon.
16 It seemed to be out there, but it wasn't. It was
17 leaked, and then maybe it wasn't there. And the
18 press were calling us for comment and we didn't have
19 any information to share with them.

20 Q. And when did you first learn that the
21 presentment had officially been released?

22 A. I believe it was in the news coverage on
23 Saturday morning.

24 Q. Okay. So that would have been November 5th?

25 A. Yes.

1 Q. And did you learn through the release of that
2 information that there was reference to a graduate
3 assistant that was connected to the football program
4 in 2001?

5 A. I don't recall his name being connected with
6 the coverage that morning.

7 Q. Okay. My question, though, was, did you
8 learn that there was a graduate assistant connected
9 in some way to the information contained in the
10 presentment?

11 A. Generically, yes, that was mentioned in the
12 presentment. But I don't believe there was any name
13 tied to that position.

14 Q. So is it fair to say then as of November 5th,
15 2011, you didn't know that Mike McQueary was the
16 graduate assistant referenced in the presentment in
17 the news reports about the presentment?

18 A. Yes. I did not know his name was connected
19 to the presentment.

20 Q. Now at about this time, was your office
21 receiving any inquiries from the press or the media
22 about the presentment?

23 A. Yes. Since it had been leaked the day
24 before, media calls started to increase.

25 Q. And the media calls that you were receiving,

1 were they connected to the release of the
2 presentment or the release of the Spanier statement?

3 A. Well, the Spanier statement I don't believe
4 went out until late Saturday morning or early
5 Saturday afternoon, so the calls that were coming in
6 Friday and Saturday morning were not connected to
7 the statement, the press had not seen it yet.

8 Q. And what were the calls and articles that you
9 were reviewing related to then?

10 A. It was related to the rumors that this was
11 about to happen on Saturday morning and that Curley
12 and Schultz were going to be named in that document.

13 Q. And then once the presentment was officially
14 released, what were the calls and media coverage
15 that you were dealing with, what was the subject of
16 that at that time?

17 A. I could not tell you specifically who called
18 or specifically what they were asking for. A lot of
19 times, it's just a general call for does the
20 University have a response.

21 Q. And were you following what was being
22 published in the media at or about this time?

23 A. It was difficult to do that because a lot was
24 going on, so I can't tell you that I was reading
25 particular stories late Saturday morning. A lot of

1 us were involved in meetings at that point.

2 Q. Is it a practice of your office to monitor
3 the media reports that were being published at any
4 time?

5 A. Yes, we've done that for decades. Somebody's
6 assigned to come in at 7:30 in the morning Mondays
7 through Fridays and review what kind of coverages
8 occurred in the last day about Penn State. We put
9 that in a digital report and share that with
10 probably 70 to 80 administrators around the
11 University. Yes.

12 Q. And during the events of November 2011, was
13 someone in your office monitoring the media coverage
14 related to the incidents and events?

15 A. Well, on a Saturday or Sunday there'd be
16 nobody in there particularly doing that. All of us
17 would read the news media and be exposed to
18 coverages that occurs on a weekend, but we would not
19 get a formal report on a weekend.

20 Q. And then that following Monday and through
21 that next week, was it a practice of your office at
22 that time to monitor the news coverage related to
23 the Sandusky events?

24 A. As it had been for 15 years or more, yes.

25 Q. So I want to walk you through the nature of

1 the communications that your office was monitoring
2 and receiving. Initially, what was the focus of the
3 articles, as you understood, that were being
4 published and the calls that you were receiving?

5 A. The focus was on the presentment and
6 information from the Attorney General's Office.
7 During the course of that weekend, more reporters
8 started showing up in town. By Monday quite a few
9 had been here. My office was ordered not to say
10 anything, not to put out a statement, not to Tweet,
11 not to respond to any press inquiries, and that was
12 an order of the Board of Trustees.

13 Q. And would it be fair to say then that at the
14 beginning of that week in November of 2011, the
15 focus of the media articles that you were reviewing,
16 the calls that you were receiving related to the
17 presentment?

18 A. Yes.

19 Q. Did they relate to Jerry Sandusky?

20 A. I'm sure.

21 Q. And were you getting any calls in particular
22 other than that one email that was introduced about
23 the president's statement?

24 A. I was getting 500 emails a day at that point.
25 I'm sure there may have been some that related to

1 the president, but I don't remember that as being
2 the focus.

3 Q. And what about the articles that your office
4 was monitoring that were being published in the
5 press? Do you remember what the focus of those
6 articles were early that week in November?

7 A. I'm sure it was all over the map, but my
8 impression would be the key focus was the
9 presentment and the allegations against Curley and
10 Schultz.

11 Q. Later that week, and it was about midweek,
12 the University announced the removal of President
13 Spanier as well as the removal of Coach Paterno from
14 his office. Do you recall those events?

15 A. Yes, I do.

16 Q. And do you recall receiving any inquiries or
17 did you receive information of media reports that
18 focused on those events?

19 A. Yes. I did receive media inquiries about
20 that. Again, it was very difficult being in a
21 public information position with orders by the Board
22 Leadership not to talk to the press.

23 Q. Did there come any point in time in which you
24 started to receive calls or your office was
25 informing you that it was monitoring messages

1 related to Michael McQueary?

2 A. I don't remember anything specific at that
3 time. It was -- it was a challenging week. As I
4 said, I was receiving 500 emails a day at that
5 point. My mother died Tuesday night and I was
6 trying to work through that challenge. And I was
7 pretty frustrated at not being able to talk to the
8 press.

9 Q. I want to direct your attention -- but your
10 office, if I understand your business practices, was
11 to continue to monitor --

12 A. Yes.

13 Q. -- even in your absence, the media articles
14 and reports that were being published; is that
15 correct?

16 A. Yes.

17 Q. And were you being updated on that
18 information?

19 A. Yes.

20 Q. Okay. I want to direct your attention to a
21 binder that's behind you. It's Defendant's
22 exhibits, it will be Volume 3. And it's --

23 A. Which volume?

24 Q. Volume 3, I believe it's the first binder
25 behind you. And I'd like you to turn to D one forty

1 -- tab 146.

2 A. 146?

3 Q. Yes.

4 A. (The witness complied.) Okay.

5 Q. Is this one of the articles that your office
6 was monitoring with respect to the events of
7 November 2011?

8 A. At that point, there wasn't a lot of news
9 coverage. I can't tell you that this specific one
10 was in the batch. Being the Wall Street Journal,
11 it's very likely it was among the hundreds of
12 stories we were looking at.

13 MS. CONRAD: Move for the admission of D146.

14 THE COURT: Any objection?

15 MR. STROKOFF: May I just have a moment to
16 review it, Your Honor? No objection, Your Honor.

17 MS. CONRAD: Permission to show it.

18 THE COURT: It's admitted. Yes.

19 MS. CONRAD: Thank you.

20 BY MS. CONRAD:

21 Q. I'd direct your attention to D146. I believe
22 you testified that it is an article from The Wall
23 Street Journal that your office would monitored?

24 A. Very likely, yes.

25 Q. And what is the headline of that article?

1 A. Ex-Penn State Coach Sandusky Arrested on Sex
2 Charges.

3 Q. Thank you. I'd now like to direct your
4 attention to binder 1?

5 A. All right.

6 Q. And if I may direct your attention to tab 69.

7 A. Okay.

8 Q. Thank you. I know that these binders can be
9 very cumbersome.

10 A. Yes, they are.

11 Q. I appreciate your work on that. All right.
12 Directing your attention then to the article at D69,
13 is that one of the articles that your office was
14 monitoring during the events of November 2011?

15 A. Again, I couldn't tell you if specifically
16 this was in the group. But it is the kind of story
17 we would have been looking for on any given day.

18 MS. CONRAD: Move for -- yes, sir?

19 THE COURT: I'm having trouble with your
20 statement of the numbers. What exhibit number?

21 MS. CONRAD: It is D69.

22 THE COURT: 69. Okay. Thank you. Any
23 objection to D69?

24 MR. STROKOFF: Your Honor, he hasn't
25 identified this. He just said it's kind of like the

1 stuff that they were monitoring.

2 THE COURT: Is that the only objection?

3 MR. STROKOFF: Yes. That he hasn't
4 authenticated it.

5 THE COURT: Overruled. It's admitted over
6 objection.

7 MS. CONRAD: Permission to post D69.

8 THE COURT: Yes.

9 MS. CONRAD: If you can take down the other
10 one, please. Thank you so much.

11 BY MS. CONRAD:

12 Q. What is the headline of the article contained
13 in D69? Hold on, we need to get it back up. There
14 we go.

15 A. Penn State Scandal: Why Mike McQueary
16 Deserves Jail Time.

17 Q. And what is the date of that article, sir?

18 A. November 9th.

19 Q. And the year?

20 A. 2011.

21 Q. Just so the record is clear, thank you.
22 Directing your attention then to D70.

23 A. That was 70?

24 Q. Yes, sir. The next article.

25 A. Yes, I have it.

1 Q. Are you familiar with that article?

2 A. Again, I assume under a New York Times story
3 on that date, I would have -- let's see, is there a
4 date on this story? Yeah, November 9th. I assume a
5 New York Times story I would have read that day, but
6 I don't remember this one specifically.

7 Q. And is this the type of article that your
8 office would have been monitoring with respect to
9 the events in November 2011?

10 A. Yes, they would.

11 MS. CONRAD: Move for the admission of
12 Defendant's 70.

13 MR. STROKOFF: No objection, Your Honor.

14 THE COURT: It's admitted.

15 MS. CONRAD: And permission to post it.

16 Thank you.

17 BY MS. CONRAD:

18 Q. And what was the headline of the New York
19 Times article?

20 A. An Aspiring Coach in the Middle of a Scandal.

21 Q. And what was the date of that article?

22 A. November 9, 2011.

23 Q. Okay. And directing your attention to
24 Exhibit 71. Is this an article that your office
25 would have monitored during the events of November

1 2011?

2 A. It is the kind of story we would very much
3 want to be aware of, a story appearing in The
4 Washington Post, yes.

5 MS. CONRAD: And move for the admission of
6 Defendant's 71.

7 THE COURT: Any objection?

8 MR. STROKOFF: If I may just have 30 seconds
9 to review it, Your Honor?

10 THE COURT: Yes.

11 MR. STROKOFF: No objection, Your Honor.

12 THE COURT: It's admitted.

13 BY MS. CONRAD:

14 Q. What is the headline of The Washington Post
15 article on November 10, 2011?

16 A. Penn State and Joe Paterno: A Scandal That
17 So Easily Could Have Been Avoided.

18 Q. And I want to direct your attention to the
19 second page of that article, particularly to the
20 third paragraph. There's a sentence that begins,
21 "but in 2002," do you see that article -- or that
22 reference?

23 A. Yes.

24 Q. And could you read into the record, please,
25 what that provides in the article?

1 A. The story says, "But in 2002 when grad
2 assistant Mike McQueary allegedly walked in on that
3 horrible scene in the showers, on campus, right
4 there it could have been stopped."

5 Q. Thank you. Directing your attention now to
6 tab 72. Is that an article that your office would
7 have reviewed during the events of November 2011?

8 A. It's possible. It's not one of the major
9 newspapers in the country that we would have been
10 drawn to more readily, but it's possible.

11 MS. CONRAD: Okay. Move for the admission of
12 Defendant's 72.

13 MR. STROKOFF: Your Honor, I don't think it's
14 -- a possibility is relevant for purposes of today's
15 proceeding.

16 THE COURT: Okay. And what is the relevance
17 of the documents that you're admitting with this?
18 This is just something that he's monitoring?

19 MS. CONRAD: Yes, sir.

20 THE COURT: And then you are going to show it
21 to the jury for the content of what he's monitoring?

22 MS. CONRAD: I'm going to show it to the jury
23 for establishing the fact that this was the
24 information that was in the press. It's not being
25 offered for the truth of the information, it's being

1 offered that this is the information that was being
2 distributed by the media.

3 THE COURT: Which like the preceding one, The
4 Washington Post article, offered the opinion of
5 someone who's not here subject to cross-examination?
6 I'll let you identify it but not publish it to the
7 jury. So this is something that yes, they looked
8 at.

9 MS. CONRAD: So, D --

10 THE WITNESS: Maybe.

11 THE COURT: Maybe.

12 MS. CONRAD: D72 was possibly something that
13 he reviewed. And do i understand, Your Honor, that
14 I may not move for the admission of this article?

15 THE COURT: No, you can admit it. It's just
16 -- members of the jury, part of the issue with
17 regard to articles such as this, to the extent that
18 they contain opinions, that would be hearsay
19 evidence that you don't have the opportunity to see
20 the person on the basis upon which they formed their
21 opinion.

22 In the law, there is an exception where you
23 say well, I'm not offering the matter for the truth
24 of what was said, but just to show what was said.
25 Well, that's splitting a very fine hair, especially

1 in a case like this. So you can identify it that
2 yes, that's something they looked at, yes, that's
3 something they considered, and it's admitted for
4 that limited purpose only.

5 MS. CONRAD: Your Honor, may we approach?

6 THE COURT: Sure.

7 (Whereupon, the following discussion was held
8 at sidebar:)

9 MS. CONRAD: Your Honor, news articles are
10 admissible when they are not offered for the truth
11 of the matter asserted. The hearsay rule has no
12 application where the question is whether certain
13 things were said or written about a third person,
14 not whether they are true. I can provide you cites.

15 THE COURT: Right. So you're offering it to
16 say this was out here.

17 MS. CONRAD: Yes.

18 THE COURT: But you're offering the opinion
19 of someone in the preceding article, The Washington
20 Post. It's their opinion that if McQueary had done
21 something at that point in time, that this would
22 have stopped right then and there.

23 MS. CONRAD: And.

24 THE COURT: And you're saying that that's
25 admissible. I want to see the case.

1 MS. CONRAD: It is -- I don't have the cases
2 with me, I have the cites.

3 THE COURT: I'm sure you can get the cites --
4 or the cases just as quickly as I can. We can
5 revisit the issue.

6 MS. CONRAD: May I continue to go through the
7 articles at this point? And then you'll hold in
8 abeyance whether or not they are published.

9 THE COURT: No. Then I think we need to
10 resolve it right now.

11 (End of sidebar.)

12 THE COURT: Members of the jury, stay
13 relaxed. This is probably a good point to take a
14 break for 15 minutes. Counsel and I have to work
15 something out and we'll do it on your break time.
16 So go ahead and put your notepads away and step out.

17 (Whereupon, the jury was excused for a
18 recess.)

19 THE COURT: So what's the exception to the
20 hearsay rule?

21 MS. CONRAD: First, Your Honor, there's
22 80321, a section which deals with reputation.

23 THE COURT: Whose reputation? Mr. McQueary's
24 representation?

25 MS. CONRAD: Because Mr. McQueary has put

1 damages as an issue, reputation concerning his
2 character, his reputation in the community, which is
3 reputation as recorded by the press is admissible.

4 THE COURT: Let's go upstairs where we have
5 some access to law books.

6 (Whereupon, the Court and counsel for the
7 parties met in chambers off the record.)

8 THE COURT: You gave us a couple cases to
9 look at counsel. And you gave us Steinhouse versus
10 Workers Compensation Appeal Board, 783 Atlantic 2nd
11 352. And I note at headnote five and six, again,
12 it's a completely different venue because we're
13 talking about workers compensation. But the
14 headnote reads, "Initially, we note that the
15 newspaper article is hearsay and is inadmissible as
16 it is not corroborated by the testimony of a
17 witness." And it goes on to say, "Facts pled that
18 were based solely on an article in a local newspaper
19 and not upon any affiant's personal knowledge are
20 hearsay."

21 But I agree with you that the general rule is
22 that a statement not offered for the truth of the
23 matter, of course, is not hearsay. The cases that
24 you have given us to look at are all workers
25 compensation cases where, of course, the fact finder

1 is a trained law judge who is making a
2 determination, not a jury who, perhaps, cannot parse
3 quite as easily the distinction between a statement
4 not offered for the truth of the matter asserted and
5 when offered for the truth of the matter asserted.

6 Because clearly, your position is that Mr.
7 McQueary is suffering whatever harm he is suffering
8 because of the opinions of other people and you are
9 offering, at least in the article from The
10 Washington Post, someone's opinion that all of this
11 would not have occurred had Mr. McQueary acted in
12 2002 and that whatever harm Mr. McQueary suffers is
13 a failure on his part to have acted. But I'm not
14 going to build in any error for you later on.

15 So what we will do is we will further instruct
16 the jury right now and we'll allow you to mark the
17 exhibits and identify them but not publish them
18 because interestingly, one of the things that has
19 been happening throughout the proceedings thus far
20 is even though it's not your case, you're
21 introducing exhibits when it's not your case. So
22 arguably, you're not entitled to do it.

23 So for the moment, we're going to allow you to
24 identify all these exhibits, have him say I may or
25 may not have read it, and we'll admit it or we're

1 not going to admit, we'll deal with it later.

2 MS. CONRAD: Your Honor, may I address the
3 Court?

4 THE COURT: Yes.

5 MS. CONRAD: It was my understanding we
6 reached an agreement that for the efficiency --

7 THE COURT: Okay. Well, if you and Mr.
8 Strokoff reached that agreement, you didn't bother
9 to tell me. So --

10 MS. CONRAD: I thought we addressed it in
11 chambers, sir, that for the efficiency for the Court
12 and to avoid --

13 THE COURT: I have no recall of that. But if
14 that's your position, fine. If that's your
15 position, if that was the agreement, then fine, you
16 can offer the exhibits. So you can admit it, you
17 can offer it, he can identify it, I will admit it,
18 but I'm not going to permit you to publish it.

19 MS. CONRAD: I understand your ruling, sir.

20 THE COURT: And you disagree. And I
21 understand that, too. Fine.

22 MS. CONRAD: Yes.

23 MR. STROKOFF: Your Honor, I would like to
24 confirm that I also have a recollection that there
25 was an agreement and I believe we shared it with

1 Your Honor for the convenience of not having to
2 bring witnesses back again.

3 THE COURT: All right. Then your memory is
4 better than mine at that point, there's no problem.
5 So you can continue to proceed as you have been. So
6 let's have the jury back.

7 MS. CONRAD: Your Honor, just to be clear,
8 you also considered 80321 with respect to
9 admissibility?

10 THE COURT: Well, 80321, as I look at the
11 rule, is reputation concerning character.

12 MS. CONRAD: Yes, sir.

13 THE COURT: Okay. And the articles that are
14 written -- well, the rule reads, "A reputation among
15 a person's associates or in the community concerning
16 the person's character." That would be relevant --
17 not relevant. Which article are you going to assert
18 that this is an exception to? The article now that
19 you're looking at D72?

20 MS. CONRAD: I would submit that all news
21 articles in the media that are available to the
22 public relate to the damages Plaintiff claims for
23 reputation, just as he is alleging that he is
24 damaged by the publication of the Spanier statement.

25 THE COURT: So tell me where in D72 there is

1 a comment that you say falls within that exception.

2 MS. CONRAD: May I return to the podium, sir?

3 THE COURT: Yes.

4 MS. CONRAD: Thank you. The article relates
5 to Mr. McQueary's reputation when it says the only
6 party witness to one of the child rapes and didn't
7 even tell the police about it, instead he just told
8 his dad and then his occupational dad Joe Pa is
9 somehow allowed to coach? Where's the justice in
10 that?

11 THE COURT: Let's make sure we're looking at
12 the same thing. 72?

13 MS. CONRAD: Yes, sir.

14 THE COURT: Okay. And --

15 MS. CONRAD: And then directing your
16 attention --

17 THE COURT: And how does that address his
18 reputation?

19 MS. CONRAD: Directing your attention to the
20 second page. Starting on the third paragraph, "Why
21 didn't McQueary come forward with this information?"
22 Turning to the next paragraph, "Then this happened,
23 he was a 26-year-old man and quite respected on
24 campus. A former quarterback, a major BMOC, yet he
25 didn't use his influence for good. He wouldn't do

1 what's right and that makes him complicit in this
2 entire sore affair." That goes directly to his
3 reputation in the community and directly relates to
4 his claim for damages.

5 MR. STROKOFF: Your Honor, I'd like to
6 comment once you finish reading.

7 THE COURT: Are you finished?

8 MS. CONRAD: For now.

9 MR. STROKOFF: I believe there is a
10 difference between a news article published in the
11 New York Times or Washington Post and somebody's
12 opinion published on a blog. And some blogs have a
13 following. But just to say, here's a blog, Chicago
14 Sports Guru, without identifying who it is, what it
15 is, and that's -- a blog is an opinion piece, it's
16 not a news article.

17 MS. CONRAD: That is not what the case law
18 says.

19 THE COURT: Okay. So first of all, it reads,
20 "A reputation among a person's associates." So the
21 author of the blog is certainly not an associate of
22 Mr. McQueary, so it wouldn't come under that
23 exception. "Or in the community concerning a
24 person's character." And reputation evidence is
25 generally put in by someone being called to the

1 witness stand and they ask the person, do you know
2 X, do you know other people who know X, and one of
3 the people that you know who know X, what is his
4 reputation for X, Y, and Z. And then of course the
5 jury has the opportunity to see that person and see
6 that person examined to the extent you rely on Rule
7 80321 is an exception for the admissibility of that
8 document, it's denied.

9 MS. CONRAD: Finally, sir, it is Mr. McQueary
10 who has put his reputation at issue in this case.
11 It is Mr. McQueary who has said national media
12 ruined me. This evidence is directly relevant to
13 Mr. McQueary's own admissions.

14 THE COURT: Yes. And somehow, at some point
15 in time, Mr. McQueary is going to have to get up
16 here and say how and in what manner that occurred.
17 And then of course, you would be permitted to come
18 up and say no, it occurred in this fashion. And at
19 that moment, I don't think we're here. So I've
20 ruled, counsel. You and I agree to disagree.

21 MS. CONRAD: Thank you, sir. Your Honor, one
22 last --

23 THE COURT: So you can get all of the
24 articles identified so that your record is protected
25 and we'll go from there.

1 MS. CONRAD: Thank you.

2 THE COURT: So, are we ready to proceed?

3 MS. CONRAD: Yes, sir.

4 THE COURT: We're ready.

5 (Whereupon, the jury was escorted into the
6 courtroom.)

7 THE COURT: Members of the jury, I had
8 mentioned to you before we broke that hearsay is an
9 out of court statement offered to prove the truth of
10 the matter asserted. And we generally don't like
11 hearsay because the whole idea is we want the person
12 who makes the statement to be present so you can
13 look at them and evaluate their testimony.

14 There are exceptions to the hearsay rule. One
15 of the exceptions is that we're not offering the
16 statement for the truth of the matter asserted, but
17 simply to show that such a statement was made.

18 At an appropriate point in time when we are
19 getting to exhibits and things that you're going to
20 see and have access to, we'll re-explain that
21 position. But with regard to newspaper articles,
22 part of the theory of the case is that Mr. McQueary
23 says his reputation has been ruined. The issue is
24 what people are saying, in what context they're
25 saying it, and it may, in fact, be relevant, what is

1 being reported in the media, again, not necessarily
2 for the truth of the matter but simply to show what
3 is being stated in the media. And I'm not going to
4 go any further with that for the moment. Go ahead.

5 BY MS. CONRAD:

6 Q. Mr. Mahon, I believe we had directed your
7 attention to Defendant's Exhibit 72.

8 A. Yes.

9 Q. And I believe I had asked you whether that
10 was a news article in the category of articles that
11 your office was monitoring during the time period of
12 November 2011?

13 A. It's not a news site or organization I am
14 familiar with, but it's quite possible it was in
15 with the collection of stories we were monitoring.

16 Q. Directing your attention, please, to tab 73.
17 Take a moment and review the news article attached
18 at tab 73.

19 A. (The witness complied.) I can't tell what
20 this is connected to, something called SportsGrid,
21 I'm not familiar with it.

22 Q. Is this the type of article in the category
23 of articles that your office would have been
24 monitoring in conjunction with the events of
25 November 2011?

1 A. Yes, it is that type of story.

2 Q. Turning your attention to tab 74. And I
3 direct your attention to page five.

4 A. Yes.

5 Q. Is the article attached at tab 74 within the
6 category of articles that your office was monitoring
7 with respect to the incidents that occurred in
8 November 2011?

9 A. Yes. We'd want to be aware of it.

10 Q. And directing your attention to tab 75, page
11 six of that exhibit.

12 A. Yes.

13 Q. The article contained at tab 75, does that
14 fall within the category of articles that your
15 office was monitoring in November of 2011?

16 A. Yes, it is the kind of story we would be
17 interested in.

18 Q. And then tab 76.

19 A. Yes.

20 Q. And the article contained in Defendant's tab
21 76, does that fall within the category of articles
22 that your office was monitoring in conjunction with
23 the events of November 2011?

24 A. Yes. I'm not familiar with the news site,
25 but we'd be interested in it.

1 Q. And in addition -- and was it your
2 understanding that these articles that your office
3 was monitoring were articles that were published to
4 the community?

5 A. Published in paper or on a digital website,
6 yes.

7 Q. And in addition to the articles that your
8 office was monitoring in 2011 with respect to
9 Michael McQueary, did you receive any additional
10 information or calls with respect to Mr. McQueary at
11 your office?

12 A. I couldn't specify that I recollect
13 particular calls. It seems logical that during that
14 week there were calls. But as I mentioned earlier,
15 we were under orders from the Board Leadership not
16 to engage in interviews with the press.

17 Q. So, you were not responding to the calls?

18 A. Correct.

19 Q. Did there come a point in time that you
20 received information that threats had been issued
21 against Mr. McQueary?

22 A. Yes. I recall hearing that that week.

23 Q. And do you recall the circumstances of
24 hearing that information, that is that there had
25 been death threats against Mr. McQueary that week?

1 A. I don't recall the specifics, it probably
2 came from another administrator or from campus
3 police.

4 Q. And did you review any internal announcements
5 or external articles with respect to those death
6 threats?

7 A. If there was news coverage, I would have
8 tried to read that. I don't remember anything
9 internal about it.

10 Q. And then there was an upcoming game that
11 week, wasn't there?

12 A. Yes. Saturday against Nebraska I believe.

13 Q. And I want to direct your attention back to
14 the binder, and in particular D48. If you could
15 turn to D48.

16 A. In the binder that I'm now in?

17 Q. Yes. Thank you. After you've had a moment
18 to review the exhibit marked Defendant 48, please
19 let me know.

20 A. Yes.

21 Q. Are you familiar with the document that's
22 been marked Defendant's 48?

23 A. Now that I see it, yes, I am.

24 Q. And generally, what is it?

25 A. It's a note from me to a number of

1 administrators explaining that the University
2 operators, a general phone number you would call at
3 the University, had received some threats related to
4 the game.

5 MS. CONRAD: I would move for the admission
6 of D48.

7 MR. STROKOFF: Objection as to relevance,
8 Your Honor. This was a memo that was written on
9 Friday, November 11th in the evening.

10 THE COURT: Let me see this.

11 MR. STROKOFF: It's after Mr. McQueary was --
12 there was an announcement he wouldn't be coaching.
13 And it was were several hours after he was placed on
14 administrative leave.

15 MS. CONRAD: If I may respond when Your Honor
16 concludes.

17 THE COURT: You don't need to respond. It's
18 admitted.

19 MS. CONRAD: I'm sorry.

20 THE COURT: It's admitted.

21 MS. CONRAD: Thank you, sir.

22 BY MS. CONRAD:

23 Q. Mr. Mahon, directing your attention back to
24 D48. I believe you said this was an email that you
25 sent to a number of administrators at Penn State; is

1 that correct?

2 A. Yes. That's what it looks like.

3 Q. And what was the purpose of you sending this
4 email?

5 A. This would have been routine. Again, I don't
6 remember the specifics. I was planning my mother's
7 funeral the next morning, so I don't remember
8 anything at all about this. But the email clearly
9 indicates I sent it. It would not be unusual for me
10 to be informed by campus police or somebody else if
11 a threat came in to a structure and then for me to
12 pass that on to other administrators.

13 Q. So in the midst of planning your mother's
14 funeral, you take the time to forward an email to
15 Penn State administrators about a potential bomb
16 threat; is that correct?

17 A. Yes.

18 Q. And that's a bomb threat that had been
19 received in conjunction with the Nebraska game that
20 was to take place the next day; is that correct?

21 A. Yes.

22 Q. And in it, in your email you state in the
23 first sentence that a threat was received by
24 University operators this evening claiming bombs
25 will go off around the stadium. Is that the

1 information that had been received by the University
2 prior to the Nebraska game?

3 A. I assume so. But as I say, I was juggling a
4 lot that day.

5 Q. And in the third paragraph, you state, "In
6 the morning, we can announce the structure has
7 actually been locked down since Tuesday." What does
8 that mean?

9 A. That would have been to try to reassure the
10 public that the FBI and the police and others had
11 gone through the stadium and cleared it. And once
12 they did that, an extra layer of security would have
13 been in place presumably to protect the structure.

14 Q. And in fact, you make reference in that first
15 paragraph that the police and FBI are investigating
16 this bomb threat that had been received; correct?

17 A. Yes.

18 Q. And that's when you indicate, and it was your
19 understanding that the structure had been locked
20 down since Tuesday?

21 A. Yes.

22 Q. Do you know what that means?

23 A. Locked down would have meant that, I presume,
24 that the police have taken much more care than usual
25 about who enters and exits the structure.

1 Q. You go on to say then the process that's
2 going to be used in response to this bomb threat.
3 What information is contained then in that third
4 paragraph?

5 A. I point out the bomb sniffing dogs and police
6 officers will be spending their early morning hours
7 before the game searching the structure and that, in
8 fact, extra search measures were already planned at
9 entry points and extra police would be on hand for
10 the game.

11 Q. And is it your understanding that there were
12 extra security measures in place with respect to
13 that Nebraska game?

14 A. If the police had told me that, I would
15 believe it, yes.

16 Q. Okay. Were you at that game?

17 A. No. I was at my mother's funeral.

18 Q. Thank you. And I'm sorry for your loss.

19 A. Thank you.

20 Q. Thank you for testifying.

21 MS. CONRAD: No further questions.

22 THE COURT: She's finished, counsel.

23 MR. STROKOFF: I do have some questions on
24 redirect, Your Honor.

25 THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. STROKOFF:

Q. Staying with Exhibit 48, just so we're clear. In this memo which you sent on Friday, November 11th at 9:27 p.m., you refer to a threat that was received by university operators that evening; is that correct?

A. Yes.

Q. That's Friday evening, November 11th?

A. Yes.

Q. Now previously, in your years at Penn State, on those occasions where there had been bomb threats, did you send out similar memos?

A. I would inform relevant administrators if I think they had not heard about it, yes.

Q. But from time to time, there had been bomb threats with respect to Beaver Stadium prior to the Sandusky scandal?

A. Yes.

Q. Now, with respect to Defense Exhibit 68, at the top.

A. Yes.

Q. At the top it says "Giger's Live Blog, Monday." Who's Giger?

A. This looks like to me it may be Cory Giger

1 with The Altoona Mirror, about an hour from here.

2 Q. Okay. So are you saying, sir, for a fact
3 that your staff, in monitoring the news, zeroed in
4 on this blog by Cory Giger?

5 A. No. My staff would have collected hundreds
6 and hundreds of news clippings every day that week.
7 It's quite possible this was among them, I don't
8 recall this one.

9 Q. But your staff would collect them and then
10 what happened to the collection?

11 A. We -- different people on the staff would try
12 to review as many as they could and point out any
13 that had any particular concern or information we
14 had not heard before elsewhere.

15 Q. All right. And once the news that was being
16 monitored, let's say for the week of November 7th,
17 was analyzed, what happened to that collection of
18 articles?

19 A. Typically we would digest down some of the
20 clips and offer URL links to them and send them out
21 to administrators or board members in case they
22 wanted to read the story. We would send them the
23 headline and web address and they could click on it
24 if they wanted to read the full story.

25 Q. So there should be a record of whatever your

1 unit sent to folks internally at Penn State to bring
2 to their attention these news articles?

3 A. I assume Penn State has access to that email.

4 Q. Okay. And you don't know whether or not
5 Giger's blog here was in that package that was sent
6 on to Penn State administrators?

7 A. No, I do not.

8 Q. Would you go, sir, please to 69? Is this
9 also a blog?

10 A. It's something I have heard of before called
11 Bleacher Report. I think it's sports oriented, but
12 I don't follow sports closely enough. I couldn't
13 tell you much about it.

14 Q. Well, do you know whether or not this was in
15 the collection of articles that your unit assembled
16 the week of November 7th and had forwarded on to
17 other folks within the Penn State community?

18 A. I could not tell you with any certainty it's
19 the kind of material they would have been looking
20 for. I have no idea if this was in the collection.

21 Q. So your staff was supposed to be looking at
22 not just New York Times and Washington Post and
23 Philadelphia Enquirer articles, but also blogs?

24 A. Anything that was in the public realm, they
25 would try to track down.

1 Q. And that week, that is the week of November
2 7th, there was an awful lot in the public realm,
3 wasn't there?

4 A. More than usual.

5 Q. Well, exponentially more than usual; isn't
6 that correct?

7 A. Exponentially more than usual, absolutely.

8 Q. Now, this New York Times article, which is
9 70, was published on November 9, 2011?

10 A. Yes.

11 Q. And that mentions Mike McQueary by name in
12 it, does it not?

13 A. Yes.

14 Q. Okay. The 71, that's an opinion piece that
15 was written in The Washington Post; isn't that
16 correct?

17 A. Reading it, it appears to me to be an
18 opinion. I'm not familiar with this author, and it
19 doesn't have opinion labeled on it, but it seems
20 more conversational than written as news.

21 Q. Well, it's not written as news; isn't that
22 correct?

23 A. Well, I'm just looking at it now.

24 Q. So you hadn't looked at it before today?

25 A. I have no idea if it was among the hundreds

1 of stories I read that week five years ago. Yeah,
2 the language that's used here is clearly opinion.

3 Q. Okay. And 72, Chicago Sports Guru. It's
4 another blog, isn't it?

5 A. I've never heard of it before looking at this
6 piece of paper.

7 Q. 73, SportsGrid, have you ever heard of that
8 before?

9 A. No, I have never heard of that before.

10 Q. Now, 74. You've heard of that one, right?

11 A. 74? Yes, I've heard of TMZ.

12 Q. Okay. And I think it's, if I recall
13 correctly, on page five and six?

14 A. I see it, yes.

15 Q. There's a piece about -- it's about three or
16 four sentences, a former Penn State football
17 player --

18 A. Yes.

19 Q. -- is telling TMZ Live something about
20 letting Mike coach on Saturday?

21 A. Yes, I see that.

22 Q. Okay. 75. Sports Nut. What's Sports Nut?

23 A. I have no idea.

24 Q. And sir, are you able to say that any of
25 these exhibits that Penn State's counsel has

1 identified during your cross-examination, can you
2 say that any of them were picked up by your staff as
3 being significant for that week?

4 A. I think it is likely that most of these were
5 collected and identified by somebody on the staff or
6 various people on the staff. I cannot tell you that
7 I am familiar five years later with these specific
8 stories.

9 Q. But my question is, once they were
10 accumulated, were any of them deemed to be worthy
11 enough to be forwarded on to other people within the
12 Penn State community for their information or use?

13 A. I can't tell you with certainty, I can give
14 you my guess that the New York Times and Washington
15 Post were.

16 Q. Okay. But that's a guess?

17 A. It's a guess.

18 Q. And there's a record somewhere, right?

19 A. Presumably, Penn State's email would reveal
20 what information was distributed that way.

21 Q. Okay. Sir, I'm going to ask you to go to the
22 Plaintiff's exhibit book, 91.

23 A. Is that the one labeled Exhibits Witness
24 Copy?

25 Q. Yes.

1 A. Okay. 91?

2 Q. It's the very last one I believe.

3 MS. CONRAD: And I'd like to note for the
4 record that while counsel has said it's an article,
5 I believe at tab 91 is a series of articles.

6 MR. STROKOFF: It is. And I will be
7 referring him to a specific article or two, Your
8 Honor.

9 MR. STROKOFF: We're on Plaintiff's 91, not
10 Defendant's.

11 THE COURT: Okay. I have Plaintiff's 91.
12 And you said what?

13 MS. CONRAD: And I am -- he -- Attorney
14 Strokoff referenced that 91 contained an article. I
15 was pointing out for the record that it contains a
16 series of articles published by the media.

17 THE COURT: Okay.

18 MR. STROKOFF: And if I said an article, I
19 misspoke myself and I'd apologize.

20 BY MR. STROKOFF:

21 Q. Sir, do you have 91?

22 A. I see the story, yes.

23 Q. Okay. While there's a series of stories
24 here, and I'm going to ask you to go in about 15
25 pages to a piece -- here's what you're looking for,

1 so it will be easy to identify.

2 A. Okay. Thank you.

3 Q. Jerry Sandusky Calling Allegations and
4 Obligations?

5 A. I see the story.

6 MR. STROKOFF: I want to wait until the Court
7 gets there.

8 MS. CONRAD: Your Honor, I would object at
9 this point. It is my understanding that you gave a
10 very clear direction to me not to read or -- from
11 the articles or disclose headlines. And I see now
12 that Mr. McQueary's counsel is permitted to do so,
13 or has just done so.

14 THE COURT: Well, counsel, I confess that
15 while all that was going on, I was trying to find
16 Plaintiff's Exhibit Number 91 on the master list,
17 and I don't find that. So what page are we at in 91
18 so I can take a look at 91?

19 MR. STROKOFF: About 15 pages in, Your Honor.
20 There's an article by SB Nation, Black Shoe Diaries.
21 It has a very prominent logo in it, that's why I
22 showed it to the witness, that he be able to locate
23 it easily.

24 THE COURT: Just a second. Is this is the
25 beginning of what --

1 MR. STROKOFF: It is, Your Honor.

2 THE COURT: Okay. So -- you and I are on the
3 same page?

4 THE WITNESS: Yes, we are, sir.

5 THE COURT: Okay. Now, just a second.

6 MR. STROKOFF: Sir,.

7 MS. CONRAD: My --

8 THE COURT: Just a second. What are you
9 going to do with regard to having the witness look
10 at this exhibit and --

11 MR. STROKOFF: I'm going to have him identify
12 the date and the time. And then on page five, Your
13 Honor.

14 MS. CONRAD: I would ask that he not reveal
15 what's on page five if that is the ruling.

16 MR. STROKOFF: In the bold face print, Your
17 Honor.

18 THE COURT: Pardon?

19 MR. STROKOFF: In the bold face print on page
20 five.

21 THE COURT: Come up here a second.

22 (Whereupon, the following discussion was held
23 at sidebar:)

24 THE COURT: Was Mr. Mahon was able to find
25 page five. So we're talking about number two.

1 MR. STROKOFF: Yes. This is I believe in the
2 type of category of news information that his
3 officer was monitoring. And on Sunday morning at
4 6:00 a.m. in this piece, Mike McQueary's identified
5 as the grad assistant. We have some other
6 identifications in the media on Sunday that Mike
7 McQueary was the grad assistant. So there is
8 contention we didn't find out about it until Tuesday
9 or Wednesday, which we think is substantial.

10 MS. CONRAD: Your Honor, if the defendant's
11 not permitted to present information as published
12 and distributed by the news media, I'm at a loss as
13 to understand why Mr. Strokoff believe he's
14 entitled.

15 THE COURT: You are going to show why it is
16 that McQueary's claim of harm is a result of the
17 article by Penn State, and you're saying no, this is
18 how people feel about it. As I'm looking at this
19 sole issue, this exhibit is to say to the witness,
20 are you sure that at the time that you published --
21 or at the time it was pub established, I'm not
22 saying he personally published it, the report of Dr.
23 Spanier that you did or did not know who the wide
24 receiver -- or who the person was. And I think it
25 is permissible to answer that.

1 MR. STROKOFF: Well, but this is about 20
2 hours after which.

3 MS. CONRAD: Yes. So therefore, it's not
4 relevant.

5 MR. STROKOFF: Some of the witnesses have
6 testified that they didn't know and some defense
7 witnesses will testify we didn't know it was Mike
8 until Monday or Tuesday and is widely reported in
9 all the media on Sunday that it was Mike McQueary.
10 This is a piece at 6:00 a.m., there's some other
11 pieces later in the day identifying Mike McQueary.
12 This is the type of category what they're
13 monitoring. I mean, it was all over the news.
14 Mike, he will be testifying that he was in an
15 airport coming back to State College on a recruiting
16 trip, getting on a plane late morning, he saw his
17 picture on the TV. That's -- that's --

18 THE COURT: Go ahead.

19 MS. CONRAD: First, he says that it's after
20 the fact, so it's not relevant. Second, if news
21 articles are not admissible, they're not admissible.
22 Now, it's our view that all the articles are
23 admissible. But to permit some and not others is to
24 send a message to the Court that some are valued
25 more than others. They're all news articles.

1 THE COURT: So this is someone who reported
2 on a post, right?

3 MR. STROKOFF: That's correct.

4 THE COURT: And this is a newspaper posting?

5 MR. STROKOFF: No. It's a sports post, out
6 of Pittsburgh I understand. We have Philly dot com
7 later with Sunday. But this is the first one, 6:00
8 a.m. Sunday.

9 THE COURT: So without getting into the text
10 of the article, you want to ask him whether -- well,
11 you want to ask him whether he saw this article, or
12 this is the type of article that somebody would
13 monitor, then he would have had to have seen it.
14 And then you're going to ask him does that refresh
15 his recollection as to who the grad assistant was,
16 is that --

17 MR. STROKOFF: I think what I'm seeking is
18 that his concession that on various news sites which
19 Penn State monitors it was reported as early as 6:00
20 a.m. Sunday and throughout the day that Mike
21 McQueary was the grad assistant.

22 MS. CONRAD: Then defendant should be
23 permitted that on various news sites it was reported
24 that Mike McQueary left a child in the shower.

25 THE COURT: Why don't you just save us all a

1 lot of trouble what is your earliest recollection?

2 MR. STROKOFF: And he was very fuzzy on that,
3 Your Honor. He's already --

4 THE COURT: Well, if you it through other
5 sources, why put yourself in a situation where the
6 box is going to get open? You could ask him what's
7 his earliest recollection and from what source --
8 I'm not going to flip-flop.

9 MR. STROKOFF: Then I'll reserve that then
10 for when Mike testifies because these are our
11 exhibits. He's going to be -- I'm mainly concerned
12 about his credibility. And so, we'll defer it then
13 I guess until he testifies.

14 THE COURT: Okay. You could always ask him
15 what's his earliest recollection and the source,
16 that's your call.

17 MS. CONRAD: And Your Honor, I would -- and
18 again, I apologize for belaboring this, but the box
19 has already been opened. I understand my
20 recollection is that Mr. Strokoff already read one
21 of the headlines, which we were not permitted to do.

22 THE COURT: Which one was that?

23 MS. CONRAD: He just read from the current
24 article.

25 MR. STROKOFF: Well, I did. And I did, I

1 believe Your Honor, the court reporter could confirm
2 that I did identify the headline trying to get the
3 witness to the page.

4 MS. CONRAD: And we were not permitted to
5 identify the headlines.

6 THE COURT: No. If that's the basis to the
7 objection, that objection is overruled. I mean, the
8 headline reads -- you'll have to tell me what you
9 read because I was trying to find the exhibit
10 number.

11 MR. STROKOFF: That's what I read Jerry
12 Sandusky Calling Allegations and Obligations. I may
13 not have said calling, I was trying to get the
14 witness to that page, about 15 pages into the
15 exhibit.

16 MS. CONRAD: And the message to the jury is
17 that the plaintiff is permitted to read the news
18 headlines but The Pennsylvania State University is
19 not.

20 THE COURT: I think that may be your
21 impression. Are you going to withdraw your question
22 to this exhibit and do it another way?

23 MR. STROKOFF: I will.

24 THE COURT: Okay.

25 MS. CONRAD: Thank you.

1 (End of sidebar.)

2 BY MR. STROKOFF:

3 Q. Sir, just two more questions. You indicated
4 that normally your staff would not be in on weekends
5 to monitor news?

6 A. The person who normally did that practice,
7 yes.

8 Q. Now this was not a normal weekend. Was there
9 anybody coming in to do extra work on that weekend
10 in your department, which would have included
11 monitoring news services?

12 A. I don't recall anybody specific, but I just
13 don't recall that.

14 Q. Okay. You didn't come in on Sunday, for
15 example, to work?

16 A. I worked on Sunday. I read news all the
17 time.

18 MR. STROKOFF: Nothing further, Your Honor.

19 MS. CONRAD: Your Honor, may we approach?

20 THE COURT: Yes.

21 (Whereupon, the following discussion was held
22 at sidebar:)

23 MS. CONRAD: I just want to be sure I have
24 this right. During Mr. Strokoff's direct, he
25 referred to an Exhibit 74, it's Defendant's Exhibit

1 74, and he asked the witness whether it contained a
2 statement from a former Penn State football player.
3 And my recollection is, he asked whether that Penn
4 State football player had stated the fact they were
5 letting Mike McQueary coach this weekend. The
6 article, in fact, says, "The fact they're letting
7 Mike McQueary coach this weekend is a disgrace." I
8 would like to go back, since Mr. Strokoff opened the
9 door on that statement, and finish it.

10 THE COURT: I don't recall exactly the
11 question and answer.

12 MR. STROKOFF: And I don't the exact words.
13 I did reference that, this TMZ.

14 THE COURT: Go ahead.

15 MS. CONRAD: So, I may proceed with that
16 question?

17 THE COURT: Yes.

18 MS. CONRAD: Thank you, sir.

19 (End of sidebar.)

20 RE CROSS EXAMINATION

21 BY MS. CONRAD:

22 Q. Mr. Mahon, I have a few follow up questions.

23 A. Sure.

24 Q. If I could direct your attention to the
25 defendant's binder, Exhibit 74?

1 A. Is that the binder I've been looking at or a
2 different one?

3 Q. It's Defendant's Volume 1?

4 THE COURT: I think it's that one.

5 THE WITNESS: What was the number?

6 MS. CONRAD: Number 74.

7 THE WITNESS: Okay. Yes.

8 BY MS. CONRAD:

9 Q. And I believe Attorney Strokoff asked you a
10 question about the information contained on page six
11 of that news article.

12 A. Yes.

13 Q. And I believe he asked you a question about a
14 statement that was quoted from a former Penn State
15 football player, Matt Hahn?

16 A. I see that here.

17 Q. And I believe he -- Attorney Strokoff asked
18 you a question about a quote from that former Penn
19 State football player about the fact about Mr.
20 McQueary coaching. Do you recall that question?

21 A. Yes.

22 Q. Could you read the quote, though, from former
23 Penn State football player to complete it?

24 A. Quote, "The fact that they're letting Mike
25 McQueary coach this weekend is a disgrace."

1 Q. And referring to this weekend, that was the
2 weekend of the Nebraska game, Mr. Mahon. You recall
3 that Mr. Strokoff asked you some questions about
4 bomb threats?

5 A. Yes.

6 Q. And I believe you testified that Penn State
7 had received bomb threats at other points in time;
8 is that correct?

9 A. Yes.

10 Q. Now, with respect to that particular game,
11 that particular week, and the number of years that
12 you had been in Penn State, had you ever lived
13 through a week like that at Penn State previously?

14 A. No.

15 Q. And were the safety concerns greater or the
16 same as those other incidents that Attorney Strokoff
17 questioned you about?

18 A. Any time there's a bomb threat, it's taken
19 very seriously by Penn State. The fact that so much
20 war was going on I'm sure increased the concern.

21 Q. So I understand your testimony, there was
22 increased concern about the bomb threat in
23 conjunction with the Nebraska game because of all of
24 the other chaos that was going on at the University
25 at that time?

1 A. I could not tell you how the police or FBI
2 managed this in any way.

3 Q. All right. Now, you also were asked by
4 Attorney Strokoff about the updates that your office
5 would provide to members of administration and other
6 offices at Penn State. Do you recall that
7 testimony?

8 A. Yes.

9 Q. In addition to emails, were you aware that
10 verbal reports were being presented with respect to
11 this flood of information that your office was
12 reviewing?

13 A. What do you mean verbal reports?

14 Q. Is it possible that any of the members of
15 your staff instead of sending an email or picking up
16 the phone or speaking to administrators or other
17 offices about this flood of information that they
18 were reviewing?

19 A. Sure. Absolutely.

20 MS. CONRAD: Thank you. I have no further
21 questions.

22 MR. STROKOFF: Two, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. STROKOFF:

25 Q. Getting back to 74. Page six.

1 A. Yes.

2 Q. How is Matt Hahn identified in the very first
3 line?

4 A. "Former Penn State football player Matt Hahn,
5 the guy who's married to Rachel," and I cannot
6 pronounce her last name.

7 Q. I believe it's Uchitel.

8 A. Okay.

9 Q. Do you understand who she is?

10 A. Apparently married to Matt Hahn. I don't
11 know either of them.

12 Q. Okay. And the next thing that this TMZ short
13 piece has, the last several words after the three
14 dots on the ultimate line.

15 A. "Is lashing out at his alma mater."

16 Q. No. "Matt tells us," can you read that?

17 A. Where is this?

18 Q. Going down to the next paragraph.

19 A. Oh, yes. The last sentence, I see that.

20 Q. "Matt tells us" --

21 A. "The Board of Trustees did the right thing."

22 Q. About firing Joe Paterno?

23 A. It's not clear. But the sentence before that
24 references Coach Paterno. Yeah, it would seem to be
25 connected.

1 MR. STROKOFF: Nothing further, Your Honor.

2 MS. CONRAD: Your Honor, I would just go back
3 and ask Mr. Mahaon to identify the headline from
4 this article.

5 THE WITNESS: "Ex-Penn State Football Player:
6 Fire Mike McQueary," and four exclamation points.

7 MS. CONRAD: Thank you. I have no further
8 questions.

9 MR. STROKOFF: Nothing further.

10 THE COURT: Mr. Mahon, if I understand your
11 testimony, through the years there have been
12 situations that required some response, some crises,
13 and that appropriate University officials would get
14 together and figure out a response?

15 THE WITNESS: Yes.

16 THE COURT: And there would be a public
17 statement put out?

18 THE WITNESS: If appropriate, yes.

19 THE COURT: If appropriate. In the years
20 that you were at Penn State, have you ever published
21 the opinion of a single administrator on a matter of
22 conflict?

23 THE WITNESS: On a matter of conflict, it
24 would not be unusual to publish an opinion. I can't
25 recall specifically a conflict.

1 THE COURT: Well, a controversy.

2 THE WITNESS: Yeah, I think so. If the
3 governor was going to cut our budget 52 percent, it
4 would not be unusual for the president to give his
5 opinion that he felt that was wrong and what the
6 implications would be.

7 THE COURT: On a matter such as a criminal
8 case?

9 THE WITNESS: I can't remember a criminal
10 case.

11 THE COURT: Okay. You can step down.

12 THE WITNESS: Thank you.

13 THE COURT: Who's next?

14 MR. STROKOFF: Cynthia Baldwin, Your Honor.

15 THE COURT: And I assume, is she going to be
16 lengthy? Short?

17 MR. STROKOFF: She's going to be more than 15
18 or 20 minutes.

19 THE COURT: And your side?

20 MS. CONRAD: She's going to be more than 30
21 minutes.

22 THE COURT: Okay. I think we better take our
23 lunch break, as much as I hate to inconvenience her.
24 Members of the jury, how about we just come back at
25 a quarter of one? And I'll remind you not to

1 discuss the matter. We'll pick it up at a quarter
2 of one.

3 E N D O F P R O C E E D I N G S
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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.

12/2/14

Date

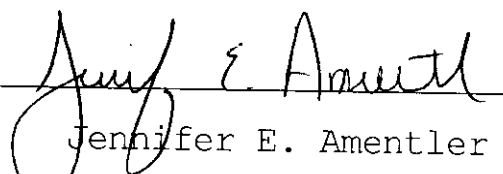
Jennifer E. Amentler
Jennifer E. Amentler
Official Reporter

C E R T I F I C A T E

I hereby certify that a copy of this transcript was furnished and made available to counsel of record for the parties, advising they had until October 25, 2016, 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


Jennifer E. Amentler
Official Reporter

ACCEPTANCE BY COURT

Upon counsel's opportunity to review and to offer objections to the record, the foregoing record of proceedings is hereby accepted and directed to be filed.

11-2-16

Thomas G. Gavin

Date

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