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

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

Transcript of Proceedings  
(Day 2 of jury trial - p.m. only)

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

Date: October 18, 2016

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

Appearances:

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

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

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

PROTHONOTARY  
CENTRE COUNTY, PA

2016 OCT 18 PM 12:56

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1 P R O C E E D I N G S

2 The Court: So everybody has a note.  
3 What is your position? And I see draft a  
4 stipulation on my desk so where are we at?

5 Ms. Conrad: Your Honor, may we  
6 approach?

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

9 Ms. Conrad: We are agreed in principle  
10 to it. We need to add two additional sentences  
11 to it to provide that it is further stipulated  
12 that if Mr. Schultz or Curley were called to  
13 testify at the trial in this matter and ask  
14 questions about any of the defense as asserted by  
15 plaintiff they would refuse --

16 Mr. Strokoff: Defense as asserted by  
17 defendant.

18 Ms. Conrad: Yes. I'm sorry. What did  
19 I say? Defense as asserted by defendant. They  
20 would refuse to answer all questions on the basis  
21 of their 5th Amendment right against  
22 self-incrimination. It is further stipulated  
23 that the testimony provided by Mr. Schultz and  
24 Curley will not be read into the record. I don't  
25 know that we need that here but I at least want



1 to know we have that agreement.

2 Mr. Strokoff: Yeah. I pick it up. I  
3 don't have a problem.

4 The Court: Okay.

5 Mr. Strokoff: Why don't you type it up.  
6 We can tell Ms. McNally (ph.) that she doesn't  
7 have to worry.

8 Ms. Conrad: Okay. We will revise this.  
9 I have two other items I wanted to bring to your  
10 attention, sir, and I ask your advice on this  
11 issue. Your Honor gave an instruction at the  
12 start of the proceeding that the jury should only  
13 consider answer to the questions and if it's a  
14 yes-or-no answer they only consider the yes or  
15 no. In light of cross-examination that's a bit  
16 -- they have to consider the question and I don't  
17 know that it's necessary to remind them of that  
18 but it seemed to me it could create a question in  
19 somebody's mind.

20 The Court: But isn't the only testimony  
21 that they are to consider is the answer of the  
22 witness? And that has always sparked me. I want  
23 to put a seminar up about that, yes, yes, yes,  
24 and yes, yes to what? So, I mean, questions are  
25 supposed to be designed to elicit a response so

1 the witness says yes, that was a problem, and it  
2 was a problem for the following reasons, not, you  
3 know, Mr. Gavin is a bum because he did x, y, and  
4 z, do you agree, yes, with the evidence here, he  
5 says yes. So, I mean, I don't know -- they are  
6 going to have enough trouble remembering the  
7 answer without trying to remember the questions.

8 Ms. Conrad: I understand and I want to  
9 raise the issue and put it before you. Then with  
10 respect to the next witness, sir, Justic Baldwin  
11 is here with a personal counsel. I don't know if  
12 you spoken to personal counsel about his role.

13 Mr. Strokoff: Yeah. He is -- he  
14 doesn't intend to intervene. His sole concern  
15 was whether or not we would start raising the  
16 issue about who she was representing, beating her  
17 up on that. I told her I had no interest in  
18 getting into that.

19 Ms. Conrad: And we will be raising  
20 questions and seeking answers from her with  
21 respect to our defenses to the whistleblower  
22 claim and we would respectfully request to the  
23 extent Your Honor is going to ask -- has  
24 questions about that claim that as you did with  
25 the prior witnesses you would do that outside of

1 the jury's presence.

2 The Court: Right. That's not a  
3 problem.

4 Ms. Conrad: Thank you, sir.

5 Mr. Strokoff: I am old school, Judge,  
6 and I have difficulty not calling Cynthia Baldwin  
7 madam justice but for purposes of the trial I am  
8 probably going to call her Ms. Baldwin unless the  
9 Court instructs me any way.

10 The Court: Has she reentered the  
11 practice of law?

12 Mr. Strokoff: I have no idea.

13 Ms. Conrad: I do not know. I do not  
14 know.

15 The Court: If she did she is not madam  
16 justice anymore. She is Cynthia Baldwin.

17 Mr. Strokoff: Well my point if the  
18 Court would prefer that I not address her --

19 (Simultaneous conversation.)

20 Mr. Strokoff: Well again if the Court  
21 doesn't think that is appropriate I will refer to  
22 her --

23 The Court: We can tell her that it is  
24 no sign of disrespect --

25 Mr. Strokoff: I have already told her

1 lawyer that. I have already told her lawyer  
2 that. I was just concerned about --

3 Mr. Strokoff: You know, certainly she  
4 is entitled if she is not back in the practice to  
5 be referred to as madam justice but I think for  
6 our purposes it's better if she is just Cynthia  
7 Baldwin, counsel.

8 Ms. Conrad: I will work very hard on  
9 that, Your Honor, but I --

10 The Court: I won't throw anything at  
11 you if you misspeak.

12 Ms. Conrad: Thank you, sir. And may we  
13 start our examinations by recognizing we will  
14 call her Ms. Baldwin or do you prefer --

15 The Court: Just refer to her as  
16 Ms. Baldwin.

17 Ms. Conrad: I will try my best, sir.  
18 Thank you.

19 The Court: So we are ready?

20 Mr. Strokoff: Yep.

21 (End of side bar.)

22 The Court: So you are calling Cynthia  
23 Baldwin, is that correct?

24 Mr. Strokoff: It is, Your Honor.

25 The Court: Ms. Baldwin, if you want to

1       come forward please.

2               We are getting head of ourselves. It  
3 will help if I have a jury.

4               Why don't you have a seat for a second.

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

7               The Court: Everybody please have  
8 seat.

9               Whereupon,

10                       Cynthia Baldwin

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

13               The Court: It will help if you get on  
14 that microphone directly in front so everybody  
15 can hear you.

16                       Direct Examination

17 By Mr. Strokoff:

18               Q. Good afternoon.

19               A. Good afternoon. I do have a voice that  
20 carries so I am going to push it away a little.  
21 Good afternoon.

22               Q. Will you please state for the record  
23 your full name?

24               A. Cynthia Ackron Baldwin.

25               The Court Reporter: Can you spell your

1 middle name?

2 The Witness: A-c-k-r-o-n.

3 By Mr. Strokoff:

4 Q. And, Ms. Baldwin, for a period of time  
5 were you employed by the Pennsylvania State  
6 University?

7 A. Yes.

8 Q. And do you recall approximately what  
9 that period of time was?

10 A. Well I actually was employed by Penn  
11 State two times. I used to be an academia. So  
12 which time are you --

13 Q. Why don't we go with time number two  
14 first.

15 A. Okay. Second time I was hired as vice  
16 president and general counsel and that was  
17 February 15th of 2010 that I started that  
18 position.

19 Q. And how long did you remain in that  
20 position?

21 A. Approximately close to two years. I  
22 left that position July 31, 2012.

23 Q. And because you have made reference to  
24 it when were you an academia?

25 A. I taught English from -- for three or

1 four years. So I started in '73 and taught until  
2 '77 and I was also assistant dean of student  
3 affairs at a campus.

4 Q. Okay. I wonder if you would please give  
5 us your academic background in terms of college  
6 and post college.

7 A. I have a Bachelor's in English from Penn  
8 State, 1966. I have a Master's in American  
9 Literature from Penn State, 1974. I have a Juris  
10 Doctor from Duquesne University, 1980. I have  
11 some other certificates but those are the main.

12 Q. Okay. Can you tell us briefly what your  
13 responsibilities were as vice president and  
14 general counsel to the Pennsylvania State  
15 University?

16 A. Actually I was the first vice president  
17 and general counsel at Penn State. They never  
18 had an in-house general counsel until 2010 and I  
19 was actually hired to start the office. So the  
20 responsibilities would have been the same as any  
21 other vice president and general counsel in doing  
22 the legal work of the University but it was much  
23 more difficult because I was starting the office.

24 Q. Okay. In the course of your employment  
25 as vice president and general counsel did you

1 have occasion to accompany individuals to a  
2 statewide investigating grand jury?

3 A. Yes.

4 Q. Are you familiar with what the law is  
5 with respect to folks who testify before a grand  
6 jury being able to disclose or not disclose the  
7 nature of their testimony?

8 Ms. Conrad: Your Honor, at this time I  
9 would ask we approach.

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

12 Ms. Conrad: It's my understanding we  
13 were not getting into this area and, in fact,  
14 there has been an agreement with Ms. Baldwin's  
15 counsel that you were not getting into this area.

16 Mr. Strokoff: The agreement is I am not  
17 going to get into the issues with respect to who  
18 she represented properly or improperly but all I  
19 want to get to is the fact that Curley, and  
20 Schultz, and Spanier for that matter were given  
21 standard instructions. They were free to  
22 disclose their testimony or not disclose their  
23 testimony after they testified because Graham  
24 Spanier is claiming that before November 7th he  
25 didn't know that grad student was Mike McQueary



1       this is part of the case of circumstantial  
2       evidence that, you know, he did know. So that's  
3       all I am going to there and I have already  
4       cleared this with her lawyer.

5               The Court: So why can't she answer?

6               Ms. Conrad: I wasn't party to that and  
7       I had a different understanding from her personal  
8       lawyer but he is here.

9               Mr. Strokoff: Yeah. He is here.

10              The Court: Do you want to ask him?

11              Ms. Conrad: Yeah.

12              The Court: Okay. Go ask him.

13              Ms. Conrad: And then come back to you,  
14       sir?

15              The Court: Yes.

16              Ms. Conrad: Okay. We will step out of  
17       the courtroom so the press doesn't hear.

18              (End of side bar.)

19              The Court: There is a wonderful  
20       business opportunity for you folks here that you  
21       should be observing because there is lots of down  
22       time in court activities and if you can figure  
23       out a business model where you can fill that  
24       court time you are going to be a very wealthy  
25       person. The discussions that are necessary

1 sometimes just take a little more time than we  
2 think about in our planning. One advantages of  
3 coming to smaller counties like this is I was  
4 across the street in the drug store and I thought  
5 I was a young boy again because they had a soda  
6 fountain in there and I haven't seen a soda  
7 fountain since I was in the south side of  
8 Scranton in the early 50's. So it was really  
9 nice to see that somebody still had a soda  
10 fountain in place and operational. So I am  
11 making it a point to help keep them in business  
12 on my way home with a little ice cream to go. I  
13 think those of us who are a little bit older  
14 remember when virtually every drug store had a  
15 soda fountain in it?

16 It was Boss's Day when I went in and I  
17 saw the woman behind the soda fountain with a  
18 lemon meringue pie and I said I will have a piece  
19 of that with my ice cream and she said oh, no,  
20 it's Boss's Day. That's for our boss. And I  
21 said well can't you pretend that I am a boss too  
22 but I didn't get a piece of the lemon meringue  
23 pie.

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

1           Ms. Conrad: My understanding is that in  
2           the conversation with counsel it was agreed that  
3           Ms. Baldwin could testify as to what the judge  
4           told the witness.

5           Mr. Strokoff: Yeah.

6           Ms. Conrad: So, therefore, you should  
7           not be asking her what, if anything, she said to  
8           the witnesses.

9           Mr. Strokoff: I don't think I did.

10          Ms. Conrad: Okay. I am just --

11          The Court: I thought that was his  
12          question. What discretion did the judge give to  
13          the witnesses --

14          Mr. Strokoff: I don't want to get into  
15          attorney/client --

16          Ms. Conrad: Right. So you are only  
17          talking -- and not what she heard. Only with  
18          respect to the instruction.

19          Mr. Strokoff: Well she heard the  
20          instruction.

21          Ms. Conrad: And that's the only area  
22          you are getting into.

23          Mr. Strokoff: Well the other thing is  
24          she knew the discussions with the grand jury  
25          concerned Mike McQueary.

1                   Ms. Conrad: No. She is not in a  
2 position to talk about what she --

3                   Mr. Strokoff: It's public record now.  
4 We have the transcript.

5                   Ms. Conrad: But you are trying to  
6 develop what she knew then.

7                   Mr. Strokoff: She was there. Of course  
8 she did.

9                   Ms. Conrad: But she can't testify what  
10 information she learned there.

11                  The Court: What prohibition there  
12 against talk? She is there as counsel to the  
13 parties.

14                  Ms. Conrad: Yes.

15                  The Court: That was the position. Your  
16 position was that she was -- you were the client  
17 and I thought you were waiving the attorney  
18 client -- all he wants to ask is what did the  
19 judge say and everybody knows that counsel is  
20 present when the judge instructs the witnesses as  
21 to their rights and obligations before the grand  
22 jury. If in the scope of the grand jury  
23 proceedings he can ask her did you know that  
24 Mr. McQueary was a witness before the grand jury  
25 she can answer yes or no.

1           Ms. Conrad: I think we need to bring up  
2 her personal counsel because I think that's  
3 contrary to what his position is. If the judge  
4 instructed what --

5           Mr. Strokoff: I don't think it is but  
6 that might be the quickest way of doing this.

7           Ms. Conrad: Agreed.

8           Mr. Strokoff: Court reporter asked if  
9 you would identify yourself.

10          Mr. Tintner: Certainly. Robert  
11 Tintner, T-i-n-t-n-e-r.

12          The Court: Very high tech here in  
13 Centre County.

14          Mr. Tintner: I see that.

15          The Court: I have a simple question.  
16 If Ms. Baldwin is asked was she aware that  
17 Mr. McQueary testified before the grand jury  
18 would you be permitted to answer why you would  
19 say yes or no.

20          Mr. Strokoff: I think the question,  
21 Your Honor, would be was she aware that  
22 Mr. McQueary was the graduate assistant who --

23          Ms. Conrad: That's a different  
24 question.

25          Mr. Strokoff: She wouldn't have been

1 present when Mr. McQueary testified.

2 Mr. Tintner: That is correct.

3 The Court: Okay. So are you going to  
4 tell her not to respond if she is asked whether  
5 she was aware that Mr. McQueary was the graduate  
6 assistant?

7 Ms. Conrad: At the time she was at the  
8 grand jury with Mr. Curley and Schultz.

9 Mr. Strokoff: I can do it right after  
10 this.

11 The Court: Isn't the easiest way to ask  
12 at any time did you become aware that  
13 Mr. McQueary was a witness before the grand jury?  
14 Certainly she had to know when the presentment  
15 was issued.

16 Ms. Tintner: Yes.

17 The Court: So she would be able to  
18 say --

19 Ms. Conrad: Well wait a minute.  
20 Mr. McQueary wasn't identified in the grand jury  
21 presentment.

22 Mr. Tintner: I don't believe  
23 Mr. McQueary was identified by name in the grand  
24 jury presentment.

25 The Court: Maybe she put two and two

1       together.

2               Mr. Tintner: Well here is the issue and  
3 maybe I will just tell you. She had a  
4 conversation -- this is not confidential. She  
5 had a conversation with Jonelle Eshbach shortly  
6 before the individuals were called to testify  
7 about accepting services of the subpoena and at  
8 that time Jonelle Eshbach gave her a little bit  
9 of information about what exactly these  
10 individuals are being subpoenaed about. I do not  
11 believe that it was ever disclosed to her that  
12 anyone else from the Penn State community,  
13 including Mr. McQueary, had already been before  
14 the grand jury. That would not have been  
15 something that they would have disclosed to her.  
16 So that's what she learned publically. She  
17 learned other information obviously by sitting  
18 next to the witnesses all of which would have  
19 been confidential because she would not have been  
20 permitted to review any of that, however --  
21 however, my understanding is the grand jury  
22 transcripts have been disclosed and had been made  
23 public.

24               Ms. Conrad: Later.

25               Mr. Tintner: Later. Correct.

1           The Court: So what is your exact  
2 question that you want her to answer if you  
3 recall at this point?

4           Mr. Strokoff: I think I was just going  
5 to ask her what the law was. I didn't even get  
6 to the question.

7           The Court: He was starting with  
8 obviously she would have been present for Curley  
9 and Schultz were instructed by the grand jury  
10 judge as to the rights and responsibilities --

11          Mr. Tintner: That is correct.

12          The Court: Okay. And since I supervise  
13 a grand jury one of those problems would be that  
14 you are -- the witness is free to talk about  
15 their testimony.

16          Mr. Tintner: That is correct also.

17          The Court: Okay. So you cannot --

18          Mr. Tintner: She absolutely can.

19          The Court: Okay. What else do you want  
20 to ask?

21          Mr. Strokoff: After Curley and Schultz  
22 testified before the grand jury did she have  
23 knowledge as to who -- or the identity of the  
24 graduate assistant who alleged that he told  
25 Curley and Schultz.



1           The Court: Why can't you simply ask did  
2 there come a point in time when you knew who the  
3 graduate assistant was.

4           Mr. Strokoff: Okay.

5           The Court: Okay.

6           Mr. Strokoff: And then ask her about  
7 when that was.

8           The Court: And then ask her when  
9 exactly.

10          Mr. Tintner: That's fine.

11          Ms. Conrad: And she will know outside  
12 of any confidential information. Well she didn't  
13 have any.

14          Mr. Tintner: Well you can say, if Your  
15 Honor permits, that it's outside of any  
16 confidential information. That's a fair question  
17 and that should get you what you need to know.

18          The Court: Fine. I was writing it down  
19 because I try not to screw it up.

20          Mr. Tintner: Thank you, Your Honor.

21          Ms. Conrad: Thank you, sir.

22          (End of side bar.)

23          The Court: Now you now know how many  
24 people are necessary to provide two simple  
25 questions.

1           Okay. And to the witness's benefit and  
2 we have conferred with counsel and you are free  
3 to answer these questions.

4           The Witness: Thank you.

5           Mr. Strokoff: I wonder if the court  
6 reporter might be able to refresh my memory as to  
7 what that question was.

8           The Court: I will refresh it for you.

9           Were you present when Mr. Curley and  
10 Mr. Schultz were read the rights and duties of  
11 the witnesses before the investigating grand  
12 jury?

13          The Witness: Yes.

14          The Court: Go ahead.

15          By Mr. Strokoff:

16           Q. And do those instructions include  
17 anything about limitations or rights of witnesses  
18 to disclose their testimony after they testify?

19           A. Yes.

20           Q. And what was that instruction as you  
21 recall?

22           A. Well the instruction was, of course, I  
23 could not disclose anything that happened but  
24 that the witnesses, themselves, were free to  
25 disclose what happened in the grand jury.

1           Q.    Okay.  And as a lawyer that's the  
2           standard instruction, is it not?

3           A.    Yes.

4           Q.    Okay.  Did there come a point in time  
5           when you became aware of the identity of the  
6           graduate assistant who testified that he told  
7           Mr. Curley and Mr. Schultz that he had seen  
8           sexual misconduct in the last shower room by  
9           Jerry Sandusky?

10           Ms. Conrad:  Objection to the form of  
11           the question.  There is no evidence that that is,  
12           in fact, the information that was reported to  
13           Mr. Curley and Schultz.  If the question is did  
14           she become aware at some point in time the  
15           identity of the graduate assistant that testified  
16           with respect to the incident that occurred in  
17           2001 that will be a acceptable question.

18           The Court:  I am assuming in due course  
19           Mr. McQueary is going to testify and testify as  
20           you have indicated in your question to the  
21           witness?

22           Mr. Strokoff:  He is, Your Honor.

23           The Court:  Objection is overruled.

24           The Witness:  Yes.

25           By Mr. Strokoff:

1           Q.   And about when was that time that you  
2           learned that the identity of the graduate  
3           assistant was Mike McQueary?

4           A.   I don't remember the exact time that I  
5           found out but it was somewhere around November  
6           11th, 10th, somewhere.

7           Q.   Of 2011?

8           A.   Yes.   2011.

9           Q.   Ma'am, there is a book big thick loose  
10          leaf binder?

11          A.   There are several big binders.

12          Q.   It says Witness's Exhibits.

13          The Court:   I think it's this one over  
14          there.

15          The Witness:   It says Exhibit Witness  
16          Copy.

17          The Court:   Yes.   I think that's it.  
18          By Mr. Strokoff:

19          Q.   I am going to ask you to turn to  
20          Plaintiff's Exhibit 27.

21          Mr. Strokoff:   And this is going to be  
22          used solely for purposes of refreshing the  
23          witness's memory.   I won't go too far with it,  
24          Your Honor.

25          The Court:   What page are you directing

1 the witness's attention to in P-27?

2 Mr. Strokoff: Beginning on page 7, Your  
3 Honor, continuing -- well let's say 7 and 8.

4 The Court: You just want the witness to  
5 read that to herself? Go ahead.

6 The Witness: Did you say 7 and 8?

7 Mr. Strokoff: Seven and 8.

8 Ms. Conrad: Your Honor, I would object  
9 at this point as to any questions on this  
10 information. The witness has already testified  
11 to the issue.

12 The Court: I don't know where they are  
13 going so you will have to wait. He is just  
14 asking to read 7 and 8.

15 By Mr. Strokoff:

16 Q. Have you done that, ma'am?

17 A. I have.

18 Q. Does that help to refresh your memory as  
19 to when you first found out that Mike --

20 Ms. Conrad: Again I am going to object  
21 at this point. We have already addressed the two  
22 questions that Your Honor has authorized.

23 The Court: Just a second. Did you say  
24 P-27 is the exhibit she is looking at?

25 Mr. Strokoff: Yes.

1           The Witness: Read pages 7 and 8.

2           The Court: I am looking over and she is  
3 looking at an entirely different document than I  
4 am looking at as my P-27. So that's why I am --

5           Ms. Conrad: Is that plaintiff's binder?

6           The Court: Somebody bring up P-27 that  
7 I am supposed to be looking at.

8           The Witness: I think these are the  
9 pages -- those are the pages of the transcript 7  
10 and 8?

11          Mr. Strokoff: Yes.

12          The Witness: No. They are two 7's and  
13 8's in here. Okay. I am looking at --

14          The Court: Okay. Give me a chance to  
15 get there because the very first pages were 7 and  
16 8. Okay. So there is two 7's and 8's.

17          Mr. Strokoff: My apologies.

18          The Court: Give me a said to read them  
19 please.

20          The Witness: I am assuming I am looking  
21 at the correct 7 and 8 now?

22          Mr. Strokoff: Let us hope.

23 By Mr. Strokoff:

24           Q. And does that help to refresh your  
25 memory as to the date that you first found out

1 the identity of the graduate assistant?

2 Ms. Conrad: Your Honor, may we  
3 approach?

4 The Court: Yes.

5 (Whereupon, the following conversation  
6 was held at side bar:)

7 Mr. Fleming: Judge, I think she is on  
8 the wrong page.

9 Ms. Conrad: She is looking at --

10 The Witness: That's where I was reading  
11 before.

12 Ms. Conrad: Your Honor, we have already  
13 -- I am sorry. I am sorry.

14 The Court: Is this the right page?

15 Mr. Strokoff: Yes, sir. It is.

16 The Witness: I was on the right 7 and  
17 8.

18 The Court: So --

19 Ms. Conrad: Should Attorney Tintner  
20 join us?

21 The Court: Sure. Why not.

22 This is the deposition --

23 Mr. Strokoff: It's grand jury  
24 testimony, Your Honor.

25 The Court: Grand jury testimony. Okay.

1 And your question is does this refresh your  
2 recollection --

3 Mr. Strokoff: As to when she first  
4 found out Mike McQueary was the fellow who  
5 allegedly reported --

6 The Court: What we really have is the  
7 grand jury transcript which as an attorney she  
8 would not have been privileged to disclose.

9 Mr. Tintner: Correct.

10 The Court: But it has now been  
11 disclosed

12 Mr. Tintner: That is correct.

13 The Court: So that the point of fact is  
14 there would be no prohibition that I can conceive  
15 of to her saying I knew it as of that date.

16 Mr. Tintner: I agree with you, Your  
17 Honor.

18 Ms. Conrad: Because she read it at the  
19 time.

20 The Court: She was there.

21 Mr. Tintner: Well she was there.

22 Ms. Conrad: All right.

23 Mr. Tintner: The problem is -- Your  
24 Honor is correct. She could never have revealed  
25 this and didn't reveal it. Her memory of when



1 she learned this versus when she learned --

2 (Simultaneous conversation.)

3 Mr. Tintner: Correct. But  
4 unfortunately or fortunately this has been  
5 revealed so this is public and everybody has this  
6 so she can rely on it.

7 The Court: Now do you want me to  
8 explain all of that to the jury or do I have to  
9 explain that to the jury or --

10 Mr. Strokoff: Your Honor, all I am  
11 interested in is that she was aware for several  
12 months that Mike McQueary had made claims against  
13 Curley and Schultz. Curley and Schultz -- Mike  
14 had made claims that he reported, you know, the  
15 Sandusky thing to Curley and Schultz well before  
16 the statement came out for Graham Spanier.

17 Ms. Conrad: How do you figure that?

18 The Court: We are making this more  
19 complicated than it has to be. She was there. I  
20 am sure without having read this at some point an  
21 attorney conducting the examination of the  
22 witnesses is saying to them and did somebody tell  
23 you x, y, and z, and, you know, at that point in  
24 time we know who somebody is.

25 Mr. Strokoff: And it's right there.

1           The Court: Okay. And she never has  
2       been permitted to disclose that accept the  
3       Attorney General said it's now public knowledge.

4           Mr. Tintner: That is correct.

5           The Court: So she would be entitled to  
6       be asked were you present when they testified.  
7       She can say yes. And when they testified was it  
8       made clear that Mr. McQueary was the graduate  
9       assistant and she can say yes. That's the other  
10      thing. I will be happy to tell the jury all of  
11      that if that's what you want.

12          Ms. Conrad: She knew that it was Mike.

13          Mr. Strokoff: McQueary.

14          Mr. Tintner: That is correct.

15          Ms. Conrad: It does not say McQueary.

16          Mr. Strokoff: On an earlier page it  
17      does.

18          Mr. Tintner: I think it does.

19          Ms. Conrad: Okay.

20          The Court: I am going tell them that.  
21      I am going tell the jury that and then you can  
22      ask questions, okay?

23          Mr. Strokoff: Okay.

24          (End of side bar.)

25          The Court: All of these side bars,

1 members of the jury, help explained why all of  
2 the judges like myself are bald and gray. I have  
3 to talk a little bit just to put things in  
4 context so the witness can know that she is  
5 permitted to go ahead and answer here. Ms.  
6 Baldwin accompanied Mr. Curley and Mr. Schultz  
7 when they testified before the grand jury. A  
8 witness before the grand jury is free to talk  
9 about their testimony or not. That's their call.  
10 Counsel is not permitted to talk about their  
11 testimony. It's quote secret. However, in the  
12 Sandusky matter the decision was made to make  
13 public all of the testimony before the grand jury  
14 so that the supervising judge -- I happen to also  
15 supervise a grand jury. I can say this testimony  
16 that previously was secret and not to be  
17 disclosed is going to be disclosed and there is a  
18 reason for that and we don't need to go into the  
19 reasons now.

20 So information that Ms. Baldwin learned  
21 while sitting in during the grand jury testimony  
22 she would not have been permitted to disclose  
23 except for the fact that the Attorney General  
24 with the concurrence of the judge agreed all of  
25 the testimony before the grand jury could be

1 disclosed. So she can now tell us what she knew  
2 during those proceedings without any violation of  
3 the attorney/client privilege or more importantly  
4 without violating the grand jury secrecy rules  
5 because those secrecy rules were taken away and  
6 once that was taken away she can be free to  
7 testify as to what she knew when.

8 Go ahead.

9 By Mr. Strokoff:

10 Q. Ms. Baldwin, when you accompanied  
11 Mr. Schultz to the grand jury you were present  
12 during his questioning, were you not?

13 A. That is correct.

14 Q. And do you recall -- and you may look at  
15 Exhibit 27 to refresh your memory that that was  
16 on January 12, 2011?

17 A. I don't have to look at it. Yes. I do  
18 recall.

19 Q. Okay. And the same day you also  
20 appeared with Mr. Curley before the investigating  
21 grand jury?

22 A. That is correct.

23 Q. Do you recall that they were asked  
24 questions specifically about what Mike McQueary  
25 had told each of them?

1 A. I do.

2 Q. In their separate questions?

3 A. Each one I do.

4 Q. And do you recall that they were --  
5 that as Mr. Curley and Mr. Schultz were asked  
6 specific questions about whether or not  
7 Mr. McQueary had reported to them that he had  
8 witnessed misconduct of a sexual nature?

9 A. That is correct.

10 Q. And were there any other reports by any  
11 other graduate assistants other than Mr. McQueary  
12 that came up during either of those grand jury  
13 testimony?

14 A. No.

15 Mr. Strokoff: I am content, Your Honor,  
16 to move on then and leave it at that.

17 The Court: Okay.

18 By Mr. Strokoff:

19 Q. I would like for you to now turn to  
20 Exhibit 30 in that same exhibit book and there is  
21 only one page so I will try to give you the right  
22 page number. Are you familiar with Plaintiff's  
23 Exhibit 30?

24 A. Yes.

25 Q. And do you recall the circumstances

1 under which Plaintiff's Exhibit 30 were  
2 developed?

3 A. Yes.

4 Q. And what do you recall about that?

5 A. I recall that there was a meeting that  
6 was called by Dr. Graham Spanier and I recall who  
7 was at that meeting.

8 Q. Who else was at that meeting?

9 A. Besides Lisa Powers and Bill Mahon there  
10 was Steve Garban, I was present, Graham Spanier  
11 was present, and as I recall Tom Pool (ph.) was  
12 in and out of the meeting.

13 Q. And that might be a name that hasn't  
14 come up before. So can you tell the jury who Tom  
15 Pool was?

16 A. Tom Pool was the assistant to the  
17 president. I don't know what his direct title  
18 was but he was assistant to the president.

19 Q. Okay. And what was the purpose for the  
20 meeting?

21 A. The purpose for the meeting was that  
22 Graham Spanier wanted to issue a statement  
23 concerning the presentments for Gary Schultz and  
24 Tim Curley.

25 Q. Now this meeting is on -- was it on

1       October 28th, the date of this memo?

2           A.   That is correct.

3           Q.   The presentment had not yet been issued  
4       as of that date?

5           A.   That is correct.

6           Q.   Okay.  So what information was there  
7       that a presentment was going to be issued?

8           A.   I had been contacted by the Office of  
9       Attorney General, a man in the Office of Attorney  
10      General, who informed me that the presentment --  
11      the presentments were forthcoming.

12          Q.   And did this individual specify what the  
13      presentments were going to say with respect to  
14      Mr. Schultz and Mr. Curley?

15          A.   He did not specify but he did say that  
16      he thought they would have something to do with  
17      perjury.

18          Q.   Prior to the meeting with Graham  
19      Spanier, and Lisa Powers, and Bill Mahon, and  
20      Steve Garban did you obtain any other information  
21      about the soon to be forthcoming presentment?

22          A.   No.

23          Q.   Okay.  What do you recall in terms of  
24      the meeting?  How did it open up?

25          A.   I really do not recall an opening of the

1 meeting.

2 Q. Well what do you first recall happening  
3 at this meeting?

4 A. That Dr. Spanier had some ideas of what  
5 he wanted to put into this statement. That we  
6 were all seated.

7 Q. And then what happened?

8 A. Then there was some discussion about  
9 other things that might go into the statement.

10 Q. And do you recall any of that  
11 discussion?

12 A. I recall some of the discussion. I  
13 don't recall all of the discussion.

14 Q. Okay. What do you recall?

15 A. I recall that there was input and very  
16 -- and concern about putting in how we felt about  
17 protecting children and that was important, that  
18 everything be investigated thoroughly before  
19 people jump to conclusion.

20 Q. Do you recall anything else about the  
21 meeting?

22 A. Not really.

23 Q. Okay. I would next ask you to turn to  
24 Plaintiff's Exhibit 31. Take a moment if you  
25 would please to exam that document. We cannot



1 put it up yet. Have you had an opportunity to  
2 review that?

3 A. I have.

4 Q. Okay. Can you identify that for us?

5 A. Yes. That's an e-mail from me to  
6 Caroline Roberto.

7 Mr. Strokoff: Move for admission of 31,  
8 Your Honor.

9 Ms. Conrad: No objection.

10 The Court: It's admitted.

11 By Mr. Strokoff:

12 Q. We are going to put it up on the  
13 monitor, Ms. Baldwin. The bulk of this e-mail is  
14 a document to you from Caroline Roberto. It's  
15 dated November 1, 2011. Do you see that?

16 A. I do.

17 Q. Who is Caroline Roberto?

18 A. Caroline Roberto is the attorney that  
19 became counsel for Tim Curley.

20 Q. And why is it that on November 1, 2011,  
21 you were sending her an e-mail that is saying  
22 here is the draft?

23 A. Because I was instructed by Dr. Spanier  
24 to send the e-mail to Caroline Roberto so she can  
25 look at it.

1           Q.    So Dr. Spanier instructed you to send  
2           this to the lawyer for --

3           A.    Who would be the lawyer for Tim Curley.

4           Q.    Who would be the lawyer for Tim Curley.  
5           To get her suggestions, approval, what,  
6           information only?

7           A.    He said to send it to her and that's  
8           what I did.

9           Q.    Okay.  Now here is the question I have.  
10          The very last sentence of the first e-mail says  
11          on this draft that you sent November 1st I am  
12          confident that the record will show that they  
13          have conducted themselves appropriately, right?

14          A.    That is what it says.

15          Q.    But the last sentence of 30 -- and you  
16          can flip back -- says -- and this is the October  
17          28th draft.  I am confident the record will show  
18          that these charges are groundless and that they  
19          conducted themselves professionally and  
20          appropriately.

21          A.    That's correct.

22          Q.    So what do you remember about the change  
23          in the language?

24          A.    Nothing.  I don't remember that changing  
25          language.

1           Q. Was the language saying that the charges  
2 are groundless -- was that dropped from the draft  
3 and then put in later?

4           A. I don't remember.

5           Q. Okay. Do you remember if anybody  
6 discussed the language the charges are  
7 groundless?

8           A. I don't remember a discussion with me.

9           Q. Okay. Getting back to 31, there is  
10 another e-mail from you to Ms. Roberto November  
11 3rd, there not?

12          A. Correct.

13          Q. And it refers to availability of  
14 Dr. Spanier?

15          A. Correct.

16          Q. Okay. What did that refer to?

17          A. It refers to Dr. Spanier's availability  
18 and it says that he will be available at a  
19 certain time and I would make myself available.  
20 So there was going to be a meeting.

21          Q. Was this going to be an in-person  
22 meeting or telephone meeting if you remember?

23          A. I don't remember whether it was in  
24 person or by telephone.

25          Q. Okay. I would ask you next to turn to

1       32. Take a moment to read that please. Now can  
2       you identify this document for us?

3           A. This is an e-mail -- really there are  
4       two e-mails I see on this page. One is from  
5       Caroline Roberto to Tom Farrell and one is from  
6       Tom Farrell to me copied to Caroline Roberto.

7           Q. Okay. So first tell us who is Tom  
8       Farrell?

9           A. Excuse me?

10          Q. Who is Tom Farrell?

11          A. Tom Farrell is a lawyer. I really did  
12       not know Tom Farrell but he was a lawyer -- he  
13       became the lawyer for Gary Schultz.

14                Mr. Strokoff: Move for admission of  
15       plaintiffs 32, Your Honor.

16                Ms. Conrad: No objection.

17                The Court: Admitted.

18       By Mr. Strokoff:

19           Q. So the point in time you are sending  
20       these drafts to Attorney Roberto and Attorney  
21       Farrell --

22           A. I did not send a draft to Attorney  
23       Farrell.

24           Q. I am sorry. To Attorney Roberto she had  
25       not yet been fully engaged as Tim Curley's

1 attorney?

2 A. I don't know. That would not have been  
3 up to me.

4 Q. Well you said she was about to become?

5 A. No. I said she was the lawyer who  
6 became his attorney. I know they met. I don't  
7 know when that exact thing happened.

8 Q. Okay. So you in sending the draft  
9 statement without the groundless language to  
10 Ms. Roberto -- that was simply Dr. Spanier's  
11 suggestion and you weren't sure exactly  
12 Ms. Roberto's status?

13 A. I wasn't sure that they had the agreed  
14 on it yet but Ms. Roberto was going to become his  
15 attorney.

16 Q. Okay. Now getting back to the exchanges  
17 with Farrell when you received the response or  
18 the e-mail from Mr. Farrell you knew who he was  
19 at that point?

20 A. I knew who he was. Yes.

21 Q. And he made a suggestion, did he not, in  
22 the top?

23 A. He did.

24 Q. I wonder if we can bold the top just a  
25 tad. So Mr. Farrell was an individual who

1 suggested that instead of indictment in the draft  
2 it should be changed to presentment?

3 A. That's correct.

4 Q. And --

5 A. And he was correct.

6 Q. Okay. So that change was made to the  
7 one that was finally posted?

8 A. Yes.

9 Q. Finally, can you turn to Exhibit 33 and  
10 identify that for us?

11 A. This is an e-mail from Caroline Roberto  
12 to me copied to Tom Farrell.

13 Q. And that's an e-mail dated November 3,  
14 2011?

15 A. That is correct.

16 Mr. Strokoff: Move for admission of 33,  
17 Your Honor.

18 Ms. Conrad: No objection.

19 The Court: Admitted.

20 By Mr. Strokoff:

21 Q. Now that says, quote, Tom and I will be  
22 there. Period. I will phone you tomorrow.  
23 Period. Thanks.

24 A. That is correct.

25 Q. So was the meeting date that was

1 originally supposed to be the 7th change to the  
2 4th if you remember?

3 A. Well I don't know -- let's see the days  
4 of the week. First was Tuesday -- looks like it  
5 was --

6 Q. I am not trying to trip you up here.

7 A. And I don't think that you are. I am  
8 just trying to get the days straight.

9 Q. November 3rd at 10:29 references  
10 tomorrow. That will be the 4th, right?

11 A. That is correct.

12 Q. Do you remember that November 5th was a  
13 Saturday?

14 A. No. I did not remember that November  
15 5th was a Saturday. The one from Caroline  
16 Roberto says Dr. Spanier is available on Monday  
17 but doesn't say what date Monday is so when you  
18 asked me the question I had to figure out the  
19 days.

20 Q. Well if you go back just a tad the one  
21 that you sent says you sent it Tuesday, November  
22 1st?

23 A. And that's why I started Tuesday is the  
24 1st, Wednesday is the 2nd. That's where I was  
25 going. Yes.

1 Q. Okay. So Monday was the 7th?

2 A. Right.

3 Q. Okay. Do you recall anything about --

4 A. No.

5 Q. -- changing the date? You do not?

6 A. I do not.

7 Q. Can you turn please to 34. Are you able  
8 to identify 34?

9 A. The first one is an e-mail from me to  
10 Caroline Roberto copied to Tom Farrell. The  
11 others are repeats.

12 Mr. Strokoff: Move for admission of 34,  
13 Your Honor.

14 Ms. Conrad: No objection.

15 The Court: It's admitted.

16 By Mr. Strokoff:

17 Q. You are simply confirming the telephone  
18 conference for the next day?

19 A. Correct.

20 Q. Do you recall what was discussed in that  
21 telephone conference?

22 A. I do not.

23 Q. And, in fact, presentment was issued  
24 alleging criminality on the part of Mr. Schultz  
25 and Mr. Curley, is that correct?



1           A.   It was issued.  Yes.

2           Q.   And that presentment referred to reports  
3   by an unidentified graduate assistant to them  
4   about sexual misconduct that he had witnessed?

5           A.   Yes.

6           Q.   I wonder if you would please turn to 40.  
7   I am sorry 39.  Are you familiar with that  
8   statement from President Spanier that was put on  
9   Penn State Live?

10          A.   No.

11          Q.   Were you aware that a statement from  
12   President Spanier was going to be placed on Penn  
13   State Live?

14          A.   No.

15          Q.   After you sent the draft statement to  
16   Ms. Roberto and then you received the e-mail back  
17   from Mr. Farrell suggesting the word change what  
18   did you do with his suggestion?

19          A.   What did I do with the suggestion?

20          Q.   He suggested you might --

21          A.   I told Dr. Spanier and it was changed  
22   from indictment to presentment.

23          Q.   And at the time the statement was being  
24   developed prior to November 5, 2011, what did you  
25   think was going to happen to the statement?

1           A. I knew that it was going to be used for  
2 press reasons.

3           Q. Okay. But you didn't know the details  
4 where it was going to be posted?

5           A. No.

6           Q. Were you aware that the attorneys for  
7 Mr. Curley and Mr. Schultz were going to be given  
8 space on Penn State Live for statements?

9           A. No.

10          Q. Did you have anything to do with  
11 securing statements from them?

12          A. No.

13          Q. Do you know who did?

14          A. No.

15          Q. Ma'am, do you know anything about the  
16 decision that Mr. McQueary would not be allowed  
17 to coach in the Nebraska game, which was  
18 scheduled for Saturday, November 12, 2011?

19          A. Yes.

20          Q. Were you involved in that  
21 decision-making process?

22          A. I was involved not in the decision  
23 making process but I was involved. I am general  
24 counsel not general decision maker.

25          Q. And I want to respect any legal advice

1     you might have given but aside from giving legal  
2     advice with respect to that issue did you have  
3     any other involvement in the decision that  
4     Mr. McQueary would not be allowed to coach in the  
5     Nebraska game?

6           A.    I was involved in Mr. McQueary being  
7     placed on administrative leave.  You asked if I  
8     was involved in the decision.  I did not make the  
9     decision.

10          Q.    Well we have not gotten to the  
11     administrative leave yet.  Do you recall first  
12     there was a decision he wasn't going to be  
13     allowed to coach and that was on Thursday?

14          A.    I remember hearing that.  Yes.

15          Q.    So if you remember hearing that you  
16     weren't involved in that decision?

17          A.    I am not -- I wasn't involved in the  
18     decision.  No.

19          Q.    Okay.  Were you involved in the decision  
20     to place Mr. McQueary on administrative leave?

21          A.    I was involved in the process of placing  
22     Mr. McQueary on administrative leave.

23          Q.    Did you render legal advice with respect  
24     to the decision makers?

25          A.    I did.

1           Q.   Okay.  And I don't want to go there.  
2           Other than rendering some legal advice did you  
3           have any other involvement in making the decision  
4           that Mr. McQueary was going to be placed on  
5           administrative leave?

6           A.   Other than rendering advice, no.

7           Q.   I forgot to ask you a question about the  
8           statement and that is do you recall when it was  
9           when you first read the full presentment?

10          A.   I began reading the presentment upon  
11          receipt.  I don't believe I finished reading the  
12          presentment because needless to say at that time  
13          that I was general counsel we didn't have a full  
14          complement.  So we counsel had a couple lawyers  
15          in the office.  So it probably took me a couple  
16          days before I read the full presentment.  I don't  
17          remember the exact time.

18          Q.   Okay.  Well will you agree you had not  
19          read the presentment before Dr. Spanier's  
20          statement was released to the public?

21          A.   No.  I had not read the presentment.

22          Q.   Okay.  Now what do you know about the  
23          public announcements that Mr. McQueary was going  
24          to be placed on administrative leave?

25          A.   I am not sure about that question.

1 Q. The answer or the question?

2 A. I am not sure about the question.

3 Q. I will ask you a different question.

4 A. Okay.

5 Q. Mr. McQueary was placed on  
6 administrative leave?

7 A. That is correct.

8 Q. It was paid administrative leave?

9 A. That is correct.

10 Q. And when did you know he was going to be  
11 placed on paid administrative leave if you  
12 remember?

13 A. That timeframe was somewhere around --  
14 I don't remember exactly but somewhere between  
15 the 9th and the 11th I knew that of November.

16 Q. Yeah. Did you advise any of  
17 Mr. McQueary's supervisors that he was going to  
18 be placed on administrative leave?

19 A. Yes. Because we were going to have a  
20 meeting.

21 Q. And who did you advise first that  
22 Mr. McQueary was going to be placed on  
23 administrative leave?

24 A. I believe that would have been Mark  
25 Sherburne.

1 Q. But you don't recall the exact date?

2 A. No.

3 Q. Can you turn please to Plaintiff's  
4 Exhibit 47. Are you able to identify Plaintiff's  
5 Exhibit 47?

6 A. Yes.

7 Q. What is that?

8 A. This is the script that I -- it really  
9 -- we needed talking points for Mark Sherburne,  
10 who was Mr. McQueary's supervisor. He was the  
11 acting athletic director and he had asked me what  
12 is it he was supposed to say. I mean, he had --  
13 he was acting. He had not been acting long. He  
14 needed to know some plan about what am I going to  
15 say and I prepared this for him.

16 Q. And this has been referred to -- I am  
17 sorry. This has been referred by a certain name,  
18 has it not? This document?

19 A. Yes. I think this has been referred to  
20 as several names I have heard.

21 Q. Well what is the one you have used?

22 A. Well it's been referred to as a script,  
23 it's been referred to as talking points, and I  
24 have used both of those.

25 Q. Well what became of Plaintiff's Exhibit

1 47?

2 A. I don't know. We are looking at it so  
3 it had to be kept.

4 Mr. Strokoff: Move for admission of 47.

5 Ms. Conrad: No objection.

6 The Court: It's admitted.

7 By Mr. Strokoff:

8 Q. Was 47 ever utilized?

9 A. Yes.

10 Q. When was it utilized?

11 A. It was utilized when we had the meeting  
12 with Mr. McQueary and that meeting was actually  
13 on Sunday.

14 Q. Okay. And who was at the meeting?

15 A. Mark Sherburne, Erikka Runkle, Mike  
16 McQueary, and me.

17 Q. And do you recall where the meeting was?

18 A. It was in one of the athletic buildings.  
19 I am not sure. Wherever Mr. Sherburne's office  
20 was at the time but it was maybe in Lasch or  
21 Bryce Jordan. I don't remember exactly.

22 Q. What do you recall happened at that  
23 meeting?

24 A. The four of us sat down.

25 Mr. Sherburne's went through these talking

1 points.

2 Q. May I interrupt you there. You said he  
3 went through the talking points?

4 A. Uh-huh.

5 Q. Didn't he read this word for word?

6 A. I don't remember if it was word for  
7 word. It may have been word for word. I don't  
8 remember that he read every word here but he  
9 utilized this in order to inform Mr. McQueary.

10 Q. So is that really the first substantive  
11 thing that happened after cordials were  
12 exchanged?

13 A. After cordials, yes.

14 Mr. Fleming: Judge, can I have the  
15 court reporter turn the projector on please.  
16 By Mr. Strokoff:

17 Q. And after Mr. Sherburne went through  
18 this statement what happened next?

19 A. If I remember correctly Mr. McQueary  
20 said something to the effect I want the  
21 University to know that I did not do anything  
22 wrong and that I really want to coach here.

23 Q. Okay. And did anybody respond to his  
24 statement?

25 A. I did.



1 Q. Do you recall what your response was?

2 A. I will let them know.

3 Q. Did you take any notes of this meeting?

4 A. I did not.

5 Q. Was there a reason why you did not take  
6 notes?

7 A. There was no reason for me to take  
8 notes.

9 Q. And why is that?

10 A. The only thing that was said is  
11 Mr. McQueary and I remember that to take it back  
12 so there was no reason to take notes.

13 Q. So this was a very short meeting?

14 A. I would say it's a short meeting. I  
15 don't know what you mean by very short. About 15  
16 minutes.

17 Q. Was it that long?

18 A. Yes.

19 Q. So something else must have happened?  
20 Mr. Sherburne's read the statement and  
21 Mr. McQueary said his brief statement and you  
22 said you will take it back?

23 A. No. It doesn't mean something else  
24 happened. It depends on the rate that the  
25 statement was given and how fast anybody would

1 respond.

2 Q. Now going back to the first page of  
3 Plaintiff's Exhibit 47 the last question on the  
4 first paragraph says -- do you recall it there?  
5 The following facilities are off limit. All  
6 athletic facilities associated with the Penn  
7 State football program, end quote. Where did  
8 that limitations come from if you know?

9 A. I am sure I am the one who put it in  
10 there and any time anyone who is placed on  
11 administrative leave -- that's the kind of  
12 language that was put in if they were working in  
13 a certain spot so that they would not be going  
14 back to that place.

15 Q. Well all athletic facilities covers a  
16 pretty big territory, does it not, associated  
17 with the Penn State football program? Did that  
18 included Beaver Stadium?

19 A. Did it included Beaver Stadium? The way  
20 that it's written it may have.

21 Q. Okay.

22 A. It probably did too because we were very  
23 afraid for Mr. McQueary so --

24 Q. Okay. May I ask you during this meeting  
25 how did Mr. McQueary appear to you?

1           A. Mr. McQueary was very polite. He seemed  
2           -- he was not happy.

3           Q. He was polite and not happy?

4           A. Yes. I don't know what other  
5           description you want. It was evident he was not  
6           happy.

7           Q. Okay. Well but he remained polite  
8           throughout?

9           A. He was polite throughout.

10          Q. Did he remain composed throughout?

11          A. He remain composed throughout.

12          Q. Did he tell you he wasn't happy?

13          A. No.

14          Q. But you perceived he wasn't happy  
15          because?

16          A. He did not look happy.

17          Q. So far as you know did Mr. McQueary  
18          comply with the terms set forth in this  
19          administrative leave document?

20          A. As far as I know Mr. McQueary complied  
21          with all of them. I am not sure he complied with  
22          all of them in a timely way put he did comply  
23          with all of them.

24          Q. And why do you say you are not sure he  
25          complied in a timely way?

1           A. I seem to remember I got a telephone  
2 call about turning over the dealer vehicle or  
3 something like that but he did comply. He did  
4 end up turning it over.

5           Q. Lastly, I would ask you to turn to page  
6 -- I am sorry. Exhibit 53. I would ask if you  
7 can identify that document?

8           A. Yes.

9           Q. And what is that?

10          A. An affidavit by me.

11          Q. And to whom did you submit that  
12 affidavit?

13          A. This went to the board of trustees.

14          Q. This is an affidavit you gave to the  
15 board of trustees?

16          A. That's where the submission went.

17                Mr. Strokoff: Move for admission of 53,  
18 Your Honor.

19                Ms. Conrad: I have no objection.

20                The Court: Admitted.

21                Before I forget are you moving 48?  
22 Minutes of the meeting?

23                Mr. Strokoff: No. Those are notes  
24 from --

25                The Court: Okay.

1           Mr. Strokoff: -- someone who hasn't  
2 testified yet, Your Honor.

3           Mr. Strokoff: Pass the witness, Your  
4 Honor.

5                           Cross-Examination

6 By Ms. Conrad:

7           Q. Good afternoon, Ms. Baldwin.

8           A. Good afternoon.

9           Q. My name is Nancy Conrad and as you know  
10 I represent the Pennsylvania State University. I  
11 want to first direct your attention to some  
12 questions that Attorney Strokoff asked you. I  
13 believe he took you through your educational  
14 background and degrees that you have earned?

15          A. Yes.

16          Q. I would like to take you through your  
17 professional experience. Following first when  
18 you I believe said you earned your bachelor's  
19 from Penn State?

20          A. Correct.

21          Q. And from-- what was your first  
22 professional position after receiving your  
23 bachelor's?

24          A. I taught high school English in  
25 McKeesport, Pennsylvania.

1           Q.   And how long did you teach high school  
2 English?

3           A.   I graduated in '66 and I taught through  
4 '72.

5           Q.   And then I believe you testified that  
6 you taught at Penn State?

7           A.   I taught junior high school and high  
8 school just to be clear.

9           Q.   And after you taught junior high school  
10 and high school English what professional  
11 position did you hold next?

12          A.   I taught at what was then Penn State  
13 McKeesport is now Penn State Greater Allegheny.

14          Q.   What was your position at Penn State  
15 Greater Allegheny?

16          A.   First I taught in a program that helped  
17 prepare students better for the collegiate  
18 experience. Then I taught English and in  
19 addition to teaching English I was assistant dean  
20 for student affairs.

21          Q.   How long did you hold that position?

22          A.   Through 1977.

23          Q.   And then what was the next professional  
24 position that you held after your facility  
25 position and dean position at Penn State?

1           A. Well the reason I left is to go to law  
2 school and I was in law school from 1977 until  
3 1980.

4           Q. I believe you testified you graduated  
5 with a JD?

6           A. I did.

7           Q. Can you complain to the jury what a JD  
8 is?

9           A. I had a Juris Doctorate Degree. I also  
10 was on law review.

11          Q. And there came a point in time that you  
12 sat for the bar?

13          A. I did.

14          Q. And did you pass the bar?

15          A. I passed the bar.

16          Q. And what significance does that have if  
17 you can tell the jury?

18          A. Because if I had not passed the bar I  
19 would be sitting here with a JD degree. So I  
20 would have never practiced law. So we all have  
21 to pass the bar.

22          Q. So after you passed the bar did you go  
23 on to practice law?

24          A. I did.

25          Q. Can you describe for us your practice of

1 law?

2 A. My first job was I was an original  
3 Hebrew Smith fellow (ph.), which meant I went to  
4 work for neighborhood legal services because  
5 that's really what I like doing. I liked doing  
6 public service and so I served as a lawyer for  
7 the lower income people.

8 Q. And how long did you hold that position?

9 A. The fellowship was from -- for one year  
10 and then after the fellowship I went on to the  
11 Office of Attorney General.

12 Q. And what was your position with the  
13 Office of Attorney General?

14 A. I was a Deputy Attorney General in the  
15 Bureau of Consumer Protection.

16 Q. And how long were you with the Office of  
17 Attorney General?

18 A. I was there for approximately three  
19 years and during that three years the head of the  
20 office left, and then the acting head left, and  
21 then I was acting head, and then I got the job as  
22 head. So I was Deputy Attorney General in charge  
23 of the regional office of the Bureau of Consumer  
24 Protection in charge of 13 counties.

25 Q. And what were your primary duties and



1 responsibility in that position?

2 A. My primary duties were to litigate any  
3 cases that came to us that had to do with people  
4 being taken advantage of. At that time there  
5 were a lot of problems with odometer rollback,  
6 which we do not worry about anymore, the Lemon  
7 Law, and I testified for Lemon Law, people who  
8 were being taken advantage of by rent-to-own  
9 businesses. So I litigated those cases in 13  
10 counties.

11 Q. And who were you representing?

12 A. The people. The Commonwealth.

13 Q. And then following your position at the  
14 Office of Attorney General did you hold other  
15 professional positions?

16 A. After I left the Office of Attorney  
17 General during that time that I was with the  
18 Office of Attorney General I was also an adjunct  
19 professor of law at Duquesne University. When I  
20 left the Office of Attorney General I taught full  
21 time at Duquesne University.

22 Q. What were the courses that you focused  
23 on?

24 A. I taught criminal procedure, legal  
25 research, and writing. I am not sure. Whatever

1       they needed at that time that's what I was  
2       teaching.

3           Q.   And following your teaching position at  
4       Duquesne did you hold other positions?

5           A.   I did. I actually went with the law  
6       firm Polpitiz and Polpitiz (ph.) and there I did  
7       the litigation for the firm. It was -- most of  
8       the lawyers were property lawyers, real property,  
9       but they started to get people who came in who  
10      had cases who wanted litigation and so they hired  
11      me to do the litigation for the firm.

12          Q.   And following the litigation position  
13      with that firm were there other positions?

14          A.   Well I was teaching and I was also  
15      working at Polpitiz and Polpitiz and after that I  
16      was approached about running for judge.

17          Q.   And did you make a decision about  
18      running for judge?

19          A.   I did.

20          Q.   And did you run for judge?

21          A.   I did.

22          Q.   And what was the outcome?

23          A.   I lost the first time.

24          Q.   Go back and try again?

25          A.   I went back and tried it again.

1 Q. And what was the outcome that time?

2 A. Hallelujah I won.

3 Q. And can you describe for us the position  
4 that you held as judge?

5 A. Yes. I was on the Allegheny County  
6 Court of Common Pleas and I first served full  
7 time in the family division. Half way through my  
8 service in the family division -- well before  
9 half way through my service because my practice  
10 was mainly a civil litigation practice they asked  
11 me to do some cases in civil and then half way  
12 through I started going into the civil division  
13 every civil trial. And then they were short in  
14 juvenile so they asked me if I would do some  
15 juvenile work so I also did some juvenile work.  
16 So at one time I was full-time family, part-time  
17 civil, part-time juvenile.

18 Then every 10 years we have to really  
19 run but it's for retention. It's not you're  
20 running against someone. It's for retention. I  
21 was retained and then I became full-time civil,  
22 part-time family, part-time juvenile.

23 Q. How many years did you hold your  
24 position as a judge with the Allegheny Court of  
25 Common Pleas?

1           A.   16.

2           Q.   Following that position did you hold  
3 other positions?

4           A.   I did.

5           Q.   What was the next position?

6           A.   I was appointed by Governor Rendell to  
7 Pennsylvania Supreme Court.

8           Q.   And how long did you serve as justice --  
9 a madam justice of the Pennsylvania Supreme  
10 Court?

11          A.   Two years.

12          Q.   Following your two years of serving on  
13 the Pennsylvania Supreme Court what then?

14          A.   Retirement seemed like a really good  
15 thing.

16          Q.   And did it work out that way?

17          A.   No.

18          Q.   What happened?

19          A.   I failed retirement. Then I was asked  
20 by a firm if I would come and do some appellate  
21 work, kind of appellate supervision, and I became  
22 a partner with Duane Morris.

23          Q.   And how long were you a partner with  
24 Duane Morris?

25          A.   Two years.

1           Q.   Following your position as a law partner  
2   at Duane Morris did you return to retirement?

3           A.   The reason why I left Duane Morris is  
4   because I was asked by Penn State to come and  
5   start their Office of General Counsel and I  
6   agreed to do that for a year and, half and I  
7   actually had a year and half contract, and after  
8   that I had promised my husband that I would try  
9   that retirement thing again.

10          Q.   And did you keep your promise to your  
11   husband that --

12          A.   He is shaking his head.

13          Q.   So what happened after the end of that  
14   one and a half year contract?

15          A.   Well what happened is the whole issue  
16   with Penn state took over, the Sandusky thing  
17   broke, and, therefore, at the end of year and a  
18   half I could not leave for several reasons. One,  
19   one main one being that we had to get someone  
20   into the office who would come into the office so  
21   I could leave the office.

22          Q.   And at what point did you end your  
23   employment with Penn state?

24          A.   July 31, 2012.

25          Q.   And did you hold any other positions

1 following your position at Penn State?

2 A. I am doing better.

3 Q. Okay.

4 A. I am an arbitrator for the American  
5 Arbitration Association.

6 Q. And what does that mean to be an  
7 arbitrator?

8 A. To be an arbitrator the first thing is  
9 you have to go through a lot of training and then  
10 you -- people who don't want to go to court ask  
11 you to be an arbitrator in their cases and I  
12 arbitrated complex commercial cases.

13 Q. I want to now direct your attention to  
14 the time you were at Penn State.

15 A. Okay.

16 Q. And in particular that late  
17 October/November 2011 time period. Will you pull  
18 up D-12, which I believe has been marked as  
19 Plaintiff's Exhibit 30. Now directing your  
20 attention at that exhibit I believe you testified  
21 that on or about October 28, 2011, you were  
22 called into a meeting with Dr. -- in  
23 Dr. Spanier's Office, is that correct?

24 A. That is correct.

25 Q. I believe you testified there were

1 certain individuals at that meeting, correct?

2 A. That is correct.

3 Q. And with respect to that meeting I  
4 believe you testified that you reviewed a draft  
5 statement that Dr. Spanier had prepared, is that  
6 correct?

7 A. That is correct.

8 Q. And in the course of reviewing that  
9 statement I believe you testified that the first  
10 two paragraphs were added to the draft statement?

11 A. The first two sentences?

12 Q. Thank you for correcting me. First two  
13 sentences were added to that statement, is that  
14 correct?

15 A. Right.

16 Q. And during the course of that meeting at  
17 any time did the name Mike McQueary arise?

18 A. No.

19 Q. I believe you had testified that you had  
20 received a call indicating that Mr. Curley and  
21 Mr. Schultz were going to be charged, is that  
22 correct?

23 A. Yes.

24 Q. Had you received any information that  
25 Mr. McQueary was going to be charged?

1           A.   No.

2           Q.   So in the course of that meeting when  
3 you are drafting the statement with respect to  
4 Mr. Curley and Mr. Schultz did anyone mention  
5 Mr. McQueary?

6           A.   No.

7           Q.   Did you have any thought of Mr. McQueary  
8 at the time you were drafting -- you were at this  
9 meeting in which this statement was being  
10 drafted?

11          A.   No.

12          Q.   Directing your attention to D-20, which  
13 I believe has previously been marked as  
14 Plaintiff's 38. You are familiar with the  
15 statement that was published on Penn State Live,  
16 aren't you?

17          A.   Yes.

18          Q.   And that is the statement from President  
19 Spanier that followed the meeting that you had  
20 had on November 5th or in late October, wasn't  
21 it?

22          A.   Yes.

23          Q.   Now directing your attention to the  
24 first sentence with regard to the other  
25 presentment -- the first sentence of the second



1 paragraph with regard to the other presentments I  
2 wish to say that Tim Curley and Gary Schultz have  
3 my unconditional support. At any time prior to  
4 the publication of that statement had Dr. Spanier  
5 related to you on what he based his view that  
6 Curley and Schultz had his unconditional support?

7 A. His personal relationship that he had  
8 worked with them for so long.

9 Q. And, in fact, that's next sentence in  
10 the statement, is not it? I have known and  
11 worked daily with Tim and Gary for more than 16  
12 years?

13 A. Yes.

14 Q. It goes on to say in Dr. Spanier's  
15 opinion I have complete confidence in how they  
16 have handled the allegations of a former  
17 University employee. Do you see that?

18 A. I do.

19 Q. Did Dr. Spanier relate the basis in  
20 which he related that opinion that he had  
21 complete confidence?

22 A. The same thing. That he had knew them  
23 from his experience in working with them.

24 Q. And in the next paragraph there  
25 Dr. Spanier states his opinion that Tim Curley

1 and Gary Schultz operated the highest level of  
2 integrity and compassion. Do you see that  
3 statement?

4 A. I do.

5 Q. Did Dr. Spanier provide you any basis  
6 for his opinion that Curley and Schultz operated  
7 the highest level of honesty, integrity, and  
8 compassion?

9 A. Other than the same thing, his  
10 experience in working with them and that he knew  
11 them, no.

12 Q. Okay. And then, finally, Dr. Spanier  
13 expresses the opinion that he will be confident  
14 that the record will show that the charges are  
15 groundless and they conducted themselves  
16 professionally and appropriately. Do you see  
17 that statement?

18 A. I do.

19 Q. And did you receive any information from  
20 Dr. Spanier about which he based that opinion  
21 that he thought -- believed that the record will  
22 show that the charges are groundless?

23 A. None other than again that he had worked  
24 with them. He knew them.

25 Q. And at the time that you viewed that

1 draft statement as well as this final statement  
2 did you at any time connect this statement to  
3 Mike McQueary?

4 A. No.

5 Q. Did you in any way infer that this  
6 statement means that Mike McQueary was not  
7 honest?

8 A. No one thought about or mentioned Mike  
9 McQueary.

10 Q. And after this statement was issued did  
11 anyone raise to you a comment that this somehow  
12 -- this statement somehow related to Mike  
13 McQueary?

14 A. No.

15 Q. Now moving along in that week there came  
16 a point in time -- did there come a point in time  
17 that the University was receiving communications  
18 as a result of the presentment being released and  
19 the matter being reported by the press?

20 A. Yes.

21 Q. What was the nature of those  
22 communications?

23 A. Well, first, I started -- I got  
24 telephone calls from the police who said that  
25 they had started to get death threats.

1 Q. What kind of death threats?

2 A. That people were making death threats  
3 against Mike McQueary and they were very afraid  
4 that if he coached in the game on the 12th they  
5 could not provide the kind of protection even if  
6 they called in other police forces because the  
7 University had this own police force because  
8 Beaver Stadium is so big and gets so many people.  
9 So they were very afraid. And then I got  
10 telephone calls from the athletic department to  
11 say that they also were getting death threats.

12 Q. And were you at all following the media  
13 reports that were surfacing during that period of  
14 time?

15 A. It was very difficult not to follow the  
16 media reports during that time because they were  
17 all over campus. In fact, you couldn't cross  
18 College Avenue because there were so many.

19 Q. And what were the nature of the reports  
20 that you were receiving or the news coverage that  
21 you were following?

22 A. Well the first thing the reports were  
23 violent reports about what people were going to  
24 do.

25 Q. What do you mean what people were going

1 to do?

2 A. People who were upset about Mike  
3 McQueary and what they were going to do.

4 Q. What information did you receive from  
5 these reports? These articles?

6 A. The fact that, you know, that Beaver  
7 Stadium would never be the same, that it would  
8 fall down, that if he showed up people would do  
9 violent things and it would never be the same.  
10 They were just horrible threats.

11 Q. What were you doing with this  
12 information?

13 A. I was sharing the information. I was  
14 sharing it with other administrators. Of course  
15 I was sharing it with the president.

16 Q. When you say other administrators what  
17 administrators were you sharing it with?

18 A. Well I was sharing it with the president  
19 basically but there is an executive counsel. So  
20 I am sure the information was shared and of  
21 course I talked to people. We were in Old Main.

22 Q. And when you were receiving these  
23 threats was it at a time that it was your  
24 understanding Mike McQueary was to coach that  
25 Saturday in the Nebraska game?

1           A.   That's correct.

2           Q.   And Thursday morning, November 10th,  
3 were you aware that interim Coach Bradley -- that  
4 is Coach Bradley at this time had been named  
5 interim head coach -- held a press conference?

6           A.   Yeah. I am aware of it now that he did  
7 hold a press conference.

8           Q.   And were you aware that in that press  
9 conference he was asked about whether or not  
10 Mr. McQueary would be coaching at the Nebraska  
11 game?

12          A.   I am aware.

13          Q.   And are you aware of Coach Bradley's  
14 response?

15          A.   Yes.

16          Q.   And what was that response?

17          A.   Yes.

18          Q.   He said that yes, Mike McQueary will be  
19 coaching on Saturday. It will be a game time  
20 tradition?

21          A.   Right.

22          Q.   Were you aware that Coach Bradley was  
23 asked about the national scrutiny from Mike  
24 McQueary?

25          A.   I am now.

1           Q.   Okay.  And he was asked whether he  
2           thought it was appropriate for McQueary to coach  
3           in this game and be the face of the University?  
4           Were you aware of that question to him?

5           A.   Yes.

6           Q.   And the response?  Were you familiar  
7           with Coach Bradley's response?

8           A.   Yes.

9           Q.   And what was it?

10          A.   Yes.

11          Q.   That yes, he would be coaching?

12          A.   The same thing.  He would be coaching  
13          and yes, he would be the face of the University.

14          Q.   And were you aware that Coach Bradley  
15          stated that it's a decision left up to  
16          administration and Mark Sherburne whether or not  
17          Mike would coach?

18          A.   Yes.

19          Q.   Is that a correct statement as to who  
20          the decision makers would be?

21          A.   Yes.

22          Q.   And did there come a point in time that  
23          you received additional information from  
24          athletics about the types of messages they were  
25          receiving with respect to athletic -- or with

1 respect to Mike McQueary?

2 A. Yes.

3 Q. I am going to ask you to locate the  
4 binder marked Defendant's Exhibit Volume 1 and  
5 when you locate Volume 1 can you turn to tab 32  
6 please. Will you take a moment please to review  
7 the document at tab 32. Are you familiar with  
8 that document?

9 A. Yes.

10 Q. What is it?

11 A. This is an e-mail that I received from  
12 Heather and Heather is really an administrative  
13 assistant to the athletic director and she sent  
14 me -- in fact, she called me first and then she  
15 sent me the e-mail because I asked her to send an  
16 e-mail and --

17 Q. Before we go further is D-32 then a copy  
18 of the e-mail that Ms. Willson forwarded to you  
19 on or about November 10, 2011?

20 A. Yes.

21 Ms. Conrad: I move for admission of  
22 D-32.

23 Mr. Strokoff: Your Honor, I would ask  
24 for a reason why there are redactions on 32.

25 The Court: What's basis of the



1 objection?

2 Mr. Strokoff: It's a redacted document.  
3 It's not the full document.

4 The Court: Okay. For some reason I  
5 don't have Volume 1 of defenses exhibits.

6 May I have that?

7 The Witness: Yes.

8 The Court: Come up here a second  
9 please.

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

12 The Court: So the objection is because  
13 it's redacted we do not know --

14 Mr. Strokoff: Well you can't tell the  
15 whole document so it's misleading.

16 The Court: Who redacted it?

17 Ms. Conrad: We redacted it, sir, and  
18 you had recognized that Ms. Baldwin was in a  
19 position to provided both legal advice, as well  
20 as information that was not legal advice in  
21 related to day-to-day operations. What was  
22 redacted was legal advice and it was marked as  
23 such on our privilege log that was produced to  
24 Attorney Strokoff in conjunction with the  
25 production of this document. He has filed no

1 objection to this point in time with respect to  
2 to that privilege log.

3 Mr. Strokoff: I respect the  
4 attorney/client privilege but they cannot use a  
5 document that's a communication between an  
6 attorney and a client and just block out stuff  
7 that they want.

8 Ms. Conrad: Your Honor --

9 Mr. Strokoff: They don't have to use  
10 the document.

11 Ms. Conrad: Your Honor, all that is  
12 required is to redact that part which is  
13 privileged. We notified Attorney Strokoff that  
14 that section would be blocked off both at the  
15 time this was produced in discovery. It was  
16 produced in this fashion to him at the time of  
17 Mr. McQueary's deposition on February 29, 2016,  
18 and it was produced in this fashion to Attorney  
19 Strokoff at the time we produced our trial  
20 exhibits.

21 Mr. Strokoff: Your Honor, there are two  
22 e-mails here. First one was from Heather Willson  
23 to a bunch of people including Cynthia Baldwin  
24 and there are two redactions.

25 The Court: Well so how would the first

1       one contain legal advice from Cynthia Baldwin?

2               Mr. Strokoff: I mean, she is seeking  
3       legal advice. I don't know. Then we have a  
4       response --

5               The Court: Excuse me. Heather Willson  
6       to Cynthia Baldwin and then we have a bunch of  
7       other people here. So the first paragraph here  
8       of Heather Willson to Cynthia Baldwin clearly did  
9       not contain any legal advice.

10              Ms. Conrad: If Ms. Willson was seeking  
11       legal advice from Ms. Baldwin that would be  
12       deemed privilege. The privilege extends to  
13       communications --

14              The Court: Well who is everybody else  
15       in the e-mail chain? The other people?

16              Ms. Conrad: Those are all individuals  
17       who are part of this privileged conversation.

18              The Court: You are asserting the --  
19       first of all, the privilege -- we don't know that  
20       it is with regard to her asking for any legal  
21       advice. Do you have the original?

22              Ms. Conrad: I don't.

23              Mr. Morrison: I can locate it.

24              The Court: Yeah. Let me look at the  
25       original and then I may be able to answer to the

1 question.

2 Ms. Conrad: It may take a few minutes  
3 to pull it up.

4 The Court: We will take a 15-minute  
5 break.

6 Ms. Conrad: Thank you, sir.

7 The Court: And then I intend to examine  
8 Ms. Baldwin on my issue when we first get back.

9 Ms. Conrad: Will that be outside of the  
10 jury?

11 The Court: Yes.

12 Ms. Conrad: Thank you. Thank you.

13 (End of side bar.)

14 The Court: We will use the time that I  
15 need to discuss with the attorneys to give you  
16 folks a chance to take a break here, afternoon  
17 break. So why don't we just come back and be  
18 ready about five minutes of the hour.

19 You can step down. Just leave all of  
20 your stuff there.

21 (Whereupon, the jury was escorted to the  
22 jury room and the following conversation  
23 was held outside of their presence:)

24 Ms. Conrad: Your Honor, I would first  
25 like to note that at no time during discovery,

1 including at the production of this document, did  
2 plaintiff ever assert an objection, file a motion  
3 for the Court's ruling on it. Discovery is  
4 closed, the document was admitted, and as a  
5 result -- it was used during deposition and as a  
6 result it is our position that any objection has  
7 been waived.

8           The Court: Well once we get beyond all  
9 of that the very top portion that is blocked out  
10 clearly has nothing to do with legal advice and  
11 the second portion that is blacked out is  
12 supportive of the position that you are taking.  
13 So I don't know why -- and again that doesn't ask  
14 for any legal advice. And the bottom line, you  
15 know, again has nothing to do with it. So why  
16 you object to showing him this letting him do  
17 with it whatever he chooses, I have no idea, but  
18 to the extent any of -- all of the objections  
19 that was related to attorney/client privilege --  
20 in my view there is no attorney/client privilege  
21 to the items that are redacted. As to the fact  
22 he didn't do things on time he is not the first  
23 lawyer who didn't do it. Cut a break.

24           What else?

25           Ms. Conrad: I would again just

1 completely assert based on the information we  
2 received from Ms. Willson and Ms. Baldwin the  
3 exchange was related to those sections for the  
4 purpose of --

5 The Court: There is no way you can read  
6 that letter to say that's what she was asking.

7 Ms. Conrad: I met with the witnesses.

8 The Court: I understand that but now  
9 you have the un-redacted copy to read. You both  
10 can read and both question legal advice.

11 Ms. Conrad: I will need then  
12 opportunities to make copies of this document.

13 The Court: Knock your socks off.

14 Ms. Conrad: Excuse me?

15 The Court: Knock your socks off.

16 Ms. Conrad: Is there a place in the  
17 courtroom --

18 Mr. Fleming: If you go up to the second  
19 floor they will help with you that.

20 Ms. Conrad: Right. I will take care of  
21 that right now, sir.

22 The Court: No. No. Don't you run off.  
23 Send one of the troops to do it because I want to  
24 do Ms. Baldwin while we are waiting.

25 Mr. Strokoff: We discussed scheduling,

1 Judge. We have some depositions to read into the  
2 record and Ms. Conrad has some readers to play  
3 the roll of the deponents, three separate ones,  
4 coming in from Allentown. So the notion is --

5 The Court: You couldn't find someone to  
6 read the way you want? Someone local?

7 Ms. Conrad: Try to find unbiased,  
8 nonparties, nonconnected individuals.

9 The Court: So what does that mean for  
10 the schedule?

11 Mr. Strokoff: Well if we with the  
12 Court's permission can agree at a certain time  
13 then we will do that. It might be a little  
14 disruptive of the day and that's -- I didn't want  
15 to simply have us go ahead and schedule it  
16 without letting them know.

17 The Court: Well schedule it whenever  
18 you want. Not at the end of the day because they  
19 will be more tired than they are already.

20 Mr. Strokoff: Will the Court object if  
21 we did all three at once?

22 The Court: I don't object. Common  
23 sense says you do that and you are really going  
24 to lose him but that's your call.

25 Mr. Strokoff: Well I am going to put

1       their witnesses at the end but okay. We will  
2       work it out.

3               Ms. Conrad: We will work it out.

4               Mr. Strokoff: Thank you.

5               (End of side bar.)

6               The Court: Ms. Baldwin, will you come  
7       back up please? Ms. Baldwin I am hearing part of  
8       this case essentially nonjury and some of the  
9       questions I would ask are not appropriate for the  
10      jury to be involved in so this is a convenient  
11      time while the jury is out for me to ask my  
12      questions of you. And of course this comes as  
13      somewhat of a surprise and if you want to confer  
14      with counsel we will see what happens as we go.

15              My first question to you is in 2011 was  
16      there a personnel manual at Penn State University  
17      that was applicable to employees of the  
18      University?

19              The Witness: Your Honor, I believe  
20      there was. I am talking to you and I -- do I  
21      need to use the microphone?

22              The Court: You are close enough. I can  
23      hear you. Counsel cannot hear you.

24              The Witness: I believe there was a  
25      manual. That would have come under human



1 resources, not out of my office.

2 The Court: Okay. And did that manual  
3 apply to all employees at Penn State if you know?

4 The Witness: Actually I don't know.

5 The Court: So let me approach it this  
6 way. I know at Penn State there are tenured  
7 employers, teachers, there are union employees,  
8 there are contract employees, and there are  
9 graduate assistants. Are there any others that  
10 you were aware of that I missed?

11 The Witness: Well the reason that I  
12 said that is when I came on board there had never  
13 been an Office of General Counsel so I don't know  
14 if they had anything applicable to lawyers  
15 serving in the Office of General Counsel.

16 The Court: Okay. So you mention the  
17 term administrative leave?

18 The Witness: Correct.

19 The Court: Is there any written policy  
20 that sets forth the definition of administrative  
21 leave?

22 The Witness: There is.

23 The Court: And where is that contained?

24 The Witness: That's -- well I got it  
25 from human resources so I would --

1           The Court:   So HR?

2           The Witness:   Yes.

3           The Court:   And does that set forth the  
4 criteria under which a decision is made to place  
5 someone on administrative leave if you know?

6           The Witness:   I do not know that it sets  
7 forth the criteria.   I think it sets forth all of  
8 the things that have to be involved with  
9 administrative leave when somebody is placed on  
10 administrative leave and that's how come Erikka  
11 Runkle was one of the people in that meeting with  
12 Mr. McQueary because she was the HR person for  
13 athletics.

14          The Court:   Okay.   And what was your  
15 understanding at the time of administrative  
16 leave?   Is that something that an employee could  
17 ask, I need leave for whatever reason, or --  
18 well ask it that way.   Can an employee ask to be  
19 placed on administrative leave?

20          The Witness:   My understanding of  
21 administrative leave was that the administration  
22 could decide to place someone on such leave.  
23 Yes.

24          The Court:   Okay.   And was the person  
25 subject to being placed on administrative leave

1 entitled to be heard with regard to that  
2 decision? In other words, is there an appeal  
3 right from that decision.

4 The Witness: I don't know that there is  
5 an appeal right. I don't know.

6 The Court: Okay. Now what was the  
7 sequence of events that prompted you to draft  
8 what we will call the talking points memo to the  
9 then athletic director? That's an inartfully  
10 asked question so I will try again. Was it your  
11 suggestion independently that Mr. McQueary be  
12 placed on administrative leave?

13 The Witness: First, it would not be my  
14 decision if he would be placed on administrative  
15 leave.

16 The Court: Who was the first person to  
17 come to you and saying we are considering putting  
18 Mr. McQueary on administrative leave?

19 The Witness: Well that was actually the  
20 president's decision.

21 The Court: Okay. So Mr. Spanier --

22 The Witness: No. That would have been  
23 Dr. Erickson.

24 The Court: Okay. So how long had  
25 Dr. Erickson been the president of the University

1       when he came to you and said administrative  
2       leave?

3               The Witness: Well I don't remember  
4       whether he came to me or if I went up to his  
5       office but it would not have been that long  
6       because -- I don't remember the dates but they  
7       are all in November of 2011 so --

8               The Court: Okay. So if I understand  
9       the sequence of events Dr. Spanier is removed as  
10      the president?

11              The Witness: Correct.

12              The Court: A decision is made to hire  
13      Dr. Erickson I assume?

14              The Witness: Correct.

15              The Court: Okay. At some point in time  
16      whether you had to go to him or he came to you  
17      the two of you had a conversation?

18              The Witness: Correct.

19              The Court: And you were told to proceed  
20      with an administrative leave with Mr. McQueary,  
21      is that correct?

22              The Witness: That is correct.

23              The Court: Okay. Did he tell you on  
24      what basis he had made the decision that he  
25      should be placed on administrative leave?

1           The Witness: Yes. Because there had  
2 been discussions because of all of the threats  
3 that were being made on Mr. McQueary's life.

4           The Court: Okay. And again you don't  
5 know whether a person who is scheduled for  
6 administrative leave has any right to discuss  
7 that decision and/or appeal that decision?

8           The Witness: Well I really have not --  
9 I don't remember the section if I read it and I  
10 wouldn't know that, but I would know that there  
11 are different reasons to place people on  
12 administrative leave and in this one because of  
13 the safety of the situation I don't know that  
14 there would be an appeal from that.

15           The Court: Do one of you remember from  
16 the top of your head the talking points number so  
17 I don't have to -- I got it. Exhibit P-47.

18           I don't think you need that in front of  
19 you. Well go ahead get P-47 in front of you.  
20 Mr. McQueary was I take it notified to come to  
21 the meeting?

22           The Witness: Yes.

23           The Court: Did he have any idea what  
24 the purpose of the meeting was?

25           The Witness: I believe he did. I

1        didn't do the notification but I believe he did.

2                The Court:    Okay.    Now all Penn State  
3        employees -- do have the right to have access to  
4        the Penn State campus and facilities?

5                The Witness:    You mean people --

6                The Court:    So if I am an employee in  
7        good standing can I access the facilities?

8                The Witness:    I believe you can.    I  
9        don't know whether there are any facilities that  
10       are off limits.    I don't know that but I believe  
11       you can.

12               The Court:    Okay.    So persons placed on  
13       administrative leave -- well let me ask it this  
14       way.    Had you previously been involved in the  
15       decision to place anyone on administrative leave?

16               The Witness:    Yes.

17               The Court:    Okay.    And the persons who  
18       were placed on administrative leave -- were they  
19       effectively barred from the --

20               The Witness:    The workplace where they  
21       worked.    Yes.

22               The Court:    Their workplace.

23               The Witness:    Yes.

24               The Court:    Okay.    And if you look from  
25       the first page at the bottom of that exhibit

1 arrangement for return of University items, et  
2 cetera, over to the top of the second page in  
3 full paragraph on that page they are benefits  
4 that Mr. McQueary was entitled to as an employee.  
5 Is that your understanding?

6 The Witness: In good standing. Yes.

7 The Court: Okay. So now you take those  
8 benefits away from him. Is that a change in his  
9 employment terms?

10 The Witness: That's a change -- well he  
11 is an employee on administrative leave. Yeah.

12 The Court: Yes. But you have changed  
13 the benefits to which he has -- he is entitled by  
14 removing those items.

15 The Witness: I look at these as  
16 benefits to which he is entitled but things he  
17 needs to do the position he is in and when he is  
18 no longer doing that position he does not need  
19 these things, but as far as health insurance and  
20 all of those other things that were entitlements.  
21 He still had those.

22 The Court: And on the second page at  
23 the end of the fourth line it says pursuant to  
24 conditions established under University policy.  
25 Is that somewhere in a personnel manual?

1                   The Witness: Yes.

2                   The Court: And you indicated that in  
3 your view he was still an employee of the  
4 University?

5                   The Witness: Right.

6                   The Court: Okay. How do we then read  
7 the first sentence of the full paragraph?

8                   The Witness: The first? Your Honor,  
9 excuse me. Which paragraph?

10                  The Court: It's the first whole  
11 paragraph. It reads arrangements for return of  
12 the dealer vehicle that you have pursuant to the  
13 employment with the University.

14                  The Witness: Well again that's  
15 something that he needed to do the job that he  
16 was doing. If he wasn't doing that job he did  
17 not need the dealer vehicle. So like the keys,  
18 and phone, and those other things, those are  
19 things he needed to do the job. He was on  
20 administrative leave and he was being paid but he  
21 wasn't doing the job.

22                  The Court: And other than yourself with  
23 whom did Dr. Erickson consult with regard to the  
24 decision to place Mr. McQueary on administrative  
25 leave?



1           The Witness: I would not know. I would  
2 actually be speculating if I said.

3           The Court: Okay. In the other  
4 instances where you say people have been placed  
5 on administrative leave can you tell me what  
6 procedure was followed in those instances? Did  
7 it come down from the president of the University  
8 or was it from some department head?

9           The Witness: Well it wasn't always from  
10 the president of the University. This wasn't a  
11 normal administrative leave action because of the  
12 threats to his life. So it wouldn't always come  
13 down from the president if that's your question.

14          The Court: So tell me what the normal  
15 administrative leave policy had been.

16          The Witness: Well the other  
17 administrative leave that I had worked on it came  
18 out of a department head and it was for something  
19 that the employee had done and we went through  
20 the same process as this. Someone sat down from  
21 HR and from my office went through the same  
22 process.

23          The Court: So the administrative leave  
24 was a reaction to some action the employee had  
25 taken?

1           The Witness: In the one that I did. I  
2 don't know about all of them because I wasn't  
3 there that long and the -- I am just talking  
4 about the other one in which I was involved.

5           The Court: Okay. So ones that you had  
6 previously been involved in involved an employee  
7 who had done something wrong in the University's  
8 eyes?

9           The Witness: I am not sure if it was  
10 even wrong. It was only one that I had done  
11 before that but something that had happened with  
12 the employee.

13          The Court: So can we say questionable?

14          The Witness: Yes. Something  
15 questionable is fine.

16          The Court: Okay. Something  
17 questionable that they had done and they were  
18 administratively put on leave?

19          The Witness: Uh-huh.

20          The Court: As to Mr. McQueary was  
21 anyone asserting that he had done anything wrong?

22          The Witness: It wasn't the fact that he  
23 had done anything wrong. We had never had an  
24 incident as I understand it where someone's life  
25 was in danger if they continued to do the job,

1       which is the reason for the administrative leave.  
2       I don't think administrative leave is only for  
3       people who have done something questionable or  
4       wrong. I think it can be for other things and so  
5       that's what happened with Mr. McQueary.

6               The Court: Okay. Any follow up as you  
7       see fit, Mr. Strokoff.

8                       Direct Examination

9       By Mr. Strokoff:

10           Q. Ms. Baldwin, to your knowledge who -- I  
11       am sorry. Ms. Baldwin to your knowledge who  
12       assessed that Mr. McQueary's life would have been  
13       in danger if he continued to do his job?

14           A. First, the police department when they  
15       called me to tell me that there was no way that  
16       they could protect him from threats that they had  
17       received.

18           Q. When you said police department do you  
19       mean Penn State Police Department?

20           A. Yes.

21           Q. And they told you they could not  
22       guarantee his security at Nebraska game?

23           A. No. They didn't specifically say the  
24       Nebraska game. They said that they could not  
25       guarantee his security. Now the Nebraska game is

1 next game that is coming up.

2 Q. Let me rephrase. Is it they could not  
3 guarantee his security in Beaver Stadium because  
4 it was so big?

5 A. Because?

6 Q. Because it's so big and there is so many  
7 people there?

8 A. Yes.

9 Q. You said first it was the police so  
10 specifically who in the police made that  
11 assessment? Mr. Shillow (ph.), the chief?

12 A. It was the chief and Ty -- his last name  
13 starts with a P.

14 Mr. Fleming: Parnell?

15 The Witness: That. Correct.

16 Mr. Fleming: Sorry, Judge.

17 Ms. Conrad: Your Honor, I object. I  
18 don't believe Mr. Fleming has been sworn, nor is  
19 he here as a fact witness, and while I appreciate  
20 there appears to be some informalities here I  
21 object to him participating in the testimony.

22 The Court: So don't give her anymore  
23 answers, Mr. Fleming.

24 Go ahead.

25 By Mr. Strokoff:

1           Q.    So the two of them called you together  
2 or separately?

3           A.    I believe I had got separate calls.

4           Q.    And the second individual because I  
5 didn't really hear what Mr. --

6                   The Court:   So just use his first name.

7 By Mr. Strokoff:

8           Q.    Ty?

9           A.    Ty.

10          Q.    Ty.   What was his title?

11          A.    He was the assistant chief.

12          Q.    He was assistant chief?

13          A.    Yes.   And then he became chief.

14          Q.    So the two of them told you separately  
15 they did not think they could guarantee  
16 Mr. McQueary's security at Beaver Stadium?

17          A.    They told me more than that.   They told  
18 me first about threats that had been received and  
19 then they talked about the safety issue.

20          Q.    Okay.   Who else made the security  
21 assessment with respect to Mr. McQueary?

22          A.    Well it wasn't so much a security  
23 assessment as relaying the fact that there were  
24 threats being made to Mr. McQueary's life from  
25 several sources.

1           Q.   Okay.  But who else participated in this  
2           assessment that he was in physical danger if he  
3           continued to perform his job?

4           A.   The president made the decision.  The  
5           fact that he was in physical danger came from  
6           that there were threats.

7           Q.   Okay.  So other than the report from  
8           Chief Shillow and Deputy Chief Ty there were --  
9           there were no other --

10          A.   There were other threats from other  
11          sources.  Yes.

12          Q.   Okay.  But those other threats -- were  
13          those other threats evaluated by Chief Shillow  
14          and Deputy Ty?

15          A.   When they talked to me they believed  
16          they were credible threats.

17          Q.   All right.  And what security measures  
18          to your knowledge were taken to protect  
19          Mr. McQueary on Thursday, November 10th?

20          A.   The threats were made if he were in the  
21          stadium if he were coaching.  That's what the  
22          threats specifically said.

23          Q.   Okay.  So that was the reason for  
24          placing him on administrative leave for seven  
25          months because of the security threat at Beaver

1 Stadium for one or two remaining games?

2 A. Well he was placed on administrative  
3 leave. It ended up being whatever amount of time  
4 but the administrative leave did not say we are  
5 placing you on for these months and in between  
6 time we had a change of football coach.

7 Q. Okay. But let's go back now in  
8 sequence.

9 A. Okay.

10 Q. President Spanier was terminated on  
11 Wednesday late afternoon or evening November the  
12 9th, right? Wednesday night?

13 A. I know that he was removed. I wasn't a  
14 part of that.

15 Q. Okay. But he was removed the same day  
16 that Coach Paterno was terminated, isn't that  
17 correct?

18 A. I believe so. I wasn't a part of that.

19 Q. Okay. But there was -- and then  
20 Dr. Erickson -- let me retract. Dr. Erickson was  
21 appointed as either president or acting  
22 president, right?

23 A. Correct.

24 Q. And in less than 48 hours -- I am sorry.  
25 I am getting ahead of the game. On Thursday

1 evening Mr. McQueary was told he wasn't going to  
2 coach the Nebraska game and there was a public  
3 statement to that effect that he would not be  
4 coaching the Nebraska game. Are you aware of  
5 that?

6 A. Yes. I am. Yes.

7 Q. Okay. So some time on Friday 12 hours,  
8 I don't know, after the announcement he is not  
9 going to be coaching at Nebraska -- he is not  
10 going to be at the Nebraska game the president of  
11 less than 48 hours standing makes the  
12 determination that Mr. McQueary is going to be  
13 placed on administrative leave?

14 A. Well, first, Rodney Erickson had been  
15 there for a long time and he was only second to  
16 the president. So it wasn't as if this acting  
17 person came in without a background and knowing.  
18 I don't know whether your time period is correct  
19 and whether when the decisions were made, but,  
20 yes, there is no doubt that when the threats came  
21 in and they were determined to be credible that a  
22 decision was made. It had to be made quickly  
23 because the game was on November 12th. So it  
24 didn't matter if you came in as acting president  
25 48 hours before or if you came in 48 minutes



1 before you were going to have to make a decision.

2 Q. And accepting that for the sake of  
3 argument it had already been determined that he  
4 wasn't going to be coaching in the Nebraska game  
5 when he was placed on administrative leave,  
6 right?

7 A. Right. And there still was another game  
8 as you said. Yes.

9 Q. And I understand there was at least one  
10 more game. I don't know if it was home or not  
11 but okay.

12 A. I don't remember either. I truly do not  
13 remember.

14 Q. And you do agree that as far as you know  
15 there were no precautions taken to secure  
16 Mr. McQueary's safety in and about State College  
17 or in his home or anywhere?

18 A. I don't know that. I just do not know  
19 that.

20 Mr. Strokoff: That's all I have, Your  
21 Honor.

22 Ms. Conrad: Your Honor, I have a few  
23 areas I am going question but reserve my right to  
24 continue my examination with respect to the jury.

25 The Court: That's fine. So do you want

1 the jury back now?

2 Ms. Conrad: Well I want to hit a few  
3 points that are specific to the questions that  
4 Your Honor asked.

5 Cross-Examination

6 By Ms. Conrad:

7 Q. Ms. Baldwin, was your office part of the  
8 Office of Human Resources?

9 A. No.

10 Q. And were there individuals in human  
11 resources whose job it was to oversee  
12 administrative leaves?

13 A. Yes.

14 Q. And would those persons have a better  
15 knowledge of the criteria terms related to  
16 administrative leave?

17 A. I think that was evident by my answer.

18 Q. Now when you received the information  
19 with respect to the threats against Mr. McQueary  
20 I believe you said initially they were related to  
21 the Nebraska game, is that correct?

22 A. Yes.

23 Q. Did the safety concerns about  
24 Mr. McQueary continue after the Nebraska game?

25 A. Yes.

1 Q. Why was that?

2 A. Well the fact is is that the threats  
3 were pertained to his position coaching and we  
4 still had another game and so the safety -- and I  
5 am trying -- I have been trying to wrack my brain  
6 to see timing of all of the threats that came in  
7 because I don't believe they just stopped like  
8 that so -- but it's been five years so.

9 Q. Is it fair to say that there was  
10 continued concern on the part of the University  
11 for the safety of Michael McQueary?

12 A. There was no doubt.

13 Q. And did that in part lead to the  
14 circumstances related to his paid administrative  
15 leave?

16 A. Yes.

17 Ms. Conrad: I reserve the rest of my  
18 questions during my examination, sir.

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

21 The Court: Okay.

22 Ms. Conrad: Your Honor, I would request  
23 then permission to place Defendant 32 binder?

24 The Court: Yes.

25 (Whereupon, the jury was escorted into

1 the courtroom.)

2 By Ms. Conrad:

3 Q. Ms. Baldwin, I am going to direct your  
4 attention to exhibit that's been marked  
5 Defendant's 32. Ask you to take a moment to  
6 review it. Are you familiar with the document  
7 marked Defendant 32?

8 A. I am.

9 Q. And what is it?

10 A. This is the e-mail that I received from  
11 Heather who was the administrative assistant to  
12 the athletic director concerning the threats.

13 Q. I believe before the break you indicated  
14 that you had received a call from Ms. Willson?

15 A. I had received a call first.

16 Q. And what was the information that you  
17 received from that call?

18 A. When she called she told me that they  
19 were receiving a lot of threats and she wanted to  
20 know what to do about the threats, et cetera, and  
21 I asked her to send me an e-mail describing the  
22 threats.

23 Q. Did you ask her to send all of the  
24 threats --

25 A. I didn't.

1 Q. -- that had been received?

2 A. I didn't.

3 Q. You asked her to send an example?

4 A. I didn't give her a number and I did not  
5 say send me a sample. I said please send me an  
6 e-mail describing the threats.

7 Q. And is D-32 the e-mail you received from  
8 Ms. Willson?

9 A. Yes.

10 Ms. Conrad: Move for admission of D-32.

11 Mr. Strokoff: No objection, Your Honor.

12 The Court: It's admitted.

13 Ms. Conrad: Permission to publish it?

14 The Court: Yes.

15 By Ms. Conrad:

16 Q. It's taking us a moment to pull it up on  
17 the screen behind you. Thank you. I want to  
18 direct your attention to the first paragraph from  
19 Ms. Willson. What does Ms. Willson inform you in  
20 that first paragraph?

21 A. She tells me that they have received  
22 many, many calls from people demanding that Coach  
23 McQueary be fired.

24 Q. Does she relate to you how they received  
25 this information?

1           A.    Yes.  She says many, many calls.

2           Q.    Okay.  And she says many calls from  
3 people demanding that Coach McQueary be fired,  
4 correct?

5           A.    Correct.

6           Q.    And does she relate to you that these  
7 calls escalated after a press conference?

8           A.    Right.

9           Q.    And what does she say as that sentence  
10 continues?

11          A.    Well I will read it.  It says they are  
12 outraged that it was said in the press conference  
13 that he will be coaching the team on Saturday.

14          Q.    And was it your understanding that was  
15 the press conference held by interim head Coach  
16 Bradley that morning?

17          A.    Yes.

18          Q.    She then indicates that the following  
19 are most concern, doesn't she?

20          A.    Yes.

21          Q.    She gives you two examples of voicemail  
22 messages that have been received at -- received  
23 at athletics, doesn't she?

24          A.    Yes.

25          Q.    Directing your attention to the first

1       voicemail message, could you read that into the  
2       record please?

3           A.   Young adult made called with a calm  
4       demeanor at first requesting to leave a message  
5       to be passed on to administration. During his  
6       message he became very angry and started  
7       screaming how can you fire the greatest coach in  
8       football history without even as much as due  
9       process as you're aware that the Attorney General  
10      cleared Coach Paterno. And then you are going to  
11      allow Mike McQueary the only person who actually  
12      witnessed the horrific crime and did nothing.  
13      How can you allow him to parade around on the  
14      sidelines coaching the team? If you are so  
15      stupid as to flaunt him in our faces we will  
16      bring the house down. You pass that along to  
17      your administrators. I asked his name several  
18      times. He said you don't need my name because  
19      this is so much bigger than me. You mark my  
20      words if Mike McQueary is in that stadium we will  
21      bring the house down.

22           Q.   And upon review of that voicemail  
23      message did you form an opinion as to the  
24      credibility of these threats?

25           A.   Not only that one but the others that I

1 had received yes, I did.

2 Q. And moving your attention onto the  
3 second message that Ms. Willson forwarded to you,  
4 could you read into the record the information  
5 you received from Ms. Willson about that second  
6 message?

7 A. He was a very calm and spoke  
8 intelligently. He strongly advised not to have  
9 Mike McQueary on the sidelines. He said the  
10 decisions that the senior administration and the  
11 BOT, board of trustees, are making are making us  
12 alumni look like fools. They are allowing the  
13 tarnishing of this great university by the  
14 actions of one person and they are making  
15 decisions based on the media. Mike McQueary  
16 witnessed a crime against a child and he did not  
17 report it to police and the board allows the  
18 media to take down the Penn State dynasty and  
19 McQueary stands on the sidelines. Bryan said  
20 from what he had been hearing if McQueary was his  
21 client he would have him in witness protection.  
22 This man is a target and we need realize that.

23 Q. When you received the message that this  
24 caller indicated in his view that this man,  
25 referring to Mr. McQueary, is a target did you



1 form an opinion as to the credibility of this  
2 particular message?

3 A. Well this one came from not only an  
4 alumni but an attorney and he was talking about  
5 having him in witness protection. He also was  
6 not -- this was interesting in that he was not  
7 making the threat but that he was saying he --  
8 because of other things that he was hearing so  
9 yes.

10 Q. Once you received this information from  
11 Ms. Willson, as well as the other information you  
12 had received from athletics, including the  
13 threats, what did you do with this information?

14 A. I took it to Dr. Erickson.

15 Q. And what response, if any, does  
16 Dr. Erickson have to the information you  
17 presented to him about the threats that the  
18 University was receiving?

19 A. Dr. Erickson was very concerned about  
20 the threats on Mr. McQueary's life.

21 Q. He was concerned about Mr. McQueary?  
22 You have to answer.

23 A. Yes. He was. He was concerned about --  
24 he was concerned about the threats on his life  
25 because he was concerned about his safety.

1           Q.   And did Dr. Erickson make a decision  
2   based on that concern for the safety of  
3   Mr. McQueary?

4           A.   Yes.   He did.

5           Q.   What was that decision?

6           A.   His decision was that Mr. McQueary  
7   should not be on the field coaching football and  
8   should be placed on administrative leave so that  
9   he would -- we would do what we could to make  
10   him safe.

11          Q.   And did you receive any direction about  
12   how to communicate that decision to Mr. McQueary?

13          A.   From Dr. Erickson?

14          Q.   Yes.

15          A.   I can't remember Dr. Erickson saying  
16   here is how I want you to relay it to  
17   Mr. McQueary.

18          Q.   Do you know how this information from  
19   Dr. Erickson was transmitted to Mr. McQueary that  
20   he would not be coaching the Nebraska game?

21          A.   Through the AD.   Through the athletic  
22   director.

23          Q.   So it is your understanding that  
24   Mr. Sherburne was to communicate the decision to  
25   Mr. McQueary?

1 A. That's my understanding.

2 Q. Do you know whether or not Coach Bradley  
3 was involved in any way?

4 A. I do not know.

5 Q. There came a point in time that that  
6 evening -- the evening of November 10th -- that  
7 there was a statement from Penn State athletics  
8 with respect to Mr. McQueary's status. Were you  
9 familiar with the statement issued by Penn State  
10 athletics?

11 A. I am now.

12 Q. I would like to direct your attention to  
13 D-40. Binder marked 1. Maybe behind you.

14 A. D-40 in Volume 1?

15 Q. Yes, ma'am.

16 A. This is it.

17 Q. Are you familiar with the document  
18 marked D40?

19 A. I am familiar with the information in  
20 it. I don't remember that I ever read it and  
21 this is really small so --

22 Q. I apologize.

23 Ms. Conrad: I would move for admission  
24 of D-40.

25 Mr. Strokoff: No objection, Your Honor.

1           The Court:  It's admitted.

2           Ms. Conrad:  Request it be published.

3           By Ms. Conrad:

4           Q.  Directing your attention then to the  
5           statement issued by Penn State athletics.  What  
6           information was provided to Penn State athletics?

7           A.  Do you want me to read that?

8           Q.  Yep.

9           A.  Due to multiple threats made against  
10          Assistant Coach Mike McQueary the University has  
11          decided it would be in the best interest of all  
12          for Assistant Coach McQueary not to be in  
13          attendance at Saturday's Nebraska game.

14          Q.  Did you participate at all in the  
15          drafting of that statement from Penn State  
16          athletics?

17          A.  I really do not remember whether I  
18          participated in the draft.

19          Q.  Do you know who participated in the  
20          drafting of this statement?

21          A.  No.

22          Q.  Do you know if Mr. McQueary participated  
23          in the drafting of that statement marked D-40?

24          A.  I would not know.

25          Q.  Following the decision that Mr. McQueary

1 would not be coaching the Nebraska game a  
2 decision was made that he would be placed on paid  
3 administrative leave, correct?

4 A. Correct.

5 Q. And who made that decision?

6 A. That would be Dr. Erickson.

7 Q. And were you aware of the reasons why  
8 Dr. Erickson made the decision to place  
9 Mr. McQueary on paid administrative leave?

10 Mr. Strokoff: Objection, Your Honor.  
11 Dr. Erickson will be testifying. What she would  
12 be testifying to would be hearsay.

13 The Court: He is raising a hearsay  
14 objection.

15 Ms. Conrad: Sorry?

16 The Court: He is raising a hearsay  
17 objection. Do you want to be heard?

18 Ms. Conrad: Ms. Baldwin will testify as  
19 to actions that she took following the  
20 information she received from Dr. Erickson.

21 The Court: Well you can ask her after  
22 you talked to him what did you do if you want.

23 Ms. Conrad: I will proceed so, Your  
24 Honor.

25 By Ms. Conrad:

1           Q. Did you take any actions after you  
2           received the information from Dr. Erickson that  
3           Mr. McQueary would be paid -- placed on paid  
4           administrative leave?

5           A. Yes.

6           Q. What actions did you take?

7           A. I set up a meeting so that Mr. McQueary  
8           could be told about administrative leave and that  
9           he was being placed on paid administrative leave  
10          and what needed to be done pursuant that action.

11          Q. How did you set up that meeting?

12          A. I called and talked to Mark Sherburne to  
13          Erikka Runkle. I believe -- I am sure I also  
14          talked to the head of HR who was Susan I think,  
15          but I talked to someone directly in HR too and  
16          then we set up the meeting.

17          Q. Do you recall whether a telephone call  
18          was placed to Mr. McQueary to set up that  
19          meeting?

20          A. I believe that it was.

21          Q. Did you make that call?

22          A. I don't believe I made the call.

23          Q. Were you present when that call was  
24          made?

25          A. I don't believe I was present when the

1 call was made.

2 Q. And the meeting was scheduled I believe  
3 you said for that Sunday night?

4 A. That's when it ended up happening. Yes.

5 Q. And during the meeting Mr. Sherburne,  
6 Ms. Runkle, and yourself were present with  
7 Mr. McQueary, is that correct?

8 A. That is correct.

9 Q. And Mr. Sherburne reads or used a  
10 document that you helped to prepare for that  
11 meeting, is that correct?

12 A. That I prepared. Yeah.

13 Q. And what was the purpose of preparing  
14 that document?

15 A. Because Mr. Sherburne asked me several  
16 times well what do I do, what do I say. He was  
17 very new in that position and, you know, usually  
18 one of your first actions is not to place an  
19 employee on paid administrative leave. So he  
20 wanted to be comfortable in what he was saying  
21 and what I ended up doing was to write this so  
22 that he knew everything that he was supposed to  
23 say.

24 Q. I would like to direct your attention to  
25 that document D-53, which was previously marked

1 as Plaintiff's 47, and is it your understanding  
2 that the information contained in D-53 is the  
3 information that was provided to Mr. McQueary in  
4 that meeting?

5 A. Yes. This is the information that was  
6 provided.

7 Q. And did that information include that  
8 Mr. McQueary was being placed on paid  
9 administrative leave?

10 A. Yes.

11 Q. And did that information include that  
12 Mr. McQueary's future status had not yet been  
13 determined?

14 A. That is correct.

15 Q. And did Mr. McQueary -- was Mr. McQueary  
16 told that during the term of his administrative  
17 leave he would receive his full current pay and  
18 benefits?

19 A. That is correct.

20 Q. And then he was told that he was not to  
21 do any work on behalf of Penn State, is that  
22 correct?

23 A. Yes.

24 Q. And why was he told that information?

25 A. He is on administrative leave. The



1 reason he was placed on administrative leave was  
2 for his safety. We did not want him to do  
3 anything that had to do with his position and his  
4 position was coach, was an assistant coach.

5 Q. But by the time you had a meeting the  
6 Nebraska game was already over, wasn't it?

7 A. We still had another game.

8 Q. So the safety concerns related to  
9 Nebraska were over, weren't they?

10 A. The safety concerns were not alleviated.

11 Q. What do you mean by that?

12 A. I mean there were still concerns that  
13 the same people who made threats if they -- if he  
14 wasn't at the Nebraska game but we put him on the  
15 field at another game that they could carry out  
16 the threats. So the threats were not alleviated.

17 Q. And what about once the season ended was  
18 there a concern for his safety walking into the  
19 Lasch football building?

20 A. Well there were a lot of things going on  
21 at that same time. We were transitioning from  
22 one coach to another coach and when coaches come  
23 in they make the decisions about their assistant  
24 coaches. So there were a lot of things going on.

25 Q. The document 53 goes on in that last

1 sentence of the first paragraph to state that  
2 following facilities are off limits, all athletic  
3 facilities associated with the Penn State  
4 football program. Was that common practice when  
5 an employee was put on administrative leave?

6 A. Was it common practice for them to be  
7 told all of the athletic facilities were --

8 Q. Was it common practice when an employee  
9 was put on administrative leave that there  
10 assigned work areas were off limits?

11 A. That's common practice.

12 Q. All right. But in the sentence above it  
13 indicates that if Mr. McQueary had any questions  
14 about his administrative leave he could refer  
15 them to somebody, couldn't he?

16 A. Yes.

17 Q. And who was that?

18 A. Tom Bradley who was the acting coach.

19 Q. In the next paragraph you make reference  
20 to a fixed term contract?

21 A. I do.

22 Q. Can you explain to us what is a fixed  
23 term contract?

24 A. A fixed term contract -- it's a contract  
25 for a specific period of time and this fixed term

1 contract was going to end on June 30, 2012.

2 Q. You also indicate a media announcement  
3 that was made by President Erickson, didn't you?

4 A. Yes.

5 Q. Were you present during that media  
6 announcement?

7 A. I may have been. I was present during  
8 several. I don't remember it exactly but I may  
9 have been.

10 Q. And do you recall at all what  
11 Dr. Erickson provided in the statement?

12 A. I recall seeing it but I don't remember  
13 it verbatim. No.

14 Q. Dr. Erickson will be here and he will be  
15 able to testify to it.

16 A. Good.

17 Q. Now, additionally, when you make  
18 reference to Mr. McQueary's fixed term contract  
19 ending on June 30th there is a reference about a  
20 new contract. Do you see that reference?

21 A. Yes.

22 Q. And what does it provided?

23 A. It says it has not been determined  
24 whether there will be a new contract at this time  
25 because when fixed term contract ends it ends.

1 It's over. There is no further employment under  
2 that contract. So then the determination to be  
3 made whether there will be another contract  
4 entered into.

5 Q. And during this meeting did you inform  
6 Mr. McQueary that no determination had been made  
7 with respect to a new contract?

8 A. Yes.

9 Q. The document goes on to address the  
10 return of personal items, doesn't it?

11 A. The return of University items, yes.

12 Q. Return of University items. And then it  
13 talks about arrangements to return Mr. McQueary's  
14 items, doesn't it?

15 A. Yes.

16 Q. Do you know if those exchanges took  
17 place?

18 A. Yes.

19 Q. Now specifically there is a reference in  
20 this document about Mr. McQueary's return of his  
21 keys, equipment, security badge, authentication  
22 token, car, and his cellphone. Do you see that?

23 A. I do.

24 Q. Is that a common practice for return of  
25 those items when a employee is placed on

1 administrative leave?

2 A. It would be common practice for an  
3 employee to return those items if the employee  
4 worked in the athletic department. All employees  
5 did not have the same things, but, yes, they  
6 would have to return all of the items that were  
7 part of their employment.

8 Q. So do I understand your response that  
9 they had to return the items that they used in  
10 conjunction with their position?

11 A. Correct.

12 Q. Going on then there is an indication  
13 that you may keep your ID card and parking  
14 permit. Do you see that?

15 A. Yes.

16 Q. Does that mean Mr. McQueary was still  
17 permitted on to the campus?

18 A. Of course.

19 Q. And then it goes on to make reference to  
20 return of the dealer vehicle that you had per  
21 your employment with the University. What is a  
22 dealer vehicle?

23 A. It's a vehicle that they got from a  
24 dealer that there was an arrangement that coaches  
25 used in their position.

1 Q. So I understand they use the vehicle in  
2 conjunction with carrying out their job duties?

3 A. Correct.

4 Q. And this information that was provided  
5 to Mr. McQueary in that meeting was that  
6 arrangements would be made for him to return the  
7 vehicle?

8 A. That is correct.

9 Q. And why did Mr. McQueary have to return  
10 the vehicle?

11 A. Because he was no longer using the  
12 vehicle in conjunction with his position.

13 Q. And then, finally, at the close of the  
14 document there is a reference to the employees  
15 assistance program. Do you see that reference?

16 A. Uh-huh. I do.

17 Q. What information was provided to  
18 Mr. McQueary about the employee assistance  
19 program?

20 A. Excuse me?

21 Q. What information was provided to  
22 Mr. McQueary about the employee assistance  
23 program?

24 A. He was talking to Erikka Runkle about  
25 that who was the human relations manager for the

1 athletic department.

2 Q. And do you know whether Mr. McQueary  
3 ever followed up on the employee assistance  
4 program with Ms. Runkle?

5 A. I do not know.

6 Q. I believe you said during the course of  
7 this meeting Mr. McQueary made a statement, is  
8 that correct?

9 A. He did.

10 Q. And what was that statement?

11 A. He said he did not do anything wrong and  
12 he really wanted to coach for the University.

13 Q. And did you respond at all to  
14 Mr. McQueary?

15 A. I did.

16 Q. And what was your response?

17 A. I told him that I would take that back I  
18 did.

19 Q. And who did you take it back to?

20 A. Dr. Erickson.

21 Q. Now following Mr. McQueary -- strike  
22 that. Following your meeting with Mr. McQueary  
23 the team participated in a bowl game that year,  
24 didn't they?

25 A. Yes.

1 Q. Do you recall what bowl game that was?

2 A. The TicketCity Bowl.

3 Q. And following that bowl game were you  
4 aware that the assistant coaches that had coached  
5 during that game had received bonuses?

6 A. I am now. I wasn't a part of that.

7 Q. Let me ask this question. Were you  
8 involved at all in the decision with respect to  
9 bonuses for the assistant coaches that had --

10 A. No.

11 Q. -- coached that game. There also came a  
12 point in time that salary increases were extended  
13 at the University. I believe this was the end of  
14 December early January 2012. Were you involved  
15 if any decisions related to who would receive  
16 salary increases?

17 A. No.

18 Q. And then, finally, there was the  
19 announcement of the search for new head coach.  
20 Were you involved in that search process?

21 A. I was not involved in the search process  
22 itself.

23 Q. Were you aware of the search process?

24 A. I was aware of the search process.

25 Q. And were you aware that the University



1 search team had interviewed with a -- with Coach  
2 Bill O'Brien?

3 A. I was.

4 Q. Were you aware of any information that  
5 was exchanged during that interview?

6 A. No.

7 Q. Excuse me?

8 A. No. I don't remember whether I was --  
9 I don't remember anybody telling me about  
10 information that would be exchanged during that.

11 Q. Do you recall any information about  
12 Coach O'Brien wanting to bring a certain group of  
13 coaches with him to Penn state?

14 Mr. Strokoff: Your Honor, I believe she  
15 is getting into hearsay now and I would object to  
16 that.

17 The Court: Well she can answer this  
18 question. We will see where it goes.

19 The Witness: Yes. I do remember that.  
20 By Ms. Conrad:

21 Q. And how did you come in possession of  
22 that information?

23 A. It had to be a part of the discussions  
24 because I was the one who wrote the contract for  
25 Bill O'Brien.

1 Q. And what information did you learn in  
2 conjunction with preparing the contract for Coach  
3 O'Brien about his plans for his staff at Penn  
4 state?

5 A. That he wanted to bring his own staff.

6 The Court: It's already in the record.

7 So go ahead.

8 Ms. Conrad: I am sorry. I didn't hear  
9 your answer.

10 The Witness: He wanted to bring his own  
11 coaches, his own staff.

12 By Ms. Conrad:

13 Q. Now there came a point in time that  
14 Coach O'Brien conducted some courtesy meetings  
15 with the current Penn State coaches. Were you at  
16 all involved in that process?

17 A. No.

18 Q. Were you aware who participated in those  
19 meetings?

20 A. Well if they were courtesy conferences  
21 it would have been all of the coaches who were in  
22 good standing at that time.

23 Q. Well was it coaches who were in good  
24 standing or was it coaches who were actively  
25 employed at the time?

1           A. Well to me that's what good standing is.  
2           They are actively employed.

3           Q. Now I would like to direct your  
4           attention to a -- strike that. Were you -- I  
5           think I asked it and maybe -- I apologize. It's  
6           getting late in the day. Were you involved in  
7           scheduling those meetings with the active  
8           coaches?

9           A. I still was not involved.

10          Q. I would like to direct your attention  
11          now to a document D-139 that will be in Volume 3  
12          I believe of the binder, defense binders.

13          A. What was the number?

14          Q. D-139.

15          A. D-139. I have it.

16          Q. Will you take a moment and review that  
17          document?

18          A. Okay.

19          Q. Are you familiar with that document?

20          A. Yes.

21          Q. What is it?

22          A. It's a letter to me from Mr. Strokoff.

23          Q. What is the date of that letter?

24          A. May 2, 2012.

25                 Ms. Conrad: Move for the admission of

1 D-139.

2 Mr. Strokoff: No objection, Your Honor.

3 The Court: Admitted.

4 Ms. Conrad: Permission to publish  
5 please?

6 The Court: Yeah.

7 By Ms. Conrad:

8 Q. And directing your attention to the  
9 first sentence of D-139 Attorney Strokoff says --  
10 makes reference to when we last spoke on April  
11 16, 2012. Do you see that reference?

12 A. I do.

13 Q. Do you recall having a conversation with  
14 Attorney Strokoff on or about April 16, 2012?

15 A. I do recall him calling me.

16 Q. And what was the nature of that  
17 conversation?

18 A. I remember him asking me about  
19 attorney's fees, payment of attorney's fees for  
20 the grand jury. He also wanted to resolve issues  
21 with the University surrounding Mike McQueary.

22 Q. Now as of April 16, 2012, Mr. McQueary  
23 was still on paid administrative leave, wasn't  
24 he?

25 A. That is correct.

1           Q.   He was still receiving his full salary  
2           benefits, wasn't he?

3           A.   That is correct.

4           Q.   Yet Attorney Strokoff was calling you  
5           about issues that he wanted to resolve with  
6           Mr. McQueary?

7           A.   He did.

8           Q.   And then in this letter the last  
9           sentence does he provide a similar type of  
10          statement?

11          A.   Yes.

12          Q.   And what does he provide in that last  
13          sentence?

14          A.   Accordingly this letter shall serve as a  
15          reminder that our window of opportunity to  
16          amicably resolve this matter is quickly coming to  
17          a close.

18          Q.   And when you received that information  
19          from Mr. Strokoff that the window of opportunity  
20          was amicably -- was -- that it was quickly coming  
21          to an end was that in a time Mr. McQueary was  
22          still employed?

23          A.   Yes.

24          Q.   He was still on administrative leave?

25          A.   Yes.

1 Q. He was still on paid administrative  
2 leave?

3 A. That is correct.

4 Q. But yet Mr. Strokoff is asking you about  
5 a window of opportunity to amicably resolve this  
6 matter, is that correct?

7 A. That's what the letter says.

8 Q. Now on or before June 30, 2012, I  
9 believe you have already testified that  
10 Mr. McQueary's employment contract would come to  
11 an end, is that correct?

12 A. That is correct.

13 Q. And did it come to an end on June 30,  
14 2012?

15 A. Yes. It did.

16 Q. Did you make a decision that his  
17 employment contract would come to an end?

18 A. There was no decision about whether the  
19 employment contract came to an end. That was the  
20 date that it ended.

21 Q. Was there any discussions about whether  
22 a new contract should be issued to Mr. McQueary  
23 at the expiration of his contract on June 30th?

24 A. Not with me there were no discussions.

25 Q. Do you know if there was an opening on

1 Coach O'Brien staff as of July 1, 2012, for a  
2 wide receivers coach?

3 A. No. There wasn't.

4 Q. Do you know if there were any openings  
5 for assisting coaches on Coach O'Brien staff as  
6 of July 1, 2012?

7 A. I would not know that personally but the  
8 fact is that he had hired everybody that -- we  
9 worked on the contracts. Our office worked on  
10 the contracts. He had hired everybody he was  
11 going to hire.

12 Q. Now following the expiration of  
13 Mr. McQueary's contract, June 30, 2012, did there  
14 come a point in time that you participated in any  
15 discussion with respect to additional benefits  
16 that Mr. McQueary would receive?

17 A. I really do not remember.

18 Q. Now in working with the contracts for  
19 the various coaches were you aware that  
20 agreements had been entered with the assistant  
21 coaches under Coach Paterno for certain severance  
22 benefits?

23 A. Yes. Some of the contracts said that.

24 Q. And when did you become aware of those  
25 letter agreements?

1           A.   When I saw those letter agreements. I  
2 saw some of them.

3           Q.   And did you see a letter agreement for  
4 Mr. McQueary?

5           A.   I did.

6           Q.   Directing your attention to D-5, which  
7 will be in Volume 1.

8           A.   I have it.

9           Q.   Are you familiar with the document  
10 that's marked D-5?

11          A.   I am.

12               Ms. Conrad: Move for admission of D-5.

13               The Court: Any objection?

14               Mr. Strokoff: No objection, Your Honor.

15               The Court: It's admitted.

16               Ms. Conrad: Permission to publish?

17               The Court: Yes.

18               Ms. Conrad: Thank you.

19               By Ms. Conrad:

20               Q.   And I want to direct your attention to  
21 paragraph two of D-5. It's paragraph two, first  
22 part. And before we get into paragraph two what  
23 was the date of this letter agreement?

24               A.   December 17, 2008.

25               Q.   So you will agree with me this letter



1 agreement was entered far before the events of  
2 November 2011?

3 A. Yes.

4 Q. And in December 17, 2008, in paragraph  
5 two what did this letter agreement provide to  
6 Mr. McQueary?

7 A. If you are employed as assistant  
8 football coach at the time of Joseph V. Paterno's  
9 departure as head coach and in the event you are  
10 terminated by the University other than for cause  
11 and as a consequence of the decision of the new  
12 head coach to not continue your employment as  
13 assistant football coach you will be entitled to  
14 the following severance benefits.

15 Q. And what were the benefits in terms of  
16 salary that would be received if the conditions  
17 of paragraph two were met?

18 A. The University will continue paying your  
19 salary for a period of 18 months or until you  
20 secure another football coaching position  
21 elsewhere at a salary equal to or greater than  
22 your University salary at the time of  
23 termination, provided, however, in the event your  
24 new salary in another football coaching position  
25 is less than your University salary at the time

1 of termination you will be paid the difference  
2 between your former University salary and your  
3 salary in the new coaching position for a period  
4 not to exceed 18 months from the date of  
5 termination of your University employment.

6 Q. So you will agree with me, would you  
7 not, that in essence that if an assistant coach  
8 were employed at the time Coach Paterno departed  
9 from his position of head coach and he is -- and  
10 decision is made by a new head coach not to  
11 continue the assistant coach's employment then  
12 the assistant coach will receive 18 months of  
13 salary -- of salary, is that correct?

14 A. Yes.

15 Q. Do you know whether Mr. McQueary after  
16 the expiration of his contract on June 30, 2012,  
17 received the 18 months of severance as described  
18 in D-5?

19 A. I don't believe so.

20 Q. You don't believe he received the  
21 severance?

22 A. I don't know. I really do not know.

23 Q. And why is it that you would not know?

24 A. Because I left on July 31, 2012. So if  
25 he received it it would have had to be after I

1 left.

2 Q. And who would have processed such a  
3 request if you know?

4 A. Who would have processed?

5 Q. Who would have processed the severance  
6 payment of 18 months if Mr. McQueary were to  
7 receive it?

8 A. People who do the checks would process  
9 it.

10 Q. And who would that be? Somebody --

11 A. Well it would have to be human resources  
12 and payroll and that's who would do it.

13 Q. And sitting here today you do not know  
14 whether or not Mr. McQueary's 18 months of  
15 severance payments were processed, is that  
16 correct?

17 A. I have no idea because I left July 1,  
18 2012.

19 Ms. Conrad: Thank you so much. No  
20 further questions.

21 Mr. Strokoff: Unfortunately, I have a  
22 few, Your Honor.

23 The Court: Go ahead.

24 Redirect Examination

25 By Mr. Strokoff:

1           Q. Can we go back to Defendant's Exhibit  
2 139, my letter to you.

3           A. Yes. I have it.

4           Q. Do you have it? The first sentence of  
5 that letter could you read it out loud please?

6           A. When we last spoke on April 16, 2012,  
7 concerning the above I expressed my hope to be  
8 hearing from you within two weeks because of the  
9 180 day limitations and 43 pertinent statute  
10 Section 1424(A).

11          Q. And 43 pertinent statute Section 1424(A)  
12 is the whistleblower statute, right?

13          A. That's what it is.

14          Q. And the whistleblower statute says if  
15 you are going to bring a whistleblower suit you  
16 have to file it within 1080 days, right?

17          A. That's what it says.

18          Q. And didn't I reach out to you in April  
19 of 2012 and we spoke by telephone to see if we  
20 could amicably resolve all disputes between Mike  
21 McQueary and Pennsylvania State University?

22               Ms. Conrad: Your Honor, if I may at  
23 this point it appears that Attorney Strokoff is  
24 making himself a witness in this case and may be  
25 subject to examination.

1           The Court: Not based on that question.

2           By Mr. Strokoff:

3           Q. Go ahead. You can answer the question.

4           A. Can you repeat the question please?

5           Mr. Strokoff: If the court reporter  
6 could repeat the question.

7           (Whereupon, the court reporter read back  
8 the requested portion.)

9           The Witness: Well I don't know whether  
10 you wanted to resolve it at all but under the  
11 whistleblower statute you did reach out to me.  
12 Yes.

13          By Mr. Strokoff:

14          Q. And we spoke twice, do you recall, by  
15 phone?

16          A. Yes. We spoke twice.

17          Q. Okay. Were they cordial conversations?

18          A. Yes, Mr. Strokoff. Very cordial.

19          Q. And did you respond to my letter to May  
20 2, 2012, in writing?

21          A. I don't believe I responded in writing  
22 but I don't remember but I know we did talk.

23          Q. Okay. And the University was not  
24 interested in an amicable resolution at that  
25 time, isn't that correct?

1           A. Yes. But specifically you were talking  
2 to me about the whistleblower statute and yes  
3 that's correct.

4           Q. And you understood --

5           A. Yeah.

6           Q. -- if we didn't file a precipe for writ  
7 of summons by May 9, 2012, we could never file a  
8 whistleblower action, right?

9           A. I understood that there was 180 day  
10 limitations.

11          Q. All right. Can you please turn to  
12 Defense Exhibit 32 please. Should be in the same  
13 binder.

14          A. 32?

15          Q. 32. Yes.

16          A. No. Not in the same book.

17          Q. I apologize.

18          A. I have it.

19          Q. Okay. This is the e-mail exchange  
20 between you and Heather Willson, right?

21                The Court: It's the other D-32, the  
22 loose one.

23                The Witness: Yeah. I am just looking.  
24 I don't see --

25                The Court: I believe that's D-32 now.

1           The Witness: Yes. I don't see an  
2 exchange.

3 By Mr. Strokoff:

4           Q. Well didn't she send you an e-mail on  
5 the 10th saying hello, Attorney Baldwin, and you  
6 said Heather we are taking care of this now?

7           A. Oh, I do see up above. Yes.

8           Q. All right. So this has been identified  
9 as part of the threats against Mr. McQueary's  
10 life, right?

11          A. It has been.

12          Q. Okay. Now the opening sentence of what  
13 Heather Willson e-mail to you -- I should say the  
14 second sentence says the following are of most  
15 concern, right?

16          A. That's what she says.

17          Q. She says two of the most concerning  
18 threats against Mike McQueary life to you?

19          A. That's what she said.

20          Q. And going to the bottom the one from an  
21 attorney he is not making a threat. He simply  
22 says I think protective measures should be taken  
23 with respect to Mike McQueary, right?

24          A. Well he says more than that but that's  
25 one of the things he says.

1           Q. Well he says if you were my client you  
2 would put him in witness protection. Can't tell  
3 if he is a government attorney or not but that's  
4 what he says, right?

5           A. Among other things.

6           Q. All right. The first one she sent two  
7 synopses?

8           A. Correct.

9           Q. The first call was from a young adult  
10 male with no name sited from an anonymous source?

11          A. Correct.

12          Q. And what he says is he concludes if Mike  
13 McQueary is in stadium we will bring the house  
14 down?

15          A. Correct.

16          Q. Exclamation point, is that correct?

17          A. Correct.

18          Q. So these were the two most concerning  
19 calls that the athletic department received as of  
20 November 10th, 3:51 p.m.?

21          A. In Heather's estimation.

22          Q. Well but Penn State has put this in  
23 evidence, right? Okay. In Heather's estimation  
24 but this went into the deliberative process?

25          A. It did go into the deliberative process.



1           Q. With respect to the details of HR  
2 policies and contracts and stuff like that at  
3 this point where you have been away from  
4 University for more than four years now would you  
5 defer to the folks in HR?

6           A. Yes. And I think that I made that  
7 answer clear. HR would know the policies.

8           Mr. Strokoff: Nothing further, Your  
9 Honor.

10                               Recross-Examination

11 By Ms. Conrad:

12           Q. Ms. Baldwin, was D-32 the e-mail from  
13 Heather Willson the only information you had  
14 received with respect to threats against Mike  
15 McQueary?

16           A. No.

17           Q. Were there others?

18           A. There were others and the fact is is  
19 that she told me about others on the telephone  
20 and then I asked her to send me this e-mail. I  
21 also got from the police and I think we got  
22 threats from other sources but I cannot remember.

23           Ms. Conrad: Thank you. I have no  
24 further questions.

25           The Court: Ma'am, when you were general

1 counsel was there any University policy as to how  
2 the University would deal with persons charged  
3 with criminal offenses who were University  
4 employees?

5 The Witness: Not that I am aware of. I  
6 would not know.

7 The Court: Okay. Would that be covered  
8 in the HR?

9 The Witness: Human resources.

10 The Court: Would know the answer to  
11 that. And I have a question because I am not  
12 sure I got you correctly. A person on  
13 administrative leave -- are they still considered  
14 to be an employee?

15 The Witness: Yes. They are an employee  
16 on administrative leave. Yes.

17 The Court: Okay. Thank you. You can  
18 step down.

19 The Witness: Thank you.

20 Mr. Strokoff: Call Mark Sherburne, Your  
21 Honor.

22 The Court: Okay. Feel free to get up  
23 and stand and stretch.

24 (Whereupon, a stretch break was taken.)

25 Whereupon,

1 Mark Sherburne

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

4 Ms. Conrad: Your Honor, may we have a  
5 moment?

6 Mr. Strokoff: Witness has been sworn,  
7 Your Honor?

8 The Court: Witness is sworn.

9 Direct Examination

10 By Mr. Strokoff:

11 Q. Will you please state for the record  
12 your name?

13 A. Mark Sherburne.

14 Q. Can you spell your last name for the  
15 court reporter?

16 A. S-h-e-r-b-u-r-n-e.

17 Q. And, Mr. Sherburne, for a period of time  
18 were you employed by Pennsylvania State  
19 University?

20 A. Yes. I was.

21 Q. And over what period of time were you so  
22 employed?

23 A. July of 1993 through April of 2012.

24 Q. And what is your educational background?

25 A. I have two degrees both from Penn State.

1 I have an undergraduate degree in business  
2 logistics. I have Master's Degree in Education.

3 Q. When did you get your master's degree,  
4 sir?

5 A. 1993.

6 Q. And your BA?

7 A. 1991.

8 Q. And when you came to work for the  
9 University in July of 1993 in what capacity was  
10 that?

11 A. I was an academic advisor for student  
12 athletes and worked with our football student  
13 athletes.

14 Q. And in that capacity did you come to  
15 know Mike McQueary?

16 A. Yes. I did.

17 Q. And how did you come to know him?

18 A. Actually I have known the McQueary  
19 family because they are local and I am a local.  
20 I grew up here in the State College area so I  
21 played high school football with Mike's brother  
22 and then I got an opportunity to meet Mike when  
23 he came to Penn State as a freshman and he was a  
24 member of the Penn State football team.

25 Q. Was he a student advisee of yours?

1 A. He was.

2 Q. For how long was he a student advisee?

3 A. On the first couple years on the team.

4 I think his freshman and sophomore years.

5 Q. Okay. How long did you remain in that  
6 initial position?

7 A. From July of '93 through about July of  
8 2000.

9 Q. And then where did you go?

10 A. I moved from academic services into  
11 athletic administration and I moved into the  
12 position of assistant athletic director for  
13 student athlete services.

14 Q. And what year was that?

15 A. Right around 2000.

16 Q. Okay. And how long did you remain in  
17 that position?

18 A. I was in that position from 2000 until  
19 about July of 2008.

20 Q. And then what position did you move  
21 into?

22 A. I was promoted into a position that had  
23 not previously existed. It was an associate  
24 athletic director position for administration.

25 Q. And how long did you remain in that

1 position?

2 A. I was in that position up until the time  
3 of April 2012 when I left the University.

4 Q. Okay. Can you explain to us for  
5 example --

6 The Court: Excuse me, sir. Do you mind  
7 getting on that microphone. It will make it a  
8 little easier. Thank you.

9 By Mr. Strokoff:

10 Q. Generally what was involved in that  
11 position as associate athletic director?

12 A. Well a variety of things. Certainly  
13 assisting the athletic director on day-to-day  
14 responsibilities and the athletic department  
15 office. I had a liaison relationship with a  
16 variety of University units that supported  
17 intercollegiate athletics. I helped manage the  
18 operating budget and take care of other  
19 administrative related duties as it related to  
20 the internal operations.

21 Q. Okay. As associate athletic director  
22 did you have interaction at all with Mike  
23 McQueary when he was an assistant coach?

24 A. Not as much interaction with Mike when I  
25 was an associate athletic director. More so when

1 I was an assistant athletic director in student  
2 athlete services.

3 Q. And during what period of time was that?  
4 Up until when?

5 A. That was July of 1993 -- no. Excuse me.  
6 July of 2000 through about July of 2008.

7 Q. Okay. On the morning of November 5,  
8 2011, do you remember where you were?

9 A. November 5, 2011. Was that a Saturday?

10 Q. It is.

11 A. I was out of town in New York State  
12 visiting family and on a hunting trip.

13 Q. And did you have any communication with  
14 athletic department personnel on that day?

15 A. On Saturday?

16 Q. Yes.

17 A. I had received a phone call on Saturday  
18 from our human resource officer in athletics,  
19 Erikka Runkle, who had communicated with me that  
20 she wanted to know if I had heard the news and I  
21 said no, I didn't hear any news, and she said did  
22 you hear that Tim was being -- Tim Curley was  
23 being arrested as a result of perjury and lying  
24 to the grand jury investigating Jerry Sandusky  
25 and I said no, I had not heard that.

1           Q.   After speaking with Erikka Runkle what  
2           did you do?

3           A.   Well obviously I was shocked. I told  
4           her I appreciated her reaching out to me, that I  
5           was going to try to reach out to another member  
6           or members of our senior administrative team and  
7           athletics to see if there was anything that we  
8           would need to do moving forward and that I would  
9           be making my way back as soon as possible.

10          Q.   And did you make your way back to State  
11          College?

12          A.   I did.

13          Q.   About what time did you arrive?

14          A.   Sorry. I just do not recall.

15          Q.   Okay. Were you involved in any business  
16          meetings Saturday evening, November 5? I say  
17          business, I mean athletic department business?

18          A.   Like I said, I think I had reached out  
19          to a member or two of the administrative team,  
20          told them that, you know, I had received a phone  
21          call from Erikka, that I was on my way back, that  
22          I think we need to get together and again have a  
23          conversation about anything that we might need to  
24          do moving forward to inform our athletic  
25          department of what was happening and to begin to



1 prepare for Monday morning.

2 Q. But did this occur Saturday evening?

3 A. Yeah. I believe the initial  
4 conversations about what I had learned and about  
5 what my immediate thought process was that we  
6 should come together and begin talking more about  
7 this and preparing for what we would needed to do  
8 at the start the meeting.

9 Q. Okay. When was this meeting going to  
10 occur?

11 A. At the time, you know, when we talked on  
12 Saturday. I think it was conversation. I think  
13 that carried over to maybe on Sunday, continued  
14 conversation, and that we were planning to bring  
15 our head coaches together in the meeting and also  
16 our full athletic department staff, which  
17 included head assistant coaches.

18 Q. Sir, on Saturday November 5th was Tim  
19 Curley still the athletic director?

20 A. On Saturday December 5th --

21 Q. Not December. November 5.

22 A. November 5. I believe that Tim had been  
23 notified, if not arrested, as a result of the  
24 charges and that he was either in or making his  
25 way to Dauphin County where he had to be

1       arraigned I think probably Monday morning.

2           Q.   Well did there come a point in time when  
3       you became acting athletic director?

4           A.   There was.

5           Q.   And how did that come about?

6           A.   It was Sunday. I remember around midday  
7       receiving a call from the then president of the  
8       University, President Spanier. He had mentioned  
9       to me that there was going to be a board of  
10      trustees meeting at some point in time later that  
11      day and that he was going to keep me posted as to  
12      what the result of that meeting was and then I  
13      believe later in the evening he followed back up  
14      with me and that's when he had the conversation  
15      with me about becoming an acting athletic  
16      director.

17          Q.   Now you made reference to some meetings  
18      on Monday?

19          A.   Yes, sir.

20          Q.   These were meetings that were planned by  
21      you and your team for athletic department  
22      personnel?

23          A.   Yes. It was really an opportunity to --  
24      the first opportunity that we would have to be  
25      together since the news had broke and it really

1 was an opportunity to address the staff.  
2 President Spanier was going to join us so that he  
3 could address the staff, you know, and inform  
4 them that he had asked me to serve in this  
5 capacity and to let him -- let them know if there  
6 was any other administrative adjustments that  
7 were being made on our athletic department staff  
8 and then give me the opportunity to just make  
9 sure that our staff knew that I was available to  
10 him and then, you know, we were going to continue  
11 to move forward, and I wanted to be sure they had  
12 heard the information and if they had any  
13 inquiries with regard to any of it, you know, how  
14 they could communicate those kinds of inquiries.  
15 That sort of thing.

16 Q. So what was the first meeting that was  
17 held on Monday?

18 A. First meeting was a coaches meeting and  
19 it occurred I believe in the recruiting lounge in  
20 Beaver Stadium.

21 Q. And did this coaches meeting include  
22 football coaches?

23 A. Certainly. The invitation went out to  
24 all head coaches to include football.

25 Q. I am sorry. Was this just for head

1 coaches?

2 A. I believe that's what I recall.

3 Q. Okay. And were you present at that  
4 meeting?

5 A. I was.

6 Q. And did Dr. Spanier say anything about  
7 the criminal charges against Curley and Schultz?

8 A. I think he had given a summary of that.

9 Q. What do you mean he gave a summary of  
10 that?

11 A. I think he had given a summary that, you  
12 know, Tim had been arrested as a result of  
13 perjury charge and that -- I can't remember if he  
14 had mentioned anything about Gary but that he was  
15 asking me to move into the acting athletic  
16 director role and that, you know, he anticipated  
17 that once Tim got through his legal issues that  
18 he would return to the position.

19 Q. Do you remember how long he spoke?

20 A. I would say probably no more than seven  
21 minutes. Somewhere in there.

22 Q. Didn't he say to all of the coaches  
23 present that Tim Curley was going to be  
24 exonerated?

25 A. I think I can recall him saying that he

1 had confidence in both Tim and Gary and that he  
2 worked with them for a long period of time and he  
3 was confident both of those guys would be  
4 exonerated. He anticipated that Tim would return  
5 to the position.

6 Q. Didn't he express the opinion that the  
7 charges against them were unfounded?

8 A. I don't recall that.

9 Q. And then there was another meeting?

10 A. And then once we broke there was about a  
11 15 minute break and we assembled in the next room  
12 -- well actually the Mount Nittany Club, which  
13 was just upstairs, the next level. We had about  
14 I would say 300 people in attendance. That would  
15 be everybody in the athletic department, staff,  
16 including all coaches and administrative staff,  
17 and President Spanier was present.

18 Q. Okay. Were there football coaches at  
19 that meeting?

20 A. I believe so.

21 Q. Okay. Who do you believe was there?

22 A. I can't recall. I can remember -- I can  
23 remember seeing a few coaches but I don't know if  
24 all of the coaches were there.

25 Q. All right. And did President Spanier

1 again address the criminal charges against  
2 Mr. Curley and Mr. Schultz?

3 A. He made comments very similar to what he  
4 had made to the head coaches.

5 Q. And did he say that the charges were  
6 groundless against Mr. Curley?

7 A. Again I don't recall exactly.

8 Q. Do you know whether or not any minutes  
9 or tape recording was made of that meeting?

10 A. I don't.

11 Q. Do you know whether any minutes or tape  
12 recording was made of the coaches meeting?

13 A. I don't.

14 Q. And when we say coaches meeting that's  
15 the head coaches meeting?

16 A. That's right. I believe that's right.

17 Q. How many people were at the head coaches  
18 meeting?

19 A. Maybe about 25 I would suspect. That  
20 included coaching and administrative staff.  
21 Coach Paterno wasn't in attendance. I can't  
22 recall if every single head coach was in  
23 attendance. Some of them may have been away from  
24 campus with their teams on the road. I am not a  
25 hundred percent sure.

1           Q.    Could you tell the jury what  
2           interactions you had with football team that  
3           week?

4           A.    That week?

5           Q.    Yes.  After that meeting with the  
6           athletic department staff.

7           A.    With the football team?

8           Q.    Or football team coaches.

9           A.    Football team coaches.  You know, first  
10          conversation that I recall having with the  
11          football coaches was the morning of -- I guess it  
12          would be November 7th.  Is that a Monday?

13          Q.    It is.

14          A.    That was prior to our head coaches  
15          meeting.  I got in early that day.  I thought  
16          about how I wanted to talk to the staff.  I  
17          wanted to make a few phone calls that I thought  
18          were important for me to make so I called Coach  
19          Paterno.  I called our two head basketball  
20          coaches.  Those are the ones that I can remember  
21          specifically to let them know that the president  
22          had asked me to step in and serve as acting  
23          athletic director and I thought that was  
24          important they heard that from me.

25          Q.    So you did call Coach Paterno?

1           A.    I did.

2           Q.    And how did that conversation go?

3           A.    I just made sure that he knew what the  
4 president had asked me and he said Mark, if there  
5 is anything you need from me let me know, and I  
6 said I appreciate it, and, you know, it was a  
7 very brief conversation.

8           Q.    Okay. What was your next interaction  
9 with the football team coach that week?

10          A.    At some point in time I think the next  
11 interaction with the coach is -- probably would  
12 have been -- trying to remember if it was  
13 Wednesday or Thursday. I believe Wednesday  
14 evening following the board of trustees press  
15 conference in which they announced the  
16 termination firing of Coach Paterno would be the  
17 next thing that I remember.

18          Q.    Well following the termination of Coach  
19 Paterno who did you next communicate with as head  
20 football coach?

21          A.    Again I think that what I recall is it  
22 was mentioned at that press conference that Tom  
23 Bradley would be stepping in as an interim head  
24 football coach and I know that I had talked to  
25 Tom that night because we were planning to have a



1 press conference on Thursday morning and I wanted  
2 to touch base with him and let him know what time  
3 I was going to be in the athletic department and  
4 we can meet there in the morning.

5 Q. And did you go to that press conference?

6 A. I did.

7 Q. And there has been evidence that during  
8 the press conference Tom Bradley said that Mike  
9 McQueary would be coaching Thursday. Do you  
10 remember that?

11 A. I don't recall. When you say press  
12 conference, sir, are you referring to the board  
13 of trustees board conference or are you referring  
14 to --

15 Q. I am sorry. Referring to Tom Bradley's  
16 press conference, which was held on Thursday  
17 morning.

18 A. On Thursday morning?

19 Q. November 10th.

20 A. Tom had an opportunity to address media  
21 and I believe the question with regard to whether  
22 or not Mike would be available to coach in the  
23 game was asked. I believe that Tom said  
24 something to the effect that we plan -- that Mike  
25 would be coaching in the game, that would be a

1 game time decision in terms of whether or not he  
2 would be on the field or somewhere else.

3 Q. And when Tom Bradley made that statement  
4 to the media is that what you thought was going  
5 to happen?

6 A. That's what I had planned and thought  
7 too.

8 Q. Okay. Now let's take time out here for  
9 minute. Did you have any opinion about Mike  
10 McQueary's capabilities as football coach?

11 A. I didn't just from my observation and  
12 Mike being on our staff.

13 Q. And what was your opinion?

14 A. I thought Mike was a great coach. He  
15 was very organized. He was very on top of the  
16 things that I think he was asked to do in terms  
17 of coaching. He seemed to get along with the  
18 staff. He seemed to get along well with the  
19 student athletes. So I thought Mike was a good  
20 coach.

21 Q. So as of the Tom Bradley press  
22 conference on Thursday you were of the view Mike  
23 was going to be coaching Saturday?

24 A. I think that's what I just said. Yeah.

25 Q. Okay. Did anything happen during the

1 day that caused to you change your opinion that  
2 he would be coaching Thursday?

3 A. At some point in time there was a --  
4 there was an afternoon meeting -- this is on  
5 Thursday, correct?

6 Q. Yes.

7 A. I apologize. I am just trying to  
8 recall. I think on Thursday afternoon I had been  
9 called into a president's council meeting at the  
10 Penn Stater, which was following a board of  
11 trustees meeting that was also happening at the  
12 Penn Stater the same afternoon.

13 Q. And maybe we better stop for a minute.  
14 What is the Penn Stater?

15 A. Penn Stater Hotel and Conference Center  
16 at Penn State.

17 Q. Okay. What is the president's council?

18 A. President council is a group of  
19 administrative staff that have responsibilities  
20 in certain units like University general counsel,  
21 intercollegiate athletics, and other areas across  
22 campus that come together on a routine basis as  
23 part of what they refer to as president's  
24 council. It's almost like a staff meeting for  
25 the president.

1           Q.   Okay.  So I think before I ask for these  
2           explanations you went to a president's council  
3           meeting then at the Penn Stater?

4           A.   In the afternoon, yes, following the  
5           board of trustees meeting.

6           Q.   Okay.  And was Mike McQueary's status  
7           discussed at the president's council meeting?

8           A.   At the conclusion of that meeting I  
9           remember being approached by General Counsel  
10          Cynthia Baldwin.

11          Q.   Okay.  What I asked first was whether or  
12          not Mike McQueary's status was discussed at the  
13          president's council meeting?

14          A.   I am saying that no, it wasn't.

15          Q.   Okay.  But following the meeting General  
16          Counsel Baldwin approached you?

17          A.   Yes.

18          Q.   And what did she say about Mike  
19          McQueary's status?

20          A.   She just wanted to let me know that, you  
21          know, the decision had been made and Mike was not  
22          going to be coaching in the game on Saturday and  
23          that his status was to be determined and she told  
24          me to please make sure I communicated to Mike and  
25          Tom that decision and that's what I planned to

1 do.

2 Q. Okay. Did you provide any input into  
3 whoever decided that he would not be coaching  
4 Thursday?

5 A. No. At that particular time I think I  
6 had provided in my previous testimony in a  
7 deposition that it was my opinion that any  
8 decisions that were being made during the period  
9 of time that we are referring to as it related to  
10 anybody involved in the matters related to  
11 Sandusky or anybody who may have been implicated,  
12 including Mike -- that those decisions were being  
13 made by the board or those who communicated  
14 directly with the board.

15 Q. So you weren't asked for any input into  
16 that decision?

17 A. Correct.

18 Q. So far as you knew at the conclusion of  
19 the president's executive council meeting on  
20 Thursday had the football team been operating  
21 normally in terms of practices?

22 A. Yeah. Tom's first sworn in practice was  
23 most likely day of -- the first day of practice  
24 was likely a Thursday so I didn't hear anything  
25 other than, you know, things were moving.

1 Q. Well Monday, Tuesday, Wednesday weren't  
2 things moving normally?

3 A. Oh, yeah. Absolutely.

4 Q. As far as you knew Mike was performing  
5 all of his duties he was supposed to be  
6 performing Monday, Tuesday, Wednesday, Thursday?

7 A. As far as I know.

8 Q. So once General Counsel Baldwin told you  
9 that Mike wasn't going to be coaching Thursday  
10 did you have anything to do with respect to that  
11 decision?

12 A. Only to make sure that I had to  
13 communicated Mike, you know, that decision.

14 Q. And did you do so?

15 A. I did.

16 Q. And when did you do so?

17 A. I did so later Thursday evening. I had  
18 been asked to attend the Lasch football building  
19 in the evening that night. Actually jump on a  
20 conference call with families of our current  
21 football student athletes and a second phone call  
22 with the families of our admitted incoming  
23 prospective student athletes.

24 Q. And do you recall whose idea it was to  
25 have this conference call with the recruits?

1           A. I don't. I just recall them asking if I  
2 would be available to come down Thursday night.

3           Q. All right. Well who was recruiting  
4 coordinator at that time?

5           A. Again I don't recall.

6           Q. So when you told Mike you would not be  
7 coaching the Nebraska game how long a discussion  
8 was that?

9           A. Probably a couple of minutes. I  
10 remember first going into Tom Bradley's office  
11 and making sure that Tom understood, you know,  
12 that Mike would not be coaching and that, you  
13 know, I was concerned for Mike's health and  
14 safety and that I had a responsibility with  
15 regard to that in addition to the safety and  
16 security of those that would be in and around and  
17 attending the football game on Saturday, and Tom  
18 took me down to Mike's office after we had a  
19 chance to visit and I talked to Mike and I let  
20 him know that, and Tom checked in and said Mike  
21 are you okay and he said yes and Mike and I  
22 stayed for few more minutes to have conversation,  
23 and so that's how I had communicated that.

24           Q. How easy was it for you to tell Mike he  
25 would not be coaching on Saturday?

1           A. Any time that, you know, we have a  
2 conversation like that when somebody is  
3 passionate as Mike is and competitive as he is  
4 it's not easy.

5           Q. All right. How did Mike handle the news  
6 from you?

7           A. You know, Mike seemed to appreciate the  
8 concern that I had and, you know, I don't know  
9 whether or not -- like I said, it wasn't easy  
10 obviously for him to hear that he wouldn't be  
11 going on Saturday.

12          Q. Sir, can you turn to Plaintiff's Exhibit  
13 44. It's in the binder there that's marked  
14 Exhibit Witness Copy.

15          A. Yes, sir.

16          Q. Do you have it there? It's an e-mail?

17          A. Yes.

18          Q. And can you identify that for the  
19 record?

20          A. Yes. It's an e-mail from me to Tom and  
21 Mike. Tom Bradley and Mike McQueary.

22               Mr. Strokoff: Move for admission of 44,  
23 Your Honor.

24               Ms. Conrad: No objection.

25               The Court: It's admitted.



1                   Mr. Strokoff: We are going to put it  
2 up.

3 By Mr. Strokoff:

4           Q. Sir, you sent this to Mr. Bradley and  
5 Mr. McQueary on the evening of November 10, 2011?

6           A. I believe I did. I am not sure the time  
7 stamp on that is accurate. I think it was  
8 earlier in the evening.

9           Q. Okay. Now why don't you read out loud  
10 what that says?

11           A. Coach Bradley and Assistant Coach  
12 McQueary have decided it will be in the best  
13 interest of the team and the school that Mike  
14 McQueary not coach and not be in attendance at  
15 the game with Nebraska on Saturday.

16           Q. Now Mike McQueary and Coach Bradley did  
17 not decide that Mike would not coach, isn't that  
18 true?

19           A. That's true. As I reflect on this  
20 e-mail I don't know what my thought process was  
21 at the time with regard to why I was suggesting  
22 that this be a potential statement that we might  
23 release to athletics but once I had sent it to  
24 Mike I recall him indicating to me that he prefer  
25 me not to send anything yet, that he had been in

1 touch with his attorney, and I was heading into a  
2 meeting, the first of the couple meetings that I  
3 had mentioned, and I told Mike that I would make  
4 sure I circled back with him when we were  
5 finished before I left the building.

6 Q. Well did Tom Bradley tell you he did not  
7 agree with this?

8 A. I don't recall that.

9 Q. Wasn't Tom Bradley upset Mike wasn't  
10 going to be coaching Saturday?

11 A. I don't recall that Tom was upset.  
12 Obviously Tom was preparing for Mike to be out  
13 there but I don't recall if he was upset when I  
14 spoke to Tom. Tom seemed to understand that I  
15 was there to communicate that and what my  
16 concerns were and took me down to Mike.

17 Q. Sir, did anything else happen Thursday  
18 that you can recall concerning Mike McQueary and  
19 you?

20 A. Like I said, you know, Mike had  
21 indicated that he was in touch with his attorney  
22 and before we sent a statement out through  
23 athletics that he wanted to -- I told him that I  
24 would circle back with him and I did before I  
25 left the building.

1           Q.   And ultimately you sent out a public  
2 announcement that was acceptable to Mike?

3           A.   Yeah.  Mike had provided me -- he had  
4 handed me a statement that as I read it it  
5 reflected the concern that I had all along with  
6 regard to the safety concern and consistent with  
7 that so I took that back to the athletic  
8 department office that night where I had informed  
9 our sports information director that Mike would  
10 not be available to coach and that a status would  
11 be to be determined and I have -- I gave that to  
12 him.

13          Q.   Now did you have any discussion about  
14 Mike about not being in town the weekend of the  
15 Nebraska game?

16          A.   That evening --

17          Q.   Which evening is that, sir?

18          A.   The same evening that we had the  
19 conversation with regard to Mike not being out  
20 there on Saturday.  You know, in the conversation  
21 that we had after coach had dropped me off to  
22 Mike and I let him know of the decision I was  
23 talking to Mike and, you know, I thought that I  
24 would ask him about what he was doing over the  
25 weekend and he said that he didn't know if he

1       wasn't going to be coaching and I had said to him  
2       -- I said maybe why don't you consider getting  
3       away from it all because of the enormity of what  
4       was happening in the campus, the amount of press  
5       that was on campus. I just thought maybe it  
6       would be a good opportunity for him and his  
7       family maybe to get away from it all and take  
8       some time.

9           Q.   Anything else happen Thursday night?

10          A.   Not that I can recall.

11          Q.   Okay. What about Friday? Anything else  
12       happen concerning Mike McQueary on Friday?

13          A.   Just that on Friday at some point in the  
14       morning I received a call from President Erickson  
15       at the time and he was -- he seemed to be upset  
16       with statement that athletics had released with  
17       regard to Mike.

18          Q.   I am sorry. Who read the release?

19          A.   I said --

20          Q.   Dr. Erickson?

21          A.   Dr. Erickson on Thursday -- it was my  
22       understanding that he was going to make a  
23       statement with regard -- regards to Mike not  
24       being available during the game. I never saw  
25       that statement until later. I am not even sure

1 if it was Thursday night but what I had taken  
2 back and given to our sports information director  
3 that was released on the athletic department  
4 website is what he had called referring and he  
5 seemed upset that that wasn't what we had agreed  
6 to. I said well I am sorry. I said I thought  
7 that I had some flexibility with regard to what  
8 we were going to put out as it related to Mike  
9 and reflected concern that I had for safety.

10 Q. You have not told us about any  
11 discussion with Dr. Erickson about the press  
12 release prior to this.

13 A. I don't recall if I had told you that or  
14 not.

15 Q. Well what was Dr. Erickson upset about  
16 in the press release?

17 A. I don't know. He seemed to be upset  
18 that it wasn't reflective of what he thought  
19 maybe was going to say.

20 Q. And did he tell you what he thought it  
21 was going to say?

22 A. No. But, you know, the statement that  
23 he had released the night prior on Thursday night  
24 was that Mike was put on administrative leave by  
25 me.

1           Q. Well this is a discussion that was had  
2           Friday. Did you see a statement that  
3           Dr. Erickson had released that you had placed  
4           Mike on administrative leave?

5           A. No. Like I had said, I don't recall  
6           seeing that statement until the next day I  
7           believe, you know, after he had asked me about  
8           the statement that we had released. Like, you  
9           know, I had a very busy schedule that day. I had  
10          left the Penn Stater. I had to get back to my  
11          office and prepare for phone calls. I went to  
12          the Lasch Building. I talked with Mike, et  
13          cetera.

14          Q. Well when was it you are supposed to  
15          divine that you are supposed to put Mike on  
16          administrative leave Thursday?

17          A. Like I said, I don't recall ever having  
18          that discussion. I remember having the  
19          discussion about Mike wasn't going to be  
20          available to coach.

21          Q. That's with Cynthia Baldwin?

22          A. Right.

23          Q. Okay. So on Friday then what happened  
24          after Dr. Erickson's telephone call expressing  
25          unhappiness with your statement?

1           A.   Shortly thereafter Cynthia arrived at my  
2 office and let me know she was stopping by.

3           Q.   And what happened?

4           A.   She met with me and she said, Mark, we  
5 are going to need to reach out to Mike and try  
6 get ahold of him, that we need to let him know  
7 that his employment status would be changing, and  
8 that we would need to meet as soon as possible,  
9 and I said I am not sure that Mike is available  
10 to meet. And she said can you please try to  
11 reach him by phone and she said to me that she  
12 was going to begin to construct information about  
13 administrative leave and that we would eventually  
14 be inclined to discuss that and she explained  
15 that typically when a meeting like that occurs it  
16 would be myself, Cynthia Baldwin, our human  
17 resource representative, Mike, and that we would  
18 need to have that meeting as soon as we could,  
19 and so I reached out to Mike.

20          Q.   And were you able to connect with him  
21 Friday?

22          A.   I was.

23          Q.   And by phone?

24          A.   By phone. Yes.

25          Q.   And did he advise you where he was?

1           A.   He had advised me that he had already  
2           left and he wasn't in town.

3           Q.   And did you tell him about the need to  
4           meet?

5           A.   I did. I told him, Mike, I know you are  
6           going out of town. I said I want to let you know  
7           we are going to need to meet when you got back  
8           and make sure he knew there would be an change in  
9           his employment status at the time. I don't  
10          recall if I knew if that was paid administrative  
11          leave or what the administrative leave would be.  
12          I told him that the way that it was explained to  
13          me is that the people at the meeting would be  
14          myself, Cynthia, Erikka Runkle, the human  
15          resource representative, and Mike, that he would  
16          be presented with any information as it related  
17          to that status, and that he would not be asked to  
18          sign anything, that there was no need for him to  
19          have anybody in attendance with him at the  
20          meeting.

21          Q.   Didn't he ask if he can bring an  
22          attorney at the meeting?

23          A.   He may have asked me if I felt he should  
24          have somebody in attendance and I related to him  
25          what I was told.



1           Q. All right. Sir, can you turn to  
2 Plaintiff's Exhibit 47? Can you identify that  
3 document?

4           A. Looks like an e-mail from Cynthia --

5           Q. No. Plaintiff's 47.

6           A. Okay. Yes.

7           Q. Can you identify that?

8           A. That appears to be what I had been given  
9 a few minutes prior to the meeting that occurred  
10 on Sunday evening once Mike returned to town and  
11 we had planned to meet in my office in the  
12 athletic department and that looks like the  
13 document that was given to me by Cynthia a few  
14 minutes before we went.

15          Q. Did you have any input into the  
16 preparation of this document?

17          A. I did not.

18          Q. So you were given this document by  
19 Cynthia Baldwin a few minutes before meeting with  
20 Mike, is that correct?

21          A. I was.

22          Q. And the meeting was at seven p.m. at  
23 your office on that Sunday?

24          A. I don't recall exactly when but it was  
25 in the evening.

1 Q. And Mike showed up on time?

2 A. Yes. Mike showed up on time.

3 Q. And after exchanging cordials what  
4 happened?

5 A. I just told him thanks for coming in,  
6 Mike, and brought him back to the office. In the  
7 office were the people that I had previously  
8 mentioned. I was instructed to make sure I read  
9 this out loud to Mike, which I did.

10 Q. And did you read it word for word, sir?

11 A. I did.

12 Q. And then what?

13 A. Following the conclusion of me reading  
14 that there was also an opportunity for Mike to  
15 ask any questions that he may have.

16 Q. And did Mike say anything?

17 A. I recall that Mike definitely said that,  
18 you know, he didn't feel that he had done  
19 anything wrong and he desired to continue to  
20 coach.

21 Q. And did Cynthia Baldwin say anything in  
22 response to that?

23 A. I recall her saying, Mike, nobody is  
24 suggesting you did anything wrong.

25 Q. And Erikka Runkle was present?

1           A.    Yes.

2           Q.    Did she say anything in response to what  
3   Mike said?

4           A.    I don't recall.

5           Q.    Did you say anything in response to what  
6   Mike said?

7           A.    Not that I recall.

8           Q.    What did you think about what Mike said?

9           A.    I felt like he believed that he had done  
10   nothing wrong and he was expressing himself.

11          Q.    And what did Mike --

12          A.    I think Mike felt that he was kind of  
13   wronged and he felt like he should continue to  
14   coach.

15          Q.    Didn't you think he should be continuing  
16   to coach?

17          A.    I don't think that it was unreasonable  
18   for the administrative leave.

19          Q.    You didn't think it was what?

20          A.    Unreasonable.

21          Q.    Sir, you are aware that coaches do more  
22   than work on game day, isn't that correct?

23          A.    Yes.

24          Q.    Were you aware of any security issues or  
25   problems with the practices that the football

1 team had the week of November 7th?

2 A. There were a lot of threats and there  
3 were a lot of chatter on various media whether it  
4 was social media, via e-mail, via phone call  
5 messages, regarding the totality of the  
6 circumstances as it related to what we were  
7 dealing with at Penn State including a lot of  
8 very vulgar and very threatening e-mails  
9 regarding Mike and whether or not Mike should  
10 continue to coach or be on the field or whatever.

11 Q. Well to your knowledge with respect to  
12 the football practice the week of November 7th  
13 was there even one additional security measure  
14 put in place when the team was practicing and  
15 coaches were on the practice field?

16 A. I don't recall with regard to practice.  
17 I know that we had a begun to really beef up  
18 security not only within the athletic department  
19 facility but also the Lasch football facility.

20 Q. Okay. When you say begun to beef up  
21 security at Lasch what do you mean by that?

22 A. Just because of the nature of the  
23 traffic that we were seeing in terms of  
24 communications we really felt that we needed to  
25 have a security presence inside Lasch Facility in

1 addition to inside of Bryce Jordan Center where  
2 our athletic department administrative staff was.

3 Q. And the practice fields?

4 A. I don't recall that. I know that we had  
5 talked about security if there were anything like  
6 that that was put into place I would have relied  
7 on, you know, our operations manager who worked  
8 directly with the football staff on that.

9 Q. Now Dr. Joyner became an athletic  
10 director shortly after the Nebraska game, is that  
11 correct?

12 A. I believe it was in and around maybe  
13 Tuesday of that week.

14 Q. So Tuesday of the following week that  
15 you were appointed acting?

16 A. Correct.

17 Q. Did Dr. Joyner ever ask you any  
18 questions about Mike McQueary?

19 A. No.

20 Q. Did Bill O'Brien ever ask you questions  
21 about Mike McQueary?

22 A. No.

23 Q. And you continued to be associate  
24 athletic director until -- what did you say?  
25 April 2012?

1 A. Yes.

2 Q. Did Cynthia Baldwin asked any questions  
3 about Mike McQueary until the April 12th?

4 A. No.

5 Q. What about Dr. Erickson?

6 A. No.

7 Mr. Strokoff: Just one moment, Your  
8 Honor, please.

9 By Mr. Strokoff:

10 Q. Did anybody ask you for your input about  
11 whether or not Mike should get a bowl bonus?

12 A. No.

13 The Court: Pass the witness, Your  
14 Honor.

15 The Court: Do you want to come up here  
16 a moment please, counsel.

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

19 The Court: How long do you think you  
20 will take?

21 Ms. Conrad: A good 45 minutes.

22 The Court: Okay. Where is this guy  
23 coming from?

24 Ms. Conrad: I don't know

25 Mr. Strokoff: I can --

1           The Court: Is that his counsel?

2           Mr. Strokoff: It is. She is local.

3           The Court: Why don't we get her up  
4 here.

5           Good afternoon, counsel.

6           Ms. Yurchak: Good afternoon.

7           The Court: You have been here before  
8 5:00 in the afternoon and we were going to begin  
9 what counsel says is a 45-minute  
10 cross-examination which is probably an hour and a  
11 half.

12          Ms. Yurchak: I agree with him.

13          The Court: Where does your client come  
14 from?

15          Ms. Yurchak: He comes from D.C.,  
16 however, he -- his parents live here and I know  
17 he would rather leave tonight but I will leave  
18 that to your discretion. He can appear tomorrow.

19          The Court: I just think it makes all of  
20 the sense in the world and then his mom and dad  
21 will be happy.

22          The Witness: Probably true. And he  
23 might be tired too and I know he would rather get  
24 it done but that's up to you guys.

25          The Court: Okay. Thank you.

1 (End of side bar.)

2 The Court: I understand that  
3 Mr. Sherburne's parents are local?

4 The Witness: Yes.

5 The Court: And I certainly would love  
6 to have you take them out to dinner. I keep  
7 waiting for one of my sons to take my wife and me  
8 out to dinner and I have been waiting a long time  
9 but I gather you will be happy to take your  
10 parents out to dinner because I believe  
11 reasonably the cross-examination is going to  
12 extend for a period of time that would tax all of  
13 us on our desire to have dinner. So I am going  
14 to ask you as a courtesy to the parties and the  
15 Court if you would please come back tomorrow  
16 morning and use the evening to take your parents  
17 out to dinner.

18 The Witness: I would be happy to.  
19 Thank you.

20 The Court: Thank you very much.

21 Members of the jury, I don't usually  
22 like to break direct and cross-examination of a  
23 witness butt on the other hand even though you  
24 are now in the \$25 a day category I think we got  
25 our money worth out of you and we will see you



1 tomorrow morning. Again have in mind admonition  
2 not to discuss the matter, avoid newspapers, et  
3 cetera, have a safe trip home.

4 You are not to discuss your testimony  
5 with any of the lawyers. You can talk to your  
6 own lawyer but not others.

7 Thank you, sir. Appreciate it.

8 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  
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11/2/16

DATE

Elise A Fitzgerald

ELISE A. FITZGERALD

OFFICIAL COURT REPORTER

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I HEREBY CERTIFY THAT A COPY OF THIS  
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RECORD FOR THE PARTIES, ADVISING THEM THAT THEY  
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ANY OBJECTIONS OR EXCEPTIONS TO THE SAME. THAT  
TIME PERIOD HAVING ELAPSED WITHOUT RECORDING OF  
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## ACCEPTANCE BY COURT

UPON COUNSEL'S OPPORTUNITY TO REVIEW AND TO  
OFFER CORRECTIONS TO THE RECORD, THE FOREGOING  
RECORD OF PROCEEDINGS IS HEREBY ACCEPTED AND  
DIRECTED TO BE FILED.

11-2-16

DATE

Thomas G. Gavin

JUDGE