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



ORIGINAL

MICHAEL J. MCQUEARY

: NO. 2012-1804

VS

THE PENNSYLVANIA STATE UNIVERSITY

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TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL A.M. DAY 3)

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

DATE: OCTOBER 19, 2016

PLACE: CENTRE COUNTY COURTHOUSE ANNEX
ANNEX COURTROOM
108 SOUTH ALLEGHENY STREET
BELLEFONTE, PA 16823

APPEARANCES:

FOR THE PLAINTIFF:
ELLIOTT STROKOFF, ESQUIRE
WILLIAM T. FLEMING, ESQUIRE

FOR THE DEFENDANT:
NANCY CONRAD, ESQUIRE
GEORGE MORRISON, ESQUIRE
KIMBERLY HAVEAR, ESQUIRE

2016 OCT 19 11:12:56
CENTRE COUNTY, PA
PROthonotary
D. M. H. M. H. M.



ORIGINAL

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For Plaintiff:

Mark Sherburne		3	54	63
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For Defendant:

(None)

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P R O C E E D I N G S

THE COURT: Okay. Mr. Strokoff.

MR. STROKOFF: Your Honor, I believe Mr. Sherburne's going to be crossed.

THE COURT: Yes. I'm sorry, yes. Again, sir, thank you for accommodating us.

CROSS EXAMINATION

BY MS. CONRAD:

Q. Good morning, Mr. Sherburne.

A. Good morning.

Q. My name is Nancy Conrad and I represent The Pennsylvania State University. I'm standing at the podium because it's easier to see you from here versus in a seat where -- at the table. I want to take you through some questions related to the testimony you provided yesterday as well as some additional areas that we will cover.

A. Okay.

Q. First -- and I'll try not to be duplicative of that information, but I want to be sure that we are able to put the events back in context for today's testimony. When did you first become aware of the release of the presentment?

A. I believe it was Saturday morning when I received the phone call from Erikka Runkle, the

1 human resource representative.

2 Q. And I believe you testified already that that
3 led to some additional phone calls as well as
4 scheduling a meeting on Sunday morn -- or
5 participating in a meeting on Sunday morning?

6 A. Participating in I think phone calls and --
7 I'm not sure exactly when that occurred, but it was
8 Sunday.

9 Q. And what was the executive council formed?
10 Or was that already in existence?

11 A. The President's Council?

12 Q. Not the President's Council. It was my
13 understanding from your testimony that within
14 athletics, in particular football, there was a group
15 that started to meet on a regular basis to address
16 the issues that followed from the presentment being
17 released?

18 A. Yeah. That would just be an athletic
19 department staff meeting, which we had every
20 morning.

21 Q. And did you have a staff meeting every
22 morning prior to the release of the presentment?

23 A. No.

24 Q. So when was that instituted?

25 A. That Monday morning.

1 Q. Do you recall the statement that was issued
2 by Dr. Spanier?

3 A. I recall seeing it. I'm not sure when I saw
4 it.

5 Q. Could you pull up the statement? D20,
6 please. And Mr. Sherburne, the exhibits are also in
7 the binders before you if you would find that
8 easier. Is it --

9 A. This is fine.

10 Q. Thank you. So directing your attention to
11 the statement from President Spanier, when did you
12 first become aware that the statement was issued?

13 A. I'm not sure exactly when it was.

14 Q. And did there come a point in time that you
15 read the statement?

16 A. I believe I may have read the statement, it
17 may have been after Monday morning.

18 Q. And when you read the statement, did you at
19 any time connect any of the information contained in
20 the statement to Mike McQueary?

21 A. No.

22 Q. You will agree with me, won't you, that Mr.
23 McQueary's name is not referenced in the statement;
24 correct?

25 A. Correct.

1 Q. And you had known Mike McQueary how long, as
2 of November 5th, 2011?

3 A. Since he became a student athlete at Penn
4 State and enrolled as a freshman.

5 Q. So approximately how many years would that
6 have been, sir?

7 A. I'm not exactly -- I don't recall exactly
8 when Mike enrolled. So I would think that it would
9 have been probably eight to ten years.

10 Q. Eight to ten years you knew Mike McQueary?

11 A. Yes.

12 Q. And you worked with him, both as a player --
13 you knew him as a player and a coach; is that
14 correct?

15 A. Correct.

16 Q. And in reading this statement, when there was
17 references made to Tim Curley and Gary Schultz, did
18 you equate any of those statements to Michael
19 McQueary?

20 A. No.

21 Q. When Dr. Spanier expressed his opinion that
22 he has complete confidence in how they handled the
23 allegations about a former University employee, did
24 you connect that at all to Mike McQueary?

25 A. No.

1 Q. When President Spanier stated that Tim Curley
2 and Gary Schultz has his unconditional support, did
3 you relate that to Michael McQueary?

4 A. I didn't.

5 Q. Did you infer that President Spanier was not
6 supporting Michael McQueary?

7 A. No. At the time I'm not sure I even knew
8 that Mike McQueary was the person that they referred
9 to as the graduate assistant.

10 Q. When did you learn that Michael McQueary was
11 the graduate assistant referenced in the
12 presentment?

13 A. I'm not sure exactly when I found out. I
14 don't think it was -- some time after Monday.
15 Midweek. I don't recall.

16 Q. And when President Spanier expressed his
17 opinion that Curley and Schultz operate at the
18 highest level of honesty, integrity, and compassion,
19 did you infer from that statement that Mike McQueary
20 did not operate at the highest level of honesty,
21 integrity, and compassion?

22 A. No.

23 Q. And when you learned that Mike McQueary was
24 the grad assistant referenced in the presentment,
25 did you at any time relate President Spanier's

1 statement to Michael McQueary?

2 A. No, I didn't connect that. I didn't think
3 about that.

4 Q. And when President Spanier goes on to say,
5 "I'm confident the record will show that these
6 charges are groundless and they conducted themselves
7 professionally and appropriately," would that
8 statement, did you connect it at all to Michael
9 McQueary?

10 A. No.

11 Q. And after you learned that Mike McQueary was
12 the graduate assistant referenced in the
13 presentment, did you infer from President Spanier's
14 statement that Mike McQueary must have been lying to
15 the grand jury?

16 A. Again, I don't recall thinking of it in that
17 context or thinking about the statement after I
18 initially read it.

19 Q. And in your position with athletics, did you
20 hear anybody talking about the Spanier statement in
21 connection with Mike McQueary?

22 A. I don't recall that.

23 Q. Now, you were appointed, I believe you
24 testified, on November 6th as the interim athletic
25 director?

1 A. Can you give me a date, please?

2 Q. Tuesday, November 6th.

3 A. As the interim athletic director?

4 Q. Yes.

5 A. I received a phone call that Sunday night in
6 which they asked me to accept that responsibility.
7 And I agreed to it.

8 Q. So that you were appointed as of Sunday
9 evening?

10 A. That's the way I understood it.

11 Q. All right. And that following Monday,
12 President Spanier held meetings with members of
13 intercollegiate athletics and the head coaches,
14 didn't he?

15 A. Athletics had organized those meetings.
16 President Spanier attended those meetings.

17 Q. And I believe you testified you were present
18 at those meetings?

19 A. I was.

20 Q. And which meeting took place first?

21 A. The head coaches meeting.

22 Q. And do you recall the remarks of President
23 Spanier, or Dr. Spanier in those meetings?

24 A. I think they were pretty consistent with what
25 I said yesterday. He addressed the group. He did

1 say that, you know, he felt that Tim and Gary were
2 two people that he had worked closely with for a
3 number of years. He was confident in them. He felt
4 that they would be exonerated. He felt that Tim
5 would be returning to the position of athletic
6 director. And then he asked me to step in in the
7 interim to serve in the capacity until Tim got
8 through that process.

9 Q. And from what I heard you just state, Dr.
10 Spanier expressed his confidence in Mr. Curley and
11 Mr. Schultz based on the fact he had worked with
12 them for 16 years, or a number of years; is that
13 correct?

14 A. Yes.

15 Q. During those two meetings, you were present
16 for both, weren't you?

17 A. Yes.

18 Q. Did Dr. Spanier make any reference to Mike
19 McQueary?

20 A. Not that I recall.

21 Q. And while you heard the statements of the
22 president, did you in any way connect his statements
23 to Michael McQueary?

24 A. Like I said, I don't think that I knew that
25 Mike McQueary was the person referenced in the

1 presentment.

2 Q. And when you learned that Mike McQueary was
3 the person referenced in the presentment, did you
4 look back at those statements that Dr. Spanier had
5 made in those meetings and in any way connect those
6 statements to Michael McQueary?

7 A. As I previously said, no, I didn't think of
8 that in that context at the time.

9 Q. So based on Dr. Spanier's statement that was
10 published, as well as the remarks that he had made
11 at the two meetings, you never inferred any
12 conclusion related to Mike McQueary?

13 A. Correct.

14 Q. And during those two meetings, let's start
15 first with the meetings of the head coaches, did you
16 hear anyone during that meeting or leaving that
17 meeting raise a question or make a reference about
18 Mike McQueary?

19 A. No.

20 Q. And did you, after you left the -- during the
21 meeting during or as you left the meeting with the
22 intercollegiate athletic staff, did you hear anyone
23 making reference or making a statement about Mike
24 McQueary?

25 A. Not that I recall.

1 Q. Did you ever, during the course of your
2 employment following Dr. Spanier's written statement
3 as well as his remarks, hear from anyone that
4 connected the president's statement and remarks to
5 Michael McQueary?

6 A. No.

7 Q. Now, you were asked during your direct
8 examination about practices during that week in
9 November. Were you attending those practices of the
10 football team?

11 A. No.

12 Q. Could you describe for me the general
13 atmosphere following the release of the presentment
14 and that first week in November in your position and
15 what you were observing?

16 A. I just think the totality of the
17 circumstances that we were dealing with and the
18 complexity of those circumstances and the amount of
19 media presence that began to converge in State
20 College, it was a very difficult time. Obviously,
21 there was a lot of people that were learning about
22 this information. There was a lot of people that
23 were sending emails, messages through various media
24 related to that, expressing their opinions,
25 providing very threatening and vulgar statements

1 with regard to the circumstances that were tough to
2 read and tough to look at at times.

3 Q. Working long days?

4 A. Very long days, yes.

5 Q. Much sleep?

6 A. Not much.

7 Q. And the emails and messages that you were
8 receiving, are we talking about hundreds, thousands?
9 And by you I mean the athletic department.

10 A. I would think there would have been hundreds,
11 possibly thousands.

12 Q. And you mentioned that the media was present.
13 Swarmed in that week?

14 A. Media was present, yes.

15 Q. One or two? Or were they everywhere?

16 A. They were everywhere.

17 Q. Were they at the athletic building?

18 A. They were downtown, on campus, they were
19 everywhere.

20 Q. They were everywhere. And were there media
21 articles being released about the information
22 related to the presentment?

23 A. I would assume. I don't recall.

24 Q. You were focused on doing your job so you
25 really didn't focus on the media articles; is that

1 fair to say?

2 A. Correct.

3 Q. You did mention threatening, vulgar messages.
4 What did you mean by that?

5 A. Just from what I recall, the messages were
6 disturbing, concerning. You know, I was receiving a
7 lot of information through email. We were receiving
8 information via phone calls within the athletic
9 department, so there's just a variety of those kinds
10 of messages coming in that were concerning.

11 Q. Based on those messages that you were
12 receiving, did there come a point in time that any
13 of those messages related to Michael McQueary?

14 A. Yes. There were several messages that
15 related to Mike.

16 Q. And what were the nature of those messages?

17 A. Again, I can't recall the exact, but very --
18 sometimes very vulgar, very threatening.

19 Q. What do you mean by threatening?

20 A. Life threatening at times.

21 Q. Were they death threats?

22 A. Some of them I took as serious threats
23 against Mike.

24 Q. Now, I want to direct your attention to the
25 press conference that Coach Bradley held on November

1 10th. Were you at that conference?

2 A. Yes.

3 Q. And was it customary to have that -- those
4 statements recorded and then published?

5 A. Yes. Typically at a press conference, that's
6 what occurs.

7 Q. Okay. I want you -- I want to direct your
8 attention to the binder that's directly in front of
9 you in the middle and turn to tab 27. It would be
10 Defendant's 27.

11 A. (The witness complied.) Okay.

12 Q. Are you familiar with that document?

13 A. It looks like the summary of the press
14 conference.

15 Q. And what press conference?

16 A. Tom Bradley press conference.

17 Q. And that was what -- what date was that?

18 A. It's listed here as November 10th.

19 MS. CONRAD: Move for the admission of D27.

20 THE COURT: Any objection?

21 MR. STROKOFF: None, Your Honor, except I
22 think it may already be in. But I might be
23 mistaken. But no objection, Your Honor.

24 THE COURT: It's admitted.

25 MS. CONRAD: Permission to publish.

1 THE COURT: Yes.

2 BY MS. CONRAD:

3 Q. Mr. Sherburne, I'd like to direct your
4 attention to the sixth question.

5 A. Okay.

6 Q. And I'm going to read the question that was
7 posed to Coach Bradley and ask that you provide the
8 answer. "Will Mike McQueary be coaching in the
9 upcoming home game against Nebraska? Will McQueary
10 be coaching on the sideline or in the press box?"
11 And what was the response that Coach Bradley
12 provided?

13 A. "Yes, Mike McQueary will be coaching on
14 Saturday. It will be a game-time decision as to
15 where he will be placed."

16 Q. And was it your understanding as of the
17 morning of November 10th, 2011 that coach McQueary
18 would be coaching in the Saturday Nebraska game?

19 A. Yes.

20 Q. Did you have any concerns at that point about
21 Mr. McQueary, based on the threatening messages that
22 you had received?

23 A. Yes. I became concerned about that. I don't
24 exactly know when, but as they began and continue to
25 come in, it was some time midweek.

1 Q. And did you at any time consider while these
2 concerns were surfacing about options to protect
3 Mike McQueary at the game that Saturday?

4 A. Yes.

5 Q. And what were -- what were you considering?

6 A. Just in talking with a senior member of our
7 staff, Mark Bodenschatz, who is an associate
8 athletic director for facilities and operation, who
9 would be the person who would coordinate security
10 and that sort of thing. We had begun discussing
11 about where Mike might be located and the best place
12 for him to be located if he were to be coaching in
13 the game. And I asked Mark to continue to give that
14 some thought.

15 Q. So when Coach Bradley said it will be a
16 game-time decision as to where he will be placed,
17 that was part of the consideration of how best to
18 protect Mike McQueary; is that right?

19 A. Correct.

20 Q. I'm going to direct your attention now to
21 page three of this document, in particular to the
22 second question. And again, I'm going to read the
23 question and ask that you provide the response.

24 "Tom, given the intense national scrutiny for Mike
25 McQueary, why do you think it is appropriate for him

1 to coach in this game and be the face of the
2 University?" And the response that Coach Bradley
3 provided?

4 A. Can you repeat that for me? I missed the
5 question you asked me to refer to.

6 Q. Yes. It's the second question.

7 A. This is the second page?

8 Q. On the third page. If you look down at the
9 lower right hand corner of the page, it will say
10 177.

11 A. Okay.

12 Q. Then second question then.

13 A. Okay.

14 Q. "Tom," are you with me?

15 A. Yes.

16 Q. "Given the intense national scrutiny for Mike
17 McQueary, why do you think it is appropriate for him
18 to coach in this game and be the face of the
19 University?" And Coach Bradley answered?

20 A. "That is a decision that is up to the
21 administration and Mark Sherburne, our acting
22 athletic director."

23 Q. And is it fair to say at that point in time,
24 Mr. Sherburne, a decision hadn't been made about
25 whether or not Coach McQueary would be coaching in

1 the Nebraska game?

2 A. Yes.

3 Q. The following question, "Was there any
4 consideration given to dismissing Mike McQueary?
5 Were you part of any conversation whatsoever about
6 potentially relieving him of his duties with the
7 football team?" Coach Bradley's answer?

8 A. "Absolutely not."

9 Q. And is that consistent with your
10 understanding of the status of Mr. McQueary, that
11 is, there had been no discussions about firing him
12 or relieving him of his duties?

13 A. Correct.

14 Q. And then if you could turn two more pages.
15 At the bottom of the page it would be 179.

16 A. 179?

17 Q. Yes, sir.

18 A. Okay. Bottom of the page?

19 Q. Bottom of the page. I'm directing your
20 attention to the next to the last question. The
21 question reads, "Can you put into words," are you
22 with me?

23 A. Yes.

24 Q. "Can you put into words why McQueary gets to
25 coach on Saturday and Joe Paterno does not?" And

1 Coach Bradley responded?

2 A. "Once again, that's based on the
3 administration."

4 Q. So was it your understanding that
5 administration would be making decisions with
6 respect to the employment status of Mr. McQueary?

7 A. Yes. I believe that I provided testimony
8 yesterday to that fact.

9 Q. And that testimony was, sir?

10 A. That it was apparent to me that no decisions
11 were being made as it related to anybody related to
12 the Sandusky matters, whether it be those implicated
13 Mike, anybody, other than the board and those who
14 had conversation with the board.

15 Q. And would that include Dr. Rod Erickson, who
16 by this time had been appointed interim president?

17 A. Yes.

18 Q. I want to go back now to what followed. And
19 we can take the exhibit down now, please. Following
20 Coach Bradley's press conference where he stated
21 that Coach McQueary would be coaching on Saturday,
22 did you receive any messages, any information
23 following that press conference related to Mr.
24 McQueary?

25 A. Yes.

1 Q. What kinds of information were you receiving
2 after that press conference?

3 A. I don't recall exactly. Only to what I had
4 testified to yesterday, later Thursday afternoon.

5 Q. Before we get to the afternoon, you had made
6 reference to threats. Did the threats increase or
7 did they continue after the press conference?

8 A. They were steady. And I can't recall exactly
9 whether or not they picked up in intensity after
10 that press conference or not.

11 Q. Again, it was a chaotic time?

12 A. Very much so, yes.

13 Q. And you were trying to multitask on numerous
14 activities?

15 A. Correct.

16 Q. I'd like to direct your attention to D26.

17 A. Will that be on the screen?

18 Q. That will be in the binder, sir.

19 A. What was it again?

20 Q. 26. Take a moment to review that email,
21 please.

22 A. (The witness complied.) Okay.

23 Q. Mr. Sherburne, is that an email that was
24 directed to you on November 9th to your email
25 address at Penn State?

1 A. It appears to be, yes.

2 MS. CONRAD: Okay. Move for the admission of
3 D26.

4 MR. STROKOFF: No objection, Your Honor.

5 THE COURT: It's admitted.

6 MS. CONRAD: Permission to publish.

7 BY MS. CONRAD:

8 Q. Directing your attention to the email that
9 appears at the lower part of the page, that would be
10 the first email that you received; correct, with
11 respect to the two that are on the page?

12 A. Yes.

13 Q. And directing your attention to the third
14 paragraph, what information did you receive in that
15 email about Mike McQueary?

16 A. Do you want me to read it out loud?

17 Q. Yes, sir.

18 A. "Mike McQueary also has to go. He shouldn't
19 be allowed to coach from the sidelines or the
20 booth."

21 Q. And then could you continue to the next
22 paragraph?

23 A. "You really need extra security for
24 Saturday's game versus Nebraska. This isn't a
25 threat or an implied threat, it is just in the

1 interest of public safety. I would hate to see
2 innocent people get hurt. Penn State doesn't care
3 about innocent people especially children. All Penn
4 State cares about is Penn State. You need real
5 security for Saturday, not just a cop or students
6 wearing jackets that say security on the back. I
7 have never been to Nebraska or rooted for that
8 school before, but I will be a big Corn Husker fan
9 on Saturday. Go Big Red."

10 Q. What did you do with this email that you
11 received that indicated McQueary has to go, he
12 shouldn't be allowed to coach, there's a need for
13 extra security?

14 A. I had forwarded the email, it appears to
15 certain members of the senior staff, including our
16 sports information director.

17 Q. And is that reflected on the upper portion of
18 the email?

19 A. Correct.

20 Q. Who specifically did you forward this email
21 to?

22 A. Greg Myford, who was an associate athletic
23 director; Mark Bodenschatz, another associate
24 athletic director; and Jeff Nelson, who was the head
25 of our sports information office and point person

1 for football, sports information.

2 Q. And Mark Bodenschatz, what was his role and
3 primary job duties and responsibilities?

4 A. He was an associate athletic director for
5 facilities and operations. And he was very integral
6 in the safety and security leading up to and around
7 events especially at Beaver Stadium.

8 Q. And why did you forward this email to Mr.
9 Bodenschatz?

10 A. Because I knew he needed to see it.

11 Q. Why did he need to see it?

12 A. Because of the threats and because of the
13 things that were outlined in the email.

14 Q. And I want to direct your attention now to
15 tab 51. Are you familiar with the document at tab
16 51?

17 A. I'm just taking a minute to read it.

18 Q. Understood.

19 A. Okay.

20 Q. Is this an email that you were copied on?

21 A. It appears so.

22 MS. CONRAD: Move for the admission of D51.

23 MR. STROKOFF: No objection, Your Honor.

24 THE COURT: It's admitted.

25 MS. CONRAD: One moment, please, while we

1 publish it.

2 BY MS. CONRAD:

3 Q. And while we're doing that, Mr. Sherburne,
4 who was this email, as reflected on D51, who was it
5 sent to?

6 A. To Mike McQueary.

7 Q. And was it copied to you?

8 A. Yes.

9 Q. Can you tell who else it was copied to?

10 A. B-O-T at P-S-U dot E-D-U, which I'm assuming
11 maybe Board of Trustees, Tom Bradley, and myself.

12 Q. And then it indicates who it's from; correct?

13 A. Yes.

14 Q. Did you know the identity of the person who
15 sent it?

16 A. I do not.

17 Q. And what is the subject line? And with all
18 due respect to the language that's being used, I
19 apologize.

20 A. "I hope Nebraska kicks the shit out of you
21 today."

22 Q. And with respect to the information contained
23 on D1, what did this sender -- what message did this
24 sender convey to Mr. McQueary and copied to you?

25 A. Do you want me to read it out loud?

1 Q. Yes, sir.

2 A. "The same way McQueary should have kicked the
3 shit out of that faggot Sandusky when he had a
4 chance. Fuck Penn State football."

5 Q. And then directing your attention to tab 48.
6 Take a moment to review that email.

7 A. (The witness complied.) Okay.

8 Q. Was that an email that you were copied on?

9 A. Yes.

10 Q. And D48 has been already admitted, we'll post
11 it for the jury. What was the substance of the
12 message received in this email?

13 A. Bomb threat.

14 Q. A bomb threat to whom?

15 A. Would you like me to read it?

16 Q. Why don't you read the first paragraph.

17 A. "A threat was received by university
18 operators this evening claiming bombs will go off
19 around the stadium. The caller's phone number was
20 blocked. Police and FBI investigating."

21 Q. Were you aware that there came a point in
22 time that the University received a bomb threat
23 prior to the Nebraska game?

24 A. Yes.

25 Q. How did you become aware of it?

1 A. I was with Mark Bodenschatz at the time and
2 he had received the information.

3 Q. And what -- was this bomb threat assessed as
4 credible?

5 A. Any threat was assessed as credible.

6 Q. And what action, if any, did the University
7 take with respect to this bomb threat?

8 A. Again, I know that agents that were on the
9 ground, officers, bomb-sniffing dogs, others were
10 busy going through and searching the stadium and
11 that extra measures were being put into place to
12 make sure that we did everything we could to take
13 that threat seriously.

14 Q. And did you take any action with respect to
15 Nebraska team that would be traveling to State
16 College to play that game?

17 A. Yes.

18 Q. I'd like to direct your attention to D51.
19 Oh, I'm sorry, 45. Are you familiar with this
20 exhibit?

21 A. Yes.

22 Q. And on the second page, are you familiar with
23 the page that follows?

24 A. Yes.

25 Q. And what are these documents?

1 A. Two emails that were drafted and put out
2 under my signature related to our athletic
3 department looking forward to Nebraska football team
4 coming to the University for the weekend, and
5 expressing to both Tom Osborne, the athletic
6 director at Nebraska, and Bo Pelini, the head
7 football coach at Nebraska, all of the efforts that
8 we were making to ensure a good experience and a
9 safe experience as they visited State College and
10 Beaver Stadium.

11 MS. CONRAD: Move for the admission of D45.

12 MR. STROKOFF: No objection.

13 THE COURT: It's admitted.

14 MS. CONRAD: Publish it, please.

15 BY MS. CONRAD:

16 Q. Starting on the first page then, I believe
17 you said this first email was to to athletic
18 director at Nebraska; is that correct?

19 A. That's correct.

20 Q. And directing your attention to that first
21 paragraph, you state, "We realize the events that
22 have brought national attention to our University
23 over the past few days might have created some
24 concerns." Do you see that statement?

25 A. Yes.

1 Q. What do you go on to say about those concerns
2 in the next sentence?

3 A. "Therefore, in an effort to alleviate any
4 concerns, we would like to ensure that the safety is
5 our number one priority. We are confident that our
6 emergency management team is taking every measure to
7 ensure the safety of all who will be on our campus
8 for this weekends's events."

9 Q. And when you say every measure, what are you
10 referring to?

11 A. Just literally every measure. Dotting the
12 I's, crossing the T's, making sure that we have the
13 amount of officers on the ground, that we have plans
14 in place for security of our venues and the stadium,
15 that we have our plans ready in case we have to
16 respond to any sort of emergency.

17 Q. And did that include having additional
18 security and officers at the game?

19 A. Yes.

20 Q. And directing your attention to the second
21 page. I believe you stated that this email was sent
22 to the head coach at Nebraska; is that correct?

23 A. Yes.

24 Q. And directing your attention to the first
25 paragraph, did you provide the same assurances to

1 the head coach at Nebraska?

2 A. Identical.

3 Q. Now following, Mr. Sherburne that press
4 conference that Coach Bradley had in which he said
5 Mike McQueary would be coaching at the Nebraska
6 game, I believe you indicated that the threats
7 against Mike McQueary continued; is that correct?

8 A. Correct.

9 Q. And did there come a point in time that you
10 received information -- did you form a concern about
11 Mike McQueary's safety for that game?

12 A. I always had a concern for Mike's safety for
13 that game.

14 Q. And did you have any conversations with Mr.
15 McQueary about your concerns for his safety?

16 A. Yeah. At one time during the course of the
17 week, and I don't recall exactly the day, it may
18 have been Wednesday-ish, midweek, I had a phone
19 conversation, I reached out to Mike because of the
20 information that I received and let him know I just
21 was concerned about him and I wanted to check in
22 with him.

23 Q. And was your concern extended to concern for
24 his family?

25 A. Just concern for him personally with

1 everything that was going on and the fact that I had
2 been concerned as a result of the traffic that we
3 were receiving, the emails, the phone calls. I'm
4 not sure exactly what I conveyed to Mike, but it was
5 more to call to check on him.

6 Q. And that concern was based on the emails that
7 were raising death threats and making other vile
8 statements against Mr. McQueary; is that right?

9 A. Right.

10 Q. And at that point in time, did you ever
11 recommend to Mr. McQueary that he should leave town
12 for the weekend?

13 A. No, not at that point in time.

14 Q. Did McQueary at any point in time ask you for
15 advice about what he should do?

16 A. Not that I recall.

17 Q. Did there come a point in time that you were
18 informed that Thursday that a decision had been made
19 that Coach McQueary would not be coaching in the
20 Nebraska game?

21 A. Yes.

22 Q. And when did you receive that information?

23 A. I think it was late in the day on Thursday,
24 afternoon, at a President's Council meeting, after a
25 President's Council meeting.

1 Q. And who did you receive that information
2 from?

3 A. As I recall, Cynthia Baldwin just made sure
4 that I knew that the decision had been made that
5 Mike wouldn't be available to coach on Saturday,
6 that his status would be pending, and that I needed
7 to be sure that I communicated that with Tom and
8 Mike.

9 Q. And did you receive any information about the
10 reason why this decision had been made that he
11 wouldn't be coaching?

12 A. Not that I recall at that time.

13 Q. What did you do then after you received the
14 information that he wouldn't be coaching?

15 A. Again, I had some other meetings that evening
16 scheduled in football. Like I said, I think it was
17 later in the afternoon when I had received that
18 information. So when I got to the football facility
19 that night, I talked with Tom and Mike prior to the
20 meetings that I had scheduled.

21 Q. And did you convey the message to Mr.
22 McQueary that he would not be coaching?

23 A. I did.

24 Q. And did you relate any reason to Mr. McQueary
25 about why he would not be coaching?

1 A. Again, you know, it was a result of my
2 concern with regard to the safety and security for
3 not only Mike but the overall safety and security
4 for all of those that would be in attendance and at
5 the game on Saturday.

6 Q. And did you convey that to Mr. McQueary?

7 A. Yes.

8 Q. Did he respond at all to you after you
9 provided that explanation?

10 A. I don't recall exactly. I know that we had a
11 conversation. I know that, you know, Mike, and the
12 competitor that he is and his interest in wanting to
13 be involved and out there, that, you know, it was a
14 hard conversation.

15 Q. It was a tough call? You knew that Mr.
16 McQueary wanted to coach?

17 MR. STROKOFF: Your Honor, at this point, I
18 would like to object to leading beyond the pale.

19 MS. CONRAD: I'll rephrase.

20 BY MS. CONRAD:

21 Q. Was it a tough decision to let Mr. McQueary
22 know that he couldn't couch?

23 A. I think any time you have a conversation with
24 somebody where, you know, they really want to do
25 what they're trained to do it's hard.

1 Q. Did you believe it was the right decision
2 that he shouldn't coach?

3 A. I didn't seem to think it was unreasonable.

4 Q. And what was that based on?

5 A. Again, the overall safety and security
6 concerns that I had. And, you know, just the
7 overall totality of circumstances and the
8 complexities.

9 Q. I'd like to direct your attention now to tab
10 41. Did you have an exchange of email messages with
11 Mr. McQueary about the release of a press statement
12 from Penn State Athletics?

13 A. Yes.

14 Q. And directing your attention to the entire
15 packet that's contained at page 41, is that the
16 email exchanges as well as the press statement that
17 was ultimately released?

18 A. Just this page 396?

19 Q. Starting with the first page 395.

20 A. Can you repeat the question?

21 Q. Yes. There's a series of emails contained at
22 D41. Are those emails that you exchanged with Mr.
23 McQueary about the press statement to be released?

24 A. Yes.

25 MS. CONRAD: Move for the admission of D41.

1 MR. STROKOFF: No objection, Your Honor.

2 THE COURT: It's admitted.

3 BY MS. CONRAD:

4 Q. Directing your attention to the first page of
5 D41. What is that, sir?

6 A. Again, it appears to be an email from me to
7 Tom and Mike regarding the potential for a possible
8 release.

9 Q. And directing your attention to the text of
10 the email, is that the proposed statement to be
11 utilized for the press release?

12 A. Again, from what I recall, it was a possible
13 way to begin framing a release.

14 Q. Do you know who initially drafted that
15 statement?

16 A. I don't recall if I just sent that or if
17 there had been conversation. I know that at the
18 time that Cynthia informed me that Mike wouldn't be
19 coaching, I can remember Bill Mahon being nearby in
20 conversation. I don't recall exactly why I may have
21 framed it this way or what I may have been thinking
22 about.

23 Q. And how is it framed Mr. Sherburne?

24 A. Do you want me to read this?

25 Q. Yes, sir.

1 A. "Coach Bradley and Assistant Coach McQueary
2 have decided it would be in the best interest of the
3 team and the school that McQueary not coach and not
4 be in attendance at the game with Nebraska."

5 Q. Are there any references to death threats in
6 this email?

7 A. No.

8 Q. And you sent this to Mr. McQueary and Coach
9 Bradley for what purpose?

10 A. Again, as I recall, it was the potential for
11 a possible way to put out a release.

12 Q. Were you seeking input from Mr. McQueary
13 about this statement?

14 A. I don't recall. I sent it to him and Mike
15 responded.

16 Q. And directing your attention then to the next
17 page. And in the middle of the message exchange is
18 the message you received from Mr. McQueary, isn't
19 it?

20 A. Yes.

21 Q. And directing your attention to the text of
22 that message, what does Mr. McQueary say to you?

23 A. He says, "Mark, please hold on the release.
24 My lawyers are examining it. I will get with you as
25 soon as I hear from them."

1 Q. Did you understand -- had any understanding
2 why Mr. McQueary's lawyers would be reviewing this
3 draft press statement?

4 A. Other than like I had stated, just the
5 complexities of the case.

6 Q. Had Mr. -- were you aware that Mr. McQueary
7 had lawyers at this point in time?

8 A. It wasn't surprising to me that he did, yeah.

9 Q. Did he have any discussion with you about his
10 lawyers at this time?

11 A. No.

12 Q. And what do you respond to Mr. McQueary when
13 he says hold on the release, my lawyers are
14 examining it?

15 A. I said, "I will not send it until I see you
16 before I leave."

17 Q. And directing your attention then to the next
18 page. Mr. McQueary thanks you for your response,
19 doesn't he?

20 A. Yes.

21 Q. And how do you respond to him?

22 A. "Call my cell."

23 Q. And do you recall whether you had a
24 conversation with Mr. McQueary by telephone on or
25 about this time?

1 A. I don't recall.

2 Q. All right. I'm going to direct your
3 attention now to page 39 -- 389. So we're skipping
4 one page and going to the next.

5 A. 99?

6 Q. Yes, sir.

7 A. Okay.

8 Q. It appears to be a message from Mr. Fleming
9 to Mike McQueary, isn't it?

10 A. Yes.

11 Q. And this message gets forwarded to you by
12 Mike McQueary, doesn't it? If you look at the top
13 of the page.

14 A. Yes.

15 Q. And directing your attention to the text of
16 the message that Mr. Fleming sent, what does Mr.
17 Fleming say?

18 A. Do you want me to read the whole email?

19 Q. Let's start with the first sentence.

20 A. "I think it would be better to read as
21 follows."

22 Q. And then is there a proposed draft? Or does
23 it repeat the same message?

24 A. I don't know if that's the exact statement.
25 Do you want me to read this?

1 Q. Is the message, in essence, the same that had
2 been proposed to Mr. McQueary?

3 A. It appears to be similar if not the same,
4 yes.

5 Q. And then what does Mr. Fleming say to Mike
6 McQueary?

7 A. "But Mike, please hold onto this until I hear
8 from Tim Reeves, our PR guy. He should get back to
9 me soon tonight."

10 Q. So did you know at this time, that is
11 November 10th, 2011, that Mr. McQueary not only is
12 consulting with his lawyers about this statement,
13 he's also consulting with his PR guy, Tim Reeves?

14 A. No, I did not know that.

15 Q. And do you know what PR stands for?

16 A. Public relations, I'm assuming.

17 Q. Did you know that Mr. McQueary, as of
18 November 10, 2011, had a public relations guy that
19 he was consulting with?

20 A. No.

21 Q. And did you follow Mr. Fleming's request to
22 Mr. McQueary to hold off on this until the PR guy
23 got back to them?

24 A. Again, I'm not sure how much of this I
25 actually saw, I was in meetings. So, you know, as I

1 told Mike, I would circle back with him before I
2 left the building.

3 Q. So you were holding off on finalizing the
4 press statement until you heard back from Mike?

5 A. Until I circled back with Mike.

6 Q. So as of the time that this message was
7 forwarded to you on November 10th, you hadn't
8 finalized the press statement, did you?

9 A. Correct. I did not.

10 Q. You were waiting to hear from Mike after he
11 consulted with his lawyers and his PR guy?

12 A. I was waiting to circle back with Mike.

13 Q. Now, directing your attention to the page
14 marked 401, it's about three pages and it starts
15 with do. Do you see that page?

16 A. Yes.

17 Q. And what is this page?

18 A. It appears to be the statement that Mike had
19 provided to me when I eventually did circle back
20 with him regarding what we had been talking about.

21 Q. So this is the statement that you received
22 from Mr. McQueary after he told you to hold off and
23 after Mr. Fleming had told him to hold off until the
24 lawyers and the PR consultant was contacted; is that
25 correct?

1 A. Yes.

2 Q. And after -- what did this message provide?
3 Could you read that into the record, sir?

4 A. "Due to multiple threats made against
5 Assistant Coach Mike McQueary, the University has
6 decided it would be in the best interest of all for
7 Assistant Coach Mike McQueary not to be in
8 attendance at Saturday's Nebraska game.

9 Q. So comparing that to the draft you had sent,
10 there's new language in this email, or this
11 statement, isn't there?

12 A. Correct.

13 Q. And what is that new language?

14 A. Just the original concern that I always had
15 about safety and security.

16 Q. Okay. But I'm asking, contrasting what Mike
17 McQueary had given to you for a press statement to
18 what you had proposed, there's an additional
19 language in there. What is that language?

20 A. The University has decided it would be in the
21 best interest not to be in attendance at Saturday's
22 game.

23 Q. So instead of it saying Coach Bradley and
24 Mike McQueary, it said the University had decided it
25 would be in the best interest; is that correct?

1 A. Correct.

2 Q. And what about the language, due to multiple
3 death threats against Assistant Coach McQueary, was
4 that in the original draft?

5 A. No.

6 Q. So the due to multiple death threats language
7 was added after Mr. McQueary consulted with his
8 lawyers and his PR consultant?

9 A. Correct.

10 MR. STROKOFF: Objection, Your Honor. That's
11 not what the statement says. There's nothing about
12 death threats, it says threats.

13 MS. CONRAD: I correct.

14 BY MS. CONRAD:

15 Q. The statements due to multiple threats
16 against Assistant Coach McQueary, that language was
17 added after Mr. McQueary consulted with his lawyers
18 and his PR consultant; is that correct?

19 A. Yes.

20 Q. And in fact, turning your attention to the
21 last page of D41. Does that page contain the
22 statement that was released by Penn State Athletics?

23 A. Yes.

24 Q. And what was the statement that was released
25 by Penn State Athletics?

1 A. The same one that I had received from Mike
2 before leaving the building.

3 Q. So you agree then to publish the statement
4 that Mr. McQueary provided after he consulted with
5 his lawyers and PR consultant?

6 A. Correct. It was consistent with what I had
7 talked with Mike about and my concerns.

8 Q. And that included the due to multiple threats
9 language?

10 A. Yes.

11 Q. Now, following the release of the statement
12 and notice to Mr. McQueary that he would not be
13 coaching in the Nebraska game due to safety
14 concerns, did you then have any follow up with Mr.
15 McQueary about his status?

16 A. I believe it was Friday morning.

17 Q. What occurred Friday morning?

18 A. Cynthia Baldwin had stopped into my office to
19 let me know that Mike's employment status would be
20 changed, and we needed to reach out to him so that
21 we could meet with him as soon as possible.

22 Q. How was his employment status changing?

23 A. She had said that we were going to place him
24 on administrative leave. I'm not sure exactly if I
25 knew what that meant at the time.

1 Q. And did you have any understanding whether or
2 not it would be paid administrative leave?

3 A. I don't recall if I knew that at that time.

4 Q. What did you do when you learned from Ms.
5 Baldwin that Mr. McQueary was going to be placed on
6 administrative leave?

7 A. I did what she asked me to do, I reached out
8 to Mike. I had alerted her that I wasn't sure that
9 Mike would be in town. But I made that phone call.

10 Q. And what did you tell Mr. McQueary in that
11 phone call?

12 A. I relayed information that Cynthia had given
13 me with regard to Mike, let him know that we needed
14 to meet with him as soon as possible. He confirmed
15 that he was already out of town and I said that's
16 fine. And I said when you return to town, we can
17 get together.

18 Q. And did you schedule a meeting?

19 A. I told him that when he returned to town,
20 which I believe he had said would be after the
21 weekend on Sunday, to get a hold of me and that we
22 would schedule a time to meet. And I explained to
23 Mike what Cynthia had shared with me with regard
24 there would be a change in his employment status,
25 that there would be certain individuals in the

1 meeting, and that he would be given a copy of
2 whatever was presented to him, and that he would be
3 required to sign it, and that he would receive a
4 copy of it, and he didn't need to have anybody with
5 him in the meeting.

6 Q. Did he ask to have anyone with him?

7 A. I can't recall. He may have said, should I
8 have somebody with me, and I just shared with him
9 what I had heard from Cynthia. And I told him who
10 would be in the meeting. And I said there would be
11 an opportunity to ask questions. And so, we agreed
12 that we would come together on Sunday at some point
13 once he got back into town.

14 Q. Now, had you ever conducted a meeting of this
15 nature during your professional career, that is
16 informing an employee that they were being placed on
17 administrative leave?

18 A. No.

19 Q. You mentioned that you weren't certain of the
20 terms related to the administrative leave; correct?

21 A. Correct.

22 Q. So, how did you go about preparing for this
23 meeting?

24 A. I relayed that information. Cynthia had said
25 to me that she needed to get started on pulling

1 together the details that we would need to present
2 to Mike at the meeting.

3 Q. And you needed those details because you were
4 running the meeting, weren't you?

5 A. I was in attendance at the meeting.

6 Q. Okay. Weren't you the one that presented to
7 Mr. McQueary the terms and conditions of his
8 administrative leave?

9 A. Yes. Yes, as Cynthia told me to do that.

10 Q. And so, you needed that information as to
11 what were the terms and conditions of his
12 administrative leave?

13 A. Correct.

14 Q. And how did you obtain that information?

15 A. I had received it Sunday evening prior to the
16 time that we were scheduled to meet, a few minutes
17 prior to.

18 Q. And who did you receive it from?

19 A. Cynthia Baldwin.

20 Q. And what did you receive from Ms. Baldwin?

21 A. A copy of what she had given me and asked me
22 to read out loud to Mike to start the meeting.

23 Q. And did that copy contain the terms and
24 conditions of Mr. McQueary's administrative leave?

25 A. Yes.

1 Q. Okay. D53, please. Directing your attention
2 to an exhibit that's been marked D53. Are you
3 familiar with this?

4 A. Yes.

5 Q. And what is it?

6 A. It appears to be the document that Cynthia
7 had provided me a few minutes prior to our meeting
8 with Mike.

9 Q. And directing your attention to the first
10 sentence. Did you provide Mr. McQueary information
11 that he was being placed on paid administrative
12 leave?

13 A. In this document, yes.

14 Q. Did you tell Mr. McQueary that he was being
15 placed on administrative leave with pay?

16 A. I read this document to Mike exactly as it
17 is.

18 Q. So is the answer yes?

19 A. Yes.

20 Q. And did you tell Mr. McQueary that his future
21 status had not been determined?

22 A. Yes.

23 Q. And what did you take that to mean?

24 A. That it was to be determined.

25 Q. Did you inform Mr. McQueary that during the

1 term of his leave, he would receive his full current
2 pay and benefits?

3 A. Yes.

4 Q. And did you inform Mr. McQueary that he was
5 to do no work on behalf of the University during his
6 leave?

7 A. Yes.

8 Q. And did you direct Mr. McQueary that if he
9 had any questions during his leave, to refer them to
10 Tom Bradley?

11 A. Refer information, if you're contacted, to
12 Tom Bradley.

13 Q. Did you go on to then tell Mr. McQueary that
14 certain facilities were off limits to him?

15 A. Yes.

16 Q. Did you tell him that all facilities on the
17 campus were off limits to him?

18 A. Facilities associate with the Penn State
19 football program.

20 Q. And that was the program in which he worked;
21 correct?

22 A. The program in which I worked?

23 Q. In which Mr. McQueary worked.

24 A. Yes.

25 Q. You didn't tell him that he couldn't go to

1 other locations on campus, did you?

2 A. No.

3 Q. And he was permitted to do -- to go on to
4 other locations on campus, wasn't he?

5 A. To my understanding.

6 Q. You then went on to explain to him that his
7 fixed-term contract is scheduled to end on June 30,
8 2012. Do you see that statement?

9 A. Yes.

10 Q. And did you provide that information to Mr.
11 McQueary?

12 A. Yes.

13 Q. Did you also inform him that it was not yet
14 determined whether a new contract would be offered?

15 A. Yes.

16 Q. Did Mr. McQueary have any questions about the
17 nature of his fixed-term contract at the meeting?

18 A. No.

19 Q. You went on to state that a media
20 announcement would be made by Dr. Erickson about Mr.
21 McQueary's status; correct?

22 MR. STROKOFF: Objection. Her
23 characterization of what he said is not what's in
24 the text. She said it was in the text. The text
25 says that a media announcement was made, not would

1 be made.

2 MS. CONRAD: I will rephrase the question.

3 MR. STROKOFF: And Your Honor, if he said
4 that this is what he read, I don't understand the
5 point of having counsel re-characterize each and
6 every part of it. He said this is what he said.

7 MS. CONRAD: I will rephrase my questions
8 accordingly, sir.

9 BY MS. CONRAD:

10 Q. Did you inform Mr. McQueary that a media
11 announcement concerning the above-described action
12 was made by Dr. Erickson on November 11, 2011 at
13 four o'clock p.m.?

14 A. Yes.

15 Q. Did you provide information to Mr. McQueary
16 about the return of personal items?

17 A. Yes.

18 Q. And did you provide Mr. McQueary information
19 about arrangements for the return of University
20 items?

21 A. Yes.

22 Q. And did you inform Mr. McQueary that he could
23 keep his ID card and parking permit?

24 A. Yes.

25 Q. And did you inform Mr. McQueary that

1 arrangements would be made for the return of his
2 dealer vehicle?

3 A. Yes.

4 Q. And then finally, did you inform Mr. McQueary
5 that he may also discuss the employee assistance
6 program with your human resources manager?

7 A. Yes.

8 Q. Do you know whether Mr. McQueary contacted
9 his human resources manager about the employee
10 assistance program?

11 A. I do not.

12 Q. Now, following your meeting -- strike that.
13 Did Mr. McQueary ask any questions or make any
14 statements during the course of the meeting?

15 A. No.

16 Q. Do you recall Ms. Baldwin making any
17 statements?

18 A. I apologize, I'd like to correct the record.

19 Q. Yes, sir.

20 A. Following me reading this, Mike was asked if
21 he had any questions. And what I recall Mike saying
22 is that he wanted to be certain that we knew that he
23 felt that he had done nothing wrong and that the
24 only thing that he wanted to do was to continue to
25 coach at Penn State.

1 Q. Did anyone respond to Mr. McQueary's
2 statement?

3 A. From what I recall, Cynthia said, "Mike
4 nobody's suggesting that you did anything wrong."

5 Q. Now, following that meeting and the placement
6 of Mr. McQueary on paid leave, did you have any
7 further interactions with Mr. McQueary?

8 A. Not that I recall.

9 Q. Were you involved in the decision with
10 respect to bowl bonuses following the Ticket City
11 Bowl?

12 A. No.

13 Q. Were you involved in decisions related to
14 whether or not Mr. McQueary would receive 18 months
15 of severance per a letter agreement?

16 A. No.

17 Q. Following the placement of Mr. McQueary on
18 administrative leave, did you hear anyone in
19 athletics make a negative statement about Mr.
20 McQueary?

21 A. No.

22 Q. Did you hear anyone in the Penn State
23 community make a single negative statement about Mr.
24 McQueary?

25 A. No. Not that I recall.

1 Q. And with respect to the administration's
2 decision to not have Mr. McQueary coach the Nebraska
3 game, did you view that as negatively reflecting on
4 Mr. McQueary?

5 A. Again, I think I previously stated that my
6 concern was health and safety. And I felt it was
7 not unreasonable.

8 Q. Well, did you view the decision that he could
9 not coach at the Nebraska game that it suggested he
10 had done something wrong?

11 A. No.

12 Q. And with respect to the decision to place Mr.
13 McQueary on paid leave, did you view that as
14 reflecting negatively on Mr. McQueary?

15 A. No.

16 Q. Why not?

17 A. I just felt that it was reasonable.

18 Q. Because of any particular reason?

19 A. Just -- I felt that it was a reasonable thing
20 to do and that he was receiving paid leave, and --

21 Q. And was it in light of the circumstances that
22 continued at Penn State during the months that
23 followed the release of the presentment?

24 A. Can you repeat the question?

25 Q. Did you believe that the placement of Mr.

1 McQueary on paid leave was appropriate based on the
2 continued chaos that followed the events of November
3 5, 2011?

4 A. I think I had previously said that it was in
5 addition to the safety and security and the totality
6 and the complexities.

7 Q. And did you hear anyone in athletics make any
8 statement that placing Mr. McQueary on paid leave
9 reflected negatively on him?

10 A. No, not that I recall.

11 Q. And did you hear anyone in the Penn State
12 community make any statement that the placement of
13 Mr. McQueary on paid leave reflected negatively on
14 him?

15 A. No, not that I recall.

16 Q. And do you believe that the University did
17 all that it could to support Mr. McQueary?

18 MR. STROKOFF: Objection, Your Honor.

19 THE COURT: Objection is sustained. That's
20 for you, members of the jury, to decide.

21 MS. CONRAD: I have no further questions.
22 Thank you, Mr. Sherburne.

23 REDIRECT EXAMINATION

24 BY MR. STROKOFF:

25 Q. Mr. Sherburne, can you flip back to

1 Defendant's Exhibit 41, please?

2 A. (The witness complied.) Okay.

3 Q. Now the first page of 41 is an email which
4 you sent to Tom Bradley and Mike McQueary stating
5 that they decided it would be in the best interest
6 of the team and the school that Mike not coach. I'm
7 paraphrasing, right?

8 A. Correct.

9 Q. So you sent the two of them a suggested
10 public release that really wasn't true, right?

11 A. Correct.

12 Q. And Mike then responds on the next page,
13 "Please hold on that release. My lawyers are
14 examining it now." He didn't conceal the fact that
15 he had lawyers, right?

16 A. Right.

17 Q. And in fact, you knew that he had been
18 summoned before the grand jury and so he must have
19 had lawyers, right?

20 A. Correct.

21 Q. Okay. Then we go a few pages into this and
22 Mike McQueary forwards to you --

23 A. Are you saying a few pages into this? Can
24 you give me the page.

25 Q. It's page 399.

1 A. Okay.

2 Q. Mike McQueary, palms up, forwards to you a
3 text message or email he got from his lawyer saying,
4 I think the language that the lawyer came up with,
5 Tim Fleming, would be better. But hold off until
6 our PR guy takes a look at this. So again, Mike
7 forwards this to you and doesn't conceal the fact
8 that not only does he have a lawyer, but there's a
9 public relations person that's going to look at
10 this, right?

11 A. That's correct.

12 Q. Again, totally palms up, right?

13 A. Yes.

14 Q. Now, you had -- before you sent your email
15 stating that Tom Bradley and Mike decided that Mike
16 shouldn't coach, you had told him that your concerns
17 were for his safety, and that's why you think the
18 decision that he not coach in the Nebraska game was
19 a solid decision, right?

20 A. Yes.

21 Q. So at the end of that few hours late November
22 11th, Mike gives you a statement which reflects what
23 you said the reason was why he wasn't going to be
24 allowed to coach, right?

25 A. Yes.

1 Q. And that's a truthful statement, right?

2 A. Absolutely.

3 Q. Statement wasn't that due to multiple
4 threats, the administration and Mike McQueary think
5 he shouldn't coach, the administration thinks,
6 right? Or the University. I'm sorry, I said
7 administration.

8 A. Yes.

9 Q. Okay. And you have detailed today what those
10 threats were, right?

11 A. I tried to, yes.

12 Q. Okay. I want to go over just a few of them,
13 the ones that you identified this morning. First
14 one is D26. D26, do you have it, sir?

15 A. I do.

16 Q. It's from J-E-F. Do you know who that is?

17 A. I don't.

18 Q. The very first line of this threatening email
19 to Mike McQueary is quote, "Joe Paterno must resign
20 effective immediately." And he goes on to justify
21 why Joe Paterno had to be fired. Right?

22 A. He's stating his opinion, yes.

23 Q. Okay. And he then says, "Mike McQueary also
24 has to go. And you really need extra security.
25 This isn't a threat or implied threat." It's his

1 opinion, right?

2 A. Yes.

3 Q. And you forwarded this on to your
4 subordinates Greg Myford, Mark Bodenschatz, and Jeff
5 Nelson, right?

6 A. Correct.

7 Q. You didn't forward it on to the police or
8 anything like that?

9 A. Correct.

10 Q. Now, let's go to the next threatening email
11 which you identified, Defense Exhibit 51. Now, that
12 was sent by -- an email sent by Ken Kirby. Who's
13 Ken Kirby?

14 A. I don't know Ken Kirby.

15 Q. All right. And this is 3:00 p.m. Saturday
16 afternoon, November 12th, right?

17 A. It looks like that's the time stamp.

18 Q. Well, that's after Mike McQueary's been
19 placed on administrative leave, right?

20 A. That's correct.

21 Q. There was a public announcement, 4:00 p.m. on
22 Friday, that he was on administrative leave, right?

23 A. Correct.

24 Q. And in fact, the night before, late the night
25 before, there was an announcement that he wouldn't

1 be coaching in Nebraska -- or the Nebraska game,
2 right?

3 A. Correct.

4 Q. So you see this email of Saturday as being a
5 threat against Mike McQueary?

6 A. I don't see it as a threat against Mike
7 McQueary.

8 Q. Okay. D48. It's an email from Bill Mahon,
9 9:27 p.m. Friday, November 11th, reporting a threat
10 received by university operators claiming bombs,
11 right?

12 A. Correct.

13 Q. And this is almost the full day after the
14 public announcement that Mike wouldn't be coaching
15 the Nebraska game and five hours or so after the
16 public announcement that he was on administrative
17 leave. Right?

18 A. Correct.

19 Q. Now, one of the things that you didn't
20 mention, sir, in your testimony yet was the uproar
21 and riot following the announcement that Joe Paterno
22 had been terminated. Do you remember any of that?

23 A. I remember there was a lot of people that
24 were upset and yes, the uproar.

25 Q. And that was Wednesday night?

1 A. Yes.

2 Q. Now, I want to go back to your testimony
3 about President Spanier's published statement.
4 Number one, when did you read the full presentment?

5 A. I don't recall exactly when. I think it was
6 likely Sunday, Saturday or Sunday, end of Sunday.

7 Q. Okay. Well, let's -- I'm going to ask you to
8 go to the plaintiff's exhibit list. Okay?

9 A. This is in the same book?

10 Q. No. Plaintiff's is a different book. It
11 says witness exhibits.

12 THE COURT: It says exhibits right there at
13 top.

14 THE WITNESS: Okay. I got the book.

15 BY MR. STROKOFF:

16 Q. Okay. Exhibit 35. It's a criminal
17 complaint. Do you see that?

18 A. Yes.

19 Q. And then behind the criminal complaint, the
20 criminal complaint's about four pages long, there's
21 the presentment. I want you to go to page 12 of the
22 presentment.

23 A. Okay.

24 Q. Beginning the second paragraph on the page,
25 which is towards the bottom, "The grand jury finds

1 that Tim Curley made a materially false statement
2 under oath in an official proceeding on January
3 12th, 2011, when he testified before the 30th
4 statewide investigating grand jury relating to the
5 2002 incident that he was not told by the graduate
6 assistant that Sandusky was engaged in sexual
7 conduct or anal sex with a boy in the Lasch Building
8 showers." When did you read that part of the
9 presentment?

10 A. Again, like I said, I can't recall the exact
11 date, but I believe it was, this document,
12 presentment was Saturday into Sunday.

13 Q. So, you knew the presentment referred to a
14 grad assistant for the football team, right?

15 A. Yes.

16 Q. And in fact, sir, wasn't your office
17 bombarded with requests from the media beginning
18 Saturday morning who was the grad assistant?

19 A. I can't tell you that, sir.

20 Q. Well, when you got back -- because you were
21 hunting. When you got back Sunday, didn't you see
22 that your office was bombarded with media requests
23 asking for the identity of the grad assistant?

24 A. No, I did not.

25 Q. Okay. And weren't you aware, sir, that

1 beginning 6:00 a.m. Sunday morning, various media
2 sources had identified Mike McQueary as the grad
3 assistant in the presentment?

4 A. Like I said, I don't recall learning that
5 information until some time later than what you're
6 suggesting.

7 Q. Because you were busy doing other things?

8 A. Absolutely, yes.

9 Q. All right. When did you read President
10 Spanier's statement? Before or after you read the
11 presentment?

12 A. Again, like I said, I'm not sure when exactly
13 I read that statement.

14 Q. Do you recall, sir, and you can turn to
15 Plaintiff's Exhibit 39 to look at the opening words
16 of that statement, that his statement begins with,
17 "The allegations about a former coach are troubling
18 and it is appropriate that they be investigated
19 thoroughly." Do you remember reading that?

20 A. I see that here, yes.

21 Q. Okay. Well, sir, didn't you think that the
22 allegations against Tim Curley and Gary Schultz were
23 troubling and didn't you think it was appropriate
24 that they be investigated thoroughly? I'm talking
25 about you.

1 A. Yeah, I think all of this was troubling.

2 Q. And didn't you think it should be
3 investigated thoroughly?

4 A. I believe it all needed to be investigated
5 thoroughly.

6 Q. But that's not what President Spanier said.
7 President Spanier said these charges are groundless?

8 A. That's what he says in his statement.

9 Q. And once you found out that Mike McQueary was
10 the grad student, to you that didn't mean that the
11 president of the University was saying his testimony
12 was false, groundless?

13 A. And again, like I had stated, I don't think
14 that I reflected back on that in that context. I
15 really can't recall that.

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

17 MS. CONRAD: Just a few follow up questions,
18 Mr. Sherburne.

19 RE CROSS EXAMINATION

20 BY MS. CONRAD:

21 Q. With respect to the press release that was
22 issued by Penn State Athletics, the press release
23 that contained the due to multiple threats made
24 against Assistant Coach Mike McQueary, did you add
25 that phrase, "due to multiple threats"?

1 A. No.

2 Q. What is your understanding of how that phrase
3 was added to the press statement?

4 A. Again, I circled back with Mike. Mike
5 provided me that document. And that's the document
6 that was released.

7 Q. So it was Mr. McQueary that provided the
8 language, due to multiple death -- "Due to multiple
9 threats made against Assistant Coach Mike McQueary,
10 the University has decided it would not be in the
11 best interest for Assistant Coach Mike McQueary not
12 to be in attendance at Saturday's game;" is that
13 correct?

14 A. Correct. It was consistent with what my
15 concern was all along.

16 Q. Now, the threats that your office and the
17 University were receiving, were they only in emails?

18 A. No.

19 Q. Were they also -- how else were they being
20 received?

21 A. Various forms. Possibly social media, email,
22 telephone messages.

23 Q. Were there voicemail messages being left?

24 A. Yes.

25 Q. When you came into the office in the morning,

1 what was the status of your inbox?

2 A. It was cluttered just as everything else was.
3 There were times -- I wasn't checking voicemail
4 messages for the general athletic department phones,
5 that was being done by our administrative assistant.

6 Q. And did the threats continue after Mr.
7 McQueary was placed on administrative leave?

8 A. The threats, as I said, were consistent. I'm
9 not sure if they picked up the pace or -- but they
10 were steady.

11 Q. So, is it fair to say they continued after
12 Mr. McQueary was placed on administrative leave?

13 A. Yes.

14 Q. Now, when you read the Spanier statement that
15 was published on Penn State Live, did you read Dr.
16 Spanier's statement that he has complete confidence
17 in how they handled the allegations about a former
18 University employee?

19 A. Can you repeat the question?

20 Q. Sure. Let me rephrase that. That was not
21 the best question. Do you have the statement in
22 front of you?

23 A. From the exhibit that Mr. Strokoff had just
24 referred to, yes. A statement from President
25 Spanier.

1 Q. Let me direct your attention to one part if
2 it, it says, "I have known and worked daily for Tim
3 and Gary for more than 16 years." Do you see that
4 statement?

5 A. Yes.

6 Q. Did you understand that statement to be true?

7 A. I don't know how long he knew them, but he
8 knew them for a number of years.

9 Q. And then he went on to say, "I am confident
10 the record will show that these charges are
11 groundless and they conducted themselves
12 professionally and appropriately. Did you view that
13 as Dr. Spanier's opinion?

14 A. Yes.

15 Q. And did you -- when Dr. Spanier said, "I wish
16 to say that Tim Curley and Gary Schultz have my
17 unconditional support," did you view that as Dr.
18 Spanier's opinion?

19 A. It's his statement, so yes.

20 Q. Was it a statement of his opinion?

21 A. It appears to be his statement.

22 Q. And did you view it as his opinion?

23 A. I did.

24 Q. Thank you. Finally, Mr. Sherburne, was there
25 anything more you could have done to support Mr.

1 McQueary?

2 A. Not that I can think of. I tried to be, you
3 know, supportive of Mike.

4 MS. CONRAD: Thank you. I have no further
5 questions.

6 MR. STROKOFF: Nothing, Your Honor.

7 THE COURT: You may step down, sir. Again,
8 thank you fore accommodating us.

9 THE WITNESS: You're welcome.

10 MR. STROKOFF: Next witness will be Joseph
11 Doncsecz, Your Honor.

12 THE COURT: Okay.

13 MS. STROKOFF: He's not going to be a five
14 minute witness.

15 THE COURT: Come up here for a minute,
16 please.

17 (Whereupon, the following discussion was held
18 at sidebar:)

19 THE COURT: What did you say?

20 MR. STROKOFF: He's not going to be a five
21 minute witness. I know we're getting close to when
22 you usually like to take a break.

23 THE COURT: We'll take a break. You're too
24 good a lawyer to have asked the last question that
25 you asked at the conclusion of your first

1 cross-exam.

2 MS. CONRAD: And I corrected it in my last
3 question on my redirect.

4 THE COURT: So you get your bye there. And
5 secondly, in your tennis match between the two of
6 you, direct and redirect, and redirect and recross
7 back and forth, we must have heard five times what
8 his view of Spanier's statement was.

9 MS. CONRAD: You want us to cut it down, I
10 get the message, sir.

11 THE COURT: I would think that four times is
12 adequate, five is a little too much..

13 MS. CONRAD: I understand. Thank you, sir.

14 THE COURT: So, take a break.

15 (End of sidebar.)

16 THE COURT: Members of the jury, I understand
17 that the next witness may be a little lengthy so
18 it's probably a good place for us to take our
19 mid-morning break so that you can stretch your legs
20 and then you'll be able to go direct and cross with
21 the witness. So again, put your notes away.
22 Remember not to discuss it with anyone and we'll see
23 you at quarter of the hour.

24 (Whereupon, a recess was taken.)

25 MR. STROKOFF: Mr. Doncsecz.

1 JOSEPH DONCSECZ

2 Was called as a witness and having be duly sworn,
3 was examined and testified as follows:

4 THE COURT: Please try and stay on the
5 microphone.

6 AS ON CROSS EXAMINATION

7 BY MR. STROKOFF:

8 Q. Could you please state for the record your
9 name?

10 A. Joseph Donchez.

11 Q. And would you please spell your last name for
12 the court reporter?

13 A. D-O-N-C-S-E-C-Z.

14 Q. And your current occupation, sir?

15 A. Associate vice president for finance and
16 controller at Penn State University.

17 MR. STROKOFF: Permission to examine the
18 witness as if on cross, Your Honor. He's the
19 highest ranking existing Penn State employee who
20 will be testifying.

21 THE COURT: Wish to be heard?

22 MS. CONRAD: I have no objection.

23 THE COURT: Okay. Members of the jury,
24 generally when a party calls a witness, they are
25 vouching for that witness because theoretically,

1 they've had the opportunity to sit down and talk to
2 them, they know what they're going to say and after
3 all, they are their witness.

4 A party is entitled to call someone who has an
5 adverse interest, someone who is not favorable to
6 the plaintiff and to call them as of
7 cross-examination. And the difference is that on
8 cross-examination, the witness can be led, the
9 witness can be given statements and asked to agree
10 with the statement or disagree with the statement,
11 they can then explain it. But because this is a
12 lawsuit against The Pennsylvania State University
13 and this gentleman is a representative of the
14 University, his interest is adverse to that of the
15 plaintiff, so that the plaintiff's attorney is
16 permitted to call him and to treat him, essentially,
17 as a hostile witness.

18 And it's more normally done when we get to the
19 point where Ms. Conrad starts calling her witnesses,
20 clearly they would be perceived to be hostile to the
21 plaintiff and he could cross-examine them just as
22 Ms. Conrad is able to treat the witnesses that he's
23 now calling as hostile from their position.

24 So this is a perfectly permissible way to
25 proceed and Mr. Strokoff will be permitted to treat

1 the witness as a hostile witness and to lead him.
2 Go ahead.

3 BY MR. STROKOFF:

4 Q. Sir, could you tell us what your employment
5 history is at The Pennsylvania State University?

6 A. I started at Penn State in 1994 as a
7 financial administrative services coordinator. I
8 was promoted to assistant controller in 1998. And
9 then to corporate controller in April of 2007. The
10 associate vice president for finance title was added
11 to the corporate controller title in September of
12 2011.

13 Q. And could you tell the jury what your duties
14 are as associate vice president of finance and
15 controller?

16 A. Essentially, it's all management of cash
17 flows of the University, internal controls, all the
18 accounting and reporting issues associated with
19 that, and managing our external audit and other --
20 both of our -- our audit of our financial statements
21 and the audit of any government agencies that happen
22 to be looking into the University's finances.

23 Q. Can we assume that you have a staff that
24 assists you in performing these duties?

25 A. Yes, I do.

1 Q. And how large is that staff?

2 A. The entire controller staff is about 170.

3 Q. And in broad categories, what types of staff
4 are they?

5 A. Accountants, financial managers, a lot of
6 staff assistants. We have some specialists in the
7 risk management function. But general accounting
8 and finance along with just customer service, our
9 office helps our students, so a number of customer
10 service type folks that are the public face of the
11 finance organization.

12 Q. Okay. Since September of 2011, to what
13 officer within the University do you report?

14 A. As of September 2011, I was reporting to Al
15 Horvath, who was the then senior vice president for
16 finance. And he -- I purported to that position my
17 entire tenure in this position. He left shortly
18 after that and Gary Schultz returned to the
19 University and into that position. And for a very
20 short period of time after Mr. Schultz retired in
21 2011, I was reporting directly to Rod Erickson, the
22 president of the -- the interim president of the
23 University at that time.

24 Q. But now you're reporting to --

25 A. Again, I'm reporting to the current senior

1 vice president for finance, which is David Gray.

2 Q. Now you've said among your duties is managing
3 cash flow. What does that mean?

4 A. The University, like any business enterprise,
5 receives cash, disburses cash for various purposes,
6 both our general funds, activities, the education
7 and research missions of the University, in addition
8 to our self-supporting enterprises like athletics,
9 like housing and food services. And basically, my
10 office is responsible for overseeing the control and
11 flows of those funds.

12 Q. And your office also has an audit function?

13 A. The internal audit function is actually not
14 part of my office, it's part of the finance and
15 business organization I belong to. But it's not
16 part of -- we have a staff that deals with external
17 auditors, both our accounting firm and for
18 government auditors. So, we don't have auditors on
19 staff, we are the ones that manage external
20 auditors.

21 Q. Explain to the jury what managing external
22 auditors means.

23 A. So, our annual financial statement audit and
24 a number of other audits that are required by the
25 federal government are conducted by Deloitte &

1 Touche, who was hired as our current accounting
2 firm, our auditing firm. So basically we field all
3 of their requests, provide documentation for them to
4 conduct their audits and make their conclusion and
5 draw their opinions. Likewise, both the state and
6 federal government can come in for specific purpose
7 audits regarding our finances, either around grants
8 and contracts or specific cash flows, has cash been
9 expended in the appropriate way for the appropriate
10 and assigned purposes. And again, we're the
11 interface with those auditors. We're the first
12 level of contact with them. A lot of times we have
13 the answers ourselves, other times we may need to go
14 and reach out to others in the University who would
15 have the appropriate answers.

16 Q. Okay. You made reference to state coming in
17 from time to time and conducting an audit. Is that
18 to see that the University is complying with
19 whatever requirements there might be for using state
20 funds?

21 A. Yes, that's right.

22 Q. And you refer to a specific purpose audit.
23 What is that?

24 A. Well, when we get a grant or contract from
25 the state that has a very specific intended use of

1 the funds, occasionally they can come in and audit
2 the audit to make sure that the funds have been
3 expended in the way they intended for the purpose
4 they had prescribed. The state used to perform an
5 annual appropriation audit, but that audit has not
6 been done in a number of year.

7 Q. Can you better quantify what a number of
8 years is?

9 MS. CONRAD: Your Honor, I'm going to object
10 at this point. I'm not certain what the relevance
11 of the auditing function is to this witness's
12 testimony.

13 MR. STROKOFF: Well, one of the things, Your
14 Honor, in the whistleblower aspect is to confirm
15 receipt of state monies. I'm going to be there in
16 about 30 seconds.

17 THE COURT: Okay.

18 MR. STROKOFF: Could the court reporter
19 repeat the question?

20 (Whereupon, the reporter read back.)

21 THE WITNESS: Yes. I'm going to say roughly
22 2009 was the last audit, appropriation audit that
23 was completed. It's on our website, but I just
24 don't recall, sitting here, when that was.

25 BY MR. STROKOFF:

1 Q. All right. Are you able to tell the jury how
2 much of an annual appropriation Penn State gets from
3 the Commonwealth of Pennsylvania, let's say on
4 average for the last three years?

5 A. On average for the last three years about
6 just shy of \$300 million. Around 275 to \$285
7 million.

8 Q. And would that be true for the two or three
9 years even before that?

10 A. Somewhere around 2010, we had crested at
11 above \$300 million.

12 Q. And that's general appropriations. Are there
13 also specific purpose grants from the state?

14 A. There are about \$40 million a year on average
15 for capital construction grants for specific capital
16 projects. There's also -- part of our appropriation
17 is also specifically designated to The Pennsylvania
18 College of Technology in Williamsport, which is part
19 of the University.

20 Q. Are there any other monies which Penn State
21 gets from the Commonwealth of Pennsylvania?

22 A. State grants and contracts, as I mentioned
23 earlier, which are outside the general appropriation
24 and given to us for very specific purposes.

25 Q. And can you quantify them on an annual basis?

1 A. It is less -- it's less than \$100 million.
2 I'd be uncomfortable pecking into a precise number.

3 Q. Now sir, from time to time in this lawsuit,
4 you have signed documents called a verification on
5 behalf of the University. Do you recall that?

6 A. Yes.

7 Q. And do you know why it was that you were
8 designated to be the official for the University to
9 sign on behalf of the University?

10 A. It's not unusual I sign. Because of the risk
11 management function and our claims office, that
12 within the risk management function, it's not
13 unusual for me as a designated University officer to
14 sign the verifications on any number of matters,
15 including proceedings like this.

16 Q. So, you have some experience in signing
17 verifications?

18 A. Yes.

19 Q. Sir, do you also have a responsibility with
20 respect to releasing special payments to employees
21 or former employees?

22 A. Yes. Through my -- the payroll office is
23 part of my -- is part of the controller's office as
24 well.

25 Q. Do you recall, sir, in July of 2012 being

1 instructed not to make any severance payments to
2 Mike McQueary?

3 A. I do not recall in July of 2012. I believe
4 his fixed-term contract had expired as of June 30th.
5 And that was the rationale for discontinuing
6 payments at that time.

7 Q. But my question is, do you recall receiving
8 any instructions with respect to making severance
9 payments to Mr. McQueary?

10 A. Severance payments, no, not in July 2012.

11 Q. At any other time?

12 A. After the fixed-term contract had expired in
13 June and somewhere in the August, possibly September
14 timeframe of 2012, we were instructed to resume
15 monthly payments on leave.

16 Q. So, someone advised you to stop making
17 payments to Mike McQueary in June of 2012?

18 A. Again, it would just be normal course of
19 business on a fixed-term contract for the payments
20 to lapse at that time. It would be the default to
21 stop them unless instructed otherwise.

22 Q. So, are you talking about a computer code
23 that automatically would cease payments?

24 A. Correct. Unless an action was taken to
25 reinstate.

1 Q. Okay. And you've referred to a fixed-term
2 contract for Mike McQueary?

3 A. Yes.

4 Q. Have you ever seen it?

5 A. I can't say that I've read it myself, no.

6 Q. Have you ever seen it without reading it?

7 A. It's very possible I had it at some point,
8 yes.

9 Q. So you think it exists?

10 A. I believe it does.

11 Q. Okay.

12 A. I rely on the office of human resources and
13 their folks to abet that.

14 Q. Okay. So based upon what they've told you,
15 you think it exists?

16 A. Correct.

17 Q. Now, with respect to the other assistant
18 football coaches who were let go after Bill O'Brien
19 was hired as head coach, do you have any knowledge
20 as to whether or not they -- I'm sorry, do you have
21 any knowledge as to whether or not they started
22 receiving their severance payments immediately?

23 A. They would have been placed on leave with pay
24 in the middle of January 2012. At that point, they
25 would have started receiving their payments for some

1 period of time after that.

2 Q. Their severance payments?

3 A. Correct.

4 Q. Okay. Now, how did that happen for them?

5 A. It was part of the whole coaching staff
6 transition. We were simply informed as to, with
7 those five or six coaches, and I'm forgetting the
8 precise number, that their severance payments were
9 to begin at that point.

10 Q. And who informed you?

11 A. I was receiving information from a variety of
12 people at that point. Cynthia Baldwin in her office
13 of general counsel, Dave Joyner, the interim
14 athletic director, or soon-to-be interim athletic
15 director at that point, and Rick Kaluza, who is the
16 associate athletic director for finance.

17 Q. Sir, so as far as you know, the last payment
18 that the University made to Mike McQueary in the
19 spring of 2012 was on or about June 1st, 2012; isn't
20 that correct?

21 A. As I recall, it would have included the June
22 -- his salary payments for June.

23 Q. June 1st pays it in advance?

24 A. Correct.

25 Q. Okay. For the month of --

1 A. June 1st actually pays for May 31st, the
2 month of May. We deposit on the last day of the
3 month for the month just ended. So when you say
4 June 1st, I'm not sure it would have been a June 1st
5 deposit.

6 Q. Well, do you believe that there was a payment
7 made to Mike McQueary after June 1st of 2012?

8 A. I don't know. But I believe if his contract
9 ended in June, there would have been a payment on or
10 about June 30th.

11 Q. But you received no instructions to make
12 severance payments to him until September of 2012?

13 A. Correct.

14 Q. And who did you receive that instruction
15 from?

16 A. Again, that would have been from our, a
17 combination of our office of general counsel and our
18 athletics department.

19 Q. Okay. Now by September, Cynthia Baldwin is
20 no longer in the general counsel's office; is that
21 correct?

22 A. Right.

23 Q. Do you have any specific memories of exactly
24 who told you to start making the payments in
25 September of 2012?

1 A. It would have been Amy McCall and Dave Joyner
2 conferring to give me what they -- Amy McCall was
3 also in our general counsel's office at that time.

4 Q. Okay. And Dave Joyner was the athletic
5 director at the time?

6 A. Correct.

7 Q. Now, sir, do you recall that beginning
8 January 1st, or thereabouts, of 2012, there was a
9 general pay increase for Penn State employees who
10 were in good standing?

11 A. It was a one percent across the board with
12 modification, which I'll explain, one percent cost
13 of living adjustment for all employees who had
14 received a -- who had received a meets expectation
15 on their evaluation in the prior period.

16 Q. Or even higher than meets expectations,
17 right?

18 A. But I was going to modify it to say --

19 Q. I don't want to interrupt you. You go ahead
20 and finish.

21 A. I was going to modify to say there were
22 instructions provided that talked about unusual
23 situations like leaves, that would have come from
24 our central budget office to instruct areas on how
25 to treat unique situations about folks that were no

1 longer with the University or were in a different
2 kind of arrangement at that time.

3 Q. Okay. Well, just getting back to the general
4 pay increase, that was for employees who had meets
5 expectations or greater than meets expectations; is
6 that correct?

7 A. Correct.

8 Q. Were you aware that the last performance
9 review conducted for Mike McQueary was significantly
10 exceeds expectations?

11 A. I didn't have any knowledge of that at the
12 time.

13 Q. Are you aware that Mike McQueary did not get
14 that pay increase?

15 A. I know he did not get that pay increase.

16 Q. Okay. And how do you know he didn't get that
17 pay increase?

18 A. I've actually checked with our payroll office
19 to make sure.

20 Q. And why didn't he get that pay increase?

21 A. The question in play was he was on leave at
22 that time and he had been put on leave with pay. I
23 think it was a gray area that we didn't have good
24 direction on for folks in that situation.

25 Q. And who made the decision with respect to he

1 shouldn't get that modest pay increase?

2 A. I do not recall specifically who gave me.
3 Again, I would have been informed by a combination
4 of the athletic director's office and office of
5 general counsel.

6 Q. Sir, are you aware that the assistant
7 football coaches who were not on administrative
8 leave received a bonus for the Ticket City Bowl?

9 A. Yes, I am.

10 Q. Are you aware that Mike McQueary did not
11 receive a bonus for the Ticket City Bowl?

12 A. Yes, I am.

13 Q. And were you instructed not to pay him a
14 Ticket City bonus?

15 A. We received information from the athletic
16 director's office as to who to pay and what amount.
17 And his -- he -- there was no amount given for Mr.
18 McQueary.

19 Q. And this is from Dave Joyner's office?

20 A. Correct.

21 Q. Sir, do you recall that in the paperwork that
22 was developed for paying the assistant coaches the
23 bonus for the Ticket City Bowl, that there were --
24 there was a history of past payments that were made
25 for comparable bowls, like the Alamo Bowl?

1 A. Yes. I was aware they used prior bowls of
2 comparable quality to assess what an appropriate
3 amount would be paid.

4 Q. And that the Ticket City Bowl kind of
5 followed the Alamo Bowl bonuses?

6 A. Correct.

7 Q. And do you recall that Mr. McQueary's Alamo
8 Bowl bonus had been \$15,000?

9 A. I recall it was in that neighborhood, yes.

10 Q. But from Dave Joyner's office, the word came
11 down he was to get zero?

12 A. Correct.

13 Q. Sir, in your function as controller, do you
14 do any work with the University's 990s that get
15 filed with the federal government?

16 A. We do not file -- we're not required to file
17 a 990 to the federal government. But there is a
18 state legislation for us to file a -- the right to
19 know legislation requires us to file a form 990-like
20 document with the Commonwealth every May.

21 Q. Sir, I'm going to ask you if you would,
22 please, there is a binder there that says witness
23 exhibits. I'm going to ask you to turn, if you
24 would, please, to tab 82.

25 A. (The witness complied.)

1 Q. And please take a moment to leaf through
2 them. If you wish, I have the complete 990s here,
3 but these are -- the first pages for 990s I
4 believe --

5 A. They are.

6 Q. -- for a number of years beginning fiscal
7 year ending June 30, 2010, even though it says 2009
8 on the form, and it ends fiscal year ending June 30,
9 2015. Do you see those pages?

10 A. Yes, I do.

11 Q. Are you able to identify these pages?

12 THE COURT: You said P82?

13 MR. STROKOFF: Plaintiff's 82, that's
14 correct, Your Honor.

15 THE COURT: I don't see it on the chart. Go
16 ahead.

17 MR. STROKOFF: It should be on the last page
18 of the chart. I can get you another last page if
19 you're missing it. That's the defendant's chart.

20 THE COURT: Okay. I'll get it taken care of.
21 It's okay.

22 MR. STROKOFF: Okay.

23 BY MR. STROKOFF:

24 Q. Sir, are you able to identify Plaintiff's
25 Exhibit 82 for us?

1 A. Yes. This is the front page of the form, the
2 federal form 990 which is the document we use to
3 comply with the state's right to know legislation.

4 MR. STROKOFF: Move for admission of 82, Your
5 Honor.

6 MS. CONRAD: Your Honor, I would object on
7 the basis that 82 relates to 2009, which is not a
8 year that would be relevant to this action.

9 MR. STROKOFF: Your Honor, actually this is
10 the cover page. Although the form says 2009, it's
11 for fiscal year ending June 30, 2010, and it's for
12 several years through the most recent one.

13 MS. CONRAD: And again, I'm going to assert
14 that 2010 is not relevant to this action.

15 THE COURT: I'm taking that all of this is
16 being offered for damages purposes and the assets of
17 the University?

18 MR. STROKOFF: It is. And I don't intend to
19 publish it on the screen. But I do think it's
20 necessary for the witness to have it so that he can
21 testify accurately.

22 THE COURT: Okay. The objection is overruled
23 with the understanding that only certain documents
24 contained within 82 are in the relevant time period
25 will be available as an exhibit.

1 MR. STROKOFF: Right.

2 THE COURT: So, it's admitted over objection.

3 BY MR. STROKOFF:

4 Q. Sir, with respect to the cover page of the
5 990, beginning with the year ending June 30, 2010,
6 through the last year which is June 30, 2014, what
7 is the annual amount of revenue reported by -- gross
8 revenue -- total revenue reported by the University?
9 On average.

10 A. It ranged from about 4.4 billion in fiscal
11 2010 to about 1.5.8 billion -- I'm sorry, 5.4
12 billion.

13 Q. I'm sorry. Let's just slow it down. It
14 ranges from what to what?

15 A. It ranges from in fiscal 2010 from 4.4
16 billion to fiscal 2015 at 5.4 billion.

17 Q. And that's annual total revenue?

18 A. Correct.

19 Q. And with respect to the total assets of the
20 University, what's the range over this time period?

21 A. The range would be just under 5 billion, 4.98
22 billion in --

23 Q. I'm sorry, I asked for total assets, not net.

24 A. Oh, I'm sorry, total. I'm sorry, I misheard
25 you. Total assets were 8.7 billion in fiscal 2010

1 and 12.3 billion in 2015.

2 Q. And now, I'll let you state what the net
3 assets of the University were during -- the range
4 during that time period?

5 A. The net assets range from 8.7 billion in --
6 I'm sorry, 4.98 billion in 2010 to 7.97 billion in
7 2015.

8 Q. And these are all billions, not millions?

9 A. Correct.

10 Q. Sir, with respect to the assistant football
11 coaches who were let go after Bill O'Brien was
12 hired, do you know whether or not they were allowed
13 to retain their dealer cars for three months?

14 A. I'm not aware of whether they did or didn't.
15 That generally would have been handled by the human
16 resources function within athletics.

17 Q. Okay. Would your answer be the same thing
18 with respect to the return of cell phones?

19 A. Yes.

20 Q. Sir, now I'm going to ask you to turn to tab
21 84.

22 A. (The witness complied.)

23 Q. Do you have that, sir?

24 A. Yes.

25 Q. And do you see your signature on the fourth

1 page there under the verification?

2 A. I do.

3 Q. And that is your signature?

4 A. Yes.

5 Q. Okay. Can you identify this document that
6 you have verified?

7 A. It's part of this action. It's part of the
8 action we're here for today. It's our response to
9 your request for production of documents.

10 MR. STROKOFF: Move for admission of 84, Your
11 Honor.

12 MS. CONRAD: No objection.

13 THE COURT: It's admitted.

14 BY MR. STROKOFF:

15 Q. Sir, do you see on page three --

16 A. Yes.

17 Q. -- the request is for quote, "the files
18 maintained by SVP Schultz concerning Jerry Sandusky,
19 referred to on pages 69-70 of The Freeh Report dated
20 July 12, 2012?

21 A. Yes, I see that.

22 Q. And you verify that documents at bates
23 numbers PSU860 to PSU872 were in response to that
24 request?

25 A. Yes.

1 Q. Okay. I'm going to ask you, if you would
2 please, keep your finger there but flip back to 58
3 just for a moment.

4 A. 58?

5 Q. Yes. Do you have 58 in front of you?

6 A. Yes, I do.

7 Q. Now, you're familiar with The Freeh Report is
8 the short name for it, right?

9 A. Yes.

10 THE COURT: You need to answer audibly.

11 THE WITNESS: I'm sorry. Yes.

12 BY MR. STROKOFF:

13 Q. And attached -- or as part of this document
14 are pages 69 and 70 of The Freeh Report?

15 A. Yes, I see it.

16 Q. So that this document response was for the
17 documents identified on pages 69 and 70 of The Freeh
18 Report?

19 A. Correct.

20 MR. STROKOFF: Move for admission of 58, Your
21 Honor.

22 THE COURT: Any objection?

23 MS. CONRAD: Yes. Objection. The question
24 related to the files that were referenced, not the
25 text of what is contained in Exhibit 58.

1 MR. STROKOFF: Your Honor, I'm not interested
2 in statements of fact alleged on these pages, just
3 that the file is identified on those pages.

4 MS. CONRAD: But then I would --

5 THE COURT: You provided these in response to
6 the question and now you're objecting to them?

7 MS. CONRAD: No. 58 is not, I believe, an
8 attachment to the document responses.

9 MR. STROKOFF: Your Honor, the documents that
10 were requested the files maintained is referred to
11 on pages 69 and 70. So that's why we have 69 and 70
12 to make it clear what this document response is to.
13 And if there's any -- and to the extent there is
14 objectionable content in there, I'm willing to
15 redact it. But I do think it's necessary so that
16 there's no confusion what these --

17 MS. CONRAD: Your Honor, there's no one here
18 to authenticate the document at tab 58.

19 MR. STROKOFF: Well, this witness verified --

20 THE COURT: The document at 58 is The Freeh
21 Report provided to Penn State University that you
22 asked for and you paid for. So now you're objecting
23 to pages from that report that's in a public
24 document?

25 MS. CONRAD: I'm objecting to the way counsel

1 is trying to refer to it.

2 THE COURT: Easiest thing to do, counsel, is
3 produce Penn State University bate stamp documents
4 860 to 872.

5 MR. STROKOFF: And that's part of the
6 response here, Your Honor.

7 MS. CONRAD: That's correct. The documents,
8 sir, have been produced. The objection goes to tab
9 58, which has not been produced in this matter.

10 THE COURT: So, what is your specific
11 objection to tab 58, which is the public report paid
12 for by Penn State University and provided to Penn
13 State University at its request? What's the
14 objection?

15 MS. CONRAD: May we approach, sir?

16 THE COURT: No. On the record.

17 MS. CONRAD: The objection is that document
18 58 was not requested nor produced in this action.
19 There is no one here to authenticate this document.
20 Moreover, the contents of this document have no
21 relevance to this proceeding. If counsel wants to
22 redact it to refer to simply in relation to the
23 files that he's referring to, that would be a
24 different matter.

25 MR. STROKOFF: Which I'm willing to do.

1 THE COURT: Okay. Fine.

2 MS. CONRAD: Thank you.

3 THE COURT: So it's admitted with that
4 understanding that the two of you will get together
5 and redact the document and make it acceptable to
6 both sides.

7 MS. CONRAD: Thank you, sir.

8 MR. STROKOFF: Thank you.

9 THE COURT: So 58 is admitted over objection.
10 So now I'm sure the witness is as confused as I am
11 and would like the question again.

12 BY MR. STROKOFF:

13 Q. So we're going to go back to 84 again. Can
14 we go over then the documents, Mr. Doncsecz that you
15 produced or you verified were those documents from
16 that file?

17 A. It appears to be what was requested in
18 document request number nine.

19 Q. And you believe it was, right?

20 A. As I sit here, yes.

21 Q. Okay. So on PSU860, some handwritten notes?

22 THE COURT: He wants you to be looking at the
23 document, sir.

24 THE WITNESS: Oh, I'm sorry,.

25 BY MR. STROKOFF:

1 Q. You see the Penn State bates number at the
2 bottom right??

3 THE COURT: Keep flipping.

4 THE WITNESS: I have it. 5598?

5 BY MR. STROKOFF:

6 Q. Do you know whose notes they are?

7 MS. CONRAD: Objection. At this point,
8 there's no foundation to establish that Mr. Doncsecz
9 is qualified to testify as to this handwriting.

10 THE COURT: He was asked do you know whose
11 notes these are. Do you know?

12 THE WITNESS: I can honestly barely read
13 them. I don't know who wrote this.

14 BY MR. STROKOFF:

15 Q. Okay. Let's go to the next page. That's
16 861. Do you see that at the bottom?

17 A. Yes.

18 MS. CONRAD: I would note my continuing
19 objection.

20 BY MR. STROKOFF:

21 Q. Do you know who wrote these notes?

22 THE COURT: Wait. Your continuing objection
23 is can he identify them. And the question is
24 essentially that, can you identify who wrote it. So
25 he's reading it now to see if he can do that. So

1 he's going to tell us when he's finished reading.

2 THE WITNESS: I cannot, without reading this
3 much more closely, I cannot tell.

4 BY MR. STROKOFF:

5 Q. And it's a very light copy that we were
6 provided, right?

7 A. Yes.

8 Q. Okay. Let's go to the next page. Do you
9 have any better luck being able to identify who
10 wrote those?

11 A. 682?

12 Q. That's correct. 862.

13 A. Or 862. I can tell it's all the same
14 handwriting. But again, I can't even make out
15 enough of the writing to make a guess at whose
16 writing.

17 Q. We don't want you to make a guess. All I
18 want to know is if you know.

19 A. No, I don't.

20 Q. How about 863? Do you know who wrote those
21 notes?

22 A. No.

23 Q. How about 864?

24 A. No.

25 Q. Okay. How about 865? It's a little bit

1 clearer.

2 A. 865 is on is on Gary Schultz's letterhead or
3 memo paper and the writing looks similar to the last
4 few pages we just looked at.

5 Q. Well, let's forget about the last two pages.
6 You worked for Gary Schultz for a while, didn't you?

7 A. Correct.

8 Q. Do you recognize this as being his
9 handwriting?

10 MS. CONRAD: Again, I would note my
11 objection. This witness is not here nor is he to
12 authenticate a document written by another
13 individual nor has he been qualified as a
14 handwriting expert.

15 THE COURT: Objection overruled. Can you
16 identify the handwriting, sir?

17 THE WITNESS: Now that I see it within the
18 context of Gary's memo or letterhead, yes, I can.
19 Now it's familiar to me.

20 THE COURT: Whose handwriting is it?

21 THE WITNESS: Gary Schultz. I'm presuming
22 from the header that it is his and it's on his memo
23 head.

24 BY MR. STROKOFF:

25 Q. How many years have you worked with him?

1 A. I mean he was there as long as I've been
2 there, so 1994. But I reported to him for about
3 eight, nine years. We were very email driven
4 organization for the most part.

5 Q. How about -- can you go to 868?

6 A. (The witness complied.) Yes.

7 Q. Do you know whose handwriting that is?

8 A. This appears to be Gary's handwriting as it
9 was there, as it was on that last document. And I
10 can say I have seen this document before, so --

11 Q. Pardon?

12 A. I can say I have seen this -- I've looked at
13 this document before so yes, I know this one is
14 Gary's.

15 Q. You looked at this document before in
16 connection with this litigation?

17 A. Yes.

18 Q. Okay. And you satisfied yourself that this
19 was Gary's handwriting?

20 A. Yes.

21 Q. Sir, in your position as associate vice
22 president of finance and controller, do you know
23 what the membership is of the Penn State Alumni
24 Association? How many folks are there?

25 A. It's in excess of 600,000 from memory, but I

1 don't know a precise number.

2 Q. I want to make a distinction. The Alumni
3 Association consists of dues paying people and
4 alumni are just folks who survived. Now, you're
5 saying there's 600,000 dues paying members of the
6 Alumni Association?

7 A. That's my recollection. It's not something I
8 keep track of, but that's my recollection.

9 Q. That's not something that goes through your
10 office?

11 A. No.

12 Q. Okay. But we're not going to hold you to
13 that.

14 A. Okay.

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

16 CROSS EXAMINATION

17 BY MS. CONRAD:

18 Q. Good afternoon, Mr. Doncsecz. As you know,
19 my name is Nancy Conrad and I represent The
20 Pennsylvania State University. You were asked some
21 questions about annual appropriations that the
22 University receives. What does the University use
23 those funds for?

24 A. The state appropriation is used for our
25 education and general mission, to support education

1 and general mission, faculty salaries, staff
2 salaries. It's part of a larger educational in
3 general fund, which we use to support the primary
4 missions, education, research, and public service.

5 Q. And what were those, the three missions of
6 the University?

7 A. Education, research, and public service.

8 Q. And how many campuses does the University
9 have?

10 A. 24.

11 Q. What's the approximate number of full-time
12 faculty?

13 A. Full-time, about 17,000.

14 Q. And then part-time faculty?

15 A. That number -- we issue over 50,000 W-2s, but
16 that includes people coming and going throughout the
17 year. So at any one time, about 30,000.

18 Q. So there's approximately over 30,000
19 employees of The Pennsylvania State University?

20 A. Correct.

21 Q. And you pay wages and benefits to those
22 individuals?

23 A. Correct.

24 Q. How about the number of students that the
25 University serves?

1 A. Nearly 100,000.

2 Q. And in terms of the numbers that counsel
3 asked you about with respect to net worth, can you
4 break down what that means?

5 A. So I believe the last number I gave was 7.97
6 billion as of June of '15. In very, very round
7 numbers, if you call that \$8 billion, it's \$3
8 billion in the endowment, which is invested for long
9 term to throw off income that will support the
10 mission of the University over the long haul, that's
11 about 3 billion of the 8 billion. Another, just shy
12 of 3 billion, is the net value of our physical
13 plant, the buildings, land, equipment that the
14 University owes and the balance, the two billion is
15 cash and investments that are used either to
16 purchase additional -- either for operating purposes
17 or for -- or to buy additional assets and to fund
18 our capital plan.

19 Q. You were asked questions about the one
20 percent salary adjustment that was provided to
21 employees. Do you recall that testimony?

22 A. Yes.

23 Q. Was Mr. McQueary actively employed at that
24 time?

25 A. He was on leave with pay.

1 Q. And with respect to the bowl bonus, you were
2 asked questions about the bowl bonuses that the
3 coaches received; correct?

4 A. Yes.

5 Q. And I believe you were asked about bonuses
6 that were received in the Alamo Bowl; correct?

7 A. Correct.

8 Q. And I believe you testified that Mr. McQueary
9 received a bonus for having -- for the Alamo Bowl?

10 A. Yes.

11 Q. And do you know whether or not he worked the
12 practices and the game of that bowl?

13 A. I assume he did. He was -- I know he was on
14 the coaching staff that flew to Texas and prepared
15 the team.

16 Q. He was actively employed at that time?

17 A. He was actively employ at that time, yes.

18 Q. And at the time of the Ticket City Bowl what
19 was, Mr. McQueary's status?

20 A. He was on leave with pay and did not travel,
21 as far as I know, to the bowl site with the team.

22 Q. Did not attend practices as far as you know?

23 A. As far as I know, no.

24 Q. He did not work that extended period of time
25 leading up to the bowl game?

1 A. He did not.

2 Q. And at the time of the expiration of his
3 contract on June 30th, 2012, was it your
4 understanding that the University met all of its
5 obligations with respect to salary and benefits to
6 be paid to the University?

7 MR. STROKOFF: Objection, Your Honor. His
8 understanding I don't believe is relevant.

9 MS. CONRAD: I'll rephrase.

10 THE COURT: Thank you.

11 BY MS. CONRAD:

12 Q. Did your office or did you authorize the
13 payment of all salary and benefits that were due to
14 Mr. McQueary through the course of his contract that
15 expired on June 30th of 2012?

16 A. Yes, we did.

17 Q. And then with respect to the severance
18 payments, did your office authorize -- I believe you
19 said in mid-August, September?

20 A. Correct, of 2012.

21 Q. Okay. Your office authorized the payment of
22 severance benefits to Mr. McQueary after his
23 contract had expired?

24 A. That's correct.

25 Q. And do you know the amount or the number of

1 months of salary payments that were paid -- that was
2 paid -- that you authorized to be paid to Mr.
3 McQueary after the expiration of his contract?

4 A. As I recall, it was another 18 months from
5 July. Even though it was retroed from September to
6 July, but beginning in July it was 18 months.

7 Q. 18 months of what?

8 A. Salary. Of his last full salary.

9 MS. CONRAD: Thank you. I have no further
10 questions.

11 MR. STROKOFF: I just have one point with
12 respect to this witness.

13 AS ON RECROSS EXAMINATION

14 BY MR. STROKOFF:

15 Q. Sir, can you turn to tab 68?

16 A. (The witness complied.)

17 Q. Do you recognize that, sir?

18 A. I recognize it as a University check and it's
19 payable to --

20 MS. CONRAD: Wait a minute. Before you
21 answer the question, I don't believe this document
22 has been admitted yet.

23 MR. STROKOFF: No. That's why I'm asking if
24 he can identify it.

25 BY MR. STROKOFF:

1 Q. Maybe I should say can you identify the
2 document?

3 A. It appears to be a University check made out
4 to Mike McQueary.

5 Q. And the date of the check?

6 A. The date of the check is September 18, 2012.

7 Q. If you were authorized to issue a check to
8 Mr. McQueary, the severance check to Mr. McQueary
9 and get that started in mid-August, why was he not
10 paid until September 18th?

11 A. I don't recall the exact dates. But our
12 electronic payroll system cuts off at a certain
13 point in the month. And if something happens
14 subsequent to that date, it has to be moved to the
15 following month. And I don't recall what that
16 calendar was for that particular month.

17 Q. But you also don't recall when you were told
18 to cut the severance check?

19 A. Not precisely, no.

20 Q. Could have been in September of 2012?

21 A. It could have been, yes.

22 Q. Do you believe that 68 is that initial check
23 with some back payments that weren't made for July
24 and August?

25 A. The timing would be right. And I think the

1 amount would be about right. So again, without
2 having payroll records in front of me, this looks to
3 be correct.

4 MR. STROKOFF: Move for admission of 68, Your
5 Honor.

6 THE COURT: Any objection?

7 MS. CONRAD: No, sir.

8 THE COURT: It's admitted.

9 MR. STROKOFF: Nothing further of this
10 witness, Your Honor.

11 MS. CONRAD: Your Honor, I just have follow
12 up with respect to Exhibit 68.

13 RECROSS EXAMINATION

14 BY MS. CONRAD:

15 Q. Mr. Doncsecz, was the payment issued -- or
16 the payment that you authorized to Michael McQueary
17 contained in 68 the first of the severance payments
18 that were issued to him?

19 A. To my recollection, yes.

20 Q. And what is the amount of the payment that
21 was issued in the first severance payment?

22 A. \$15,349.81.

23 Q. And how many months of severance payments did
24 Mr. McQueary receive after the expiration of his
25 contract?

1 A. As I recall, it was 18 months from -- in
2 total from July of 2012 to December of 2013.

3 MS. CONRAD: Thank you. I have no further
4 questions.

5 AS ON RECROSS EXAMINATION

6 BY MR. STROKOFF:

7 Q. And Mr. Doncsecz, you don't want this jury to
8 believe that Penn State paid him \$15,349 a month for
9 18 months, do you?

10 A. Well, this would have included the
11 retroactive catch up. This now would have included
12 the July and August amounts.

13 Q. So, this is three months of checks?

14 A. Correct.

15 MR. STROKOFF: Okay. Thank you.

16 MS. CONRAD: One final question, sir.

17 THE COURT: Directly related to that point,
18 yes.

19 RECROSS EXAMINATION

20 BY MS. CONRAD:

21 Q. And that severance that was paid to Mr.
22 McQueary was for the entire 18 months, wasn't it?

23 A. Over the -- from that period I described,
24 July of 2012 through December of 2013, yes.

25 MS. CONRAD: Thank you.

1 THE COURT: Sir, in your capacity, how many
2 times have you dealt with people on administrative
3 leave? You personally getting involved.

4 THE WITNESS: My office in some capacity
5 wouldn't be involved in every single one.

6 THE COURT: You personally.

7 THE WITNESS: Me personally? I could
8 probably -- less than 10.

9 THE COURT: How many times have you been
10 involved where the general counsel was involved?

11 THE WITNESS: On any matters or with respect
12 to severance?

13 THE COURT: On administrative leave issues.

14 THE WITNESS: On administrative leave issues,
15 again, it's very few. Ten.

16 THE COURT: And on severance?

17 THE WITNESS: On severance, I tend to -- I
18 sign most of the severance checks that the
19 University issues, or most of the severance
20 agreements that the University issues, so that would
21 be a much larger number.

22 THE COURT: Thank you. You can step down.

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

24 THE COURT: Yes.

25 (Whereupon, the following discussion was held

1 at sidebar:)

2 MS. CONRAD: Your Honor, I raise this with
3 all due respect, it was my understanding that to the
4 extent that Your Honor had questions, that they
5 would be presented outside of the jury's presence.
6 And while I fully recognize you are the trier of the
7 fact in the whistleblower claim, I just wanted to
8 clarify that position.

9 THE COURT: And when I think it pertains
10 directly to the whistleblower, I'm asking those
11 questions. And I thought that this was a general
12 follow up on the questions you folks were asking
13 related directly to the whistleblower.

14 MS. CONRAD: And to the extent Your Honor has
15 questions that relate to either the defamation or
16 the misrepresentation claim, are they going to be
17 raised in the presence of the jury?

18 THE COURT: If I think something needs to be
19 clarified, yes.

20 MS. CONRAD: Understood. Thank you, sir. I
21 just wanted that clarification.

22 MR. STROKOFF: I have a short witness.

23 THE COURT: Okay.

24 (End of sidebar.)

25 MR. STROKOFF: Anthony Sassano, Your Honor.

1 ANTHONY SASSANO

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

4 DIRECT EXAMINATION

5 BY MR. STROKOFF:

6 Q. Would you please state for the record your
7 full name, sir?

8 A. My name is Anthony Sassano.

9 Q. Could you spell the last name for the court
10 reporter, please?

11 A. S-A-S-S-A-N-O.

12 Q. And your occupation, sir?

13 A. Currently, I'm the acting special agent
14 charge of Bureau of Narcotics for the Pennsylvania
15 Office of the Attorney General.

16 Q. And how long have you been employed by the
17 Pennsylvania Office of Attorney General?

18 A. Approximately 17 years.

19 Q. And before you were employed by the Office of
20 Attorney General, what was your employment?

21 A. I was employed by the City of Altoona Police
22 Department for 20 years.

23 Q. In -- did you receive an assignment from the
24 Office of Attorney General with respect to
25 investigating matters related to Jerry Sandusky?

1 A. Yes.

2 Q. And about when did you receive that
3 assignment?

4 A. About May of 2009.

5 Q. And did you work with anybody else in
6 investigating that case?

7 A. Yes.

8 Q. And who else did you work with?

9 A. Numerous people. Do you want people's name
10 or do you want agencies?

11 Q. No. How about, was there one or two
12 individuals that you worked with or was there more
13 than that?

14 A. One or two individuals or what?

15 Q. Did you work with just a few individuals or
16 was it much more than that?

17 A. Probably over the course of the
18 investigation, 10, 12, 15 individuals.

19 Q. What was your role in that investigation?

20 A. I was the lead investigator for the Attorney
21 General's Office on this matter.

22 Q. And did you have any reporting lines to
23 attorneys within the Office of Attorney General?

24 A. Yes.

25 Q. And what were those lines during the

1 investigation phase of the case?

2 A. Initially I reported to Jonelle Eshbach. She
3 was, at that time, a senior deputy attorney general.

4 Q. Okay. Do you know Mike McQueary?

5 A. I do.

6 Q. And how did you come to know Mike McQueary?

7 A. Of course I knew him from following Penn
8 State football, I'm a Penn State graduate myself.
9 So I knew him --

10 Q. Well, what year did you graduate from Penn
11 State, seeing as how you brought it up?

12 A. 1975.

13 Q. Okay. I'm sorry.

14 A. That's all right.

15 Q. Go ahead. When did you first meet him?

16 A. I met him in November of 2010. That's when I
17 first met him in a park near the high school. I
18 don't recall the name of the park.

19 Q. And was that in connection with your
20 investigating the Sandusky matter?

21 A. Yes, it was.

22 Q. And during the course of that investigation,
23 did you see Mr. McQueary after November of 2010?

24 A. Yes. On numerous occasions.

25 Q. Okay. And did you participate in putting

1 together the criminal charges against Mr. Sandusky?

2 A. I did.

3 Q. And what about the criminal charges against
4 Mr. Curley and Mr. Schultz?

5 A. Yes, on both. They were charged on two
6 occasions. And Graham Spanier would be another
7 person.

8 Q. We're not going to go there in this trial.

9 A. Okay.

10 Q. Could you turn to Plaintiff's Exhibit 35?

11 A. To what? Did you say 35?

12 Q. Plaintiff's Exhibit 35, that's correct.

13 A. Okay.

14 Q. On the first page of that criminal complaint,
15 when we go down toward the, let's say the last
16 third, there's a reference an A-G-T, A dot, L dot,
17 Sassano. Who's that?

18 A. Yes. That's me.

19 Q. Okay. So you were one of the affiants in the
20 criminal complaint process?

21 A. That's correct.

22 Q. Okay. Could you tell the jury what role Mr.
23 McQueary played in the Sandusky prosecution?

24 A. There's a lot of adjectives I can use. He
25 was a linchpin, or a key role, in the investigation.

1 I think that sort of sums it up, linchpin in the
2 investigation.

3 Q. Okay. Now what about -- what role did he
4 play in the putting together the criminal complaint
5 against Mr. Curley?

6 A. Likewise. Same thing. Linchpin. Key role
7 in providing information that we further
8 investigated.

9 Q. And similarly, what role, if any, did he play
10 in the criminal complaint process against Mr.
11 Schultz?

12 A. I'd describe it in the same identical
13 fashion.

14 Q. Okay. If there is going to be a trial in the
15 Curley matter, would Mr. McQueary have a role to
16 play in that trial?

17 A. He would.

18 Q. And what would that role be?

19 A. Same as I described before, a key role in
20 that prosecution.

21 Q. Well, would he be --

22 A. He'd be a witness.

23 Q. He'd be a witness?

24 A. Yes, sir.

25 Q. Okay. Would he be your main witness?

1 A. Yes.

2 Q. What about in the Schultz, if there is a
3 Schultz trial, would it be similar?

4 A. Same thing. Main witness, yes.

5 Q. Sir, were you working on this case after the
6 presentments were handed down in on or about
7 November 5, 2011?

8 A. Yes.

9 Q. And at that time, Mr. McQueary was still a
10 key part of your case?

11 A. Yes.

12 Q. All right. Do you know whether or not your
13 office felt that Mr. McQueary was in any physical
14 danger?

15 MS. CONRAD: Objection. Your office felt?

16 THE COURT: Rephrase your question, please.

17 MR. STROKOFF: Certainly.

18 BY MR. STROKOFF:

19 Q. Sir, did you have any thoughts, let's say the
20 week beginning November 5, 2011, whether or not
21 there was any concern for Mr. McQueary's physical
22 safety?

23 A. Did I have any thoughts?

24 Q. Yes.

25 A. I did not fear for his safety if that's what

1 you're asking.

2 Q. Was there any concern that you were aware of
3 that other members of your investigative staff had
4 about Mr. McQueary's physical safety?

5 A. There was discussion and no one expressed any
6 concern that he was in imminent danger.

7 Q. Did you have any reports from The Penn State
8 University Police that they had concerns about Mr.
9 McQueary's physical safety?

10 A. No, they never called me.

11 Q. Did you have open lines of communication with
12 the Penn State Police?

13 A. I did. And I still do up until today.

14 Q. So nobody from the Pennsylvania State -- I'm
15 sorry, from the University Police every expressed to
16 you concerns for Mr. McQueary's safety?

17 A. That's accurate.

18 Q. Sir, as part of your investigation in the
19 Curley and Schultz matters, did you investigate
20 whether or not any reports had ever been filed with
21 Centre County Youth Services?

22 A. Yes.

23 Q. And what was the result of your
24 investigation?

25 A. They had no reports.

1 Q. Okay. And what about DPW?

2 A. Similarly, they had no reports on file
3 referenced to this matter.

4 Q. And did you check with any police department
5 to see if there were any police reports with respect
6 to the 2001 incident?

7 A. I did.

8 Q. Were there any?

9 A. There were not.

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

11 THE COURT: Okay.

12 CROSS EXAMINATION

13 BY MS. CONRAD:

14 Q. Mr. Sassano, I'm going to step to the podium
15 so I have better eyesight.

16 A. Okay.

17 Q. Sir, you just testified that no one from Penn
18 State contacted you about a concern with respect to
19 Mr. McQueary's safety; is that correct?

20 A. Yes.

21 Q. Did you have the opportunity to speak with
22 Mr. Mark Sherburne about safety concerns related to
23 Mr. McQueary?

24 A. Is he the athletic director who was
25 terminated shortly thereafter?

1 Q. He was the acting athletic director for a
2 period of time.

3 A. Okay. There were two -- I get mixed up with
4 the roles up there at the University. There were
5 two assistant or associate athletic directors. I
6 spoke to one individual. The other one I don't
7 recall speaking to.

8 Q. Prior to the Nebraska game, did you speak
9 with Mark Sherburne who was the interim athletic
10 director about safety concerns related to Mr.
11 McQueary?

12 A. I don't recall speaking to any person at the
13 University, police, athletics, et cetera about Mr.
14 McQueary's safety concerns.

15 Q. So you were not -- you were not in possession
16 of the information those individuals possessed with
17 respect to safety concerns related to Mr. McQueary?

18 A. You're accurate, yes.

19 Q. Excuse me?

20 A. Yes, you're correct.

21 Q. Now, Mr. McQueary contacted you with respect
22 to some of the emails he was receiving, didn't he?

23 A. Yes.

24 Q. And you made reference to him about some of
25 the sports talking -- what some of the sports

1 talking heads on ESPN were saying about him, didn't
2 you?

3 A. Can you show me that document, please?

4 Q. I certainly can, sir. Can you pull up D53?

5 A. 53 in this book?

6 Q. You'll find a binder that says Defendant's
7 exhibits. And if you turn to tab 43, sir?

8 A. Okay. So we're done with this first book?

9 Q. I'm sorry?

10 A. We're done for right now with this first
11 book?

12 Q. That is Plaintiff's exhibits, sir. We're in
13 the defendant's binder.

14 A. Okay. I don't see anything labeled
15 Defendant. Okay. And it's D1?

16 THE COURT: D1, 43 she wants you to look at.

17 THE WITNESS: 43? Okay. And this is the one
18 dated at the top 11/11/2011?

19 BY MS. CONRAD:

20 Q. Yes, sir. Are you familiar with that
21 document?

22 A. Without it being authenticated --

23 Q. I'm sorry.

24 A. That's okay. Without authentication from a
25 computer expert from our agency with that

1 qualification, this appears to be what I wrote and
2 this appears to be a genuine article. To me.

3 Q. If I understand your testimony, from
4 reviewing Defendant 43, it is your testimony that
5 this appears to be an email exchange between Mr.
6 McQueary and you?

7 A. The bottom one is between McQueary and
8 Eshbach with me CC'd. I would say the top one from
9 me to Mike, yes.

10 Q. So you'll agree with me that you were copied
11 on the email in the bottom portion that was sent
12 from Mike McQueary and that you then sent to Mr.
13 McQueary a response to that email; is that correct?

14 A. It appears that way, yes.

15 MS. CONRAD: Move for the admission of D43.

16 MR. STROKOFF: No objection, Your Honor.

17 THE COURT: It's admitted.

18 BY MS. CONRAD:

19 Q. I'm directing your attention, first, to the
20 email that was sent from Mr. McQueary to Ms. Eshbach
21 and copied to you. It begins by saying -- Mr.
22 McQueary begins by saying, "Also I never went to
23 Coach Paterno's house with my father. It was only
24 me and only me." See that reference?

25 MR. STROKOFF: Excuse me, counsel, you're not

1 reading that exactly correct.

2 BY MS. CONRAD:

3 Q. "It was me and only me." Do you see that
4 statement?

5 A. Yes, I do.

6 Q. Do you know why Mr. McQueary was informing
7 Ms. Eshbach and you that information?

8 A. No, I have no idea, because he never told us
9 his father went with him.

10 Q. What was contained in the presentment with
11 respect to that issue?

12 A. I don't recall.

13 Q. Now, directing your attention to your
14 response, you say, "I was disappointed that we did
15 not get together yesterday but still hope to meet
16 with you, perhaps next week at your pleasure." Do
17 you see that?

18 A. I do.

19 Q. Did you meet with Mr. McQueary on a regular
20 basis?

21 A. I wouldn't call it regular, I'd call it
22 semi-regular, periodically.

23 Q. And what was the purpose or your planning to
24 meet with him perhaps next week at your pleasure?

25 A. I have no idea.

1 Q. In the next sentence, you say, "Not to add to
2 your anxiety/frustration, but to reassure you." Can
3 you read the end of that sentence, please?

4 A. "So this AM," and I think meant by that this
5 morning, "some of the sports talking heads on ESPN
6 saying you would/could get arrested."

7 Q. Could you describe for us, please, what you
8 heard from this talking heads on ESPN in or around
9 November 11, 2011?

10 A. No, I can't, other than reading this. It
11 appears that something I saw indicated individuals,
12 sports reporters were saying that he could/would get
13 arrested.

14 Q. And why were you bringing that issue up to
15 Mr. McQueary?

16 A. I don't recall at this particular time.

17 Q. I'm sorry, I didn't mean to interrupt you.

18 A. Perhaps it's because of his statement in the
19 initial email, misrepresented in the media. I was
20 letting him know there's another misrepresentation I
21 think. I don't know that for sure, I have no
22 independent memory of that right now.

23 Q. I understand. But it was your understanding
24 that at this time there were numerous media articles
25 surfacing about Mr. McQueary; is that correct?

1 A. Yes, there were.

2 Q. Okay. Directing your attention to D38, which
3 I believe had been admitted. Yes.

4 MR. STROKOFF: Excuse me, I'm not sure we're
5 on the same page. D38?

6 MS. CONRAD: Yes, sir.

7 BY MS. CONRAD:

8 Q. Are you familiar with the document marked
9 D38?

10 A. I'm reading it now. Please give me a couple
11 seconds.

12 Q. Certainly. Please let me know when you're
13 ready to proceed.

14 A. What was the other number that we just got
15 done talking about?

16 Q. That was D43, sir.

17 A. First glance, the initial email here from
18 Mike appears to be the same one we previously
19 discussed; correct?

20 Q. I'm sorry, I didn't hear your question.

21 A. I don't have a question. I guess I'm making
22 a statement. When we talked about D43, the initial
23 emails from Mike McQueary dated November 10th of
24 2011 at 10:22 a.m. As I look at this D38, it's
25 identical.

1 Q. Yes, sir. And I'm asking you now about the
2 statement that Ms. Eshbach provided?

3 A. Well, you'll have to talk to Ms. Eshbach what
4 she provided.

5 Q. That's what I was going to ask you, sir. Did
6 you speak with Ms. Eshbach about the response that
7 she provided to Mr. McQueary?

8 A. We probably did have a conversation, but I
9 don't recall what that would have been.

10 Q. Well, do you recall that Ms. Eshbach told Mr.
11 McQueary that he can't respond to the information
12 that was being published about him?

13 A. I have no -- I believe that happened. I
14 believe I told him that.

15 Q. That he could not respond to --

16 A. Not that he couldn't, it's a free country.
17 But my recommendation, if he's calling me asking me
18 for my advice, as a mature adult, number one, and as
19 an investigator, number two, you don't respond to
20 kooks.

21 Q. You didn't want him to respond to kooks?

22 A. Kooks.

23 Q. What do you mean by that?

24 A. Nuts.

25 Q. Excuse me?

1 A. Crazy people. Nuts.

2 Q. Are you referring to the media report then
3 as --

4 A. No, I'm referring to these emails. Isn't
5 that what we're talking about, emails?

6 Q. Let me direct your attention now to
7 Defendant's 36. Could you turn to tab 36?

8 A. We're done with this one then?

9 Q. Yes, sir.

10 A. Okay.

11 Q. Let me know when you've finished reviewing
12 Defendant's 36.

13 A. Okay. Without going too much further, there
14 was a reference to him getting charged in the
15 previous emails, I believe that was dated 11/11 of
16 2011. Now I think I was responding, perhaps, or to
17 reassure him reference of this email which you're
18 taking out of order here, it's dated 11/10/11. So
19 we had this email. And then to fully answer about
20 the previous emails we discussed, my response
21 probably was keeping this in mind, he expressed
22 concern that people were saying he was going to get
23 charged. So that's a complete answer I guess to a
24 previous question, I don't remember which one,
25 though.

1 Q. Thank you for that clarification. Please let
2 me know when you've completed reviewing the exhibit
3 marked D36.

4 A. Okay.

5 Q. I'd like to direct your attention to the
6 second page of that document?

7 A. Okay.

8 Q. And to the fourth paragraph. Could you read
9 to me what Mr. McQueary informs Ms. Eshbac and you
10 about the presentment?

11 A. "I feel my words were slightly twisted and
12 not totally portrayed correctly in the presentment.
13 I may be wrong. But is there any way that Tim and I
14 can get a copy of the actual grand jury
15 presentment," or I'm sorry, testimony.

16 Q. And what Mr. McQueary was concerned about and
17 related to you was that he was concerned that his
18 words were twisted and not portrayed correctly in
19 the presentment. That's what he told you; correct?

20 A. That's what this says, yes.

21 Q. And if you turn to the first page of that
22 document.

23 A. (The witness complied.)

24 Q. And in the fifth paragraph, he provides
25 information to you about that issue, doesn't he?

1 A. You want me to read that?

2 Q. Yes, sir.

3 A. "I have also said clearly that I cannot say
4 one thousand percent sure that it was sodomy. I did
5 not see insertion. It was a sexual act and or way
6 over the line in my opinion whatever it was."

7 Q. And did you take any action with respect to
8 the information you received from Mr. McQueary on
9 November 10th and the words that were used in the
10 presentment?

11 A. I'm not clear what you mean by did I take any
12 action?

13 Q. Well, did you go back and look at the
14 presentment to see how Mr. McQueary's words were
15 characterized after he told you, "I feel my words
16 were slightly twisted and not totally portrayed
17 correctly"?

18 A. No. I did not draft the presentment.
19 Attorneys that we pay, lawyers drafted that
20 presentment. And I answer to them, they don't
21 answer to me.

22 Q. Well, after you received this email, did you
23 go to those attorneys and say to them I received
24 information from Mr. McQueary that he's concerned
25 that his words were twisted --

1 A. Ma'am --

2 Q. -- and not totally portrayed correctly in the
3 presentment?

4 A. Ma'am, why would I do that when an email was
5 sent to the attorney who drafted the presentment,
6 Jonelle Eshbach and I was merely CC'd on it? Why
7 would I have to point out the obvious to her?

8 Q. Did you go to her and say --

9 A. We had discussions. And Mike and I have
10 discussed this repeatedly, he did not say anal rape.
11 He said sodomy. He was consistent from day one
12 until probably whatever next time we talk. He's
13 never said anything, he's said the same thing
14 exactly since day one.

15 Q. And I'm sorry I missed, what was that exact
16 thing he said?

17 A. Which part didn't you understand?

18 Q. That you just said, I didn't hear that.

19 A. From day one he said he witnessed what he
20 believed to be sodomy. He did not see insertion.
21 Of course he did not see the penetration. The only
22 -- if he saw penetration or if the victim would have
23 come forward and said he was penetrated, that's the
24 only two ways you have that. He saw what he
25 believed to be penetration from, my recollection, 20

1 feet away.

2 Q. I understand what you're saying, sir.

3 A. He's been consistent. He's been consistent
4 since day one.

5 Q. But you'll agree with me that in the document
6 marked D36 he says, "I have also said clearly that I
7 cannot say a thousand percent sure that it was
8 sodomy." That's what he told you in this email,
9 didn't he?

10 A. Yeah, that's what he said from day one, he
11 believed he saw an act of sodomy, but he could not
12 say a hundred percent because he didn't see
13 insertion. He said that from the very get go.

14 Q. And directing your attention then to the
15 first paragraph on this exhibit.

16 A. Okay.

17 Q. Mr. McQueary goes on to say in the second
18 sentence, "My life has drastically, drastically
19 changed. My family's life has drastically changed.
20 National media and public opinion has totally, in
21 every single way ruined me." Do you see that
22 sentence?

23 A. I do.

24 Q. And did I read that correctly, sir?

25 A. Except for the last part. It says, "For

1 what?"

2 Q. I apologize for not including for what.

3 A. That's okay.

4 Q. Did you respond to Mr. McQueary at all about
5 his statement that national media and public opinion
6 had totally, in every single way ruined him?

7 A. I don't recall if we talked about that. I
8 would presume or guess that we did, but that's --
9 pardon me?

10 Q. I'm sorry. I didn't want to interrupt you,
11 sir.

12 A. I would presume or guess that we had
13 discussions about that, but I don't recall specific
14 discussions.

15 Q. And did he relate to you what information in
16 the national media and public opinion that he
17 believed had totally ruined him?

18 A. I don't recall that exactly. It could have
19 occurred, but I don't recall.

20 Q. Okay. Directing your attention then to the
21 next paragraph.

22 A. Okay.

23 Q. "They said he is worse than Sandusky. I will
24 forward just a small fraction of the emails and
25 articles that have been written to and about me.

1 People say I will eventually get charged. With what
2 I have no idea." Do you see that statement?

3 A. Yes. That's the one I was referring to
4 several minutes ago that I thought we should have
5 talked about before we talked about the email dated
6 11/11/2011.

7 Q. And did Mr. McQueary forward any of those
8 emails and articles that have written to and about
9 me to you?

10 A. I don't recall articles per se, but I believe
11 emails. He did forward me some documents, yes -- or
12 some emails. Yes.

13 Q. But you don't remember the articles that he
14 was referring to?

15 A. No, I don't remember those.

16 Q. And you don't remember the national media and
17 public opinion he was referring to; correct?

18 A. I remember there was a lot of controversy
19 about Mike, yes. But for me to tell you
20 specifically. There's controversy and negative
21 articles about me, too, but that's part of my job.
22 I get paid for people to criticize me, he doesn't
23 get paid to be criticized for doing the right thing.

24 Q. He goes on at that page at the ninth
25 paragraph are says, "National talk shows are saying

1 the most brutal things not about the perp, but about
2 everyone else." Do you see that reference?

3 A. I do.

4 Q. Were you watching any of those national talk
5 shows?

6 A. I gather as much intel as I can on every
7 investigation I'm doing. So I watched some, saw
8 some. Go home after work, I like sports so I turn
9 on ESPN. So yeah, I would have seen them.

10 Q. And do you recall what the national talk
11 shows were saying about Mr. McQueary at that time?

12 A. I do not.

13 Q. Mr. McQueary goes on. And in the last
14 paragraph on the second page of this document in the
15 PS, he says, "I have also re-watched the press
16 conference from Monday." Do you recall that press
17 conference from Monday?

18 A. Yes, I was there.

19 Q. And what was that press conference?

20 A. It was to announce the arrests.

21 Q. He then says, "Nowhere is there strong
22 support for me." Do you see that statement?

23 A. Yes.

24 Q. Is that accurate?

25 A. Is it accurate that there was no strong

1 support for him?

2 Q. Well, let's flip it around. Was there any
3 support expressed for Michael McQueary in that press
4 conference?

5 A. I don't recall. That was a number of years
6 ago, I have haven't watched it since.

7 Q. But according to Michael McQueary, there was
8 no support for him expressed in that press
9 conference; correct?

10 A. That's what he said and that was important to
11 him.

12 Q. And he goes on in the paragraph, the third
13 paragraph on that page, and he says, "What are my
14 options as far as a statement from me goes? Will I
15 be in legal trouble, any trouble with the law?" Did
16 you have any conversations with Mr. McQueary about
17 his options for releasing a statement?

18 A. I believe we already discussed that. Free
19 country, he can do whatever he wants. However, if
20 you're asking me or if he was asking me for advice
21 and opinions, I told him I didn't think he should
22 respond or issue a public statement. But he also
23 had counsel to advise him what the proper course of
24 action would be. I'm not his counsel.

25 Q. I understand, sir.

1 A. So yeah, I believe we did have conversations
2 and that was my advice.

3 Q. And why was that your advice?

4 A. Just previously asked and answered here.
5 Because you don't respond to these kooks or nuts out
6 there that are threatening you.

7 Q. Mr. McQueary was still in a position that he
8 was going to testify for you, for the Attorney
9 General, wasn't he?

10 A. Yes. And still is in that same position.

11 Q. And at any time, did the Office of Attorney
12 General, as far as you know, respond to his concern
13 about nowhere there is strong support for me?

14 A. I may have said something to him. I wasn't
15 in control of the press conference obviously, it was
16 the Attorney General and her executive staff I would
17 call it. That's my best answer on that.

18 Q. Do you know whether or not the Office of
19 Attorney General ever issued a statement in strong
20 support for Mr. McQueary?

21 A. I don't know. I don't think I ever saw one.
22 I should know if there was one, I don't know of one.

23 Q. And directing your attention to the exhibit
24 that's been marked D37. Are you familiar with this
25 document?

1 A. I'm going to read it. Okay?

2 Q. Yes, sir. Thank you. And let me know when
3 you're completed and ready to proceed.

4 A. Okay. All right, I've reviewed it.

5 Q. And directing your attention to the second
6 page, were these some of the emails that Mr.
7 McQueary had forwarded to Ms. Eshbach and you as a
8 follow up to that email that we previously reviewed?

9 A. I'll need a little bit more time. I
10 apologize, I thought it was just one page.

11 Q. Please take all the time you need.

12 A. Okay. It seems to be a lot of duplication
13 here. There seems to be one email two times maybe
14 three times. So I've reviewed it, yes.

15 Q. And sometimes when there's a string of
16 emails, you understand that duplication occurs, sir?

17 A. Yes.

18 Q. Now, directing your attention to the second
19 page -- strike that. So you're familiar with this
20 document; correct?

21 A. I believe I've seen this before, yes, because
22 I recall the my diploma's fucking worthless now.

23 MS. CONRAD: Move for the admission of D37.

24 MR. STROKOFF: No objection.

25 THE COURT: Admitted.

1 MS. CONRAD: I'll request that you publish
2 the second page of it, please.

3 BY MS. CONRAD:

4 Q. Now I want to direct your attention -- and
5 strike that. Were these some of the emails that mr.
6 McQueary had forwarded to you? It's the same page
7 in front of you, sir.

8 A. It appears to be, yes.

9 Q. And in the email that's from XX, do you see
10 that halfway through the second page?

11 A. Yes, I do. He must be a brave individual.

12 Q. I'm sorry, I couldn't hear --

13 A. He must be a brave individual.

14 Q. What do you mean by that, sir?

15 A. Well, to send an anonymous email like this.
16 Yes, I see it.

17 Q. In the second paragraph, you'll agree with
18 me, won't you, that it says, and excuse my language,
19 I want to kill you you effing piece of S-H-I-T. Did
20 I read that correctly?

21 A. Except for saying effing, you read it
22 correctly.

23 Q. That's correct, sir. I'm showing resepect to
24 the Court. This is one of the emails that mr.
25 McQueary had received and forwarded to you; is that

1 correct?

2 A. I believe so, yes.

3 Q. And is this one of the emails that you would
4 characterize as from one of those kooks?

5 A. Yeah. Yes, I would.

6 Q. And is this one of those messages that you
7 would have dismissed as not credible?

8 A. Yes. However, at the same time, may I add, I
9 believe with all of these emails, I could have
10 ascertained the identity of these anonymous people
11 and went and paid them a visit. But I was told not
12 to do that. I could have tracked down their IP
13 addresses and went and talked to them.

14 Q. Who told you not to do that?

15 A. I believe Jonelle.

16 Q. And was that because they were deemed not
17 credible?

18 A. Yes.

19 Q. You didn't take them seriously?

20 A. That's correct. We did not believe he was in
21 danger based on a couple of these emails.

22 Q. And you didn't obtain additional emails or
23 information from the University with respect that
24 threats that were being received at the University?

25 A. That's correct. But if I might add, it was

1 not easy getting information from the University.
2 It was extremely cumbersome. Where we were required
3 to go through a variety of attorneys, Dan Wellworth,
4 I'll mention his name, is the primary individual I
5 dealt with, Mike Mustokoff I believe is in charge or
6 the head of the law firm, I don't recall the name.
7 But there were numerous barriers placed in our way
8 repeatedly throughout the entire investigation by
9 Penn State.

10 Q. Following receipt of this information from
11 Mr. McQueary, you took no further action to assess
12 the nature of his safety; is that correct?

13 A. No. We assessed it. We did not believe it
14 was legitimate and real. And we did not do anything
15 else. That's what they have 200 cops for at the
16 stadium.

17 Q. Your office took no further action; correct?

18 A. That's correct.

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

21 MR. STROKOFF: No questions, Your Honor.

22 THE COURT: Thank you, sir. Have a nice day.

23 THE WITNESS: Thank you, sir.

24 MR. STROKOFF: Your Honor, Mr. Fleming
25 believes that I failed to move in the admission of

1 84. I thought I did, but if I didn't, I'd like to
2 move --

3 THE COURT: P84?

4 MR. STROKOFF: Plaintiff's 84.

5 THE COURT: It was moved previously.

6 MR. STROKOFF: It's admitted?

7 THE COURT: It's admitted.

8 MR. STROKOFF: Thank you.

9 THE COURT: Ladies and gentlemen of the jury,
10 I think this is a good time to take our lunch break.
11 As close to 1:15 as you can be back will work.
12 Okay? And again, I'll remind you not to discuss the
13 matter. We'll see you back here at 1:15.

14 (Whereupon, the jury was excused for a
15 luncheon recess.)

16 THE COURT: Will somebody get me the
17 personnel manual?

18 (Whereupon, the following discussion took
19 place at sidebar:)

20 MS. CONRAD: As Ms. Baldwin testified, she
21 was not connected with HR. The University does not
22 have a quote personnel policy manual. It has a
23 series of personnel policies designated as HR1, HR2,
24 each that address a particular issue.

25 THE COURT: So do we have that addresses

1 administrative leave?

2 MS. CONRAD: There is one that we will
3 introduce. While it has not been marked as an
4 exhibit, we can introduce it through the next
5 witness who it will be an HR representative.

6 THE COURT: I would ask to see it.

7 MS. CONRAD: Certainly would you like it now,
8 sir?

9 THE COURT: I would.

10 MS. CONRAD: I would, again, note this was
11 not sought in discovery, nor is it listed as an
12 exhibit as part of either Plaintiff's case or our
13 case.

14 THE COURT: Do you have a copy for him so we
15 can all be reading the same thing? Enjoy your
16 lunch.

17 MS. CONRAD: Thank you.

18 E N D O F P R O C E E D I N G S
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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me upon the hearing of the within matter and that this copy is a correct transcript of the same.

11/2/16

Date

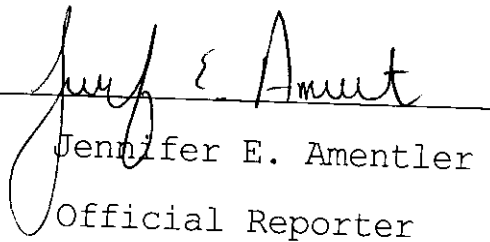
Jennifer E. Amentler
Official Reporter

C E R T I F I C A T E

I hereby certify that a copy of this transcript was furnished and made available to counsel of record for the parties, advising they had until October 26, 2016, in which to file any objections or exceptions to the same. That time period having elapsed without recording of objections or exceptions, the transcript is therefore lodged with the Court for further action.

11/2/16

Date


Jennifer E. Amentler
Official Reporter

ACCEPTANCE BY COURT

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

11-2-16Thomas G. Gavin

Date

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