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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

TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL A.M. DAY 4)

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

DATE: OCTOBER 20, 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 21 11:12:56
CLERK OF COURT
PROthonotary
CENTRE COUNTY, PA



ORIGINAL

NOTES BY: JENNIFER AMENTLER
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	Direct	Cross	Redirect	Recross
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For Plaintiff:

Thomas Harmon	5	31		
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Graham Spanier	35			
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For Defendant:

(None)

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Admitted:

Plaintiff:

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Defendant:

(None)

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

2 THE COURT: Mr. Strokoff.

3 MR. STROKOFF: Thomas Harmon, Your Honor.

4 MS. CONRAD: Your Honor, can we approach?

5 THE COURT: Yes.

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

8 MS. CONRAD: Good morning, sir. Two items.
9 First, I wanted to make clear, not necessarily for
10 this witness, but it is my understanding that
11 Plaintiff has withdrawn his claim for reimbursement
12 of legal fees incurred and/or paid for legal counsel
13 in connection with the legal process of the criminal
14 investigations and prosecution.

15 MR. STROKOFF: Yeah. That's true, Your
16 Honor.

17 THE COURT: Okay. I thought that was of
18 record already.

19 MS. CONRAD: I don't recall it being on the
20 record. In light of the upcoming witnesses, I
21 wanted to confirm this on the record.

22 Second, the witness today is here with
23 personal counsel. I understand that he will only
24 intervene in the event certain issues arise, which I
25 believe you do not intend to go into.

1 MR. STROKOFF: Yeah. I can't imagine why
2 Harmon's attorney would have anything. I've already
3 discussed that with her.

4 THE COURT: Okay.

5 MS. CONRAD: Thank you.

6 MR. STROKOFF: And while we're here, Graham
7 Spanier's represented by counsel also, he will be
8 our second witness this morning. And she told me
9 that she does not intend to make any objections
10 unless we start asking him about the privileged
11 communications between Cynthia Baldwin and Dr.
12 Spanier in connection with his grand jury testimony.
13 And I do not intend to get into that.

14 THE COURT: Okay. And she's advised him that
15 anything he says here is --

16 MR. STROKOFF: He's waived the Fifth in this,
17 Your Honor.

18 MS. CONRAD: Thank you.

19 THE COURT: Okay.

20 (End of sidebar.)

21 MR. STROKOFF: Mr. Harmon.

22 THOMAS HARMON

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

25 THE COURT: It will help if you stay on the

1 microphone. And you can adjust it to suit yourself.

2 THE WITNESS: Okay.

3 DIRECT EXAMINATION

4 BY MR. STROKOFF:

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

7 A. My name is Thomas R. Harmon.

8 Q. And Mr. Harmon, your current occupation?

9 A. I am retired.

10 Q. Okay. Was there a period of time when you
11 were employed by The Pennsylvania State University?

12 A. There was.

13 Q. Could you tell us what that period of time
14 was?

15 A. I was employed from 1992 -- I'm sorry, 1972
16 to 2005.

17 Q. And in what capacity were you employed at the
18 time you left in 2005?

19 A. I was director of University Police.

20 Q. And that's The Pennsylvania State University
21 Police?

22 A. I'm sorry?

23 Q. That's The Pennsylvania State University
24 Police?

25 A. The Pennsylvania State University Police

1 Department, yes.

2 Q. And how long have you been director of the
3 Penn State Police Department?

4 A. I had held various titles but had been in
5 charge of the University police for approximately 25
6 years.

7 Q. So going back to about 1980 or so?

8 A. Oh, yes.

9 Q. Okay. Sir, going to the 1998 timeframe, you
10 were director of University police?

11 A. I was.

12 Q. And to whom did you report within the Penn
13 State organization?

14 A. I reported to Gary Schultz, who was senior
15 vice president for finance and business.

16 Q. And in 2001, you were still director of
17 University police?

18 A. I was.

19 Q. And to whom did you report at that time?

20 A. I still reported to Gary Schultz.

21 Q. Did you continue to report to him until 2005?

22 A. I did.

23 Q. And could you tell us, generally, what your
24 duties were as director of the Penn State University
25 Police in the time period, let's say 1998 through

1 2001?

2 A. I was a general administrator within the
3 University. I had carried out all the management
4 functions, planning, organizing, directing, budget,
5 recordkeeping, reporting.

6 Q. And were you supervising any police?

7 A. I supervised all members of the University
8 police. Not directly, but I was overseeing all of
9 that operation.

10 Q. Was there a significant change in the
11 compliment of the Penn State Police between 1998 and
12 2001?

13 A. No.

14 Q. And so generally, what was the size of the
15 police force?

16 A. We had approximately 50 sworn police
17 officers. We had a contingent of security and
18 parking enforcement personnel. And at any given
19 time, we probably had between 100 and 200 students
20 working for us in various support capacities.

21 Q. And what jurisdiction did the Penn State
22 Police have?

23 A. I'm sorry, say again?

24 Q. What jurisdiction did the Penn State Police
25 have?

1 A. We had the same jurisdiction as municipal
2 police officers in the Commonwealth. Our
3 jurisdiction, of course, was limited to the property
4 of the University and to a certain parameter or
5 beyond the border of the University. But generally
6 speaking, our authority was limited to the campus.

7 Q. And Penn State has a number of campuses. Are
8 we talking about one campus?

9 A. Can you clarify that question?

10 Q. Which campus or campuses are you talking
11 about that you had jurisdiction over?

12 A. The police jurisdiction was the same on any
13 campus. But my responsibilities for direct
14 oversight of police operation was at the University
15 Park campus.

16 Q. In State College?

17 A. In State College.

18 Q. Okay. So, were you also director of
19 University police at a satellite campus?

20 A. No.

21 Q. Okay. And when you say the jurisdiction was
22 the same as municipal police, what do you mean by
23 that?

24 A. Well, we had the authority to make arrests
25 for violations of the criminal law. We had

1 responsibilities for investigating crimes. And that
2 was generally our responsibility for law
3 enforcement.

4 Q. Okay. Sir, could you tell us whether or not
5 the Lasch Building on the Penn State campus was
6 within the primary jurisdiction of the University
7 police?

8 A. It was.

9 Q. Sir, there is an exhibit book, looseleaf
10 binder, that's called Exhibits Witness Copy. I
11 believe it's the center binder in front of you. Do
12 you see that?

13 A. Yes.

14 Q. Could you turn, please, to Plaintiff's
15 Exhibit Number 3?

16 A. I believe I have it.

17 Q. I'm going to ask you a question. You do have
18 it?

19 A. I believe that's -- it says Plaintiff's
20 Exhibit 3.

21 Q. Okay. Could you please read it for a moment,
22 because I'm going to ask if you can identify it?

23 A. Could I please?

24 Q. Read it for a moment.

25 A. Yes, sir. (The witness complied.) I've read

1 it.

2 Q. Sir, are you able to identify this document?

3 A. I am.

4 Q. And what is this document?

5 A. What is?

6 Q. What is the document, Plaintiff's Exhibit 3?

7 A. It is a copy of an email chain that was sent
8 from Gary Schultz to me that was apparently the last
9 direction of the chain.

10 MR. STROKOFF: Move for admission of
11 Plaintiff's Exhibit 3, Your Honor.

12 MS. CONRAD: I would only move -- I object to
13 -- I don't believe the witness has testified if he
14 received the entire chain.

15 MR. STROKOFF: He's identified this document,
16 Your Honor.

17 THE COURT: Okay. Mr. Harmon, you've
18 indicated that you can identify the chain. Do you
19 recall receiving everything that's on Exhibit P3?

20 THE WITNESS: I recall it to the extent that
21 I recognize it.

22 THE COURT: Okay. Objection's overruled.
23 Admitted over objection.

24 BY MR. STROKOFF:

25 Q. Sir, directing yourself, or your attention I

1 should say, to Plaintiff's Exhibit Number 3, there
2 appear to be three separate emails on this document;
3 is that correct?

4 A. There do appear to be.

5 Q. Okay. The first one, which is toward the
6 bottom of the page, is from Tim Curley, "Anything
7 new in this department? Coach is anxious to know
8 where it stands." Do you know what Mr. Curley was
9 referring to when he was asking that question?

10 A. Yes. I knew at the time that -- when I would
11 have read it that this -- what that referred to.

12 Q. And what did it refer to?

13 A. It referred to the status of the
14 investigation that we were conducting with respect
15 to a report that we had received pertaining to Jerry
16 Sandusky.

17 Q. And could you give us a short version of the
18 investigation up to that point, May 13th, 1998?

19 A. I believe that this was in spring of the year
20 1998. The exact day I do not remember. But I was
21 approached by Investigator Ronald Shreffler who was
22 an investigator with the University police who
23 informed me that he had received a report that
24 morning from a mother who had come to the University
25 police and had been referred to Officer Shreffler.

1 And the mother's report was, essentially, as I
2 recall, that her son, a preteen child had on the
3 previous Sunday, as I recall, gone with Jerry
4 Sandusky to the East Area lockers, which is the
5 football locker room, or facility on the campus, and
6 had worked out. After working out, Sandusky and the
7 child showered. And while showering, Sandusky had
8 hugged the child from the rear.

9 And that was pretty much the extent of what
10 the mother reported. There was no information from
11 the mother that reported this as a sexual incident.
12 And nothing was said by Sandusky or done in a sexual
13 nature that Shreffler related about the report.

14 Q. So that was the initial report which
15 Detective Shreffler made to you?

16 A. That's correct.

17 Q. And then what happened in terms of this
18 investigation?

19 A. Well, we had a brief discussion. I told him
20 to contact the District Attorney's office to seek
21 guidance with respect to how to handle this matter.
22 I also notified, shortly thereafter on that same
23 morning, Gary Schultz of the report that I had
24 received from Officer Shreffler.

25 Q. After Officer Shreffler contacted the Centre

1 County District Attorney, what happened next? And
2 again, I just want to come up to this email from May
3 13th.

4 A. He subsequently interviewed the child. There
5 was also -- Children and Youth Services became
6 involved, which is an agency of the Commonwealth
7 which oversees the welfare of children. So they
8 became involved with Officer Shreffler in conducting
9 this inquiry. Officer Shreffler interviewed the
10 child, obtained additional details. But
11 essentially, the report didn't change, the child was
12 not injured and Officer Shreffler learned from that
13 child about a second child who had a similar
14 experience. He interviewed that child also. And at
15 some point in time there, the state Department of
16 Public Welfare became involved and sent an
17 investigator who worked -- conducted their own
18 investigation but worked in concert with Officer
19 Shreffler.

20 Q. Well, I'd like to again refer you back to
21 Plaintiff's Exhibit 3. On the 14th, "Tim, I
22 understand that a DPW person was here last week.
23 Don't know for sure if they talked with Jerry. They
24 decided to have a child psychologist talk to the
25 boys some time over the next week. We won't know

1 anything before then." So what you just described
2 brings us up to this email, right?

3 A. I believe so.

4 Q. Okay. And then you further wrote on the 13th
5 about the psychologist speaking with the child?

6 A. I did.

7 Q. Okay. That says, "The psychologist from DPW
8 spoke with the child. They have not spoken to him."
9 I don't quite understand that. Do you? Who is the
10 him?

11 A. Well, it's my recollection that they referred
12 to the DPW investigator. But that's -- again, I
13 didn't write it very clearly at the time so I --

14 Q. Well, the psychologist from DPW spoke with
15 the child. But then it says they have not spoken to
16 him. Who's the him?

17 A. Oh, I believe that it was Sandusky.

18 Q. Okay. And then this ends with an email from
19 Mr. Schultz to you?

20 A. Yes.

21 Q. Okay. Now, did you report to Mr. Schultz
22 about all investigations that your department was
23 conducting?

24 A. No.

25 Q. Why did you report to him about this

1 investigation?

2 A. Because this involved an individual who was a
3 high profile figure at the University.

4 Q. And because there might be, I'm not saying
5 there are, but there might be some members of the
6 jury who don't know who Jerry Sandusky was at that
7 time, could you tell us who he was at that time?

8 A. I believe his title was defensive coordinator
9 on the football team. And he also was known in the
10 community for his work with disadvantaged children
11 through The Second Mile foundation which I believe
12 he had founded.

13 Q. So he was well known in the Penn State
14 community -- I'm sorry the State College community?

15 A. He was.

16 Q. Okay. And was that your reason for bringing
17 this to Mr. Schultz's attention at that time?

18 A. It was.

19 Q. Okay. Now, did you log this mother's report
20 as a criminal complaint in your system?

21 A. We did not. If you mean -- well, we had a
22 chronological log that was maintained that was
23 publicly accessible for reports of crimes, and we
24 did not log this at that time.

25 Q. Okay. Did you make a record of it anywhere?

1 A. I'm sure that Officer Shreffler immediately
2 began making a record of his activities.

3 Q. Okay. Ultimately, was this ever put in that
4 chronological log that was accessible to the public?

5 A. It was not.

6 Q. Where was it -- where was this file
7 maintained ultimately?

8 A. The file was maintained in the records office
9 of the University police.

10 Q. And these records are not publicly
11 accessible?

12 A. They are not.

13 Q. Sir, could you turn to Plaintiff's Exhibit 4?
14 It's the next page.

15 A. (The witness complied.) I've read it.

16 Q. Okay. Can you identify this document?

17 A. I can. It's, again, an email chain. It
18 appears to contain part of the chain from the
19 previous exhibit, but it ends with Schultz writing
20 to me.

21 MR. STROKOFF: Move for admission of
22 Plaintiff's Exhibit Number 4, Your Honor.

23 MS. CONRAD: No objection.

24 THE COURT: It's admitted.

25 MR. STROKOFF: Could we publish that, please?

1 BY MR. STROKOFF:

2 Q. So the bottom part, the bottom third or so of
3 this page has some of the emails that were on
4 Plaintiff's Exhibit 3?

5 A. I believe yes. Yes.

6 Q. Okay. And then on May 18th, Mr. Curley
7 wrote, "Any update?" See that?

8 A. That's correct.

9 Q. And then you wrote back, "No, but I don't
10 expect we'll hear anything prior to the end of this
11 week." Is that correct?

12 A. It says you wrote back but I am not certain,
13 and I don't think that was me, I think that was
14 Schultz responding.

15 Q. Okay. I'm sorry. Why don't you walk me
16 through because you know this better than I do. So
17 Schultz said, "No, but I don't expect we'll hear
18 anything prior to the end of this week"?

19 A. I believe that was Schultz's response, yes.

20 Q. And then the end of the month?

21 A. Curley writes again.

22 Q. And what does he say?

23 A. He says, "Any further update?"

24 Q. And then there's another email between Mr.
25 Schultz and Tim Re: Jerry, referencing something

1 that Tom had told him, right?

2 A. That's correct.

3 Q. And then the top email is what?

4 A. This is from Schultz to me on the 9th of
5 June.

6 Q. Okay. Could you read that out loud, please?

7 A. It says, "Tom, I've been holding some 'catch
8 up time' on my calendar on Monday, and I suggest
9 that we use a piece of it to meet and discuss the
10 status. I also recall the last time we talked, you
11 indicated that there was some aspects of this that
12 you felt you should review with me when we had a
13 chance to talk. Please get a hold of Joan and see
14 what time will work. Thanks."

15 Q. Joan is Joan Koval, his secretary at the
16 time?

17 A. She was.

18 Q. Okay. Now, did you have that meeting with
19 Mr. Schultz?

20 A. To the best of my recollection, we did not.

21 Q. Okay. Well --

22 A. We never met personally to discuss this.

23 Q. All right. Did you have any telephone
24 discussion with him?

25 A. During the period of time of the

1 investigation, yes, we had a number of phone
2 conversations. I would say three or four, wherein I
3 kept him updated about the status of the
4 investigation.

5 Q. And what was the final status of
6 determinations and whether or not to go ahead with a
7 prosecution?

8 A. Well, about the time of this particular
9 email --

10 Q. This meaning Plaintiff's 4?

11 A. Yes. I would believe it would have been
12 shortly thereafter Officer Shreffler called me and
13 informed me that the District Attorney had reached a
14 decision, and that decision was that the
15 Commonwealth would not pursue this as a
16 criminal offense because there was no, as we say, no
17 evidence of elements of a crime based upon the
18 investigation.

19 Q. And this was District Attorney Gricar at that
20 time?

21 A. He was the District Attorney. And I
22 understood from Shreffler that came -- that decision
23 was made by him.

24 Q. So after that decision was made, how was the
25 decision made to place this investigative material

1 into this non-accessible file?

2 A. I instructed Officer Shreffler at that time
3 to write up his report. And then there was some
4 subsequent decision with some supervisors about how
5 we should title it. And because, in light of the
6 District Attorney's decision that there was no crime
7 committed, I directed that this be called
8 administrative information rather than a specific
9 crime and that we handle it as a non-criminal
10 incident.

11 Q. Okay. Did you advise Mr. Schultz that that
12 was how you were placing the file or this
13 investigative file?

14 A. I have no recollection of that. And I don't
15 believe that I did have any discussion with him
16 about that.

17 Q. Okay. Thank you. Now I'm going to ask you,
18 if you would, please, turn to Plaintiff's Exhibit 5.
19 Are you able to identify this document?

20 A. I'm sorry, the question was can I identify
21 it?

22 Q. Yes. Can you?

23 A. I can.

24 Q. And what is it?

25 A. It is another email chain. And it again

1 contains some of the email chain from Exhibit 3 and
2 4 and it concludes with an email from Schultz to Tim
3 Curley with me being copied on that.

4 Q. And Graham Spanier was copied as well?

5 A. He was.

6 Q. Okay. Could we publish that, please?

7 THE COURT: Are you moving its admission?

8 MR. STROKOFF: I'm sorry. I apologize, Your
9 Honor. Move for admission to Plaintiff's Exhibit 5.

10 MS. CONRAD: No objection.

11 THE COURT: Thank you. It's admitted.

12 BY MR. STROKOFF:

13 Q. Sir, the top email is from Mr. Schultz to Tim
14 Curley with a CC to Dr. Spanier and to you; is that
15 correct?

16 A. That is correct.

17 Q. Okay. And read what Gary Schultz wrote.

18 A. "They met with Jerry on Monday and concluded
19 that there was no criminal behavior and the matter
20 was closed as an investigation. He was a little
21 emotional and expressed concern as to how this might
22 have adversely affected the child. I think the
23 matter has been appropriately investigated and I
24 hope it is behind us now" -- or "I hope it is now
25 behind us."

1 Q. Now Mr. Schultz's writing this to Curley,
2 where did he get this information? If you know.

3 A. I'm certain that this was information that I
4 conveyed to him that was related to me by Officer
5 Shreffler.

6 Q. So that would have been in one of the
7 telephone communications you were talking about
8 previously? If you remember. If you don't --

9 A. I don't have a specific recollection, but I
10 believe that would have been a telephone call.

11 Q. Okay. And Mr. Schultz then was aware that
12 your department had investigated the matter?

13 A. He was.

14 Q. And that DPW had been involved?

15 A. He was.

16 Q. And that a psychologist had been involved?

17 A. He was.

18 Q. And that the Centre County District Attorney
19 had been involved?

20 A. He was.

21 Q. And he was aware that all of those elements
22 were in that investigation?

23 A. I'm sorry. Can you --

24 Q. He was aware then that all of those elements
25 were in that investigation of the 1998 incident?

1 A. If you mean all of those agencies, yes.

2 Q. Yes. Mr. Schultz was aware that the incident
3 that was reported by the mother was a shower
4 incident, was he not?

5 A. Would you repeat that again? I'm having a
6 little difficulty hearing. I've lost some hearing.

7 Q. I think it's more of a problem with my voice,
8 and I'll try and speak up a little bit. Mr. Schultz
9 had been appraised that the mother's complaint
10 involved Mr. Sandusky hugging a boy from behind in a
11 shower?

12 A. He was.

13 Q. Now sir, I'm going to ask, if you would
14 please, turn to Plaintiff's Exhibit 8.

15 A. Eight?

16 Q. Eight, yes.

17 A. I have it.

18 Q. Are you able to identify Plaintiff's Exhibit
19 8?

20 A. It is an email I wrote in 2001 to Gary
21 Schultz.

22 MR. STROKOFF: Move for admission of
23 Plaintiff's Exhibit 8, Your Honor.

24 MS. CONRAD: No objection.

25 THE COURT: Thank you. It's admitted.

1 BY MR. STROKOFF:

2 Q. So sir, this email you sent, according to the
3 date stamp here, February 12th, 2001 at 4:57 p.m.?

4 A. I'm sorry?

5 Q. The date and time of the email was what?

6 A. 4:57 p.m., February 12th, 2001.

7 Q. Your email address at that time was as set
8 forth here?

9 A. That's my email address.

10 Q. And who is G-C-S-2 at P-S-U dot E-D-U?

11 A. That was Gary Schultz.

12 Q. And the subject matter is what?

13 A. Incident in 1998.

14 Q. And which incident in 1998, if you remember,
15 were you referring to in this email?

16 A. I was referring to the incident with Sandusky
17 and the boys in the shower.

18 Q. Okay. And what did you email Mr. Schultz on
19 February 12, 2001? Could you read that?

20 A. Do you want me to read that?

21 Q. Please.

22 A. "Regarding the incident in 1998 involving the
23 former coach, I checked and the incident is
24 documented in our imaged archives."

25 Q. Now by this point in time, Mr. Sandusky's a

1 former coach?

2 A. That's correct.

3 Q. Okay. And do you recall why it is you sent
4 Mr. Schultz this email on February 12th, 2001?

5 A. It was obviously in response to an inquiry
6 from him. However, I do not have any recollection
7 of how that inquiry was made or the context of that.
8 I can only testify that I recognized this as my
9 response to an inquiry.

10 Q. So Mr. Schultz made some kind of inquiry and
11 you were responding to it?

12 A. He did. Obviously, based upon this email
13 that I wrote.

14 Q. And what does documented in our imaged
15 archives mean?

16 A. That meant we still had a written record of
17 it.

18 Q. Well, it says imaged.

19 A. At the time, we would take our written
20 reports which were on paper, and at the end of the
21 year we would scan them in digital form to be
22 maintained in our archived records.

23 Q. Okay. Now sir, I want to jump ahead to the
24 year 2011. At that point in time, are you still
25 employed by The Pennsylvania State University?

1 A. I was not.

2 Q. Okay. Do you recall an incident, sir, where
3 a newspaper reporter came to your house one evening?

4 A. I do.

5 Q. And do you recall about when that was?

6 A. I believe it was about in February of 2011.

7 Q. And did you know this reporter?

8 A. I did not know her personally, but I do
9 remember her name.

10 Q. She identified herself?

11 A. As -- yes.

12 Q. Okay. And who was she?

13 A. Sara Ganim.

14 Q. Okay. And she came to your house. And what
15 did she ask?

16 A. She came to my door one evening and asked --
17 she identified herself and said she was, I believe
18 with The Harrisburg Patriot at that time, and asked
19 if she could ask me some questions. I invited her
20 into my living room and she asked me, "Do you
21 remember an incident in 1998 involving Jerry
22 Sandusky in the showers at the University?" And she
23 said that she knew that this incident had not been
24 prosecuted. And that was generally the gist of her
25 question and --

1 Q. And how did you respond to her question?

2 A. I told her that I couldn't comment on
3 anything that I had worked on at the University and
4 that she would have to contact the people at the
5 University police who were in charge today, at that
6 time.

7 Q. So that was a very short interview?

8 A. It was.

9 Q. Okay. And did you do anything after she left
10 your house?

11 A. Shortly thereafter that very evening, I
12 called Steven Shilo, who was my successor at the
13 University.

14 Q. And you called Mr. Shilo. And what did you
15 talk about?

16 A. I told him essentially about this unusual
17 inquiry I had from a news reporter.

18 Q. Okay. And what did Mr. Shilo say in
19 response?

20 A. He told me at that time that he had a request
21 a short period before that, I don't know how long
22 but it was certainly recent, from the office of the
23 University counsel for a copy of --

24 MS. CONRAD: Objection at this point. I'm
25 going to assert attorney/client privilege with

1 respect to any information related by University
2 counsel.

3 MR. STROKOFF: Your Honor, this isn't related
4 by University counsel, this is from a police
5 director to a former police director. So if he's
6 repeating what the University counsel said, that's
7 not privileged.

8 MS. CONRAD: To the extent Mr. Shilo related
9 information directly to Mr. Harmon, he may testify
10 as to that information only.

11 THE COURT: Do you understand what you can
12 do?

13 THE WITNESS: I'm a little confused, but --

14 THE COURT: You are permitted to tell the
15 jury what your replacement told you.

16 THE WITNESS: Okay. He told me that he had
17 had a request from the University counsel fairly
18 recently for a copy of the report of the 1998
19 incident. And he also told me, he said apparently
20 there has been another incident.

21 BY MR. STROKOFF:

22 Q. Okay. And this was about when, sir, in the
23 year? This is in 2011, and what time of the year
24 was it?

25 A. To the best of my recollection, I'm thinking

1 it was probably about in February some time.

2 Q. Okay. Now at some point in time, were you
3 interviewed by any investigators from the Office of
4 Attorney General?

5 A. I was.

6 Q. And about when were you interviewed?

7 A. It was approximately a week before I was to
8 appear before the grand jury in Harrisburg. And I
9 think that was late March, early April of 2011.

10 Q. I'm not going to ask you what your testimony
11 was before the grand jury. But what did you discuss
12 with the investigator from the Attorney General's
13 office?

14 A. I was asked and told them pretty much the
15 same thing that I've testified here to with respect
16 to the 1998 incident. They also asked me if I knew
17 Mike McQueary, if I had ever been notified or
18 provided information about an incident that he had
19 witnessed. And they told me generally that he --

20 MS. CONRAD: Objection as to hearsay. And
21 I'm not certain what relevance this has to this
22 proceeding.

23 MR. STROKOFF: The University maintains and
24 claims that they didn't know Mike McQueary was the
25 grad assistant until some time after the presentment

1 in November of 2011. And this is part of the
2 evidence that there was knowledge abounding that he
3 was the grad assistant.

4 MS. CONRAD: In 2011, Mr. Harmon was not
5 associated with the University.

6 MR. STROKOFF: All the more reason why the
7 Attorney General --

8 THE COURT: The Attorney General investigator
9 identified Mr. McQueary as being involved in the
10 investigation?

11 THE WITNESS: She did.

12 THE COURT: Objection's overruled.

13 BY MR. STROKOFF:

14 Q. So I believe you started to say that after he
15 identified Mr. McQueary, he asked you about a
16 report?

17 A. Yes. They told me that they had a report
18 from Mr. McQueary. I don't remember what the
19 details were that they told me, I'm sure they didn't
20 go into great detail. But I was aware from what
21 they had told me that there had been a report made
22 by Mr. McQueary.

23 Q. Sir, could you tell us whether or not back in
24 2001 around the time when you sent Mr. Schultz
25 Plaintiff's Exhibit 8 regarding the 1998 incident

1 whether or not your office ever received any report
2 about a 2001, February 2001 incident involving Mr.
3 Sandusky in the Lasch shower room?

4 A. We did not.

5 Q. You're sure of that?

6 A. Absolutely.

7 Q. Because if you had received a report, what
8 would you have done with it?

9 A. If we had received a report that led to a
10 reasonable belief that a crime had been committed or
11 frankly any incident in the shower with Sandusky and
12 a child again, we would have contacted the District
13 Attorney again and attempted to initiate an
14 investigation.

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

16 CROSS EXAMINATION

17 BY MS. CONRAD:

18 Q. Mr. Harmon, I'm going to move to the podium
19 so I can see you better and you can hear me better.

20 A. Thank you.

21 Q. Mr. Harmon, I'd like to direct your attention
22 to tab 3, that was Plaintiff's Exhibit 3. In that
23 first email at the bottom of the page that Tim
24 Curley wrote, "Anything new in this department?
25 Coach is anxious to know where it stands." Do you

1 see that statement?

2 A. I see that.

3 Q. Do you know whom Mr. Curley was referring to
4 when he said "coach is anxious to know"?

5 A. I'm certain that that was Coach Paterno.

6 Q. Now I believe you testified in conjunction
7 with the 1998 incident, that you received
8 information from Investigator Shreffler that you
9 provided to Gary Schultz; correct?

10 A. That's correct.

11 Q. And I believe you informed Mr. Schultz that
12 it was your understanding based on the updates that
13 you received that the University police, that is
14 Investigator Shreffler, had interviewed the child?

15 A. Well, not -- the first notification was based
16 upon what the mother had said to Officer Shreffler.
17 I did notify Gary Schultz in a phone call after the
18 child was interviewed also.

19 Q. Okay. And that's what I want to take you
20 through. There was a point in time, wasn't there,
21 that you informed Mr. Schultz that University
22 police, that is Investigator Shreffler, had
23 interviewed the child; correct?

24 A. That's correct.

25 Q. And there was a point in time that you

1 informed Mr. Schultz that DPW had interviewed the
2 child in 1998?

3 A. I'm not certain I understand the question.
4 Could you repeat?

5 Q. Did you inform Mr. Schultz that DPW had
6 interviewed the child in 1998?

7 A. I'm sure I notified him that DPW had either
8 interviewed him or he -- I believe that they
9 participated in an interview with Officer Shreffler.
10 That would have been what I notified him of.

11 Q. So you informed Mr. Schultz that DPW had
12 participated in the interview with the child in 1998
13 that University Police Investigator Shreffler
14 conducted?

15 A. I did.

16 Q. And you informed Mr. Schultz that a child
17 psychologist had interviewed the child in 1998,
18 didn't you?

19 A. At some point in time during the course of
20 the investigation, I did notify him of that event.

21 Q. And you informed Mr. Schultz, didn't you,
22 that based on those interviews as well as others
23 based on the complete investigation that the
24 District Attorney decided not to pursue the incident
25 as a criminal offense; is that correct?

1 A. I notified Mr. Schultz that the District
2 Attorney had made that decision. I didn't go into
3 detail about the rationale or all of the events that
4 the District Attorney might have considered.

5 Q. I understand that, sir. But you informed Mr.
6 Schultz that the DA was not going to pursue the
7 incident as a criminal offense after the child had
8 been interviewed by University police; correct?

9 A. That's correct.

10 Q. And you told Mr. Schultz that the DA was not
11 pursuing the incident as a criminal offense after
12 DPW participated in that interview with the child;
13 correct?

14 A. That's correct.

15 Q. And you told Mr. Schultz that the DA was not
16 pursuing a criminal offense after you told Mr.
17 Schultz that a child psychologist had interviewed
18 the child?

19 A. That's correct.

20 Q. And based on the fact that there is no
21 criminal offense, you did not log it into the
22 University's criminal log, did you?

23 A. That's correct.

24 Q. You, though, filed it in the University
25 files, I believe you said as an administrative

1 matter; is that correct?

2 A. That's correct.

3 MS. CONRAD: I have no further questions.

4 Thank you, sir.

5 MR. STROKOFF: Nor do I, Your Honor.

6 THE COURT: Thank you, Mr. Harmon. You're
7 free to go about your business.

8 MR. STROKOFF: Graham Spanier, Your Honor.

9 THE COURT: Okay.

10 GRAHAM SPANIER

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

13 DIRECT EXAMINATION

14 BY THE COURT:

15 Q. Sir, please state, for the record, your full
16 name?

17 A. Graham B. Spanier.

18 Q. And for the court reporter's benefit, can you
19 spell your last name?

20 A. S-P-A-N-I-E-R.

21 Q. Sir, could you tell us during what period of
22 time you were employed by The Pennsylvania State
23 University?

24 A. I came to Penn State in 1973 as a professor
25 and in my first administrative positions and

1 remained there for nine years until 1982. And then
2 I was invited back in 1995, starting September 1st,
3 to be the president of Penn State. And I remained
4 in that position until November 9th of 2011.

5 Q. And sir, could you briefly tell the jury what
6 you have academic degrees in?

7 A. My Bachelor's, Master's and Ph.D degrees are
8 in sociology with an emphasis on marriage in the
9 family and my academic appointments were in the
10 college of health and human development as it's
11 known now, in the sociology department, in the
12 college of liberal arts, I had a joined appointment
13 in demography, and in the college of medicine in
14 family and community medicine.

15 Q. And sir, could you tell the jury whether or
16 not you have published in any professional way?

17 A. Yes. I have approximately 100 publications
18 including 10 books, and was a frequent contributor
19 to magazines and higher education publications as
20 well as publications in my scholarly field.

21 THE COURT: Mr. Strokoff, the jurors are
22 indicating they can't hear you.

23 BY MR. STROKOFF:

24 Q. These other publications, you said some of
25 them were magazines and others were in your

1 scholarly field. Can you explain that, please?

2 A. And in admissions, customarily publish in
3 what are called peer review scholarly journals, so
4 these are journals where you are publishing research
5 and they are reviewed by other scholars in the field
6 for their academic merit and published in various
7 journals.

8 Q. And over what period of time would you say
9 you had been writing the material for publications?

10 A. My first publications would have appeared in
11 1971 or '72. And in my academic field, they would
12 have gone through the 1980s and 90s perhaps. More
13 of the publications after that date tended to focus
14 on higher education topics.

15 Q. And the magazines that you referred to, are
16 they popular magazines?

17 A. Moderately popular. A good example would be
18 Trusteeship Magazine, which went to all university
19 presidents and members of governing boards across
20 the country where I was the presidential columnist
21 and had some longer feature stories under his
22 topics.

23 Q. So these are not as scholarly as the
24 scholarly publications?

25 A. That's right.

1 Q. Okay. And do you have any experience in
2 television?

3 A. Yes, I do.

4 Q. And what is that experience?

5 A. Well, in my youth as a teenager in Chicago, I
6 worked in radio and television. I supported myself
7 through college in part working at a radio station
8 in central Iowa. I had television shows on the ABC
9 affiliate there. And then after I became a
10 professor, I maintained my interest in journalism,
11 radio and television, and I hosted for about 20
12 years, until I stepped down as president of Penn
13 State, two television shows, one on public
14 television and one on the Big 10 Network.

15 Q. And just for the sake of -- if there are any
16 jurors who don't know what the Big 10 Network is,
17 please explain what the Big 10 Network is.

18 A. The Big 10 Network is a sports network I was
19 involved in creating along with the commissioner of
20 the Big 10 and on behalf of the presidents of Big 10
21 universities to cover Big 10 sports across the whole
22 spectrum of sports and to also feature other kinds
23 of programs emanating from the membering
24 universities.

25 Q. Sir, I would like you to take a look --

1 there's a black binder in front of you, it should
2 say exhibits in real big print, witness copy. Do
3 you see that?

4 A. Yes.

5 Q. Could you please turn to Plaintiff's Exhibit
6 Number 5, please?

7 A. I see tab five. Okay, Plaintiff's -- I see
8 it now, thank you.

9 Q. Could you take a moment to review that
10 document?

11 A. Yes. (The witness complied.) I've reviewed
12 it.

13 MR. STROKOFF: And Your Honor, this is
14 already in evidence, so I'm going to ask that it be
15 put up on the screen.

16 BY MR. STROKOFF:

17 Q. Sir, do you recognize that top email from Mr.
18 Schultz to Mr. Curley with a CC to you and Mr.
19 Harmon?

20 A. I recognize it insofar as it came to my
21 attention, to the best of my recollection, for the
22 first time in 2012.

23 Q. So you don't remember receiving it in 1998?

24 A. No.

25 Q. You don't remember an investigation into an

1 incident involving Jerry Sandusky in 1998?

2 A. I have no such recollection.

3 Q. Once this email came to your attention in
4 2012, did you make an effort to go back to see if
5 you had received this email in 1998?

6 A. Yes, I did.

7 Q. And what did you ascertain?

8 A. I was baffled by the fact that I had not
9 recalled ever seeing it before. And it wasn't until
10 the investigation of this matter emerged in 2012
11 that I had access to my calendar from 1998. And
12 therein my explanation of why I don't believe I ever
13 saw this email. And I can explain it to you, it
14 would take a moment.

15 Q. Well, first I want to know -- and I don't
16 want to cut you off. But there's a difference
17 between not seeing the email and not having received
18 the email. Did you -- do you believe you received
19 the email on -- in June 9th, 1998?

20 A. I don't know the answer to that question.
21 But my recollection is that I never saw the email.
22 And the explanation is that in this era, a much
23 earlier era of email, 18 years ago, Blackberries had
24 not been invented yet. There were no mobile
25 devices, and email was very difficult to obtain if

1 you were traveling in foreign countries. I -- on
2 this date, and for, I'm going to estimate, about 10
3 days before this date and for some days afterwards
4 was on a trade mission with Governor Ridge in
5 Israel, Ireland, and Scotland -- wait a minute, I'm
6 getting my two trips confused. I believe this
7 particular trip may have been when I was visiting
8 partner universities in the Worldwide Universities
9 Network, which I was the United States chair. In
10 any event, I was out of the country for an extended
11 period of time without access to email.

12 Immediately upon my return, I then turned
13 around for a meeting of the board of directors of
14 National 4H in the Washington, D.C. area and would
15 only have been back home for a matter of hours. So
16 in this era where I was receiving approximately 100
17 emails a day, by the time I came back, if this email
18 had been in my cue it would have been among a
19 thousand or so emails. And I have no recollection
20 of ever seeing it, if indeed it was there.

21 The other thing that occurred in that era,
22 when you didn't have ongoing access to email, this
23 system that we used at the time, Eudora, like most
24 systems today, had a feature where you can
25 electronically set a message to go back to all

1 senders who email you saying I'm out of the country
2 and don't have access to email, if you need
3 immediate attention call whomever you designate and
4 please have the matter handled that way. So that's
5 a not-so-brief explanation of why I have no
6 recollection of seeing this email. I don't know
7 whether it ever came to me or not.

8 Q. Sir, when you finally were able to return to
9 your office for more than a few hours, didn't you go
10 back to check to see what emails had come in while
11 you had the out of office message on?

12 A. I always tried to stay on top of my email.
13 But there's no record of my ever responding to this,
14 and I responded to all of my emails as a matter of
15 habit. And by the time you get back in this era
16 from an extended trip where you have hundreds or
17 more than a thousand emails, that was probably the
18 one circumstance where I did not go back and
19 literally try to read every email because my
20 calendar was pretty full.

21 Q. Well, if Mr. Schultz was sending you a CC on
22 a matter, wouldn't he have thought that you knew
23 what the matter was that he was CCing you about?

24 A. I can't speculate about what might have been
25 in his mind or what he was thinking at the time. I

1 also am aware from reviewing my calendar that Mr.
2 Schultz was out of the office for a good part of
3 June when I would have gotten back, so I'm not sure
4 we would have even overlapped.

5 Q. Well, you worked with Mr. Schultz when both
6 of you were in town on a regular basis, right?

7 A. Yes.

8 Q. Did he regularly send you copies of emails
9 about matters that he hadn't briefed you about
10 beforehand?

11 A. I would say selectively. It would -- we had
12 dozens of issues at the University and hundreds of
13 matters across the University in any given week. So
14 the vice presidents and deans and others who had
15 senior positions, there are about 50 at the
16 University, would use their judgment about what
17 things they might feel the need to copy me on or
18 not. If it was something where they were asking for
19 a response or wanting to speak with me, they would
20 address it to me rather than just give me an
21 informational copy.

22 Q. And my question, however, is, was it his
23 practice to give you a CC on a matter about which he
24 didn't think you had any knowledge?

25 A. I can't say one way or another whether it was

1 a practice because it would have been a matter of
2 selective judgment depending on the topic and that
3 there was no uniform practice.

4 Q. In the event he might send you a CC about
5 something that you hadn't any prior knowledge about,
6 wasn't it your practice to go back to him and say
7 what's this all about, why did I get a CC?

8 A. I think your question has this foundation
9 that I saw this email and that it peaked my
10 curiosity. As I said, I have no recollection of
11 ever seeing this email or being aware of what it
12 might involve. And furthermore, if by some chance I
13 had seen it when I would see something at a time of
14 reviewing hundreds of emails with a statement that
15 says a matter has been appropriately closed, I would
16 almost certainly not insert myself into the
17 discussion and try to follow it further. You would
18 have other matters that you were dealing with.

19 Q. Sir, I'd ask you now to turn to Plaintiff's
20 Exhibit 10. I'd ask you to review that.

21 A. (The witness complied.) I have had a chance
22 to review this before.

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

24 A. Yes. It is an email exchange from February
25 of 2001 involving Tim Curley, Gary Schultz, and me.

1 MR. STROKOFF: Move for admission of
2 Plaintiff's Exhibit 10, Your Honor.

3 MS. CONRAD: No objection.

4 THE COURT: It's admitted.

5 BY MR. STROKOFF:

6 Q. Sir, could you walk us through,
7 chronologically, this email because it's been
8 reproduced in a sort of unusual format, in my
9 experience anyway? Tell us who sent the first
10 email, who sent the second one, and what was in
11 each.

12 A. There is -- the exchange begins with an email
13 from Tim Curley to Gary Schultz and me.

14 Q. And the date of that email, sir?

15 A. That was sent at 8:10 p.m. on February 27th
16 of 2001. I then responded at 10:18 p.m. that
17 evening. And it concludes with an email from Gary
18 Schultz the following afternoon at 2:13 p.m.

19 Q. Now, before we discuss this email, what was
20 the series of events leading up to this email
21 exchange on February 27th, 2001 into February 28th,
22 2001?

23 A. The -- my involvement in the precipitating
24 event was a short meeting in my office on February
25 12th when Gary Schultz and Tim Curley asked if they

1 could catch me after a meeting to give me a heads up
2 on a matter. And what Tim Curley described in that
3 meeting was that a member of the athletic department
4 staff had seen Jerry Sandusky in an athletic locker
5 room facility after a workout, and Mr. Sandusky was
6 engaged in horseplay with one of his kids. It made
7 the individual uncomfortable, but he wasn't sure
8 what he saw because it was indirect and around a
9 corner.

10 This -- at that meeting, it was agreed that we
11 were also uncomfortable with that report and that
12 there should be two forms of intervention that Tim
13 Curley would speak with Jerry Sandusky and tell him
14 that we were uncomfortable with this report and give
15 him a directive that we did not want him to bring
16 his kids into our athletic locker room facilities
17 and that we would like him to cease doing that in
18 the future. And we also thought it prudent, since
19 Mr. Sandusky was no longer an employee of the
20 University and not under our control or authority,
21 to go to the head of The Second Mile and to tell
22 that person that we were giving Mr. Sandusky this
23 directive.

24 It was understood that Tim Curley would be the
25 one to follow up. And that was the gist of that

1 meeting which may have lasted ten minutes, almost
2 certainly not more than 15, but somewhere in that
3 length of time.

4 Q. Sir, could you turn to Plaintiff's Exhibit
5 57, please? We're going to come back to that
6 exhibit. Can you identify Plaintiff's Exhibit 57?

7 A. Yes. This was a summary that I wrote up in
8 the summer of 2012, I believe in July of 2012 to
9 give to Louie Freeh who had reluctantly agreed to
10 meet with me. We did so in Philadelphia, but I
11 wanted very much for him to have the full story and
12 the truth to the best of my recollection at the time
13 so that his investigation, which I assumed at the
14 time would be an impartial and straightforward
15 investigation so that it could be based on the
16 knowledge that I had, minimal as it was.

17 Q. So you authored this document?

18 A. Yes.

19 MR. STROKOFF: Move for admission of
20 Plaintiff's Exhibit 57, Your Honor.

21 THE COURT: Any objection?

22 MS. CONRAD: No, sir.

23 THE COURT: It's admitted.

24 BY MR. STROKOFF:

25 Q. Sir, that document begins with a category or

1 heading Initial Heads Up. Do you see that?

2 A. Yes.

3 Q. And correct me if I'm wrong but your heads up
4 says that Curley and Schultz reported to you that a
5 member of the athletic department staff had reported
6 something to Joe Paterno and Joe had passed that
7 report on to Tim and Gary, right?

8 A. Yes.

9 Q. And what Tim and Gary told you was that
10 Sandusky was seen in the athletic locker room
11 facilities showering with one of his Second Mile
12 youth, and they were horsing around or engaged in
13 horseplay. It was reported that the staff member
14 was not sure what he saw because it was around a
15 corner and indirect. That's basically what they
16 reported to you?

17 A. Well, that's -- that's what I've written
18 here. I do not recall that Joe Paterno's name was
19 actually mentioned in that discussion. But I
20 surmised that the report came to Tim Curley from Joe
21 Paterno.

22 I also want to make clear that in my meeting,
23 that initial heads up meeting, it was with Tim
24 Curley and Gary Schultz. But it was Tim Curley's
25 report at that meeting of what he had heard the day

1 before. It is not my recollection now that Gary
2 Schultz met with Joe Paterno on that day. As I am
3 thinking about it, it was Tim Curley who was giving
4 me the information during that meeting.

5 Q. But you knew the information he was giving
6 you was second or third hand, right?

7 A. Yes.

8 Q. Okay. And was there a discussion about the
9 similarity between this report and the 1998
10 incident?

11 A. I recall no such mention of a report of 1998
12 in that meeting.

13 Q. And was there any mention that Wendell
14 Courtney had advised Gary Schultz the day before to
15 report this to DPW?

16 A. No.

17 MS. CONRAD: I'm going to object to the
18 characterization, that is not what Wendell Courtney
19 testified to.

20 THE COURT: Members of the jury, it's your
21 recollection, as with all the testimony, to remember
22 what the witness said. Go ahead.

23 THE WITNESS: I'm not sure I --

24 THE COURT: Just wait for the question, Mr.
25 Spanier. It will be easier.

1 BY MR. STROKOFF:

2 Q. Was there any discussion that Gary Schultz
3 had requested advice from Wendell Courtney?

4 A. I have no such recollection of that.

5 Q. So Mr. Schultz did not report to you any
6 advice that he had received from Wendell Courtney?

7 A. Not that I remember.

8 Q. And you know who Wendell Courtney is, right?

9 A. Yes, I do.

10 Q. Okay. So the first -- you said, "I recall
11 asking two questions, one, are you sure that is how
12 it was described to you, as horsing around? Both
13 replied yes." So Mr. Schultz had received that
14 description as well, apparently?

15 A. I don't know if that's the case. I had the
16 impression that Mr. Curley and Mr. Schultz had
17 discussed this before that meeting. It may have
18 been the day before, it may have been that morning.
19 This meeting took place, I would estimate, at about
20 2:30 that afternoon. And I know the approximate
21 time because it followed a presidential council
22 meeting, that was a meeting of my cabinet
23 essentially, which that would normally go from about
24 12:30 to 2:30. And after the meeting, different
25 members of the staff will catch me privately or

1 individually for follow up matters that they didn't
2 want to take the time of the entire group with. So
3 it would have been customary if a matter touched
4 intercollegiate athletics and they wanted to give me
5 a heads up that Mr. Curley and Mr. Schultz would
6 both be there for that discussion.

7 But when I say here that both of them said
8 yes, it is my impression that Mr. Schultz was saying
9 yes based upon what he had heard from Mr. Curley,
10 not necessarily that he personally had that
11 knowledge. I know it's a nuance, I just want to be
12 as clear as I can.

13 Q. And just so that everybody's clear, Mr.
14 Curley wasn't reporting that he had interviewed the
15 staff member who had witnessed the incident?

16 A. I don't believe so, no.

17 Q. Okay. And then your second question was,
18 "Are you sure that that is all that was reported?
19 Both replied yes." Okay. So then a decision was
20 made to tell Tim to meet with Sandusky and tell him
21 he can't bring youth into the showers again and we
22 should inform The Second Mile?

23 A. That was what was discussed at that meeting,
24 yes.

25 Q. So that decision was made on February 12th,

1 2001?

2 A. Yes.

3 Q. Without ever having a direct interview of the
4 individual who had reported the incident?

5 A. Yes.

6 Q. And you didn't see a need to further
7 investigate to see what the staff member was sure or
8 not sure what he had seen?

9 MS. CONRAD: Objection. Leading.

10 THE COURT: Overruled. You could answer the
11 question.

12 THE WITNESS: Based on what I heard, that it
13 was a report of horsing around, it didn't occur to
14 me that any additional intervention beyond what I've
15 just described was relevant, especially after I
16 heard the answer to the question, are you sure
17 that's all that occurred, is all that you heard, was
18 there anything else? No, it didn't occur to me that
19 anything other than what I described was an adequate
20 level of intervention.

21 Q. Okay. So, this document which you produced,
22 just talked about for the last few minutes, was a
23 discussion that was had on February 12th, 2001?

24 A. Yes.

25 Q. Okay. Now I want to go back to the emails

1 that you were starting to interpret for us, which is
2 10 I believe.

3 A. Remind me, tab 10 did you say?

4 Q. Yes. And the tabs are there for convenience.
5 The actual document should be labeled Plaintiff's
6 Exhibit 10, which is behind the tab.

7 A. Okay. I have it again.

8 Q. Okay. Can you read for us what the first
9 email was that Tim Curley wrote on, you said,
10 February 27th, 2001 at 8:10?

11 A. Yes. "I had scheduled a meeting with you
12 this afternoon about the subject we discussed on
13 Sunday. After giving it more thought and talking it
14 over with Joe yesterday, I'm uncomfortable with what
15 we agreed were the next steps. I'm having trouble
16 with going to everyone but the person involved. I
17 think I would be more comfortable meeting with the
18 person and tell him about the information we
19 received. I would plan to tell him we were aware of
20 the first situation. I would indicate we feel there
21 is a problem and we want to assist the individual to
22 get professional help. Also, we feel a
23 responsibility at some point soon to inform his
24 organization and maybe the other one about the
25 situation. If he is cooperative, we would work with

1 him to handle informing the organization. If not,
2 we do not have a choice and will inform the two
3 groups. Additionally, I will let him know that his
4 guests are not permitted to use our facilities. I
5 need some help on this one. What do you think about
6 this approach?"

7 Q. So we're talking that the person is Jerry
8 Sandusky?

9 A. I believe so, yes.

10 Q. Okay. And the information you received that
11 Mr. Curley's referring to is what?

12 A. I can't be sure what it references. You
13 would have to ask --

14 Q. Well, what about "I would plan to tell him we
15 are aware of the first situation"? What was the
16 first situation?

17 A. At the time I read that email, I'm not -- I
18 don't recall having an an awareness of what that
19 might have meant, nor would I have spent more than a
20 moment reading his email. So I don't want to put
21 words in anyone else's mouth.

22 Q. So you're saying at the time you would have
23 read this, you don't think you would have known what
24 the first situation referred to?

25 A. I'm not sure that everything he was saying

1 would have registered with me. I was out of town,
2 on the road for most of the period of time between
3 when this was written. And before that, when we had
4 that heads up meeting as I described it earlier, and
5 Tim Curley had the lead in following up on this. So
6 I can't parse the nuances of what he is saying in
7 that particular email.

8 Q. Well today, do you know what the first
9 situation refers to?

10 A. I am surmising, based upon testimony we heard
11 earlier this morning, that it may have referred to a
12 prior incident. But since I had no awareness of
13 this time, to the best of my recollection, of a
14 prior incident, I can't say that that was part of my
15 thinking as I responded to this email.

16 Q. Well, the next sentence says, "I would
17 indicate we feel there's a problem." What was the
18 problem? If you know.

19 A. You're asking me to explain what somebody
20 else wrote and I just don't think I can do that.

21 Q. Okay. So the we would not include Graham
22 Spanier, we feel there's a problem?

23 A. My answer would be the same. I'm just not
24 sure that I can explain someone else's words.

25 THE COURT: Okay. I think I mentioned

1 earlier if any of the jurors needed a break for any
2 reason, we would take it. So let's take a break,
3 we'll call it our mid-morning break. We'll take it
4 to a quarter of 11. Okay?

5 (Whereupon, a recess was taken.)

6 THE COURT: Go ahead, counsel.

7 BY MR. STROKOFF:

8 Q. Dr. Spanier, getting back to Plaintiff's
9 Exhibit 10, we were still in the middle of the
10 initial email which Mr. Curley sent. And I believe,
11 am I correct, that you're not sure what Mr. Curley
12 was referring to when he said there is a problem?

13 A. That's correct.

14 Q. But at this point in time, you still think
15 the report is just about horseplay?

16 A. Yes.

17 Q. "And we want to assist the individual to get
18 professional help." You're not sure you know what
19 Mr. Curley was referring to there? I'm sorry --
20 yes. Mr. Curley was referring to there?

21 A. No, I'm not aware of what he may have meant
22 with that statement.

23 Q. And he goes onto say, "We feel a
24 responsibility at some point soon to inform his
25 organization." Do you know what his organization

1 refers to?

2 A. No.

3 Q. "And and," yeah, that's what it says, "and
4 and maybe the other one about the situation." Do
5 you know what the other one refers to?

6 A. Can I correct something I just said?

7 Q. Absolutely.

8 A. In the statement you just read, I would have
9 assumed that he was referring to The Second Mile,
10 because that is what we had discussed in our prior
11 conversation. But with regard to your second
12 question, I can't say what he may have been
13 referring to there because I have no recollection
14 about that.

15 Q. "If he is cooperative, we would work with him
16 to handle informing the organization." That's The
17 Second Mile, you assume?

18 A. Well, you're asking me now to interpret what
19 someone else is saying in an email exchange from 15
20 years ago that I don't even recall. I'm not saying
21 that the email exchange isn't authentic, it
22 certainly sounds like me in my reply. But I don't
23 specifically recall this exchange. It was about
24 600,000 emails ago.

25 Q. Well, sir, is it your testimony that at the

1 time you would have received this email back in
2 February 2001, you probably knew what he was talking
3 about but you forget it today?

4 A. If I understand your question correctly, in
5 February of 2001, I knew that we had had that
6 discussion on February 12th and that Tim Curley was
7 going to follow up with the two actions we had
8 discussed in that meeting, and that this was a
9 follow up email to his thinking at that time about
10 that earlier discussion.

11 Q. But I'm just trying to understand your
12 testimony. Did you believe that in February 28th,
13 2001, you understood all of the references to the
14 first situation and there's a problem and we want
15 him to get professional help, but you don't remember
16 that today?

17 MS. CONRAD: Objection. Asked and answered.

18 THE COURT: Overruled.

19 THE WITNESS: No. I think what you just
20 described is incorrect.

21 BY MR. STROKOFF:

22 Q. And I don't want to misinterpret your
23 testimony.

24 A. Yeah. What I recall from 2001 was what I
25 described earlier about that heads up conversation,

1 and I think I've already described in some detail
2 what occurred in that conversation. This is an
3 email exchange that occurred a couple weeks later
4 where Tim Curley seems to be following up on what
5 his actions and conclusions are at that point. And
6 I am responding very briefly and quickly late at
7 night, undoubtedly catching up on that day's emails
8 maybe in a sequence of several dozen emails in very
9 short succession. So it is hard for me to
10 reconstruct beyond what I've already told you what
11 may -- what my thinking may have been as I
12 responded. And I certainly can't parse with what
13 Tim Curley may have been saying, because I probably
14 just read that very quickly and responded very
15 quickly.

16 Q. So your testimony is that in February 28th,
17 2001, actually February 27th, 2001 when you received
18 this email, you didn't know what the reference to
19 the first situation was?

20 A. I had no recollection that there was any
21 discussion I was involved with about a first
22 situation.

23 Q. And the email's reference to the problem, you
24 don't know what the problem was at that time?

25 A. I don't recall being a part of any discussion

1 about a problem.

2 Q. And you don't know what kind of professional
3 help we want to assist him to get?

4 A. I have only one other recollection that may
5 shed some light on it. I do remember Tim Curley
6 saying to me, "What if we inform Jerry that we are
7 uncomfortable with his bringing kids into the shower
8 and want him to stop, what if he doesn't hear that
9 message?" And that accounts I'm pretty sure for
10 what I said in my reply, "Let's wait and see if the
11 message is heard. If not, we may have to have a
12 higher level of intervention." But that's the only
13 other recollection I have from that era that might
14 provide a context for the questions you're asking
15 about.

16 Q. All right. But carrying on with this initial
17 email, if he, meaning Jerry Sandusky, is
18 cooperative, we would work with him to handle
19 informing the organization, meaning The Second Mile,
20 right?

21 A. I am presuming that is what is meant there.

22 Q. If not, meaning if he's not cooperative, we
23 don't have a choice and will inform the two groups.
24 Do you know who the two groups were?

25 A. I can't now explain what was being referenced

1 there.

2 Q. Okay. "Additionally, I will let him know
3 that his guests are not permitted to use our
4 facilities. I need some help on this one. What do
5 you think about this approach?" So you respond, do
6 you not, sir?

7 A. Yes.

8 Q. And when do you respond?

9 A. I responded later that night at 10:18 p.m.

10 Q. And could you read to the jury your response?

11 A. "This approach is acceptable to me. It
12 requires you to go a step further and means that
13 your conversation will be all the more difficult,
14 but I admire your willingness to do that and I am
15 supportive. The only downside is if the message" --

16 Q. The only downside for us, right?

17 A. "The only downside for us is if the message
18 isn't heard," quote, heard, unquote, "and acted upon
19 and we then become vulnerable for not having
20 reported it, but it can be assessed down the road.
21 The approach you outlined is humane and a reasonable
22 way to proceed."

23 Q. So you were approving Mr. Curley's approach,
24 right?

25 A. Yes.

1 Q. You were approving his approach, even though
2 you didn't know what the first situation was, right?

3 A. I was approving his approach.

4 Q. And you were approving his approach without
5 knowing what the problem was that Mr. Curley was
6 referring to, right?

7 A. I think that's a fair assessment.

8 Q. And you were approving his approach without
9 knowing the kind of professional help Mr. Curley was
10 anticipating assisting Jerry Sandusky to get?

11 A. I'm sorry, but you're putting some words in
12 my mouth. You're saying I'm approving his approach.
13 Tim Curley, it was agreed, was the individual
14 responsible for following up. It was thought to be
15 under his purview because it was an athletic locker
16 room facility, that's how he described it to me. So
17 he essentially volunteered that he would be the one
18 that would follow up. He also was the one who knew
19 Jerry Sandusky, I did not any more. I knew him only
20 in the most distant, casual way. So, he's basically
21 saying I've thought about this, here's what I plan
22 to do. And I'm sure what was in my head at that
23 time was saying -- was thinking you have the lead on
24 this, I'm comfortable with your approach, please
25 proceed to handle it. I was affirming his

1 responsibility for following up. It was not a
2 directive on my part or some order because I was the
3 president of the University, that's not how we
4 typically did business at Penn State.

5 Q. But it's your testimony that you were
6 approving an approach as set forth here that
7 contained elements which you did not understand?

8 MS. CONRAD: Objection as to
9 characterization. I believe it states the approach
10 is acceptable. I don't know that I see the word
11 approve.

12 THE COURT: Objection is overruled. You can
13 answer the question.

14 THE WITNESS: Well, I can only say, once
15 again, please don't think that I have today a memory
16 of this email exchange. I am trying to reconstruct
17 it, as I think you are, based to some extent on what
18 we know now and what might have been in my mind at
19 that time. I can undoubtedly tell you what I was
20 thinking based upon information that I had. I
21 certainly can't tell you what others were thinking.
22 BY MR. STROKOFF:

23 Q. Just to put this in perspective, on February
24 12th, 2001, you and Mr. Curley and Mr. Schultz
25 agreed upon an approach. And now, February 27th,

1 Mr. Curley wants to change it a little bit?

2 A. I don't think I would characterize it that
3 way. I don't believe that was my understanding. I
4 was out of town, mostly fundraising, during that
5 interim period between that February 12th meeting
6 and two days before this email exchange. So, it
7 would have almost certainly been the case that Mr.
8 Curley and Mr. Schultz were communicating with each
9 other about a follow up plan with Tim having the
10 responsibility for going forward. And the way I
11 read this now is that he had come to a conclusion
12 about how he wanted to proceed and I am replying
13 that it sounds reasonable to me.

14 Q. Well, you also say it's humane?

15 A. Yes.

16 Q. Why was it humane?

17 A. Well, that sounds very much like me. Because
18 he was saying, if I'm reading it right, I'm going to
19 bring Jerry with me to the meeting with The Second
20 Mile, the head of The Second Mile. I'm not going to
21 -- the way I would explain it now, these words are
22 not here, I'm not going to go behind his back, I'm
23 going to bring him with me so he can hear what I'm
24 going to say to the head of The Second Mile. And to
25 me, based upon the way I've always operated in my

1 career, that is a very humane thing to do. That's
2 -- to bring the person who's the subject of your
3 discussion with you for the conversation, I think I
4 said something to the effect of, you know, you're
5 going the extra step here. This is makes it even
6 harder for you, you're going the extra step, it's a
7 very humane approach.

8 Q. Didn't he say, sir, that quote, "I am having
9 trouble with going to everyone but the person
10 involved"? Isn't he saying he wants to go to Jerry
11 Sandusky first, lay it out, and if he's cooperative
12 then he'll take Jerry Sandusky to The Second Mile
13 and if he isn't, then we'll go to the other two
14 organizations?

15 A. You're interpreting it at a level I almost
16 certainly didn't think about at the time.

17 Q. So is it fair to say that at this point in
18 time, February 27, 2001, you had no knowledge that
19 any investigation into the original report of
20 conduct in the shower room in the Lasch Building,
21 that no investigation had been done into that
22 report?

23 A. Which -- which investigation are you
24 referring to?

25 Q. On February 12th, you said Curley, with

1 Schultz there, reported to you that someone,
2 presumably Joe Paterno, had received a report from
3 somebody who had witnessed some conduct in the Lasch
4 shower room, but that person wasn't sure what he
5 saw. And what I'm asking you is, as of February
6 27th, 2001, you were under the impression that there
7 was no investigation into that original report?

8 A. I need to correct a couple of things you
9 said, I'm sorry.

10 Q. Sure.

11 A. First of all, the Lasch Building was never
12 mentioned to me, it was described as an athletic
13 locker room facility. I had no idea we were talking
14 about the Lasch Building. In my mind, I didn't know
15 what facility it was and I may have thought it was
16 the East Area locker room, but I had no knowledge of
17 it being the Lasch Building. And then you're asking
18 me about an investigation, could you just clarify
19 that further?

20 Q. Certainly. It was decided on February 12th,
21 2001, that there wouldn't be an investigation, just
22 Tim Curley was going to go to Sandusky and go to The
23 Second Mile. That was the decision, right?

24 MS. CONRAD: Objection as to form.

25 THE WITNESS: I think you're --

1 THE COURT: You have to wait for me. The
2 objection's overruled. You can answer. Go ahead.

3 THE WITNESS: I think you're going too far.
4 We had no discussion one way or another about an
5 investigation, it was left in Tim Curley's hands to
6 follow up with. And given what was described to me
7 in that meeting, I can tell you, in all honesty, it
8 didn't occur to me that it was something that
9 warranted an investigation.

10 BY MR. STROKOFF:

11 Q. So if -- again, the question is, you had no
12 indication as of February 27th, 2001, that either
13 Mr. Curley or Mr. Schultz or anybody had conducted
14 an investigation into that report that had been made
15 to you third hand or fourth hand on February 12th,
16 2001?

17 MS. CONRAD: Again, objection as to form.

18 THE COURT: What is wrong with the form of
19 the question?

20 MS. CONRAD: It is a compound question. It
21 is no broken down.

22 THE COURT: Break it down.

23 BY MR. STROKOFF:

24 Q. Sir, as of February 27th, 2001, did you think
25 anybody had investigated the initial incident in the

1 shower room that occurred in 2001?

2 A. I can only describe an impression. But I'm
3 not able to be any more specific because I just
4 don't recall details. But I have the impression
5 that Tim Curley had looked into the matter and this
6 was now his recommended follow up.

7 Q. And your impression derives from what?

8 A. From that one comment that Tim made to me,
9 which I don't think was at that initial meeting. It
10 was some time after that where I bumped into him and
11 he made the comment, "What if we tell Jerry that we
12 don't want him bringing youth into the locker room
13 facilities at Penn State? And he says to me, well,
14 I didn't do anything wrong why should I not be able
15 to do that?" And this is a fairly vague
16 recollection, but I would have the impression from
17 that that Tim had, at some level, looked into the
18 matter and was thinking now about informing Sandusky
19 and worrying a little bit that his message might not
20 be heard.

21 Q. Well, let's move onto Gary Schultz's
22 response. He also adopts the humane nomenclature?

23 A. I see that word there, yes.

24 Q. Okay. And do you recall receiving Gary
25 Schultz's response?

1 A. Well, as I said before, I don't recall this
2 exchange at all. But I've had a chance to read it
3 many times and it sounds like Gary Schultz
4 responding to Tim and me.

5 Q. And he says, "We will inform his organization
6 with or without his cooperation and we can play it
7 by ear to decide about the other organization." But
8 you're not sure -- or you weren't sure at that time
9 what the other organization referred to?

10 A. Well, at this point in time I don't recall
11 the exchange or that that was something that
12 registered with me.

13 Q. Can you flip to the next tab, please?

14 A. (The witness complied.) Tab 11?

15 Q. That's correct. Wait a second, I may have
16 made a mistake here. Well, sir, what do you recall
17 next? We'll put 11 aside for a moment. What do you
18 recall next happened with respect to hearing how
19 this matter proceeded?

20 A. Some time after that exchange, and I don't
21 know if it was a few days or a couple of weeks, I
22 was coming out of a meeting in the president's
23 conference room and Tim Curley grabbed me in the
24 vestibule area in that meeting, he and I were both
25 coming out of the same meeting, it may have been a

1 president's council meeting, it could have been
2 something else. And Tim caught me and said, "You
3 know those two follow up items? I've had those
4 conversations. They went well. I think the matter
5 is closed." It was an interaction of only 10 or 15
6 seconds maybe. And then we each went onto our next
7 meetings. That was the last I heard for ten years.

8 Q. So Tim Curley reported to you that he had
9 spoken to Mr. Sandusky?

10 A. What he said to me was those two follow up
11 conversations, I had had them.

12 Q. And what did --

13 A. He did not mention the names, but I knew
14 because we had earlier, on February 12th I believe,
15 agreed on the two follow up items and he had
16 indicated that he had had those follow up
17 discussions.

18 Q. And those follow up discussions were with
19 who?

20 A. I assume them to be with the head of The
21 Second Mile, I did not know who that person was. I
22 now know -- my thinking was mistaken because I
23 didn't know The Second Mile was actually an
24 organization, I thought the head of The Second Mile
25 was the chair of the board, I didn't know they had a

1 paid staff. But whoever was in charge of The Second
2 Mile, that was what we had agreed, Tim had had that
3 discussion, and the other discussion seemed clear
4 enough to me that that was with Jerry Sandusky.

5 Q. And Tim Curley reported to you that these
6 discussions went well, our directive accepted, and
7 the matter is closed?

8 A. Yes.

9 Q. And that's the last you heard of anything
10 until 2010 or 2011?

11 A. It was --

12 Q. Concerning Jerry Sandusky.

13 A. It was the last I heard anything until late
14 December of 2010.

15 Q. Okay. And what happened in late December
16 2010?

17 A. I might need to get some clarification on
18 this, because based on the Superior Court's --

19 THE COURT: Do you want to speak with your
20 attorney?

21 THE WITNESS: Well, we're potentially getting
22 into the area of attorney/client privilege. And I
23 don't want to give up that -- I'm happy to answer
24 the question, but I just don't want to get into any
25 judicial trouble over my answer.

1 THE COURT: Okay.

2 MS. AINSLIE: Your Honor, I believe the
3 witness can answer the question as it's been posed
4 so far. If we get into anything further, I may have
5 to ask the Court's permission to consult with him.

6 THE COURT: So what we're going to do, sir,
7 is we're going to let the question be stated.
8 Before you respond, your attorney will indicate
9 whether you can answer the question or not and we'll
10 go that way. So don't immediately respond.

11 THE WITNESS: Okay. I understand. On that
12 day in late December of 2010, the then University
13 counsel, Cynthia Baldwin, came to my office to tell
14 me that Joe Paterno, Tim Curley, and Gary Schultz
15 had been subpoenaed before a grand jury and that she
16 was going to represent them before the grand jury
17 and simply wanted me to know about that. And there
18 was a brief discussion about the need to inform the
19 three of them.

20 BY MR. STROKOFF:

21 Q. Okay. But I'm not particularly interested in
22 that stuff. But did she mention anything about
23 Sandusky? Because that was really my question.
24 What next happened relative to Sandusky?

25 MS. AINSLIE: I'm sorry, I think that

1 question is too vague and may involve
2 attorney/client privilege.

3 THE COURT: So ask him a precise question and
4 then we'll know where we're at.

5 BY MR. STROKOFF:

6 Q. What was the next development that involved
7 you with respect to Jerry Sandusky?

8 A. In about -- on, actually I remember the date,
9 March 8th of 2011, I'm pretty sure that's the date,
10 it was a Monday, an assistant attorney general
11 called Cynthia Baldwin and said that representatives
12 of the Office of Attorney General wished to
13 interview me about an investigation they were
14 conducting related to Jerry Sandusky, and they would
15 conduct this interview in the State College Office
16 of the Attorney General. And I told her that I
17 would be pleased to participate in that discussion,
18 if there was any way in which I could be helpful I
19 would want to be. I did have that discussion in
20 March. And then shortly after that meeting, I was
21 informed that they wanted me to speak to the grand
22 jury.

23 MS. AINSLIE: Your Honor, if I may interject
24 at this point. I wasn't given much warning of this.
25 I would like to admonish the witness not to discuss

1 matters relating to the grand jury or his
2 interaction with Ms. Baldwin. May I do that?

3 THE COURT: So, you're advising him to assert
4 his attorney/client privilege?

5 MS. AINSLIE: I am.

6 BY MR. STROKOFF:

7 Q. Sir, I -- you did testify before the grand
8 jury, right?

9 A. Yes.

10 Q. Okay. I'm not going to ask you about that
11 testimony. But did not, sir, understand that
12 somebody who testifies before the grand jury is free
13 to disclose or not disclose what their testimony was
14 subsequent thereto?

15 A. No, I did not actually understand that very
16 clearly.

17 Q. Okay.

18 MS. CONRAD: Your Honor, at this point I
19 would request that we approach.

20 THE COURT: Okay.

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

23 MS. CONRAD: I have not intervened, I've
24 tried to let Mr. Strokoff develop his case, but we
25 seem to be spending an awful lot of time on

1 information that does not seem directly relevant.

2 THE COURT: You mean like when you went
3 through hear Cynthia Baldwin's entire resume that
4 wasn't relevant to anything? So you're going to
5 give him a little bit of leeway if that's your
6 objection.

7 MS. CONRAD: I'm just trying to determine
8 what the relevance of this lengthy, lengthy inquiry.

9 MR. STROKOFF: Well, it goes to the
10 believability of his assertion at the time he
11 published the statement that he didn't know the grad
12 assistant was Mike McQueary.

13 THE COURT: So you can move it along and keep
14 Ms. Conrad happy, because it's getting close to
15 lunchtime.

16 MR. STROKOFF: I'll do my best, sir.

17 MS. CONRAD: And I would note not just for
18 Ms. Conrad, but I think for everyone's purpose.

19 THE COURT: I'm okay. I'm here for the week.

20 (End of sidebar.)

21 BY MR. STROKOFF:

22 Q. Sir, could you turn to tab 53, please?

23 A. (The witness complied.)

24 Q. And I would direct your attention to
25 paragraph four, the second bullet point.

1 A. Paragraph four, second bullet point. I see
2 it.

3 Q. Okay. Sir, by May 12, 2011, wasn't it clear
4 to you that those that who testified before a grand
5 jury are free to divulge their testimony?

6 A. It was still unclear to me, based on
7 information that I'd received in response to a
8 specific question I asked of the grand jury judge
9 and my attorney.

10 Q. Were you present at a Board of Trustees
11 meeting on May 12th, 2011?

12 A. Yes.

13 Q. When Cynthia Baldwin advised the Board that
14 the grand jury process was confidential but those
15 who testified before the grand jury are free to
16 divulge their testimony?

17 A. I was present at that meeting. I have no
18 recollection that at that meeting, she said the two
19 things you just stated. And I want to be clear,
20 however, she did give a report to the Board of
21 Trustees and executive session at that date and she
22 gave that report at my request. What is summarized
23 here is partially consistent with my recollection,
24 but not entirely.

25 Q. Okay. Sir, at any time prior to October

1 28th, 2011, did you ask Mr. Curley what he had
2 testified about before the grand jury?

3 A. No, I did not.

4 Q. At any time before October 28th, 2011, did
5 you ask Mr. Schultz what he had testified before the
6 grand jury?

7 A. No, I didn't.

8 Q. So, let's get to October 28th, 2011, which is
9 Plaintiff's Exhibit 30. If you would turn to that,
10 please.

11 THE COURT: Did you say 30, counsel?

12 MR. STROKOFF: I did. I did, Your Honor.
13 It's already been admitted so I would ask that it be
14 put up on the screen again.

15 THE COURT: Yes.

16 BY MR. STROKOFF:

17 Q. Sir, do you recognize Plaintiff's Exhibit 30?

18 A. Yes.

19 Q. And what is it?

20 A. You're asking me what is that statement?

21 Q. Yes.

22 A. It's titled Statement Related to Grand Jury
23 Indictments.

24 Q. All right. Did you have any involvement with
25 respect to developing that statement?

1 A. Yes. I did the first draft of this statement
2 and approved of the final draft.

3 Q. And who was involved in the process of
4 developing this Plaintiff's Exhibit 30?

5 A. The principal participants in drafting the
6 statement were me, Bill Mahon, our vice president
7 for University Relations; and Lisa Powers, our
8 director of public information. Secondarily, Steve
9 Garban, who was at that time the chair of Penn
10 State's Board of Trustees. And I'm going to say
11 around the fringes, Cynthia Baldwin.

12 Q. Now, what prompted you and your colleagues to
13 prepare a statement like this?

14 A. I believe it was on the morning of Friday,
15 October 28th, Cynthia Baldwin came to my office to
16 say that a source in the Office of Attorney General,
17 a former colleague of hers, had informed her that
18 Jerry Sandusky was going to be charged with a crime,
19 she did not say what it was, and that Tim Curley and
20 Gary Schultz were going to be charged with perjury
21 and failure to report. Does that sufficiently
22 answer your question? Or --

23 Q. Well, didn't that prompt the question by you,
24 perjury what, failure to report what?

25 A. Yes.

1 Q. And what was her response?

2 A. She did not have any additional information,
3 or at least did not share with me any additional
4 information. What I did at that point was
5 immediately call the chair of the Board of Trustees,
6 ordered up boxed lunches to come to my office, asked
7 him to come to my office immediately and --

8 Q. That would be Mr. Garban?

9 A. Mr. Garban. And I did -- I drafted -- my
10 recollection is that I drafted the second and third
11 paragraphs right away and shared them, I think even
12 that morning, with Bill Mahon and Lisa Powers, who
13 were then literally looking over my shoulder, as we
14 changed words and massaged it to try to communicate
15 what we collectively thought was an appropriate
16 message. Subsequently, Steve Garban became
17 involved in that discussion. And somewhere in the
18 process, we asked Cynthia Baldwin to look it over
19 from a legal standpoint to see what her thoughts
20 were.

21 In the process of revising the statement and
22 it went through a number of iterations back and
23 forth, we all thought it was very important to have
24 a first sentence that talked about the allegations
25 against a former coach. We didn't know the

1 specifics of what they were, we hadn't seen any
2 documents, so we couldn't -- we weren't in any
3 position to be specific. But we knew enough that it
4 had to be about issues relating to the protection of
5 children.

6 Q. Now, when you say we all thought this was
7 appropriate, this initial paragraph was not in your
8 first draft; isn't that correct?

9 A. Well, my first draft -- well, the moment I
10 had heard, I knew that -- I was worried, first of
11 all, that this information would leak. Already it
12 had leaked to Cynthia Baldwin. And we're very
13 familiar with leaks that can be damaging to
14 individuals or the University, so I already started
15 to work on it. And I was probably writing it as
16 Bill and Lisa were coming up to my office. So I
17 wouldn't want to leave you with the impression that
18 I had a done document and now others weighed in.
19 They were on the spot looking over my shoulder, I
20 don't want to say as I was writing it, but
21 undoubtedly, by the time they arrived in my office,
22 I had a version of the second and third paragraph.
23 And I recall Lisa being the one to say, you know,
24 maybe we ought to lead with something about the
25 children, and I thought yes, absolutely. So I think

1 I wrote that paragraph as they were looking over my
2 shoulder.

3 Q. Okay. But this draft, the last sentence
4 says, "I am confident the record will show that
5 these charges are groundless"?

6 A. Yes.

7 Q. And that they conducted themselves
8 professionally and appropriately. At this time, you
9 didn't know what the charges were; isn't that
10 correct?

11 A. I had been told the charges were perjury and
12 failure to report.

13 Q. But you didn't know failure to report what?

14 A. I think I had asked the question, what does
15 failure to report mean. It means failure to report
16 an incident.

17 Q. And incident of child abuse or suspected
18 child abuse?

19 A. I can't say. I mean, I have already told you
20 everything I can recall about what Cynthia Baldwin
21 said. She simply said the words perjury and failure
22 to report.

23 Q. And you didn't know perjury how or where?
24 She didn't say perjury before the grand jury?

25 A. Well, she didn't say that. I may have

1 inferred it.

2 Q. And you determined that without knowing what
3 the specific charges were and the specific elements
4 of the charges that they were groundless?

5 A. I don't think it's right to say I determined
6 it. That was my opinion.

7 Q. Okay.

8 A. Based on extensive knowledge of working every
9 day with these two individuals, over 16 plus years.

10 Q. And you didn't -- at this point, you hadn't
11 asked the individuals what could you be charged with
12 perjury about? What could you possibly be charged
13 with failure to report about?

14 A. No, we did not have such a discussion.

15 Q. All right. Could you turn to Exhibit 30,
16 please? I'm sorry, 31.

17 MR. STROKOFF: This is already admitted, Your
18 Honor, so we're going to publish it.

19 THE COURT: Yes.

20 BY MR. STROKOFF:

21 Q. Are you familiar with 31, sir?

22 A. I'm not sure if I've seen this particular
23 email exchange before.

24 Q. Well, were you aware that Cynthia Baldwin was
25 sending a copy of the draft to Caroline Roberto for

1 her comment?

2 A. Yes. I believe I had asked her -- by that
3 time, we had obtained attorneys for Tim Curley and
4 Gary Schultz.

5 Q. We, meaning who?

6 A. Cynthia Baldwin had the lead on it and I was
7 involved in that discussion. It occurred over the
8 Sunday and Monday beforehand. So, after I had
9 drafted this statement with the assistance of
10 others, I thought it appropriate to share it with
11 their attorneys and ask Cynthia to be the one to do
12 that because she was the one in touch with them.

13 Q. Why did you think it appropriate to share it
14 with their attorneys?

15 A. Well, we had two senior employees at the
16 University who were going to be charged, or on
17 November 3rd, or about to be charged. We didn't
18 know it would occur as soon as it did, but we
19 thought it was going to be a week, more than a week
20 later. That is what Ms. Baldwin had reported. So,
21 we thought their attorneys should see the statement
22 that I was intending to release, as a matter of
23 courtesy.

24 Q. The draft that Cynthia Baldwin sent to
25 Caroline Roberto on November 1st, 2011, do you see

1 the last sentence? Quote, "I am confident that the
2 record will show that they have conducted themselves
3 appropriately," end quote. So there's no mention
4 about charges being groundless in this draft, which
5 she sent three days after the October 28th draft.
6 So my question to you is, what happened to the
7 charges are groundless language?

8 A. As I described earlier, we went through an
9 irritative process, many drafts back and forth
10 between all of the parties I've mentioned. And I
11 can't reconstruct for you what words were changed or
12 suggested to be changed by who and when. And I
13 can't even say right now that this is the final
14 version that was released. My memory isn't that
15 good.

16 Q. I don't want to mislead you, this isn't the
17 final version. But my question is, the phrase
18 that's in Exhibit 30, these charges are groundless,
19 is not in a draft that was sent to Caroline Roberto
20 on November 1st, 2011, and I'm just asking you if
21 you know the chronology of these charges are
22 groundless?

23 MS. CONRAD: And I just want to note, I'm not
24 certain if counsel said that you sent or that he
25 referenced that Ms. Baldwin sent. I thought you

1 said you sent.

2 THE COURT: Just restate the question.

3 BY MR. STROKOFF:

4 Q. On November 1st, Ms. Baldwin sent a draft
5 that didn't have these charges are groundless. On
6 October 28th, there's a draft that says these
7 charges are groundless. And the ultimate statement
8 that was released on Penn State Live says these
9 charges are groundless. Do you have any memory as
10 to the development of these charges are groundless?
11 Was it in, out, in, out?

12 A. It appears, and I think it's logical to
13 assume, that the language of the charges are
14 groundless was my language. That was my opinion and
15 my belief at that time and still. So, I can't --
16 I'm not copied on this email. And even if I had
17 seen this version, I'm not sure I would have spotted
18 the nuanced difference. So I can't really
19 reconstruct, because my recollection is there was a
20 lot of different suggestions of the people involved
21 about nuancing the words. But the message, the
22 underlying message was never intended by me to vary
23 from what was in my mind and what was part of my
24 motivation to issue a statement in the first place.

25 Q. So you don't remember how these charges are

1 groundless ended up in the final draft?

2 A. Well, I'm not aware that the word groundless
3 was taken out and apparently put back in. Whatever
4 was sent out in the end would have been a statement
5 from me and certainly with my approval and would
6 have been very influenced by the individuals I
7 mentioned who were part of the discussion, who were
8 weighing in with their different opinions about the
9 words to use, because we saw it as an important
10 statement.

11 Q. Sir, why don't we go to 37, Plaintiff's 37.
12 And that is the one, is it not, the statement that
13 you wanted posted on Penn State Live?

14 A. I can't be entirely positive because this
15 statement was sent to my administrative assistant
16 because I wanted her to be in the loop because I
17 believe it was that afternoon we were going to
18 release the statement. So I would have to see
19 somewhere if we were still tinkering with wording or
20 if this was the final statement.

21 Q. Fair enough.

22 A. This may very well have been the final
23 statement.

24 Q. Check out Plaintiff's 38.

25 A. 38. This looks like the statement that went

1 out that afternoon.

2 Q. And the statement that went out says at the
3 end, "I am confident the record will show that these
4 charges are groundless." Right?

5 A. Yes.

6 Q. Okay. And then when we go to the next one
7 39, we have an amendment to your statement; isn't
8 that correct?

9 A. No. I don't believe there's an amendment.

10 Q. I should say not an amendment, an addendum.

11 A. Yes. I believe as a courtesy to the
12 attorneys, Cynthia Baldwin continued to be in touch
13 with them and they wished to issue a statement of
14 support for their clients. And I thought it was
15 appropriate that they be allowed to do so.

16 Q. And your intent with this statement, sir,
17 with your comments from the lawyers was what?

18 A. My intent? Well, from the beginning of my
19 being informed that two of my colleagues, two people
20 holding among the most important leadership
21 positions in the University were going to be
22 charged, and with my belief that after working daily
23 with these individuals for about 16 years and
24 knowing their honesty, their integrity, believing
25 that they never withheld information from me and

1 recollecting rather clearly that meeting from 2001
2 that we spoke about earlier and what they described
3 to me at the time, that it mirrored my unconditional
4 support for them.

5 From everything I knew based on the facts and
6 from what I knew about the character of these two
7 individuals, to me it seemed like a great injustice
8 that they were being charged at all. And it was the
9 right thing to do. If you're leading an
10 organization -- and in fact, when I released this
11 statement, just to give you some context, I called a
12 meeting of all of the senior executives of the
13 University, there was about 30 people in my
14 conference room that Saturday afternoon. And the
15 chair of the Board of Trustees was there. And I
16 said to them -- I mean, media were descending on the
17 University, it was chaos. We were having to close
18 off streets to accommodate the satellite trucks.
19 And people were very shaky about what was happening.
20 And I said to them, I handed out the statement at
21 that three o'clock meeting, and I said, "This is the
22 statement that I'm about to release." And I said,
23 "I want all of you to know that if you do your jobs
24 and always make decisions that are in the best
25 interest of the University and you operate with

1 complete honesty and integrity and always try to do
2 the right thing, if you were falsely accused of a
3 crime I would issue the same kind of statement for
4 you. I will do that for you. And you need to know
5 that you have my support for always doing the right
6 thing. And that is why I'm supporting Tim and
7 Gary." Everybody in the room worked with them for
8 years and had exactly the same sentiment I had. And
9 the chair of the Board who opened the meeting said,
10 "I support this statement. It is exactly what I
11 would say."

12 Q. Okay.

13 A. And that's the context.

14 Q. In the beginning part of your answer, you
15 said that you knew this was false because of what
16 had been reported to you in 2001. So, you did know
17 that the perjury and the failure to report related
18 back to 2001, right?

19 A. Well, that morning is when the grand jury
20 presentment leaked. It may have leaked earlier than
21 that, but it was only in the course of that Saturday
22 that anyone on my staff had seen it at all. And so,
23 I was aware at the time I finally issued this
24 statement and had the meeting I just described,
25 which was immediately followed by a meeting via

1 conference call with the Board of Trustees, I knew
2 that there were references in the grand jury
3 presentment to 2001. And the part that I read very
4 quickly at that point confirmed the opinion that I
5 had developed and was prepared to talk about days
6 before. It did not conform what was in the grand
7 jury presentment, did not conform to my recollection
8 that we've already talked about of what I heard in
9 2001.

10 Q. It didn't conform to your recollection as to
11 what Curley and Schultz told you had been reported
12 to them by somebody who had received the report from
13 a staff person?

14 MS. CONRAD: I'm going to object again.
15 That's a very compound, drawn out question.

16 THE WITNESS: It's -- you're putting --

17 THE COURT: Excuse me. Restate the question.

18 BY MR. STROKOFF:

19 Q. The grand jury presentment did not conform
20 with what Curley and Schultz had reported to you on
21 February 12th, 2001?

22 A. I want to agree with what you just said with
23 one slight correction, what Curley reported to me in
24 the presence of Gary Schultz in 2001.

25 Q. Fine. And because of that, that's how come

1 you knew that these charges were groundless?

2 MS. CONRAD: Objection. That's not --
3 mischaracterizes Dr. Spanier's testimony.

4 THE WITNESS: That is how come I believed.

5 THE COURT: Excuse me, sir. What was your
6 basis for your belief that the charges were
7 groundless?

8 THE WITNESS: The basis of my belief was that
9 I knew these two individuals very well. I had 16
10 years of handling, and you're going to think this is
11 an exaggeration, it is not, hundreds, hundreds of
12 issues, crises. And the most visible part of the
13 University, for better or worse, is intercollegiate
14 athletics. So, you know, intercollegiate athletics
15 was two percent of my budget but about 75 percent of
16 the visibility. So, you spend a lot of time with
17 the athletic director as issues pop up. And the
18 athletic director's supervisor on a day-today basis
19 is the senior vice president for finance and
20 business, Gary Schultz, for most of that 16 plus
21 years I was president.

22 And beyond that, Gary Schultz had
23 administrative responsibility for, I don't know, 12,
24 15, 20 different units of the University and a
25 nearly \$5 billion budget. These are two individuals

1 who I saw regularly who had to deal with the most
2 complex issue, visible issues. And they have a
3 history of being completely straightforward with me.
4 Open, honest. There was never a single incident in
5 all of those years where any information was
6 withheld, where it was shaded in any way. So I knew
7 what they'd said to me, therefore I knew what I
8 thought was the truth, and have continued to believe
9 is the truth, and had no basis other than thinking
10 that this was an unbelievable injustice that these
11 two guys, who are like boy scouts, would be charged
12 with a crime.

13 And that's what was in my head as I was giving
14 this opinion from the president of the -- this is --
15 this isn't official policy statement of Penn State,
16 this was a statement from the president of the
17 University, me. And I don't want to represent it
18 otherwise. I take responsibility for it.

19 BY MR. STROKOFF:

20 Q. And you -- just to be clear, as of October
21 28th, 2011, you hadn't checked with either Curley or
22 Schultz to see what could possibly be the basis for
23 these charges against him?

24 A. Out of respect for the process -- just to
25 continue with the boy scout theme. Out of respect

1 for the process, Tim Curley, Gary Schultz, and I
2 never once had a discussion about our grand jury
3 testimonies. Ever.

4 Q. Okay. Well, my question is, again -- you
5 already testified. As of October 28th, 2011, you
6 hadn't investigated into what the possible charges
7 could be. As of the instance you issued this
8 statement from you on Penn State Live, had you done
9 any other investigation into what these charges or
10 what the basis of these charges could be against
11 Curley and Schultz?

12 A. No, we hadn't done an investigation because
13 we didn't know, as the statement was being drafted,
14 what the specifics were.

15 Q. Well, let me ask you this. Did you call
16 them, these guys as you call them, I'm going to call
17 them colleagues who you worked with for a long time,
18 did you call them in and say we received this
19 information, what could possibly have led the
20 Attorney General to be bringing these charges
21 against you? You didn't ask them that?

22 A. Well, here's what we did. On that -- on the
23 Sunday night after October 28th -- well, on that
24 Friday, October 28th, I knew nothing about criminal
25 law or about charges, but I said to Cynthia Baldwin,

1 "Don't these two individuals need a defense
2 attorney?" And she said yes, they do. I said, "I
3 have no idea how we go about that." And she said
4 well, I know someone who I think would be very good,
5 and she put a call into Caroline Roberto from
6 Pittsburgh, who is Tim Curley's attorney now. And
7 Caroline Roberto was --

8 MS. CONRAD: I'm going to caution the witness
9 now with respect to privilege.

10 MS. AINSLIE: Well -- yes, please don't go
11 into any conversations with Cynthia Baldwin on this
12 subject. Basically stick to what happened.

13 THE WITNESS: Is it okay if I just talk about
14 process? The context? Because you're asking me --

15 THE COURT: Why don't you just wait for a
16 question.

17 BY MR. STROKOFF:

18 Q. The question was, did you do any
19 investigation or ask these guys, what could possibly
20 be the basis for these charges the Attorney
21 General's going to bring against you? And you're
22 saying your response was, they better get a criminal
23 lawyer?

24 A. No, because I wasn't able to finish my answer
25 for good reasons, I understand. But -- so the

1 answer to your question I think is a qualified yes.

2 Q. The yes is you did no further investigation?

3 A. No. Yes, we did have further discussion at
4 that point.

5 Q. With Mr. Schultz and/or Mr. Curley?

6 A. Yes.

7 Q. And who's the we?

8 A. Myself, Cynthia Baldwin, and initially
9 Caroline Roberto.

10 Q. Now, I don't want to know then that
11 discussion. But did you -- prior to the release of
12 the statement from President Spanier, other than
13 what you've testified about 15 or 16 years of
14 working with these guys who were like boy scouts you
15 say, did you have any other information which led
16 you to express the opinion that these charges are
17 groundless?

18 A. Just the information and belief that I had
19 based on my knowledge of the situation.

20 Q. And to be sure or to be clear, at the time
21 the statement from President Spanier was released,
22 you hadn't even read the whole presentment?

23 A. I had glanced at it quickly. I did a quick
24 reading of it on that Saturday. But it wasn't until
25 Sunday where I had the time to fully digest it.

1 Q. Could you turn to tab 35, please?

2 A. (The witness complied.)

3 Q. Now, the first four pages are a criminal
4 complaint and then there's the presentment attached
5 to it. I'm going to ask you to go page 12 of the
6 presentment.

7 A. 12 from the presentment?

8 Q. Yes. Read the second paragraph and then the
9 final paragraph on 12 to yourself.

10 A. The paragraph that begins, "The grand jury
11 finds"?

12 Q. That's correct. There are two of those. The
13 first one that says, "The grand jury finds." Just
14 read it to yourself and then read the one that says
15 then furthermore.

16 A. (The witness complied.)

17 THE COURT: While you're doing that, I get
18 the sense, Mr. Strokoff, that you are going to be
19 continuing with this witness for a longer period of
20 time.

21 MR. STROKOFF: Beyond lunch, Your Honor, yes.

22 THE COURT: And this might be an appropriate
23 place to break before we get into starting to
24 discuss this. So I think that's we're going to do.
25 Members of the jury, let's take our lunch break.

1 We'll come back at one o'clock. Again, I'll remind
2 you not to discuss the matter with anyone. You can
3 stand down, sir.

4 THE WITNESS: Thank you.

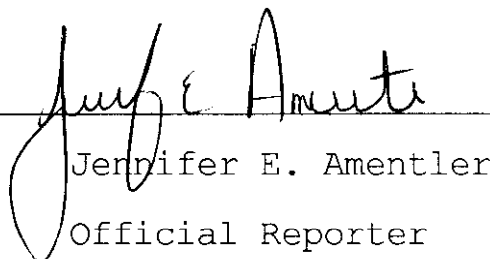
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C E R T I F I C A T E

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

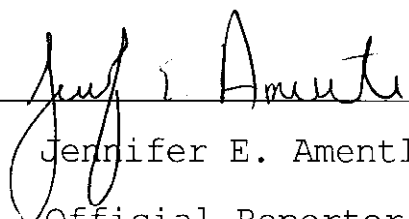

Jennifer E. Amentler
Official Reporter

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 27, 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