

ORIGINAL



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

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

Transcript of Proceedings
(Day 7 of jury trial - a.m. only)

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

Date: October 25, 2016

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

Appearances:

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

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

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

2016 OCT 25 11:12:57
PROthonary
CENTRE COUNTY, PA

ORIGINAL

1	Index to the Witnesses				
2		Direct	Cross	Redirect	Recross
3	Plaintiff:				
4	James Stavros	4	--		
5		10	46	54	55
6					
7	Defendant:				
8	Kirk Diehl	76			
9					
10	Index to the Exhibits				
11					Admitted:
12	Plaintiff:				
13	No. 58				59
14	No. 80				4
15	No. 81				29
16	No. 91				61
17					
18	Defendant:				
19	[None]				
20					
21					
22					
23					
24					
25					

P R O C E E D I N G S

(Whereupon, a discussion was held off the record.)

The Court: You may be seated, everyone.

Members of the jury, we excused Ms. Mulfinger. I am sure she mentioned to you the situation with regard to her husband. Everyone was agreeable that her interest lay with taking care of her husband so she has been excused.

And, Mr. Gonder, please move up and take her seat, seat number 11.

Go ahead, Mr. Strokoff.

Mr. Strokoff: Your Honor, our first witness will be James Stavros but before we call him I would like to move for admission of Plaintiff Exhibit 80, which was Mr. Parry's report.

The Court: All right. 80 is the personal report, counsel.

Ms. Conrad: Is Mr. Strokoff going to qualify it?

The Court: He is talking about Mr. Parry from yesterday.

Ms. Conrad: My objection had been

1 noted, overruled.

2 The Court: It's admitted over
3 objection.

4 Mr. Strokoff: James Stavros please.

5 Whereupon,

6 James Stavros
7 was called as a witness and having been duly
8 sworn, was examined and testified as follows:

9 The Court: You might want to move some
10 of those binders out of your way.

11 Voir Dire as to Qualifications
12 By Mr. Strokoff:

13 Q. Sir, will you please state for the
14 record your full name?

15 A. James Anthony Stavros.

16 The Court Reporter: Can you spell your
17 last name?

18 The Witness: St-a-v-r-o-s.

19 By Mr. Strokoff:

20 Q. And your profession, Mr. Stavros?

21 A. I am a forensic accountant.

22 Q. Please explain to the jury what a
23 forensic accountant is.

24 A. Sure. Forensic means used or suitable
25 in a court of law. So forensic accounting is the

1 application of certain accounting or other
2 financial technique that can be used to quantify
3 the financial aspects of matters that are in
4 dispute. So those matters in dispute can take
5 many different forms such as the quantification
6 of lost earning capacity, which is what I am here
7 to do today. I investigate allegations of fraud
8 in companies or with individuals, a book keeper
9 that has gone bad, or corporate fraud. I also
10 calculate economic losses with respect to fires
11 or floods, catastrophic loss, disagreements among
12 individuals or boards of a company. Something
13 where there is a dispute or action where there is
14 economic damages. So as a forensic accountant we
15 are hired sometimes by either side, plaintiff or
16 defense, whatever may call us, and quantify those
17 financial aspects that are in dispute.

18 Q. But you said you are a financial
19 accountant. That means you started out as an
20 accountant?

21 A. No. Actually I started a little
22 differently. I graduated from Widener University
23 in 1984 with a degree in business administration.
24 I started my career out as a banker for a number
25 of years. I was a branch manager and I left

1 banking to get my master's degree in business
2 administration and when I graduated in 1988 I
3 started my career in forensic accounting in 1988.
4 So I have been doing this type of work for the
5 past 28 years. I am a CPA, licensed certified
6 public accountant, in Pennsylvania. I am a
7 member of the American Institute of Certified
8 Public Accountant. I am a member of the
9 Pennsylvania Institute of Certified Public
10 Accountant. I also serve on two committees. One
11 is the Forensic and Litigation Services Committee
12 and the other I am an editor for the litigation
13 column in our quarterly publication. I am a
14 member also of a group called NAFE, which is
15 National Association of Forensic Economists. I
16 am also a member of the local chapter of
17 certified fraud examiners in the Philadelphia
18 area.

19 Q. You said you're licensed by the State of
20 Pennsylvania as a certified public accountant?

21 A. Yes.

22 Q. And for how long have you been so
23 licensed?

24 A. Well when I started my career in
25 forensic accounting in 1988 I took additional

1 accounting courses and ultimately became a CPA
2 some time in the mid '90's I am going to say
3 approximately 20 years ago.

4 Q. Okay. Sir, do you have any publications
5 related to forensic accounting?

6 A. I do. I have written a number of
7 articles on forensic accounting, calculating
8 damages in various types of cases.

9 Q. And what articles and what kind of
10 magazines or publications?

11 A. Well they are in what I would call more
12 legal trade journals, other publications,
13 magazines. I have done, you know, a lot of
14 writing essay in the last several years along
15 with the topic of forensic accounting, damage
16 assessment, fraud investigation, calculating
17 damages in cases in such as these.

18 Q. Okay. And do you have a business under
19 which you operate?

20 A. Yes. The name of my company is Forensic
21 Resolution, Inc. I am a shareholder. I
22 cofounded this company with my business partner
23 back in 2004 and as a forensic accountant this is
24 all we do. We quantify the financial aspects of
25 disputes. Most of our cases involve lawsuits and

1 there is a lawsuit involved and we need damage
2 assessment but other cases we have we are hired
3 in a non-lawsuit situation. For example,
4 insurance claims. I have got several cases right
5 now where I evaluate the loss of business income,
6 inventory, extra expenses, and property. So it's
7 not all litigation based kind of work that I do.

8 Q. And where is your business Forensic
9 Resolutions located?

10 A. Our main office is in Haddonfield, New
11 Jersey.

12 Q. But you are licensed in Pennsylvania?

13 A. I am.

14 Q. And you indicated that some of your work
15 at least involves litigation?

16 A. That is correct.

17 Q. And are you able to tell us with respect
18 to this litigation work what percentage of work
19 you have done as -- or I should say for a
20 defendant and what percentage of work you have
21 done for plaintiff?

22 A. In all kinds of work, as I mentioned
23 before, I do work where we quantify losses in
24 personal injury, wrongful death, defamation
25 cases, that's probably the majority of the type I

1 work I do, but I do other work as I mentioned. I
2 would say overall I am retained maybe 70 to 80
3 percent by the defendant and in the other
4 percentage by the plaintiff.

5 Q. And have you ever testified in a court
6 proceeding before?

7 A. I have many times.

8 Q. And many times where, sir?

9 A. Well I -- so my practice is in
10 Haddonfield, New Jersey, which is right outside
11 of Philadelphia. Most of my testimony experience
12 is in and around Philadelphia County, New Jersey,
13 Delaware, Pennsylvania are primarily the areas in
14 which I have testified but I have testified many
15 times in my past. Maybe five or six times a year
16 on average is how much I testify.

17 Q. When you say counties around
18 Philadelphia what counties are you referring to?

19 A. Well Philadelphia County, Bucks County,
20 Berks County, Delaware, Montgomery County, Lehigh
21 County, Luzerne County. Those are the counties
22 off the top of my head. There might be more.

23 Mr. Strokoff: Your Honor, offer
24 Mr. Stavros as an expert in forensic accounting.

25 Mr. Morrison: No objection.

1 The Court: All right. Members of the
2 jury, again as with Mr. Parry, I am going to
3 permit Mr. Stavros to testify as an expert
4 witness. My decision is not binding on you.
5 Again, as with any other expert witness, you ask
6 yourself does he have the requisite education,
7 training, and experience to be considered an
8 expert in the field. If you find he meets that
9 qualification you then ask yourself of all of the
10 relevant information out there does he have
11 adequate information upon which to make a
12 recommendation or to draw an opinion, and to the
13 extent that he has an opinion he has to hold it
14 to a reasonable degree of forensic accounting
15 standards. The fact that he comes to an opinion,
16 even an opinion that is ultimate opinion in the
17 case, is not binding on you. You are free to
18 accept or reject his opinion as you are free to
19 accept or reject testimony of any other fact
20 witness in the case. So again your making your
21 own independent analysis.

22 Go ahead.

23 Direct Examination

24 By Mr. Strokoff:

25 Q. Sir, there is a binder in front of you

1 that says Witness Exhibits. I know there are a
2 lot. Look for one that says Witness Exhibits.

3 A. I have got it.

4 Q. Please turn to Plaintiff's Exhibit 81
5 please.

6 A. I have got it here.

7 Q. Can you identify Plaintiff's Exhibit 81
8 please?

9 A. This is the report that I authored in
10 this case.

11 Q. And with respect to this report
12 generally what is it a report of?

13 A. This is a report of my findings and my
14 conclusion of the economic loss to Mr. McQueary
15 as a result of the complaints made in this case.

16 Q. Now in preparing your report did you
17 make any conclusions as to liability?

18 A. No. I did not.

19 Q. Okay. Now what do you mean by you said
20 you didn't make any conclusions as to liability?

21 A. I assumed that -- I was asked to
22 evaluate the economic loss to Mr. McQueary as a
23 result of the allegations made in the complaint
24 against Penn State regarding the actions or
25 instances in November of 2011. That a primary

1 assumption that I made as a damage expert and
2 it's typical as a damage expert to assume
3 liability. So that is one I will say big
4 assumption that I made is that the approximate
5 cause, the primary reason, for Mr. McQueary's
6 inability to obtain employment is as a result of
7 the allegations in that complaint.

8 Q. But you did not conduct any independent
9 investigation as to whether or not any of those
10 allegations were true or false?

11 A. That is correct.

12 Q. Now how does an forensic accountant
13 begin to assess liability under the circumstances
14 as outlined in the complaint?

15 A. Well when you talk about assessing
16 liability as its circumstances in the complaint
17 again I am -- I am assuming liability. So as a
18 standard aspect of what I do as an expert,
19 whether it be a car crash, or a slip and fall, or
20 some other action, it's typical for me to make
21 that assumption and leave it to others or the
22 fact finders to determine and to -- to determine
23 it.

24 Q. And once you've made that assumption how
25 do you go about calculating or arriving at your

1 economic loss?

2 A. Well I gather a lot of information and I
3 rely on a lot of different documents that are
4 contained in my report and I come up with an
5 economic model. How we calculate losses in these
6 types of cases it is to take a look at the
7 pre-incident estimate of what the individuals
8 earnings would be, Mr. McQueary's earnings. So
9 what I did was looked at the facts of this case,
10 I looked at his Penn State history, his
11 employment file, his intentions, what his
12 intentions were in the future. I looked at his
13 job research. I was provided with over 600 pages
14 of attempts for him to get work. So all of those
15 factors go into my analysis and methodology in
16 trying to develop what I would call a
17 pre-incident earning capacity. That means I am
18 trying to predict what his earnings would have
19 been over his lifetime had the incident at Penn
20 State not happened. That's my job.

21 Q. Now when you say incident at Penn State
22 what incident are you talking about?

23 A. I am referring to all of them
24 collectively as incidents that took place in
25 November of 2011.

1 Q. Okay. So the first thing you do is you
2 try to predict what his lifetime earning would
3 have been before November 2011?

4 A. That is correct.

5 Q. And did you do that in this case?

6 A. I did.

7 Q. All right. We will get into the details
8 later.

9 A. Sure.

10 Q. Once you make that prediction as a
11 forensic accountant what do you next do?

12 A. Once I come up with a number of
13 scenarios -- and I will talk about those
14 scenarios in just few minutes and how I came up
15 to those -- I then have to determine what is he
16 now capable of doing. So what are post-incident
17 earning capacity, meaning what can he do today.
18 So those are two very I would say drivers of the
19 economic model that I will talk about; is what he
20 can do from pre-incident prospective, subtract
21 out what they do in the post-incident prospective
22 given the fact that these incidents occurred as
23 claimed in the complaint. I then apply a number
24 of adjustments for each benefits, growth, work,
25 life statistics, and other things and then I have

1 calculated an amount or amounts under various
2 scenarios. Now it's typical for experts to
3 calculate future losses because these are
4 estimates under various scenarios because the
5 facts have led me to those scenarios. It's not
6 every case. Sometimes there may be one scenario.
7 Sometimes there maybe one, two, three number of
8 scenarios. It's left to the judgment of the
9 expert to really come up with the difference but
10 based upon my analysis of the records and the
11 history I have come up with four different --
12 excuse me -- pre-incident earning scenarios and
13 two post-earning incident scenarios to total
14 eight different economic loss scenarios which I
15 will discuss in a minute.

16 Q. When you make calculations or offer
17 opinions about post-incident earnings what do you
18 rely on to arrive at those numbers?

19 A. I rely on quite a bit. I rely upon his
20 post -- I should say his pre-incident earning
21 history and I take a look at what Mr. McQueary
22 was doing in the years leading up to 2011, what
23 his earnings were, what his reviews from Penn
24 State were, what his intentions are. An aspect
25 of someone's earning capacity is what they intend

1 to do, what do they want to do. I then take a
2 look at virtually hundreds of pages of documents
3 regarding his job search, his job search efforts.
4 So I looked at quite a lot in coming up with
5 what's in my economic model.

6 Q. Well did you have an opportunity to
7 speak with Mr. McQueary?

8 A. I did several times.

9 Q. Okay. And in addition to the material
10 -- the documents or the materials and speaking to
11 Mr. McQueary are there any other generally
12 accepted reference points that you used to make
13 your calculations?

14 A. Well if you talk about reference points
15 the accepted -- I have used accepted
16 methodologies I would say in calculating damages
17 that I have used many, many times in my career as
18 an forensic accountant that others have used as
19 well. So I am guided by the industry. I am
20 guided by what I have done in the past. I am
21 guided by the documents and facts that led me to
22 the conclusions I have made, as well as
23 discussions that I had with Mr. McQueary about
24 what his intentions were going forward.

25 Q. Did Mr. McQueary tell you how long he

1 wanted to work?

2 A. He did. He expressed an interest in
3 working until approximately age 67 or 70.

4 Q. Is that the number you used in doing
5 your calculations?

6 A. No. I used a different number. I used
7 -- 62.76 years is what I have used as work life.

8 Q. And why did you use that?

9 A. In predicting future lost earnings in a
10 case it's important to assess an individual's
11 work life not so much -- you have to take into
12 consideration perhaps what they intend -- how far
13 they intended to work but work life probabilities
14 taking into account controllable and
15 uncontrollable factors in your life. It assesses
16 the probability of surviving your life
17 expectancy. It's assessing the probability of
18 participating in the workforce. You may not
19 participate in the workforce because you are
20 sick, or you have an accident, or decided to
21 retire. Some of those things are involuntary.
22 And the third aspect is chance of becoming
23 unemployed in any given year. So it's important
24 for experts to use work life rather than someone
25 who states, hey, I am going to work to age 67 or

1 70 because that work life statistic takes into
2 account those factors, some of which you can
3 control but others that you can't control. So my
4 computations are calculated to age 63.76. It's
5 important to note that is not retirement age.
6 It's an aggregate number of years that's
7 calculated to loss that takes into account early
8 retirement. It also takes into account the fact
9 he may work to 70 or 75.

10 Q. Where does this number come from?

11 A. This number comes from a publication I
12 have used and many other experts use published in
13 the Journal of Forensic Economics. It's called
14 the Skoog Ciecka and Kruegers Tables.

15 Q. You better spell that for the court
16 reporter.

17 A. Skoog, S-k-o-o-g, Ciecka, C-i-e-c-k-a,
18 and Krueger.

19 Q. So even though Mr. McQueary told you
20 that he wanted to work to age 67 or 70
21 referencing this industry standard you used 62.76
22 years as the number for when he would be working
23 until?

24 A. That's correct.

25 Q. Okay. Now with respect to post-incident

1 earning capacity I think you made reference to
2 that?

3 A. Right.

4 Q. How do you as a forensic accountant
5 approach that?

6 A. Again it's -- I base it on facts. The
7 facts of the case and intentions, as well as I am
8 guided by the things I have done in other cases
9 that are very similar. In this case Mr. McQueary
10 does not have a job and I look at calculating a
11 post-incident earning capacity under two
12 different scenarios. One is based upon the
13 average earnings as a salesperson. I could see
14 numerous applications for jobs in pharmaceutical
15 sales and other sales. I did some research and
16 determined that the average earnings is about
17 \$70,000 for those vocations. I think that number
18 was also an approximate number that Mr. McQueary
19 had indicated to me he may have been offered --
20 or maybe not so much offered but discussed in
21 some of these earnings. So that's one of the two
22 post-injury -- post-incident -- I am sorry --
23 earning capacities I assumed Mr. McQueary is
24 capable of doing today.

25 The second is based upon his education.

1 I know that he is a bachelor's degree holder. He
2 has not used his bachelor's degree education as
3 an entry person so -- I should say let me go
4 back. When he earned his degree from Penn State
5 many years ago -- we typically when you are
6 looking at an educational attainment and earning
7 education they start out at entry. We can all
8 understand that and goes up over time. Since
9 Mr. McQueary took a different path and went to
10 coaching I am assuming that he would be getting
11 into the workforce at entry today earning about
12 \$45,000 a year. That's entry average for a
13 bachelor's degree holder.

14 Those are the two post-incident earning
15 capacity amounts that I use as of today or as of
16 the date of my report, which is September 2016,
17 that he is capable of earning today and I project
18 those out of my economic model into the future.

19 Q. So the 70,000 or so dollar earning
20 capacities based upon the job that Mr. McQueary
21 himself applied for outside of coaching?

22 A. That is correct.

23 Q. And the \$45,000 estimate is based solely
24 upon his education?

25 A. That is right.

1 Q. And where do these two numbers come
2 from? Where do you go to obtain these numbers?

3 A. The Bureau of Labor Statistics is a
4 publication that I use frequently, that other
5 experts use frequently, and it's a government --
6 a Federal Government based source.

7 Q. Okay. Now have you had an opportunity
8 to review the report by Dr. Lursch, which the
9 defendant has secured?

10 A. I have.

11 Q. With respect to Dr. Kursch's
12 post-incident earning capacity what numbers does
13 he use?

14 Mr. Morrison: Objection, Your Honor.
15 Dr. Kursch's report is not yet in evidence. I
16 want to make that clear. Dr. Kursch will be here
17 to testify tomorrow but at this point
18 Dr. Kursch's report is not in evidence.

19 The Court: Okay. But I assume he will
20 be testifying on the basis of the report that was
21 provided?

22 Mr. Morrison: That is correct, Your
23 Honor.

24 The Court: Okay. So the witness is
25 merely looking at his report and accepting that

1 Dr. Kursch is going to say that tomorrow. Okay.

2 So you will hear from Dr. Kersch
3 tomorrow but obviously this witness is here today
4 so he needs to reference the report that
5 Dr. Kursch will be testifying from.

6 Go ahead.

7 The Witness: Okay. Dr. Kursch, the
8 defenses expert, has listed in his report two
9 post-incident earning capacities that are very
10 similar to mine. In one scenario he used
11 \$41,700, which is slightly lower than my
12 educational statement scenario, and in the other
13 he uses an estimate I believe of \$42,000 -- I am
14 sorry \$72,600 as a second scenario. So both
15 Mr. Kersch and I appear to be very close when it
16 comes to looking at what Mr. McQueary's
17 post-incident earning capacity is.

18 By Mr. Strokoff:

19 Q. Okay. Now, sir, when you made your
20 calculations and different models did you assume
21 that in terms of the post-incident which -- what
22 you call post-incident earnings, did you assume
23 Mr. McQueary would remain as coach at Penn State?

24 A. I did not under any of the scenarios.
25 No.

1 Q. Okay. Sir, can you walk us through --
2 you said you had four models and two
3 post-incident earning capacities. Can you walk
4 us through your first models?

5 A. Sure. As I testified before I have
6 calculated four pre-incident earning capacity
7 models. The first one I did is called -- I
8 reference it as a yardstick approach. I took a
9 look at Mr. McQueary's contemporaries in coaching
10 and after speaking with Mr. McQueary it was based
11 upon the -- I am looking at people with similar
12 backgrounds as position coach with him and I
13 track their earnings after leaving Penn State and
14 I want to see if that's in close proximity to
15 what Mr. McQueary could have respectively earning
16 and they were Bugs, Bill Kenney, and Rod
17 Vanderlinden. Now they have been to different
18 places. I looked up their salaries and I made
19 the assumption under this one scenario that
20 Mr. McQueary would have earned amounts similar to
21 those individuals.

22 So I took a look at there salaries and
23 their combined average salaries as of \$127,390,
24 plus a potential bonus of about \$23,367 a year.
25 So under that scenario I am looking at comparable

1 individuals to Mr. McQueary and this is after my
2 discussions with him in determining this is a
3 potential future track for him. That's under
4 yardstick approach. That's under I will say
5 scenario one and two in my model that you will
6 see in a minute.

7 Q. Okay. Well put the detail up on the
8 screen shortly. So the first two models are the
9 yardstick approach?

10 A. Right.

11 Q. What is your third and fourth model?

12 A. Well third and fourth model in this
13 second pre-incident computation is essentially
14 assuming he is staying where he is from a salary
15 prospective. \$140,000 a year plus approximately
16 \$25,000 a year in potential bonuses. This is
17 what he was earning in Penn State but I have
18 assumed that this is an earning capacity. This
19 is his earnings not necessarily what he would be
20 earning at one place because I have not made any
21 assumption he would stay at Penn State. So
22 scenarios three and four essentially are fixed in
23 time. He is not going to do any better and
24 that's his earnings in the future.

25 Q. But in the yardstick approach there is I

1 think you said 127 average compensation, plus 25
2 in bonuses?

3 A. About \$20,000 in bonuses. So scenario
4 one and two it's less than what he was earning
5 and I have to look at that and if you believe
6 that his earning track was going to be comparable
7 to those individuals there is a potential that
8 could have been his earning track. Scenarios
9 three and four is essentially staying the same,
10 what he was doing at the time at Penn State.

11 Scenarios five and six I took a look at
12 the schools Mr. McQueary had applied to. He
13 applied to many schools and these were all
14 Division 1 schools in the documentation that was
15 provided to me, about 12 schools, and I took the
16 average of the wide receivers coaches and they
17 totaled \$215,206 in salary, plus an approximate
18 bonus of about \$39,666. So this scenario looked
19 at Mr. McQueary's earning potential still working
20 as a wide receivers coach. I know he was also
21 recruitment and also coached the kickers. I only
22 looked at the wide receivers coaches from these
23 12 schools.

24 So this estimate has a lot of I will say
25 specifics in it because I can go right to the

1 schools that he applied to or he was making
2 inquiries to and get their salaries. So that's
3 -- that forms the basis of that scenario. The
4 fourth scenario is based on Mr. McQueary's
5 advancement to an offensive coordinator based
6 upon the report of Mr. Parry, who I heard testify
7 yesterday and whose report indicates that
8 Mr. McQueary was a very good coach, he had
9 potential to advance, and so my economic model in
10 the future takes into account that at the highest
11 level of -- I should say at the upper level of
12 when Mr. Parry opined Mr. McQueary could become
13 an offensive coordinator. Seven years.

14 I looked at the schools again these are
15 other schools that Mr. McQueary had applied to
16 for the offensive coordinator position and the
17 average salary for offensive coordinator that I
18 calculated was \$426,527 a year, plus a bonus of
19 about \$64,000. Okay. So I plus that into my
20 economic model and that scenario takes into
21 account the actual earnings of offensive
22 coordinators of schools that Mr. McQueary was
23 applying to and it really takes into account I
24 will say the future earning potential
25 Mr. McQueary has indicated by -- as indicated by

1 Mr. Parry and it's much more of an upward I will
2 say view of where he was going as a coach. If
3 you believe that he was on the rise and he had
4 this upper potentials then scenarios seven and
5 eight would be more relevant.

6 Q. Now Mr. Parry's report and opinion was
7 that Mr. McQueary likely would have become either
8 an offensive coordinator or head coach within
9 five to seven years. My first question is in
10 this last model that you just talked about that's
11 just offensive coordinator, right?

12 A. That is correct.

13 Q. You did no models with respect to head
14 coach?

15 A. That is correct.

16 Q. Mr. Parry said five to seven years.
17 What did you assume? He would become offensive
18 coordinator in five, six, seven?

19 A. In seven years.

20 Q. You took a conservative opinion based
21 on --

22 A. That is right.

23 Mr. Strokoff: Your Honor, at this time
24 I would like to publish Mr. Stavros's Exhibit
25 Number 1 to his report. So I guess I ought to

1 move for admission of his report, which is
2 Plaintiff's Exhibit 81.

3 The Court: Okay.

4 Mr. Morrison: Your Honor, my
5 understanding is that expert reports are not to
6 be published to the jury. It's admissible --

7 The Court: I believe that you're just
8 putting the math up. Is that what you are doing?

9 Mr. Strokoff: Yes. There is one
10 exhibit where he has the math. It's Exhibit
11 Number 1, Your Honor.

12 The Court: Just a second. What page is
13 this? At the very end?

14 Mr Fleming: Yes, Your Honor.

15 Mr. Strokoff: His resume is at the very
16 end of the exhibit.

17 The Court: Okay. I found it. And you
18 are objecting to putting up these numbers on the
19 basis of what? That these are his mathematical
20 calculations?

21 Mr. Morrison: Number one, it's an
22 attachment to his report, therefore, it's the
23 report, and, second, it's going into the
24 provinces to the injury on issue of damages.

25 The Court: No.

1 Members of the jury, we generally -- or
2 at least I personally never send out the expert
3 reports. You have got to remember what the
4 expert had to say. With regard to the chart this
5 is a mathematics upon which he is basing his
6 calculations. Again if you accept any of these
7 scenarios based on your review of his testimony
8 feel free to do so. Of course you are free to
9 reject it but I think it is a much more
10 convenient way to proceed.

11 And I am overruling your objection,
12 counsel. So that instead of having him read a
13 line and then a number and these folks trying to
14 stay on track with it they can look at the chart.
15 So objection is overruled.

16 Put the chart up.

17 Mr. Strokoff: Number 81.

18 By Mr. Strokoff:

19 Q. Now, Mr. Stavros, there is a lot of
20 numbers on that page?

21 A. Right. There you go. Right.

22 Q. First of all, what is this Exhibit
23 Number 1?

24 A. This is a summary of my findings. This
25 is eight scenarios. Okay. One, two, three,

1 four, five, six, seven, and eight, and as I
2 mentioned before the driver of this economic
3 model is the assumption of what Mr. McQueary
4 could have earned but for the incidents at Penn
5 State less what he is capable of earning today.
6 Now I have also added a number of adjustments
7 that I will go over briefly with you as well. So
8 this is scenario one and two where I have used
9 the yardstick approach in which I am looking at
10 the earnings from his colleagues, comparable
11 colleagues.

12 Q. So let's -- we are not going to run down
13 each and every detail in every column but I want
14 to run down some of the details so that we can
15 understand this chart a little bit. So let's
16 take column number one. Okay?

17 A. Right here. Okay.

18 Q. You said this is the first scenario
19 under the yardstick approach?

20 A. Right.

21 Q. And you have here under pre-incident
22 earning capacity. What is that again?

23 A. Right here. So I am not sure you can
24 see. I am not sure the jury can see all of that
25 but pre-incident earning capacity is I assume for

1 a period of time up through 2016 that he would
2 have remain and received \$140,000 a year as a
3 base. It's only after into the future of 2016
4 where I am assuming a different amount of earning
5 capacity going forward into the future.

6 Q. Now in terms of your calculations, by
7 the way, did you take into account the fact he
8 was paid the severance?

9 A. I am sorry. I didn't hear that.

10 Q. Did you take into account the fact that
11 he was paid eventually a severance?

12 A. Yes. I deducted from my economic model
13 his severance pay, any unemployment payment. I
14 know he earned some money doing some camps and
15 some other things in 2014 and '15 that I deducted
16 from the model.

17 Q. Okay. So you have your column one. You
18 then have post-incident earning capacity \$70,000
19 and that number again is based on what? That's
20 up at the top?

21 A. Again this one right here, \$70,000,
22 that's the post-earning capacity. That's the
23 higher amount. Okay. And that was based upon a
24 sales position.

25 Q. And why don't we right now zip over the

1 same line to column two. That's got a different
2 number?

3 A. Right. Column two is based upon the
4 educational earnings so --

5 Q. And that amount is what, sir?

6 A. That was 45,000.

7 Q. Okay. Now as we go down the column
8 number one you have here future growth rate.
9 What does that mean? Post-incident future growth
10 rate?

11 A. I added a number of adjustments, growth
12 rates, a discount rate, and fringe benefit rate,
13 and I will explain all of that. For the
14 post-incident earning capacity I added about one
15 percent productivity -- one percent productivity
16 into the future for his post-incident in all my
17 scenarios. For the pre-incident earning capacity
18 under the various scenarios I just testified to I
19 did not add any growth. I didn't add any
20 increase for productivity. I took the average
21 and I just used that average going down.

22 Q. Okay. What do you mean by productivity?
23 Do you mean raises?

24 A. Productivity would be raises, right,
25 merit increases, raises, that type thing.

1 Q. To lay people productivity means raises?

2 A. Productivity means that you are getting
3 better every year so you can do things faster,
4 more efficiently, and better, and the Federal
5 Government keeps statistics on general overall
6 productivity so that's what that one percent
7 relates to. Again we are assuming in my model
8 that Mr. McQueary is essentially getting out of
9 coaching for good, that he is precluded from
10 coaching, and he has to get another job. So
11 looking at growing and salary growth for other
12 jobs I think is a little different than looking
13 at a job in coaching in terms of adding that
14 level of productivity. So from the future
15 standpoint I have only added productivity in his
16 post-incident earnings and not his pre-incident.

17 Q. Okay. These adjustments that you have
18 here -- we are not going to go down through
19 every one. These are generally accepted in your
20 profession?

21 A. Yes. They are. But again facts have
22 led me to some of these adjustments like fringe
23 benefits and I know Mr. McQueary had received
24 retirement contributions towards a retirement
25 plan. His employer also paid contributions

1 towards his Social Security, old age retirement
2 fund, and he also received a healthcare benefit,
3 so I have -- I have made provisions assuming that
4 he would receive those -- those same items from
5 different employer both on the pre-incident side
6 and post-incident side. So that's in here as
7 well. Okay.

8 I have fringe benefits. Just as a note
9 and the note tells you what's in there but I have
10 just testified to those are the elements that are
11 in there. It's important to include those
12 because that's what he was receiving from his
13 former employer and I would assume receive into
14 the future.

15 Q. Okay. And again your assumption across
16 the board here is that your wage calculations end
17 at age 62.76 years?

18 A. That is correct.

19 Q. Based on that skewing table?

20 A. That is correct.

21 Q. Now with respect to scenario number one
22 -- what is the total economic loss which you
23 calculated under scenario number one?

24 A. The total economic loss of scenario one
25 which is right here is 1,862,615.

1 Q. And scenario number two refresh our
2 memory again as to what this is?

3 A. Scenario number two is the same
4 pre-incident earning capacity, right, that
5 yardstick approach, but I am using a different
6 post-incident earning capacity. That's \$45,000
7 here.

8 Q. That's one based on his education?

9 A. That's right.

10 Q. And that gives you a total of what, sir?

11 A. 1,969,658.

12 Q. Okay. Now models three and four --
13 refresh our memory again as to what they are
14 based upon?

15 A. Model three and four assumes the
16 pre-incident earning capacity as essentially set
17 what he was earning at Penn State as of 2011,
18 \$140,000, plus bonuses, and it assumes
19 essentially that he wouldn't earn anymore and it
20 would be fixed.

21 Q. The 140 would be fixed?

22 A. That's right.

23 Q. Plus bonus?

24 A. Plus bonus and the difference between
25 scenarios three and four is the amount of the

1 post-incident earning capacity. 70,000 is in the
2 scenario three and scenario four is the 45,000.

3 Q. And your totals with respect to models
4 three and four?

5 A. \$2,079,516.

6 Q. What was that amount again?

7 A. 2,379.516 for scenario three.

8 Q. And assuming a \$45,593 earning capacity
9 it's what?

10 A. Well that's scenario four and that's
11 2,486,559.

12 Q. Okay. Scenarios five and six are what,
13 sir?

14 A. Okay. Scenarios five and six up here
15 that again is the pre-incident earnings based
16 upon the schools he was applying to, the wide
17 receivers salary that I averaged, and the
18 difference -- the only difference between these
19 two scenarios is post-incident earning capacity I
20 have been talking about. So scenario five uses
21 the post-injury earning capacity of 70,000 and
22 that total bottom loss is \$3,805,134. That's
23 scenario five. Scenario six uses the \$45,000
24 post-incident earning capacity and after all of
25 the adjustments total \$3,912,177.

1 Q. Now, sir, the \$70,000 earning capacity
2 number is one that you arrived at based upon the
3 nine coaching jobs that Mr. McQueary the applied
4 for, right?

5 A. That is correct.

6 Q. And this model is based upon the
7 salaries with benefits upon -- or from the
8 schools that he had applied for as coach?

9 A. That's correct.

10 Q. So this is basically the same idea about
11 developing numbers from places where somebody
12 applied to?

13 A. It's similar. Yes. Yes.

14 Q. Okay. Even though, for example, you
15 used the \$70,000 number for jobs that
16 Mr. McQueary applied to but he didn't get?

17 A. That is correct.

18 Q. And even though this model uses salaries
19 of position that he applied for but didn't get?

20 A. That is correct.

21 Q. And why is it that forensic accountants
22 accept this as an appropriate way to make
23 estimates about future losses?

24 A. Well it's -- I think it adds to the
25 shrink of my economic model that I am using

1 actual data. I am using his intentions in
2 applying to schools for a job that he is --
3 believes he is capable of doing, had done in the
4 past. I am using actual -- those actual earnings
5 and then I am looking at the actual earnings of
6 jobs that he is applying to. The difference is
7 the issue in this case, the allegations in the
8 complaint, which is what the claim is here is the
9 reason he is prohibited from earning the previous
10 amounts is -- are the allegations in the
11 complaint. That's the claim here.

12 Q. Okay. Please now go to the last two
13 columns and refresh our memories as to what they
14 are.

15 A. Scenario seven and eight are based upon
16 -- based upon Mr. Parry's report that after seven
17 years that Mr. McQueary would have obtained an
18 offensive coordinator job. I used those
19 statistics from the schools that he was
20 researching and I plugged those into the model
21 and again the only difference between seven and
22 eight are the post-incident earning capacity
23 amounts. So plugging those numbers in after all
24 of the adjustments the total is 7,440,217.
25 That's scenario seven. And scenario eight is

1 7,547,260.

2 Q. And this assumes that Mr. McQueary would
3 have been elevated to offensive coordinator in
4 seven years as Mr. Parry opined?

5 A. That is correct.

6 Q. Sir, did you also have an opportunity to
7 review Mr. McQueary's income tax return, which he
8 filed jointly with his wife Barb for the year
9 2012?

10 A. I did.

11 Q. And did you understand that Mr. McQueary
12 cashed out his TIAA-CREF retirement account in I
13 believe it was August of 2012? Did you
14 understand that to be the case?

15 A. I did.

16 Q. That was reflected on his income tax
17 return?

18 A. It was. Yes. Mr. McQueary ended up
19 paying taxes of -- taxes and penalties of about
20 \$84,225 in early receipt of his pension amounts.

21 Q. So that's separate from his other income
22 in 2012?

23 A. That is correct. And this is an element
24 also I think that's contained in the complaint
25 and I looked at that amount. Had Mr. McQueary

1 taken the early retirement at another time -- he
2 is going to have pay taxes on it one way or
3 another in the future. I calculated a much lower
4 tax liability. It excludes the penalty that he
5 had to pay and there is a 10 percent penalty for
6 early withdraw and because he was taxed at a
7 higher tax bracket because the -- in 2012 it
8 included a severance he was receiving from Penn
9 State on top of the early withdraw of his
10 retirement fund. So he is at a higher -- he is
11 paying higher taxes if he is at a higher tax
12 bracket. I did computation excluding the higher
13 tax bracket amount assuming that after standard
14 itemized deductions and exemptions the tax rate
15 would be a lot less and I calculated \$61,871 as
16 the difference. So that's the additional amount
17 of tax that he paid and it's listed right down
18 there on the bottom of the report of my exhibit.
19 So all the numbers that I just testified to all
20 the way across here are the numbers that pertain
21 to the loss and the various earning scenarios. I
22 didn't included the \$61,000 amount. That would
23 have to be added to each one of amounts. The
24 total amount of my loss estimate was contained
25 here in the shaded portion at the bottom.

1 Q. Sir, could you turn to Plaintiff Exhibit
2 73 for a moment.

3 A. I got it.

4 Q. Okay. What is Plaintiff's Exhibit 73?

5 A. This is his tax return for 2012.

6 Q. And this is the tax return you utilized
7 for -- as part of your calculations?

8 A. I did. Yes.

9 Q. So because Mr. McQueary had to withdraw
10 or felt compelled to withdraw his TIAA-CREF
11 retirement account in 2012 he ultimately had to
12 pay an additional what?

13 A. From my computations, this is including
14 the penalty which is not listed on here, is he
15 had to pay an additional \$61,871 and that's the
16 difference between what he paid and his tax
17 return, including the penalty, compared to what
18 he would have paid if he would have taken this
19 out in the future tax separately.

20 Q. So I would like to talk just a bit more
21 about Dr. Kursch's report. You reference about
22 yours and Dr. Kursch's assumptions about post
23 November 2011 earning capacities were basically
24 the same, right?

25 A. Correct.

1 Q. But were there any other differences or
2 were there any differences between what he is got
3 in his report and what you did in your report?

4 A. Yes. There are a number of differences
5 I have with Mr. Kersch's report. One thing is --
6 and I noted that he was not provided or really
7 fails to account for Mr. McQueary's numerous job
8 search efforts. I have close to 600 pages of job
9 search efforts, almost 200 different entries,
10 football and nonfootball related entries, and
11 that was really important in me developing what
12 his pre-incident earning capacity would be.
13 Mr. Kersch did not have that so --

14 Q. Now when you say did not have it it's
15 not referenced in his report?

16 A. Not referenced in his report.

17 Q. Might have had it but it's not
18 referenced?

19 A. Not referenced and that's a better way
20 to put it. It's not referenced in his report.
21 As documents reviewed he did not indicate that he
22 reviewed it in the narrative of his report. So
23 that was one big thing I would say. Another
24 conclusion that he makes is -- and he had several
25 scenarios. He stopped the loss in one scenario

1 when Mr. McQueary -- when his contract was up
2 essentially with Penn State. So this is going to
3 be I guess 2012 or -- at the end of 2012 and he
4 essentially says the loss is zero. Now I don't
5 understand that so much as that was not his
6 intentions. His intention was to continue to
7 coach and a component of someone's earning
8 capacity -- and there are several elements that
9 go into an individual's earning capacity. One is
10 his intention. So from my prospective -- and I
11 don't know how he came to that conclusion, that
12 he would somehow stop coaching and come up with
13 zero in that amount.

14 Another difference I have with him is he
15 then calculates a loss -- he did determine in two
16 other scenarios a pre-incident earning capacity
17 for Mr. McQueary in scenario three. He actually
18 uses \$140,000 a year for six years.

19 Q. And that's what you used? 140?

20 A. That's right.

21 Q. In one of your models I think it was
22 three and four?

23 A. That's right. Three and four as the
24 future I have used 140.

25 Q. And so he uses the same 140 for his

1 model three?

2 A. That is correct. But he only -- and
3 then he makes a deduction similar to what I did
4 where he reduces by his two post-incident earning
5 capacity amounts, 41,000 -- almost 42,000 and
6 72,000 but he only calculates a loss for six
7 years. Now he references in a footnote here --
8 he references a statistics and he referenced it
9 in a report that head coaches on average are only
10 coaching or head coaching for 6.4 years and I
11 pulled the statistic and I get the impression
12 that he is using that statistic to cut the loss
13 off after six years. It's not very clear in his
14 report and the problem I have with that is that I
15 don't have any scenario which I assume
16 Mr. McQueary would have been head coach, and so I
17 would suggest that the use of that statistic to
18 support his conclusion is false. It's wrong. I
19 don't know the basis for why he stopped the loss
20 after six years but he did calculate a loss --
21 Mr. Kersch -- of only six years.

22 Q. Any other significant difference between
23 your opinion and his opinion?

24 A. Well the final problem I have with
25 Mr. Kersch is he uses and another scenario. He

1 determined that Mr. McQueary's post -- or I will
2 say pre-incident earning capacity is about
3 \$77,000 a year and he cites some statistics
4 indicating that Mr. McQueary's earnings would be
5 on the lower level of those statistics for all
6 assistant coach's salaries and he uses that as a
7 means to calculate a loss and I guess my
8 difference with that is I don't understand the
9 basis for how he can assume -- this is --
10 remember this is pre-incident earning capacity.
11 This is absent the claims in the allegation. I
12 want to make sure that that is understood. I
13 don't understand how Mr. Kersch can assume a
14 roughly 50 percent reduction in an individual's
15 earning capacity and then calculate that -- or
16 assumingly calculate that for the next 25 or so
17 years into the future. It makes no sense to me
18 so --

19 Q. I just want to ask you the pre-incident
20 earnings were, in fact, 140,000, plus bonuses,
21 right, for Mr. McQueary?

22 A. That is correct. That is correct and
23 that was in looking at Mr. McQueary's tax returns
24 -- I mean, that did not happen just in one year.
25 He had a history of earning from 2008 -- I mean,

1 his tax return showed he earned about \$147,000.

2 Q. On average?

3 A. On average.

4 Q. And you don't understand why Dr. Kursch
5 assumed a pre-incident earning capacity of only
6 \$77,000?

7 A. No. I don't understand that.

8 Q. Sir, the opinions that you have
9 expressed this morning, have you expressed them
10 to a reasonable degree of accounting and economic
11 certainty?

12 A. I have. Yes.

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

15 Cross-Examination

16 By Mr. Morrison:

17 Q. Good morning, Mr. Stavros.

18 A. Good morning.

19 Q. My name is George Morrison and I am here
20 on behalf of the Pennsylvania State University.
21 I have a few pretty general broad overreaching
22 questions for you about your report, okay?
23 First, in reaching your determination you will
24 agree with me that you testified that you do rely
25 on the opinions of Mr. Parry, correct?

1 A. Yes. In part. Correct.

2 Q. And you will agree with me that
3 Mr. Parry concluded that Mr. McQueary had every
4 reason to expect to have a long successful career
5 as an NCAA bowl champion football coach. Do you
6 agree with me on that?

7 A. Yes.

8 Q. And for the positions that you set forth
9 in your expert report you only rely on Mr. Parry?

10 A. No.

11 Q. For the positions that Mr. McQueary
12 would be expected to have a long-standing career
13 in coaching you only rely on Mr. Parry, is that
14 correct?

15 A. No.

16 Q. That is not correct?

17 A. No. Mr. Parry -- I specifically
18 reference in my report in scenarios seven and
19 eight where he would have aspired to become an
20 offensive coordinator.

21 Q. On page four of your report, sir, you
22 quote McQueary had every reason to expect to have
23 long successful career as an NCAA bowl
24 championship series BCS football coach, is that
25 correct that you have that quote?

1 A. Yes. It is.

2 Q. And then you cite to Mr. Parry's report,
3 right?

4 A. Correct.

5 Q. Now am I also correct or will you agree
6 with me that under all of the scenarios that you
7 have calculated you did rely on the assumption
8 that Mr. McQueary would continue to be a football
9 coach?

10 A. That's correct.

11 Q. Okay. Did you provide any scenarios to
12 address the situation where Mr. McQueary would
13 not have continued to be a football coach?

14 A. Not in the pre-incident estimates.

15 Q. I would like to focus on your
16 calculations of future losses. Did you provide
17 any scenarios under your calculations of future
18 losses to account for a situation where
19 Mr. McQueary would not have continued to be
20 employed as a football coach?

21 A. I did not.

22 Q. Thank you. One moment. My voice is --
23 okay. Now focussing on scenarios one and two you
24 provided that you assume that Mr. McQueary may
25 have obtained alternative coaching positions in

1 the future similar to the few comparatives, is
2 that correct?

3 A. Yes.

4 Q. And the comparatives that you identify
5 were Mr. Earnest Bugs, is that correct?

6 A. Yes.

7 Q. Bill Kenney?

8 A. Correct.

9 Q. And Ron Vanderlinden, is that correct?

10 A. Yes.

11 Q. And correct me if I am wrong but you
12 selected those comparators based on who -- strike
13 that. Who Mr. McQueary felt were comparators, am
14 I accurate with that?

15 A. That is correct.

16 Q. Does your report provide any analysis as
17 to whether these individuals actually draw
18 comparators besides Mr. McQueary belief that he
19 relaid to you?

20 A. Yes. I mean, I may not have listed it
21 in the report but I recall my discussion with
22 Mr. McQueary and asking a number of questions
23 about the years of experience they had, what
24 their intentions were, kind of other coaching
25 they have had in other places. So while it may

1 not be specifically included in my report it was
2 discussed.

3 Q. So, sir, the answer to my question
4 which, was is it in your report -- what is your
5 answer to that question?

6 A. I would say that my report speaks for
7 itself. If that information is not in there,
8 then I didn't miss it.

9 Q. Does your report take into account the
10 work experience of Mr. Bugs?

11 A. When you say work experience what are
12 you saying?

13 Q. Does your report provide a summary of
14 the work history of Mr. Bugs, Mr. Kenney, or
15 Mr. Vanderlinden?

16 A. It does not and it did not -- I didn't
17 think it needed to be done.

18 Q. Does your report take into account the
19 network or connections of Mr. Bugs, Mr. Kenney,
20 or Mr. Vanderlinden?

21 A. Again I did not go into that level of
22 detail. I didn't think it was necessary.

23 Q. Under scenarios five and six you opine
24 that Mr. McQueary would have begun to turn the
25 salaries of wide receivers coach as of the date

1 of your report, is that correct?

2 A. That is correct.

3 Q. And you base that -- you base those
4 scenarios on the fact that Mr. McQueary applied
5 to certain institutions, is that correct?

6 A. That is correct.

7 Q. And the institutions that you identify
8 -- and I realize they are not all inclusive --
9 are Connecticut, Maryland, Rutgers, LSU, and West
10 Virginia? Is that all correct?

11 A. Yes.

12 Q. Did you take into consideration
13 Mr. McQueary's network or connections with the
14 individuals that are at Connecticut to actually
15 allow him to land a job at that institution?

16 A. I have information about each one of
17 these connections. I can't answer that question
18 sitting here about who he knew at each one of
19 these schools.

20 Q. Let's put it this way. Does your report
21 address that?

22 A. No.

23 Q. Does your report address that same
24 question in the context of Maryland?

25 A. No.

1 Q. Rutgers?

2 A. No.

3 Q. LSU?

4 A. No.

5 Q. West Virginia?

6 A. No.

7 Q. Scenario seven and eight will you agree
8 with me you opined Mr. McQueary would have began
9 to earn the earnings of an offensive coordinator?

10 A. That is correct.

11 Q. And you opine that he would have began
12 to earn that level of salary commencing November
13 11, 2018, is that correct?

14 A. That is correct.

15 Q. And again you tie your opinion to the
16 salaries based on where Mr. McQueary applied to,
17 correct?

18 A. That is correct.

19 Q. And you again reference to some
20 institutions, correct?

21 A. Yes.

22 Q. And those institutions are again
23 Connecticut, Maryland, Rutgers, LSU, and West
24 Virginia?

25 A. That is correct.

1 Q. When you were calculating your estimates
2 under scenarios seven and eight did you consider
3 Mr. McQueary's network at any of those
4 institutions within your report?

5 A. Again I did not get into that level of
6 detail and I am primarily relying upon Mr. Parry
7 who indicated that Mr. McQueary was capable of
8 obtaining those positions.

9 Q. So again my question was does your
10 report reflect Mr. McQueary's network and/or
11 connections to individuals at Connecticut,
12 Maryland, Rutgers, LSU, or West Virginia?

13 A. No. My report does not specifically
14 reference that.

15 Q. And you already referenced this but your
16 sole support for these various scenarios is in
17 fact based upon the opinion of Mr. Parry,
18 correct?

19 A. Well again I will say scenario seven and
20 eight --

21 Q. That's what we are talking about?

22 A. Right. That is correct.

23 Q. And that's the opinion of just one
24 individual, correct?

25 A. That's correct.

1 Q. I also note that you provided
2 calculations and you assume that Mr. McQueary
3 would land the position as offensive coordinator
4 at one of these institutions or an institution of
5 this type as of November 11, 2018, is that
6 correct?

7 A. Yes.

8 Q. Does your report reference what
9 Mr. McQueary's network or connections would have
10 been with these institutions at that future date?

11 A. Again I am -- for series seven and eight
12 I am relying upon Mr. Parry.

13 Q. My question though, sir, is does your
14 report provide what Mr. McQueary's connections
15 would be at that future date, November 18, 2018,
16 a couple years in the future?

17 A. No. My report does not go into that
18 level of detail.

19 Mr. Morrison: No further questions.

20 Mr. Strokoff: Three questions, Your
21 Honor.

22 Redirect Examination

23 By Mr. Strokoff:

24 Q. Sir, you said that your report did not
25 go into detail with respect to networking because

1 you didn't think it needed to be in the report.
2 Why?

3 A. Because it's not necessary. There is a
4 number of reasons for how someone gets a job and
5 position and it was entirely not necessary for me
6 to put that in there.

7 Q. And what about the question about
8 predicting what Mr. McQueary's network would have
9 been in 2018. Why is that not in your report?

10 A. Again it's not necessary for me to put
11 that in there to make my opinion.

12 Q. And, lastly, you have been
13 cross-examined about relying on Mr. Parry's
14 report and opinion. Have you had an opportunity
15 to review the report of Mr. Russel which the
16 defendant will be --

17 A. Yes.

18 Q. Did that change your opinion at all?

19 A. No.

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

22 Mr. Morrison: I have one follow-up
23 question.

24 Recross-Examination

25 By Mr. Morrison:

1 Q. Mr. Stavros, do you recall Mr. Parry
2 testifying as to the importance of the network in
3 landing a job?

4 A. I do.

5 Mr. Morrison: No further questions.

6 The Court: Thank you, sir. You are
7 free go about your business.

8 Mr. Strokoff: Your Honor, I believe I
9 have moved for admission of Plaintiff's Exhibit
10 81 and it's in?

11 The Court: I thought we did that
12 already but I understand your position.

13 Mr. Morrison: Understood.

14 The Court: So we have admitted it over
15 objection.

16 Mr. Strokoff: We have a stipulation,
17 Your Honor, to present and read. May I show it
18 to the Court first?

19 The Court: Yes.

20 (Whereupon, a discussion was held off
21 the record.)

22 The Court: Members of the jury, counsel
23 is going to read a stipulation to you. Again
24 this is a normal practice in a civil case and it
25 is an agreement between the parties that what is

1 read to you is correct and there is no dispute
2 about what is going to be read to you. Again
3 it's simply another piece of information like
4 every other piece of information that you receive
5 during the trial. You are free to use the
6 stipulation in any manner you determine.

7 Go ahead.

8 Mr. Strokoff: Stipulation.

9 It is hereby stipulated and agreed that
10 if Gary C. Schultz and slash or Timothy M. Curley
11 were called to testify at the trial of this
12 matter and ask questions about any of the
13 allegations made by the plaintiff or plaintiff's
14 testimony or asked to identify certain documents
15 appended to the depositions which they provide in
16 this case or any of the defenses asserted by
17 defendant, including information they receive
18 from plaintiff and their responses thereto, that
19 each would refuse to answer all such questions on
20 the basis of there Fifth Amendment right against
21 incrimination. Therefore, they will not be
22 testifying in this case.

23 The Court: Okay.

24 Mr. Strokoff: Your Honor, on an early
25 day of the trial -- I think it was day three. I

1 am not positive. Plaintiff's Exhibit 58 was
2 admitted subject to redaction and I have a
3 redacted copy of Plaintiff's Exhibit 58, which I
4 would like to pass up the Court at this time.

5 Ms. Conrad: Your Honor, I believe that
6 was just handed to me as we were beginning today
7 and I have not had the opportunity to look at it.

8 The Court: Okay. So you can look at it
9 on the next break.

10 Ms. Conrad: Thank you, sir.

11 The Court: Is this a good time to take
12 a break?

13 Mr. Strokoff: It is, Your Honor,
14 because I want to go over my checklist to make
15 sure I want to do everything I need to do.

16 The Court: All right. Members of the
17 jury, why don't we take a break until 20 minutes
18 of the hour. Again have in mind my admonition
19 that you not discuss the matter with anyone. Go
20 ahead and step out please.

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

25 The Court: Ms. Conrad, thought you were

1 going to provide me with the copy of the
2 grievance policy and a copy of the memos that you
3 intended to present the Court later.

4 Ms. Conrad: And you recall when you
5 called us up this morning and you said to come up
6 without the papers and I did not return -- would
7 you like them now, sir.

8 The Court: So can we have the papers
9 now?

10 Ms. Conrad: Yes, sir. I have the get
11 the grievance.

12 The Court: Okay. Thank you.

13 Mr. Strokoff: Do I get copies?

14 Ms. Conrad: Yes, sir.

15 (Whereupon, a break was taken.)

16 (Whereupon, the jury was escorted into
17 the courtroom.)

18 Mr. Strokoff: Just housekeeping, Your
19 Honor, before we rest again Plaintiff's Exhibit
20 58 redacted.

21 Ms. Conrad: No objection.

22 The Court: Okay. It's admitted.

23 Mr. Strokoff: Your Honor, I only have
24 one copy now. We can make copies later. I am
25 passing it up the Court.

1 Lastly, Your Honor, it's not clear to me
2 even though we referenced numerous parts of 91
3 whether or not that's been admitted into
4 evidence. So I would move Plaintiff's Exhibit 91
5 into evidence at this time.

6 The Court: Just a second. P91?

7 Mr. Strokoff: That is correct.

8 The Court: I don't have any indication
9 about 91. Let me see. Is there any objection to
10 91?

11 Ms. Conrad: Your Honor, I believe you
12 gave specific instructions as to 91. So subject
13 to those instructions, no. I don't think they
14 are going to the jury.

15 The Court: Okay. So 91 is just a
16 compilation of the blogs, et cetera, just to show
17 what was out there, is that correct?

18 Ms. Conrad: One of them. Yes.

19 The Court: Okay.

20 Mr. Strokoff: And it also has some time
21 dates with regard to identifying Mr. McQueary.

22 Ms. Conrad: Objection. It's now going
23 into content.

24 Mr. Strokoff: Well there was testimony
25 about that.

1 The Court: Okay. So again we are going
2 to admit it. In looking at 91 it's my
3 recollection that certain of the articles were
4 addressed by various witnesses and it was my
5 understanding that whatever was addressed on
6 direct was fair game on purposes for
7 cross-examination but that the intent was not
8 that the documents go out to the jury.

9 Mr. Strokoff: Understood.

10 The Court: And now you are saying that
11 one of the subparts of that analysis was the
12 timing of certain articles and my recollection
13 is --

14 And, members of the jury, it's your
15 recollection that controls with reference as to
16 when Mr. McQueary was being identified.

17 Mr. Strokoff: And witnesses --

18 The Court: Pardon?

19 Mr. Strokoff: And the witness's
20 testified.

21 The Court: Right. And the witness's
22 testified to that.

23 Ms. Conrad: The witnesses testified as
24 to a comment that was attached to the article.
25 The witnesses testified and then on cross it was

1 noted that the comments only included three I
2 believe out of the 58 comments. The comments
3 were not part of the article. So it was hearsay
4 within hearsay.

5 The Court: Okay. We will deal with it
6 later because I don't know what you are going to
7 do with it and you can identify for me the
8 specific items. One of them I thought was this
9 one which I simply recall because of the
10 distinctive character on the front page and
11 everybody is referencing it and it contains a
12 date.

13 And a date is what you want to reference
14 to, is that correct?

15 Mr. Strokoff: As well as the time.
16 Some of these have times.

17 The Court: Yes. Okay. We will address
18 it later. Go ahead.

19 Mr. Strokoff: With that, Your Honor,
20 plaintiff rests.

21 The Court: Okay. Fine.

22 Mr. Strokoff: Stavros's report is
23 already in, Your Honor? That's --

24 The Court: It's my understanding you
25 moved the admission of his report and it was

1 admitted.

2 Mr. Strokoff: Yeah. Thank you.

3 The Court: Okay. Counsel, want to come
4 up here?

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

7 Mr. Strokoff: To refresh your memory,
8 Your Honor, one of the discovery answers, the
9 documents which were produced, references page --
10 was it 69 and 70 of the Freeh Report.

11 The Court: Right.

12 Mr. Strokoff: And I had originally
13 produced -- reproduced the whole pages and
14 counsel wanted the document redacted so that's --
15 so that's what that is.

16 Ms. Conrad: And I just believe I had an
17 objection as to the document that was overruled.
18 So I just maintain that.

19 Mr. Strokoff: That's an excerpt of the
20 Freeh Report.

21 The Court: I assume you want to make
22 your motion?

23 Ms. Conrad: Yes, sir. Proceed here?

24 The Court: Yes.

25 Ms. Conrad: At this time the defendant

1 moves for a compulsory nonsuit on the
2 misrepresentation claim. With respect to the
3 misrepresentation claim the burden is on the
4 plaintiff to establish the elements of the claim.
5 Strike that. Representation that it was material
6 made falsely with the intent to mislead another,
7 with justifiable reliance on it, and result in
8 injury. In this case there is no evidence of an
9 intentional misrepresentation. The plaintiff
10 claims and testified that -- the plaintiff's
11 claims in his complaint that Curley and Schultz
12 misrepresented that they would see that the
13 matter be properly investigated and that
14 appropriate action would be taken. In his
15 testimony the plaintiff testified that Curley and
16 Schultz first made a representation that they
17 would see that the matter was investigated and
18 appropriate action be taken. He testified that
19 that representation allegedly took place on
20 February 22nd or 23rd, 2001.

21 Plaintiff then testified that, quote,
22 possibly 10 days, maybe roughly a week, after
23 that meeting he received a telephone call from
24 Mr. Curley. In that telephone call plaintiff
25 testified that Mr. Curley told him that they had

1 informed the Second Mile, they had informed Jerry
2 that that he no longer allowed to be in the
3 facility with kids, and they decided to take
4 Jerry's keys away. Plaintiff admits that Curley
5 told him the actions that were taken following
6 the representation that plaintiff points to. As
7 a result there is absolutely no evidence on the
8 record of any misrepresentation. That is, in
9 fact, made even stronger by the fact plaintiff
10 testified that he couldn't believe it when he
11 learned that Curley was in trouble and to be
12 charged. That testimony demonstrates that he
13 believes the steps that were taken as informed to
14 him by Mr. Curley were proper and that they were
15 taken.

16 Finally, there is no evidence that
17 plaintiff objected to the plan as presented by
18 Mr. Curley and there has been no evidence in this
19 case to show causation between those
20 representations, not misrepresentations, but
21 representations and any harm that plaintiff
22 alleges some 10 years later.

23 Mr. Strokoff: Okay. We begin, Your
24 Honor, with February 11th, 2001, Wendell Courtney
25 testified that he told Gary Schultz reported. On

1 February 12th Gary Schultz -- and I believe this
2 is Plaintiff Exhibit Number 7 -- a handwritten
3 note that said their plan February 12th unless
4 he, being Jerry Sandusky, confesses to having a
5 problem, then indicate we will report it. Then
6 there is the meeting with Mike McQueary in which
7 they say this is serious, we will see it's
8 properly investigated with appropriate measures
9 taken. Then we have I think it's five days
10 thereafter Plaintiff's Exhibit 10, the e-mail
11 exchanges between and among Dr. Spanier,
12 Mr. Curley, and Mr. Schultz in which among other
13 things Dr. Spanier wrote that we were vulnerable
14 for not having reported so --

15 Ms. Conrad: You think that's exact
16 testimony?

17 Mr. Strokoff: I will go get the exhibit
18 but that's -- you know, his e-mail says we will
19 be vulnerable if Jerry does not take our guidance
20 or something. We will be vulnerable for not
21 having reported it. We have Detective Sassano's
22 testimony that there was no report. So the fact
23 that they told Mr. McQueary -- or Curley told
24 Mr. McQueary here is the action we are taking
25 does not negate the fact that at the time they

1 made the misrepresentation to him they were going
2 to see this properly investigated. There is no
3 investigation, period. No evidence of any
4 investigation and that's -- that's the crux of
5 that. In terms of damage the very first -- the
6 very first defense exhibit from the very first
7 day -- I think it's 35 if I recall correctly --
8 Mr. McQueary gets an e-mail saying you are part
9 of the cover up. That's the problem and this is
10 what we allege in the misrepresentation. So,
11 therefore, under the standard as enunciated in
12 their memo about giving the plaintiff the benefit
13 of every doubt the motion should be denied.

14 Ms. Conrad: May I respond?

15 The Court: Yes.

16 Ms. Conrad: Mr. Courtney's note does
17 not go to the representation that was made to
18 Mr. McQueary. What is pertinent to the
19 misrepresentation claim is what Mr. Curley and
20 Schultz allegedly said to plaintiff in the first
21 meeting and then Mr. Curley in the second meeting
22 and based on those two exchanges, which plaintiff
23 testified to, there is simply no evidence of a
24 misrepresentation.

25 The Court: Well if the jury credits

1 Mr. McQueary's version of what he told Coach
2 Paterno and Mr. Curley under the then existing
3 law Mr. Curley and/or Mr. Schultz were mandated
4 reporters and they were required to report that
5 to the police authorities and they were required
6 to report to the appropriate Children and Youth
7 and Department of Public Welfare agencies. So if
8 the jury credits that and they say we are going
9 to take appropriate action their failure to do so
10 in and of itself is misrepresentation, and of
11 course you're both going to argue what the
12 objective evidence establishes as to whether they
13 did or did not do that. Mr. McQueary even under
14 Penn States then existent policy has enunciated
15 through the doctor, which was unrebutted, was
16 that you go to your immediate supervisor and you
17 pass it up the chain. He went to Coach Paterno,
18 Paterno went to the athletic director, and the
19 representation was we will take appropriate
20 action. There was no duty for them to do
21 anything further and they have -- they -- I am
22 leaving Paterno out. He, McQueary, had the right
23 to rely on that representation and to claim there
24 is no nexus between their failure to act and the
25 boat he finds himself in is just not there for

1 this record. So the motion for nonsuit is
2 denied.

3 Now let's get back to where we are.
4 What's the game plan so we all know what we are
5 doing.

6 Ms. Conrad: Your Honor, I have here
7 today two witnesses that we may be able to get in
8 before lunch. After lunch I have one live
9 witness and then I have a videotape of a trial
10 deposition that will take about an hour. As I
11 previously said our experts are not coming in
12 until tomorrow. Additionally, we will be
13 recalling Bill Mahon based on Your Honor's most
14 recent ruling and then we have one other witness,
15 who is not available until tomorrow.

16 The Court: Okay. Just give me a
17 timeline so I can be giving the jurors a head's
18 up so they can be making plans.

19 Ms. Conrad: It would seem to me that
20 with Your Honor's to proceed as follows --

21 The Court: We will go any way you want
22 to go.

23 Ms. Conrad: Okay. Thank you. I really
24 appreciate that. We may finish early today about
25 3:00. Tom Mahon will be at most 20 minutes.

1 Senior will probably be an hour. The experts are
2 going to comparable to Elliott's case so maybe
3 two and two hours or two, or two and three hours.
4 We then have some additional for tomorrow. I
5 think it will be done about 4, 5:00.

6 The Court: And your case is done
7 tomorrow?

8 Ms. Conrad: That is my plan. I have
9 not yet finished after reviewing what his --

10 The Court: Now with regard to the trial
11 videotape deposition are there objections that
12 need to be ruled upon?

13 Ms. Conrad: I don't believe so.

14 Mr. Strokoff: I just received, Your
15 Honor, this morning Ms. Conrad's destinations,
16 which I will go through over the lunch hour with
17 respect to that. I don't think you do have rule
18 on any.

19 The Court: Okay. I was just --

20 Mr. Strokoff: That's just my
21 recollection.

22 Ms. Conrad: And then we have one short
23 one that was working with the staff that may not
24 be ready until tomorrow.

25 The Court: Okay. So then Thursday for

1 the likelihood is when we will be closing. On
2 Thursday.

3 Ms. Conrad: And can we -- may we
4 request closing on Thursday since we have a full
5 line up for Wednesday?

6 The Court: Yes.

7 Ms. Conrad: Thank you. Thank you.

8 Mr. Strokoff: I did not understand your
9 request. We won't be closing before Thursday?

10 Ms. Conrad: Correct. We will close
11 when the jury is fresh.

12 The Court: Finish your testimony on
13 Wednesday whenever and that will get everybody a
14 chance to go because you all will have advance
15 opportunity to prepare and you won't need an hour
16 and a half.

17 Ms. Conrad: Yes, sir. I will make that
18 a priority. One other housekeeping item, sir.
19 As you recall we entered into an agreement for
20 the efficiency of the Court, for the jury, and
21 the witnesses that 12 of our witnesses that I
22 would be calling in my case in chief were called
23 during plaintiff's case. I would request -- and
24 I conducted my full examination during that time.
25 I would request that Your Honor provide direction

1 to the jury that the University would have called
2 these witnesses in its case such were the
3 efficiency the University did its examination
4 during plaintiff's case.

5 Mr. Strokoff: No. I just want to
6 double check the witness list.

7 Ms. Conrad: Certainly. And I have my
8 original letter to Your Honor that lists these as
9 our witnesses.

10 The Court: I recall getting this.

11 Mr. Strokoff: I will double check it in
12 literally one minute.

13 The Court: Well we don't have to do it
14 right now. You don't want me to read that right
15 now?

16 Ms. Conrad: I would prefer before the
17 start of our case.

18 Mr. Strokoff: It will just take a
19 minute.

20 Ms. Conrad: Thank you.

21 (End of side bar.)

22 The Court: Members of the jury, just
23 some housekeeping information for you. Counsel
24 are still looking at one or two other matters.

25 The plaintiff has rested his case and we

1 are going to begin with the defense's case. So
2 then you are saying to yourself where are we
3 timing wise. Sometimes they move a little
4 quicker than you think. Sometimes they move a
5 little longer. I think today we are going to
6 probably get another one of those early
7 afternoons. We are not going to have to go to
8 5:00 again this afternoon and I think tomorrow we
9 will probably occupy the entirety of the day but
10 my expectation is that on Thursday the case will
11 be ready to go to you for closing arguments and
12 deliberations. So the anticipation -- now every
13 time I say something like that I wind up getting
14 egg all over my face but the anticipation at the
15 moment is that Thursday morning we would have
16 closing arguments -- the closing arguments of
17 counsel and the instructions of the Court and
18 then deliberations beginning thereafter.

19 I would ask, therefore, that any of you
20 who have commitments later in the afternoon,
21 childcare issues of that, could you try and make
22 some arrangement for someone else to cover you so
23 you can deliberate to a reasonable hour. In
24 Chester County we consider 7:00 to be a
25 reasonable hour and ask jurors to stay until

1 7:00. Beyond that we don't ask anybody to do
2 that and again that will be decided by what you
3 do. So I am going to suggest that when we break
4 for lunch you might just caucus among yourselves
5 and say, you know, yeah, Judge, if we had to stay
6 until 7:00 that's fine, we will make the
7 necessary adjustments, or, no, they are
8 insurmountable and we can only stay to X time on
9 Thursday afternoon.

10 Again we are going to be guided by what
11 you have to say there but it makes sense I think
12 you will have all the arguments and the
13 instructions of the Court by 12:30 on Thursday.
14 We're going to make arrangements to feed you in
15 which means we will have lunch brought in and we
16 will take care of that and let court
17 administration people tomorrow and make sure that
18 all of that is taken care of.

19 So with that in mind if you can confirm
20 on yourselves and just designate someone to tell
21 me when you come back this afternoon what the
22 game plan in your mind can be in terms of how
23 late you want to stay on Thursday.

24 Mr. Strokoff, did you look at the list?

25 Mr. Strokoff: Yes. The list is okay,

1 Your Honor.

2 The Court: Okay. Now, members of the
3 jury, one of the things that was done for
4 efficiency purposes during the examination of the
5 witnesses that we allowed more leeway than
6 normally occur with the witnesses because the
7 plaintiff gets to go first with their witnesses
8 and then the defense gets to call their witnesses
9 and usually you don't allow the defense through
10 the examination of the plaintiff's witnesses to
11 in part put their case before you, but we have
12 had so many witnesses that the parties agreed
13 that the following witnesses that were called in
14 the plaintiff's case were really witnesses that
15 Penn State itself would have been calling in at
16 some point in time but for efficiency purposes
17 they examined the witness and got from that
18 witness the testimony they wanted to get in terms
19 of the cross-examination of the witness. So at
20 some point we had a subtle shift between cross
21 and direct. You might have missed it but it
22 doesn't make any difference. We are going to
23 read the list of names and in the main you have
24 heard what their position would be both in
25 reference to the plaintiff's case and in

1 reference to the defendant's case. So you heard
2 from Cynthia Baldwin, Thomas Bradley,
3 Mr. Docsecz, I hope that's close enough, Joseph
4 Doncsecz, that I didn't get it too bad, Rodney
5 Erickson, Francis Ganter, Thomas Haron, David
6 Joyner, Bill Mahon, Lisa Powers, Erikka Runkle,
7 Mark Sherburne, and Graham Spanier. So you heard
8 from all of those witnesses that are, in fact,
9 witnesses for Penn State but they are not going
10 to reappear. One or two of them may reappear but
11 the majority of these individuals are not going
12 to reappear and whatever Penn State wished to
13 establish through them they did so.

14 Is that correct, counsel?

15 Ms. Conrad: Yes. Thank you, sir. May
16 I call my first witness?

17 The Court: Yes.

18 Ms. Conrad: Mr. Kirk Diehl.

19 Whereupon,

20 Kirk Diehl

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

23 Direct Examination

24 By Ms. Conrad:

25 Q. Good morning.

1 A. Good morning.

2 Q. My name is Nancy Conrad and I represent
3 the Pennsylvania State University. Mr. Diehl,
4 can you put your full name on the record please?

5 A. First name is Kirk, last name is Diehl.

6 Q. And are you currently employed, sir?

7 A. I am.

8 Q. With whom?

9 A. Penn State University.

10 Q. And your educational background, sir?

11 A. I came to Penn State as an undergraduate
12 student in July of 1992. Graduated in December
13 of 1996. I also obtained a Masters in Education
14 in 2005.

15 Q. And what was your degree, your
16 undergraduate degree, in?

17 A. Broadcast journalism and emphasis in
18 kinesiology as well.

19 Q. What is kinesiology?

20 A. Kinesiology is the collegiate term for
21 exercise sport science physical education.

22 Q. And then in terms of your professional
23 background I believe you testified that you're
24 currently employed with Penn State, is that
25 correct?

1 A. That is correct.

2 Q. What is your current position?

3 A. My current position is director of the
4 Varsity S Club under the umbrella of the Nittany
5 Lion Club.

6 Q. What is the Varsity S Club Nittany Lion
7 Club?

8 A. The Nittany Lion Club is the arm under
9 intercollegiate athletics from the division of
10 alumni relations and development and the Varsity
11 S Club -- specifically I am the conduit or our
12 alumni athletes with the University.

13 Q. And for what period of time have you
14 held that position?

15 A. I gained employment in that position,
16 that current position, in June of 2014.

17 Q. Have you held other positions at Penn
18 State?

19 A. I have.

20 Q. What are your other positions?

21 A. From 1992 to 1996 while I was
22 undergraduate I was a student manager for the
23 football program. In 1996 I gained employment as
24 assistant equipment manager. In 1999 I became
25 the coordinator facilities for the football

1 program for Penn State and then in 2012 I was the
2 director of football operations from 2012, 2014
3 with the football program.

4 Q. So during time period of 2011 to 2012
5 what positions did you hold?

6 A. I was coordinator of facilities.

7 Q. And what were your primary duties and
8 responsibilities as a coordinator of facilities?

9 A. Basically it was everything but playing
10 and coach.

11 Q. Everything but what?

12 A. Everything but playing and coach. We
13 took care of all of the background information.
14 I assisted the current director of football
15 operations. I also assisted Brad Caldwell in the
16 equipment room. I handled the inclination of the
17 NIKE contract for athletic director as well.

18 Q. So day to day what kind of things were
19 you doing?

20 A. We were doing anything from fixing
21 equipment, to organizing transportation, to --
22 and from trips or every day logistics of running
23 a major Division 1 football program such as
24 practice, laundry, equipment repairs. Basically
25 everything making sure students were getting

1 their obligations, going to meetings, and stuff
2 like that.

3 Q. And during the time that you held your
4 positions from 1992 until the present did you at
5 any point in time have the opportunity to work
6 with Mr. McQueary?

7 A. I did.

8 Q. And what was the nature of your working
9 relationship?

10 A. Well going back to 1993 I was a student
11 peer with Mike. I was a year ahead of him in
12 school, so I knew him as a peer, as a student
13 athlete, and then in 1997 when I was full time it
14 was Mike's senior year. So then I became a staff
15 member while he was still a student and then I
16 believe in '99 or 2000 he came back as an office
17 employee and then eventually a graduate
18 assistant.

19 Mr. Strokoff: Your Honor, may I
20 approach the bench please?

21 The Court: Yes.

22 Mr. Strokoff: I know it's unusual.

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

25 Mr. Strokoff: Your Honor, Mr. Diehl is

1 not on their witness list. I just noticed that
2 and I understand it's belated so I don't have a
3 clue as to why he is here or what he is going to
4 be testifying about.

5 Ms. Conrad: Your Honor, I do believe t
6 hat we informed Elliott yesterday that we were
7 supplementing the list with Mr. Diehl.

8 Mr. Strokoff: No. No. I am sorry.

9 The Court: What's the gist of what he
10 is going to say?

11 Ms. Conrad: He is going to testify to
12 information -- he is going to testify that he was
13 part of the lunch bunch that met with
14 Mr. McQueary, that during that time the
15 presentment was released he will testify testify
16 as to what information he received during that
17 ICA meeting.

18 The Court: Okay. This guy is not
19 somebody they put on outer space.

20 Mr. Strokoff: No. No. No. I
21 understand but -- and I understand I am raising
22 this too late but I really want to know now
23 because she hasn't identified who the other
24 witnesses are going to be if there are any
25 witnesses she is proposing that aren't on her

1 witness list and specifically she mentioned
2 Mr. Mahon. Who else is she putting on?

3 Ms. Conrad: We are presenting
4 Mr. Caldwell.

5 Mr. Strokoff: He is on their list.

6 Ms. Conrad: Mr. Shelow.

7 Mr. Strokoff: Shelow?

8 Ms. Conrad: Yes.

9 Mr. Strokoff: I think he is on the list
10 but let me check.

11 Ms. Conrad: Coach Matt Rhule.

12 Mr. Strokoff: Okay.

13 Ms. Conrad: We will be recalling
14 Mr. Mahon.

15 Mr. Strokoff: Yes.

16 Ms. Conrad: We will be calling Brett
17 Senior and we learned on Friday that Mr. Senior
18 was on plaintiff's list -- we were informed by
19 plaintiff that he was not intending to call him
20 at which point we indicated we would be following
21 up with him and we are now supplementing our list
22 to add Mr. Senior. We will calling our two
23 experts and then we will be calling Coach Bill
24 O'Brien, which is by video, which Mr. Strokoff
25 participated in the trial deposition.

1 Mr. Strokoff: And Mr. Senior is going
2 to be testifying about what?

3 Ms. Conrad: Mr. Senior will be
4 testifying about -- and you took his deposition
5 with me.

6 Mr. Strokoff: Ma'am.

7 Ms. Conrad: He will be testifying
8 consistent with what is in his deposition; that
9 is that he was an agent for Mr. McQueary after
10 Mr. McQueary's employment ended with the
11 University, he continued to advise and work with
12 Mr. McQueary and assist in his job search
13 efforts. There was testimony from Mr. McQueary
14 himself that he has received work assignments
15 from Mr. Senior and he will testify as to that
16 ongoing relationship.

17 Mr. Strokoff: And that's rebuttal
18 witness supposedly to what?

19 Ms. Conrad: That is --

20 The Court: It does not have to be
21 rebuttal witness, sir. She is calling whoever
22 she wants.

23 Mr. Strokoff: It will be limited to his
24 deposition?

25 Ms. Conrad: I don't know that it's

1 going to be the exact four corners but the
2 subject covered in that deposition will be
3 subject covered in -- in my examination.

4 Mr. Strokoff: If there is anything
5 beyond the deposition I will object at that
6 point, Your Honor.

7 The Court: Well he is coming live?

8 Ms. Conrad: Yes so he can
9 cross-examine.

10 Mr. Strokoff: But again we have had no
11 preparation. This witness list was sent
12 September 8th. He is not on their witness list,
13 as are many of the witnesses we put on, and she
14 is representing now that on October 25th that he
15 is going to be called on the 26th for the first
16 time and she is asking for leave to go beyond
17 what's in his deposition.

18 Ms. Conrad: Judge, Mr. Senior was on
19 plaintiff's witness list. He was asked to
20 testify on Friday. He had all of the preparation
21 he needed to get ready for Mr. Senior and because
22 he did not call Mr. Senior we now supplemented
23 our list.

24 Mr. Strokoff: I am not saying I didn't
25 have time to prepare Mr. Senior but I don't have

1 the time to prepare Mr. Senior for something
2 beyond his deposition.

3 The Court: But the problem is you were
4 preparing him for what you wanted him to present.
5 We are now on her case. She doesn't necessarily
6 have to tell you other than in general terms
7 because we ask each other the terms what specific
8 questions she is going to ask so --

9 Mr. Strokoff: I don't disagree but he
10 is not on their list sent on September 8th, 7
11 weeks later.

12 Ms. Conrad: That's because he was on
13 their list.

14 The Court: Okay. So I am going to
15 handle it this way. If you, in fact, believe you
16 are prejudiced when she asks any of these
17 questions that you would say are outside of the
18 box you make an objection we will come up but I
19 am going to say that you are not the first
20 attorney who got caught short by a witness that
21 you weren't expecting being called and used
22 against you. So I don't know what relief you are
23 entitled to.

24 Mr. Strokoff: Again if he stays within
25 the box --

1 The Court: Well I am not sure he is
2 within the box but he is not coming until this
3 afternoon.

4 Ms. Conrad: Tomorrow. He is traveling
5 and cannot be here until tomorrow.

6 The Court: We will deal with it
7 tomorrow. One crisis at a time.

8 Ms. Conrad: Thank you, sir.

9 (End of side bar.)

10 The Court: Go ahead, counsel.

11 Ms. Conrad: Thank you for your
12 patience.

13 By Ms. Conrad:

14 Q. I think we had started discussing
15 whether or not during your positions -- and I am
16 speaking throughout your career at Penn State --
17 you had the opportunity to work with
18 Mr. McQueary. I believe when we stopped you had
19 relaid into your experience working with him up
20 and until while you were a student. If you can
21 pick up then and get us back on track there I
22 would appreciate it.

23 A. Yes. So upon my graduation in 1996 I
24 was hired by the University to be an assistant
25 equipment manager. At that time Mike would have

1 been a senior -- going into his senior year and
2 then he came back to the University in '99 as an
3 office employee and then eventually grad
4 assistant and then full-time coach.

5 Q. And what was the nature of your working
6 relationship with Mr. McQueary?

7 A. Working relationship would have been in
8 a support role taking up the needs of the head
9 football coach and assistant coaches to make sure
10 the program was running smoothly during practice
11 and on trips and also any needs they need for
12 equipment or anything were to pop up.

13 Q. And do you recall when Mr. McQueary was
14 a graduate assistant?

15 A. Yes.

16 Q. 2001?

17 A. Yeah. I would say 2000, 2001. Uh-huh.

18 Q. And what was the nature of your working
19 relationship with Mr. McQueary during that time
20 period, that is when he was a graduate assistant?

21 A. We would have had more interaction
22 because he would have been in charge of what we
23 call the scout team, which is the demonstration
24 team. Basically simulates what the opponent is
25 going to do. So he would give us a list of those

1 student athletes and they are basically in
2 school, in grad school, to get their higher
3 education degrees for whatever career they chose
4 and that's where he would have been.

5 Q. So during the entire course of the time
6 you worked with Mr. McQueary would you consider
7 it to be a close working relationship?

8 A. Absolutely.

9 Q. And why do you say that?

10 A. The amount of hours and what you are
11 doing for the young men in my position -- I
12 wasn't hired to win football games. It's very
13 clear in support positions you are hired to make
14 sure the young men grow and continue to be better
15 citizens.

16 Q. When you say young men who are you
17 referring to?

18 A. Student athletes.

19 Q. Student athletes. Will you describe
20 your relationship with Mr. McQueary as being a
21 friend?

22 A. Absolutely.

23 Q. Good friend?

24 A. Good friend.

25 Q. And what about your observations, if

1 any, of him as a coach? How would you
2 characterize him as a coach?

3 A. In my opinion he is exactly what you
4 would have wanted in a football coach.

5 Q. Good coach?

6 A. Good coach.

7 Q. Good friend, good coach?

8 A. Yes, ma'am.

9 Q. Did you have occasion to have lunch with
10 Mr. McQueary during the workday?

11 A. Absolutely.

12 Q. And can you describe the nature of those
13 lunches?

14 A. Usually the way we -- support staff,
15 myself and Brad Caldwell, did not really leave
16 the building once we got there to work because
17 again student athletes would come throughout the
18 day lifting or rehabbing, so we would be in the
19 equipment room, and at that time Mike liked to
20 eat food as most of us do and he would come down
21 and basically spend an hour, hour and 15 minutes,
22 talking about memories and eating.

23 Q. Who was part of this lunch group?

24 A. Basically started around 1999, 2000, we
25 moved into the current Lasch football building.

1 It would have been -- the daily ones were myself
2 and Brad Caldwell. That was our office space.
3 We didn't have a separate office. And then Tom
4 Venturino would be daily -- a daily visitor.

5 Q. Who is Tom Venturino?

6 A. Tom Venturino is the director of
7 football operations and then Mike would be a
8 frequent visitor almost daily.

9 Q. Was there a name for this lunch group?

10 A. It was coined by Mr. Venturino to be
11 called the lunch bunch.

12 Q. And did this group meet on a regular
13 basis, including Mr. McQueary?

14 A. Yes. I guess it wasn't a meeting but we
15 had lunch.

16 Q. So you had lunch together on a regular
17 basis?

18 A. Yes.

19 Q. And during those lunches you would have
20 conversations?

21 A. Yes. Absolutely.

22 Q. And during that lunchtime did that help
23 you to develop a relationship, your friendship,
24 with Mr. McQueary?

25 A. Yes. Because we talked very little

1 about like -- our life was football, specifically
2 collegiate football, so we would talk about the
3 kids, our kids, we would talk about a lot of
4 different stuff.

5 Q. So lunchtime was time to talk about
6 things other than football?

7 A. Yeah. I am not going to say there
8 wasn't occasional talk about football.

9 Q. And during the course of your working
10 with Mr. McQueary did you have opportunities to
11 observe Mr. McQueary interact with Coach Joseph
12 Paterno?

13 A. Yes.

14 Q. How would you describe the nature of
15 what you observed?

16 A. First and foremost, the amount of
17 respect particularly Mike showed Joe and the
18 amount of respect given back by Coach Paterno.

19 Q. And did you have occasion in your
20 position at Penn State to work with Mr. Curley?

21 A. Yes. I did.

22 Q. And who is Mr. Curley?

23 A. Mr. Curley is at the time was the
24 athletic director for Penn State.

25 Q. And did you find in your working with

1 Mr. Curley him to be -- to operate at the highest
2 level of honesty, integrity, and compassion?

3 A. Yes. He was a Penn Stater.

4 Q. And does that mean he operated in --
5 setting aside him being a Penn Stater, based on
6 him as an individual and based on your working
7 with him as an individual did you observe that he
8 operated at the highest level of honesty,
9 integrity, and compassion?

10 A. Yes, ma'am.

11 Q. Now in summer of 2011 were you involved
12 in any discussions or about the status of Coach
13 Paterno?

14 A. Yes. I was. I wasn't a hundred percent
15 sure it was the summer of 2011 but I did have
16 discussions. Yes.

17 Q. And what were the nature of those
18 discussions about Coach Paterno?

19 A. Tim at the time had called me into his
20 office, which was kind of unusual because usually
21 when had we talked it was either on the football
22 field or anywhere else.

23 Mr. Strokoff: Question to relevance,
24 Your Honor.

25 Ms. Conrad: Goes to his working

1 relationship but I will withdraw that and move
2 on.

3 By Ms. Conrad:

4 Q. Directing your attention then to the
5 time period in November of 2011. November 4th,
6 5th, 2011, a grand jury presentment was released.
7 Are you familiar with that presentment?

8 A. Yes.

9 Q. How did you become familiar with that
10 presentment?

11 A. It was Friday afternoon I believe. I
12 was -- it was an off weekend, which means we did
13 not have a football game that weekend, so we had
14 an early morning practice on that Friday morning
15 and I was little perturbed because Mr. Caldwell
16 was given permission to go up to a place in
17 Vermont. So I was running ship by myself at 5:30
18 in the morning.

19 Q. So you were little annoyed with
20 Mr. Caldwell?

21 A. Yes. I was. Yes. I was. But -- and
22 then in the afternoon get everything ready but
23 the students had already -- the student athletes
24 had already left. Those who didn't have class
25 were given permission to go home. So I am

1 basically by myself and I got a text message from
2 one of the ballplayers saying, oh, my God, what
3 is happening, and I turned on the TV and that's
4 when they said that Jerry Sandusky was charged.

5 Q. Did you at any time read the
6 presentment?

7 A. I have not still to this day.

8 Q. In the presentment there is a reference
9 to a graduate assistant. Did you at any point in
10 time learn that the presentment contained
11 information about an incident observed by a
12 graduate assistant in 2001?

13 A. From the news reports that weekend, yes.

14 Q. And at the time you were viewing those
15 news reports did you know the identity of the
16 graduate assistant?

17 A. In hindsight, yes, I did, but at the
18 time no.

19 Q. And that's my question. At the time you
20 first heard in November of 2011 about the
21 graduate assistant that had observed Jerry
22 Sandusky in the shower with the young boy in 2001
23 did you know the identity of the graduate
24 assistant?

25 A. No.

1 Q. And prior to the release of the present
2 postponement did you know -- did you have direct
3 knowledge and information about any incident that
4 had occurred between Jerry Sandusky and a young
5 boy in 2001 in the Lasch Building?

6 A. Not direct knowledge. No.

7 Q. At or about the same time Dr. Spanier
8 issued a statement. Are you familiar with that
9 statement?

10 A. Yes.

11 Ms. Conrad: Permission to publish D-20?

12 The Court: Yes.

13 By Ms. Conrad:

14 Q. There is a binder I believe in front of
15 you that contains defendants exhibits if you can
16 kindly turn to Tab 20.

17 A. Sure. Got it.

18 Q. Are you familiar with the document that
19 is contained at Tab 20?

20 A. I have seen this before. Yes.

21 Q. And did there come a point in time that
22 you reviewed this statement from Dr. Spanier?

23 A. Yes.

24 Q. And did you -- and directing your
25 attention to the second paragraph it makes a

1 statement from Dr. Spanier with regard to the
2 other presentments. I wish to say that Tim
3 Curley and Gary Schultz have my unconditional
4 support. Do you see that statement?

5 A. I do.

6 Q. And you hadn't worked with Mr. Schultz
7 in any significant capacity during your
8 employment, did you?

9 A. That is correct.

10 Q. So directing your attention then to
11 Mr. Curley, as of November 2011 did Mr. Curley
12 have your unconditional support?

13 A. Absolutely.

14 Q. And what would that have been based on?

15 A. Working relationship with him and
16 respect that he gave me.

17 Q. Over how many years?

18 A. I knew Mr. Curley from the first -- 1992
19 when he was an assistant athletic director but
20 every meeting I have ever had with him or
21 conversation it was to make Penn State a better
22 place.

23 Q. And when Dr. Spanier expresses his
24 unconditional support for Tim Curley do you have
25 any reason, any basis to form an understanding of

1 Dr. Spanier's basis for his position?

2 A. Well if he knew Tim like I knew Tim I
3 would see where he would give him his
4 unconditional support.

5 Q. Dr. Spanier then goes on to make a
6 statement I have known and worked daily with Tim
7 and Gary for more than 16 years. Do you see
8 that?

9 A. I do.

10 Q. Did you ever have occasion to see
11 Dr. Spanier working with Mr. Curley?

12 A. Yes.

13 Q. And what did you observe from that
14 working relationship?

15 A. Two men that worked well together and
16 most of the assistance I saw it was in a public
17 setting whether bowl games, or football stadium,
18 or athletic events.

19 Q. Dr. Spanier in the next line goes on to
20 express the opinion that he has complete
21 confidence in how they have handled the
22 allegations about a former University employee.
23 Do you see that statement?

24 A. I do.

25 Q. Do you have any knowledge or information

1 about the basis for Dr. Spanier's opinion in that
2 paragraph?

3 A. I don't understand the question.

4 Q. Do you know on what basis Dr. Spanier
5 premised that opinion?

6 A. I do not.

7 Q. Moving on to the third paragraph then
8 Dr. Spanier offers the opinion that Tim Curley
9 and Gary Schultz operated the highest level of
10 honest, integrity, and compassion. Do you see
11 that statement?

12 A. I do.

13 Q. I believe you have already testified
14 that based on your working relationship with
15 Mr. Curley you too have the view that Mr. Curley
16 operated at the highest level of honest,
17 integrity, and compassion, is that correct?

18 A. That is correct.

19 Q. Dr. Spanier then goes on to express the
20 opinion that he is confident the report will show
21 that these charges are groundless and they
22 conducted themselves professionally and
23 appropriately. Do you see that statement?

24 A. I do.

25 Q. And after you read this complete

1 statement as released by Dr. Spanier did you at
2 any time connect the statements in D-20 to Mike
3 McQueary?

4 A. I did not.

5 Q. Did you at any time -- and this was
6 after you had worked with Mr. McQueary how long
7 as of November 2011?

8 A. Worked with him over 10 years.

9 Q. Known him?

10 A. Over 14, 15 years.

11 Q. Did you at any time after reviewing this
12 statement issued by Dr. Spanier form a conclusion
13 that it implied that Mr. McQueary had lied to law
14 enforcement?

15 A. No. I did not.

16 Q. After reading the Spanier statement and
17 knowing Mr. McQueary for the 10 to 15 years that
18 you knew him did you at any time draw the
19 conclusion that the statement implied that
20 Mr. McQueary had committed perjury?

21 A. No. I did not.

22 Q. And did you at any time after reading
23 this statement draw the conclusion that the
24 statement made any negative reference to
25 Mr. McQueary?

1 A. No. I did not.

2 Q. On Monday I believe it was November 7th,
3 2011, Dr. Spanier housed a meeting at
4 intercollegiate athletics. Did you attend any of
5 those meetings?

6 A. I did.

7 Q. Which meeting did you attend?

8 A. I believe it was the 8:15 or 8:30
9 meeting in our club lounge at Beaver Stadium.

10 Q. Who attended that meeting?

11 A. It would have been anybody that was
12 available from intercollegiate athletics staff,
13 which is what the e-mail said.

14 Q. And what do you recall, if anything,
15 from that meeting as ruled by Dr. Spanier?

16 A. The most important thing that was there
17 was a leadership set up where Mark Sherburne at
18 the time, who was the assistant director of
19 athletics -- Dr. Spanier announced that he would
20 be running the athletic department until Tim was
21 brought back in.

22 Q. And did Dr. Spanier make any statements
23 about the presentments that had been issued over
24 the weekend?

25 A. He basically informed all of us that was

1 there that Tim and Mr. Schultz did absolutely
2 nothing wrong and that it will be -- everything
3 will be worked out.

4 Q. And was he expressing his opinion that
5 based on his years of working with Tim and --

6 Mr. Strokoff: Your Honor, she is
7 leading her witness now.

8 Ms. Conrad: Let me rephrase.
9 By Ms. Conrad:

10 Q. Was he expressing an opinion?

11 A. I believe so.

12 Q. And based on that opinion that
13 Dr. Spanier related in that meeting did he --
14 strike that. During that meeting did he at any
15 time reference Mr. McQueary?

16 A. No, ma'am.

17 Q. During that meeting did Dr. Spanier at
18 any time reference to Mr. McQueary?

19 A. No, ma'am.

20 Q. Based on the statements that Dr. Spanier
21 made during that meeting did you at any time
22 infer that the statements in any way related to
23 Mr. McQueary?

24 A. No, ma'am.

25 Q. Based on the statements that Dr. Spanier

1 made in that meeting did you during that meeting
2 or at any time thereafter infer that those
3 statements must mean that plaintiff is a liar?

4 A. No, ma'am.

5 Q. Did you at any time during that meeting
6 or after that meeting make any inference based on
7 Dr. Spanier's statements that Mr. McQueary had
8 committed perjury?

9 A. No, ma'am.

10 Q. And did you at any time during that
11 meeting or any time after that meeting draw the
12 conclusion that Dr. Spanier's statements implied
13 in a negative -- made any negative reference to
14 Mr. McQueary?

15 A. No, ma'am.

16 Q. And you were at that meeting with other
17 members of the football staff?

18 A. Yes. I believe so. Yes.

19 Q. And as you left that meeting the meeting
20 in which Dr. Spanier made his statements did you
21 hear anyone talking about Mr. McQueary?

22 A. No.

23 Q. Did you hear anyone referencing
24 Mr. McQueary?

25 A. No.

1 Q. Did you hear anyone as you were leaving
2 the meeting or any time after the meeting in any
3 way connect the statements that Dr. Spanier had
4 made to Mr. McQueary?

5 A. No.

6 Q. And did you hear anyone as you were
7 exiting the meeting or any time after the meeting
8 saying based on what Dr. Spanier said that that
9 implied something negative about Mike McQueary?

10 A. No, ma'am.

11 Q. During that week of November 6th into
12 7th, 2011, what was the atmosphere like?

13 A. It's very emotional. It's still
14 emotional to this day.

15 Q. And I don't want to take you back to
16 that time but what do you mean by emotional?

17 A. I mean, you spent 20 years of your life
18 at the University you love and so many men that
19 you work with and people you work with are
20 effected and to this day and it was a tough
21 environment but we did what we did and the young
22 men that I work with every day helped me get
23 through it.

24 Q. When you say young men you are referring
25 to the student athletes?

1 A. Student athletes are the most powerful.

2 Q. Did you only work with student athletes
3 in the football program?

4 A. Directly, yes, everyday. Indirectly
5 with the NIKE contract. I met with them two or
6 three times a year to get their opinions on the
7 product.

8 Q. Now in addition to the very emotional
9 atmosphere that you described, any other
10 descriptions that you can apply to that while you
11 are still trying to work?

12 A. I would say outside the building the
13 polite word would be chaos but inside the
14 building what did what we did. We worked every
15 day. We prepared for upcoming opponents. We
16 tried our best every day as staff to keep the
17 students focused and then in turn in doing that
18 those students helped us remain focused.

19 Q. What was happening outside the building?

20 A. Media. The attacks on everything that
21 you know for so long. Just wanted to go home and
22 you know, hug my wife and put my kids to bed and
23 once you left the building that's all you want to
24 do is get home.

25 Q. You reference the media. What was the

1 presence of the media like that week?

2 A. Insane.

3 Q. What do you mean by that?

4 A. We had to do everything we could to keep
5 cameras away from practice. Under Coach Paterno
6 we ran a closed practice and so we did --

7 Q. I am sorry. What is a closed practice?

8 A. Closed practice means you are there to
9 work. There was very limited access to the
10 outside world. The term we use is ignore the
11 noise. You can control. So we did the best we
12 could to keep the young -- the cameras away from
13 practice.

14 Q. So media wasn't permitted near or at the
15 practice, is that correct?

16 A. That is correct.

17 Q. So chaos stayed away from practice, is
18 that correct?

19 A. At the practice field that is correct
20 but right outside of it it did not. That's what
21 it made it different.

22 Q. And what was happening right outside
23 that field?

24 A. They would throw there cameras and
25 microphones and recorders in front of the

1 students who would come in. They did it to
2 employers -- to the employees, like myself, and
3 coaches, and anybody going in and out of the
4 building.

5 Q. And during this time that the media was
6 everywhere, there was chaos, there was this very
7 emotional reaction, were you following any of the
8 media articles out there that followed the
9 presentment?

10 A. Absolutely not.

11 Q. You stayed away from that?

12 A. Yes, ma'am.

13 Q. Focused on your job?

14 A. Yes, ma'am.

15 Q. What about communications that were
16 being received by athletics? Did you receive any
17 information about the type of communications that
18 were coming in to athletics?

19 A. Nothing.

20 Q. How about the voicemails that were
21 coming in? Did you receive any information about
22 those voicemails?

23 A. No, ma'am. I did not.

24 Q. And again because you were focused on
25 doing your job?

1 A. Yes. The only phones we answered were
2 the numbers we recognized from letterman or
3 support staff to hang in there and keep playing.

4 Q. So you did not answer any numbers that
5 you didn't recognize?

6 A. That is correct.

7 Q. Were you aware at any time that threats
8 were being received by athletics?

9 A. No, ma'am.

10 Q. Were you aware at any time that
11 Mr. McQueary was receiving threats?

12 A. No, ma'am.

13 Q. Thursday, November 10, 2011, Coach
14 Bradley is named as interim head coach, is that
15 correct?

16 A. That is correct.

17 Q. And did you attend the press conference
18 on Thursday morning that Coach Bradley held?

19 A. I did not.

20 Q. Were you aware that in that press
21 conference --

22 Mr. Strokoff: Objection, Your Honor.
23 If he wasn't there how can he be aware?

24 Ms. Conrad: Let me rephrase.

25 By Ms. Conrad:

1 Q. Were you aware of the status of
2 Mr. McQueary as of Thursday morning?

3 A. No.

4 Q. Did you come to an understanding at some
5 point in time that Mr. McQueary would not be
6 coaching in the Nebraska game?

7 A. Thursday evening during practice.

8 Q. And how did you learn about the fact
9 that Mr. McQueary would not be coaching in the
10 Nebraska game?

11 A. We obviously moved inside the confines
12 of Holuba Hall, which is our indoor practice
13 facility, being Coach Paterno was just no longer
14 going to be our coach on Wednesday night, so we
15 went into Holuba Hall on Thursday to keep the
16 media away.

17 Q. Do you feel the emotion again?

18 A. Yep.

19 Q. And what is the basis -- and I
20 apologize. What is the basis of that emotion?

21 A. Just he was my head coach.

22 Q. You had great deal of respect for him?

23 A. Yes, ma'am.

24 Q. It's hard when he was removed from his
25 position?

1 A. Yes, ma'am.

2 Q. Now we were asked -- you were focused on
3 your understanding that Mr. McQueary would not be
4 coaching in that Nebraska game. You started to
5 answer that how you learned?

6 A. Yeah. Sorry.

7 Q. Please don't be sorry. We understand.

8 A. We were on the practice field. We were
9 running a drill and someone received a phone call
10 and handed the phone to Mike. Mike was in my
11 position during practice, was in charge of the
12 offensive field in case -- to help a student
13 manger if they had an issue or equipment break.
14 So I did the offensive field while Mr. Caldwell
15 did defensive field. I remember Mike getting a
16 phone call or handing -- getting the cellphone
17 and then handed the phone back and he looked at
18 me and said they don't want me to coach this
19 weekend. That's when I found out he was not
20 coaching.

21 Q. At that time did Mr. McQueary relate to
22 you the reason he would not be coaching in the
23 Nebraska game?

24 A. No, ma'am. Just that statement.

25 Q. Did there come a point in time that you

1 learned the reason why Mr. McQueary would not be
2 coaching in the Nebraska game?

3 A. Yes, ma'am.

4 Q. What was your understand?

5 A. I am sorry. My understanding was that
6 Coach Bradley on Friday got the team together and
7 said that the University --

8 Mr. Strokoff: Objection, Your Honor.
9 Unless he heard it directly he should not be
10 testifying about what he heard Coach Bradley told
11 the team.

12 By Ms. Conrad:

13 Q. What was your understanding of why
14 Mr. McQueary was not coaching?

15 A. In our squad meeting Coach Bradley said
16 that the University felt it was right for Coach
17 McQueary not to be coaching that weekend.

18 Q. Did he give a reason why the University
19 had decided that Coach McQueary would not be
20 coaching that weekend?

21 A. I don't believe he did.

22 Q. Let me direct your attention to Tab 40.

23 A. Okay.

24 Q. Are you familiar with the document that
25 is contained in Tab 40?

1 A. I am.

2 Q. What is it?

3 A. It's what we would use as a standard
4 press release online.

5 Q. When you say we who are you referring
6 to, sir?

7 A. The University athletic director.

8 Q. The athletic director.

9 Ms. Conrad: And permission to publish
10 D-40 that's already been admitted into evidence,
11 sir?

12 The Court: Go ahead.

13 By Ms. Conrad:

14 Q. I believe you said this is a typical
15 press statement issued by Penn State athletics?

16 A. Yes, ma'am.

17 Q. And by reading this statement did you
18 obtain information about the reason for Mike
19 McQueary not coaching in the Nebraska Game?

20 A. Yes, ma'am. It says in the first
21 sentence.

22 Q. And what information did you obtain from
23 reading the press statement from Penn State
24 athletics?

25 A. It just sounds like that some threats

1 were made against Assistant Coach Mike McQueary.

2 Q. Was this the first time you learned that
3 there were threats against Mike McQueary?

4 A. Yes.

5 Q. After you learned that there were
6 threats against Mike McQueary did you obtain any
7 information about the nature of those threats?

8 A. No, ma'am.

9 Q. Did you speak with Mr. McQueary about
10 the nature of those threats?

11 A. No, ma'am.

12 Q. Did there come a point in time that you
13 learned that Mr. McQueary was going to be --
14 strike that. Directing your attention to the
15 Nebraska game. Did you attend and work that
16 game?

17 A. Yes, ma'am.

18 Q. Did you observe any additional security
19 in place during that game?

20 A. No. I was in a fog. I am not going to
21 lie to you.

22 Q. What do you mean you were in fog?

23 A. Just -- I mean, when everything you have
24 done for -- your very routine on game day that
25 routine was shattered obviously. So you were

1 just trying to not let your feelings show to the
2 student athletes but they did. They could see it
3 too.

4 Q. What were they seeing?

5 A. We were struggling. We were struggling.

6 Q. It's a tough time?

7 A. Uh-huh.

8 Q. And security was not a responsibility
9 within your job duties and responsibilities, was
10 it?

11 A. Just keep people out of the locker room
12 and I am not exactly the biggest dude but I can
13 -- you can get spunky if you had to.

14 Q. But in terms of game day were you aware
15 that there had been a bomb threat?

16 A. No, ma'am.

17 Q. Again your focused on the game?

18 A. Uh-huh.

19 Q. You are leaving security to others who
20 deal with security issues?

21 A. Well you figure if you are there you are
22 going to be safe. Yes, ma'am.

23 Q. Later there came a later point in time
24 that it was announced that Mr. McQueary would be
25 on paid administrative leave. Did you become

1 aware that Mr. McQueary was placed on
2 administrative leave with pay?

3 A. Yes. And I don't know how to answer the
4 question. I knew he would still being paid even
5 though he wasn't in the building working
6 everyday.

7 Q. How did you know that?

8 A. That's just what I remember. I don't
9 know how.

10 Q. Okay. And you understood he wasn't
11 working?

12 A. Yes.

13 Q. So on some type of leave?

14 A. Yes, ma'am.

15 Q. And he was on paid leave, is that
16 correct?

17 A. That is correct.

18 Q. Now at any point in time when -- once
19 Mr. McQueary was put on leave did you receive any
20 direction to cease contact with Mr. McQueary?

21 A. No, ma'am.

22 Q. Were you told not to speak to him?

23 A. No, ma'am.

24 Q. Were you told not to connect with him in
25 any way?

1 A. No. The only thing we were told was to
2 be careful, that he had filed a lawsuit against
3 the University, and it was in your best interest
4 not to talk about the lawsuit.

5 Q. So this was at the later point in time?

6 A. Yes, ma'am.

7 Q. Do you remember when that was?

8 A. Yeah. It would have been almost a year
9 ago to that month because Coach O'Brien was our
10 head coach.

11 Q. So you were informed not to talk about
12 the lawsuit or were you informed or was it
13 recommended to you?

14 A. We were encourage not to -- to limit our
15 conversations with Mike McQueary regarding the
16 lawsuit.

17 Q. Were you told not to speak with
18 Mr. McQueary after he filed his lawsuit?

19 A. No, ma'am.

20 Q. So you were able to continue to connect
21 with Mr. McQueary but you were advised to limit
22 your conversation to topics other than his
23 lawsuit, is that correct?

24 A. That is correct.

25 Q. In December of 2011 I believe the team

1 participated in a bowl game, is that correct?

2 A. That is correct.

3 Q. TicketCity Bowl game?

4 A. Yes.

5 Q. And did you work in conjunction with the
6 teams participation in that bowl game?

7 A. Yes, ma'am.

8 Q. And how do you work with respect to
9 preparing for the bowl game?

10 A. Basically at that time from the last
11 game up until you depart for the bowl site you
12 are doing a bunch of different -- you are wearing
13 a bunch of different hats. Excuse me. You are
14 in the midst of recruiting. At that time during
15 that year we were still actively recruiting young
16 men to come to Penn State and so we were doing
17 that on weekends. At the same time getting
18 organized. The leadership was very inexperienced
19 at the time so we were asked to really step up
20 our game, not that we had to because that's just
21 what we did, but we really made sure no one had
22 to worry about what we were doing down in the
23 equipment room.

24 Q. In preparation for the bowl game were
25 there additional practices post season?

1 A. Yeah, you are allowed 15 additional
2 practices up until the bowl game.

3 Q. And did student athletes continue with
4 their strength training and other exercise
5 routines during that led into the bowl program?

6 A. Yes, ma'am. Coach Paterno was obviously
7 -- let the young man focus on their academics,
8 particularly their finals, so we limited our
9 practice to the weekend. The coaches were on the
10 road recruiting. So we did a lot of practice
11 either Friday evenings into Saturday and then
12 went down to the bowl site. It was time to go to
13 work and that's when we did most of our practice.

14 Q. And it was the assistant coaches who
15 were doing that additional coaching during those
16 15 practice, is that correct?

17 A. Yes, ma'am.

18 Q. And were the assistant coaches available
19 to the student athletes during that time period
20 to the extent they were continuing with their
21 strength?

22 A. They were actually doing a lot of work.
23 They were on the road recruiting usually Sunday
24 nights through Thursday or Friday morning and
25 then back on campus to host the recruiting

1 weekend. We always did weekends while we were
2 practicing.

3 Q. And following the TicketCity Bowl did
4 you receive bowl bonuses?

5 A. Yes, ma'am.

6 Q. And do you have an understanding as to
7 why you received the bowl bonus?

8 A. For the extra work we put in.

9 Q. I am going to direct your attention now
10 to January 2012. I believe there is an
11 announcement with respect to a search for a new
12 head coach, wasn't there?

13 A. Yes. I believe that was in December
14 before the bowl game if I remember that.

15 Q. So in December the announcement came
16 out?

17 A. Uh-huh.

18 Q. And you have been in athletics for a
19 number of years at this point, haven't you?

20 A. Yes, ma'am.

21 Q. What observations, if any, or what
22 information did you have about what happens when
23 a new head coach from the outside is appointed?

24 A. I think, first and foremost, knowing
25 what I know how Coach Paterno sheltered us from

1 major Division 1 football --

2 Q. What do you mean sheltered?

3 A. He was very loyal to his assistants and
4 in return we were very loyal to him and I think
5 that helped Penn State with the whole University,
6 the whole town, the whole philosophy of what Penn
7 State football meant.

8 Q. When you say sheltered us are you
9 including in that the assistant coaches?

10 A. I would say the whole University. I
11 would say everything.

12 Q. And did that sheltering give you feeling
13 of security of being at Penn State?

14 A. Yes, ma'am.

15 Q. So what's the reaction then when there
16 is talk about a new head coach that might get
17 appointed from the outside?

18 A. I really -- at that time we were all
19 struggling. I mean, we knew eventually that
20 Coach Paterno wasn't going to be head coach but
21 the way it went down was very difficult. So we
22 did not really know what was going on.

23 Q. Well with your knowledge and experience
24 in college football what is your understanding of
25 what happens to the staff when a new head coach

1 from the outside is appointed?

2 A. Usually when -- a lot of times when new
3 head coach comes in he brings his own staff with
4 him. Usually first people are coaches -- the
5 assistant coaches that come and then it trickles
6 down to strength training, it trickles down to
7 video, most of the time equipment, and staff
8 support is not so much. There might be one or
9 two moves but usually the coaches are the first
10 one to get moved.

11 Q. So what was the reaction, if you know,
12 of the assistant coaches -- at the time these
13 were assistant coaches under Coach Paterno --
14 when they are hearing that a head coach from the
15 outside might be brought in?

16 A. I think, first and foremost, am I still
17 going to have a job.

18 Q. They were worried about job security?

19 A. I think indirectly they were. I think,
20 first and foremost, was the young men.

21 Q. Again, first and foremost, the student
22 athletes?

23 A. Yes.

24 Q. And again at that point in time and
25 prior to the appointment of Interim Head Coach

1 Bradley how many coaches did you work with at
2 Penn State?

3 A. One?

4 Q. And that was?

5 A. Coach Joseph Paterno.

6 Q. And was it your observation that
7 assistant coaches had made plans at all to
8 prepare in the event that a head coach from the
9 outside were to be brought in?

10 Mr. Strokoff: Objection as to relevance
11 and how can he have the knowledge any way other
12 than hearsay?

13 Ms. Conrad: I asked based on his
14 working with the assistant coaches what was his
15 knowledge, understanding, and observations.

16 The Court: Well I guess he can report
17 what his observation was but his knowledge would
18 have come from them, which would be hearsay. The
19 objection is sustained. You can ask it based on
20 his observation I suppose.

21 By Ms. Conrad:

22 Q. Would you like me rephrase the question?

23 A. Please.

24 Q. What observations, if any, did you have
25 with respect to the assistant coaches preparing

1 for the event if the new head coach was brought
2 in from the outside?

3 A. I can only speak directly. They were
4 very professional in their current jobs and I
5 think that's what separated that group of men. I
6 don't know if they were looking for employment
7 elsewhere but I can tell you they worked for Penn
8 State until day they were told they could not
9 work there.

10 Q. And when were they told they were no
11 longer going to work there?

12 A. I believe some time in that first week
13 in January we got back from the bowl game.

14 Q. And before we get that first week in
15 January there came point in time that new Head
16 Coach Bill O'Brien was announced, correct?

17 A. That is correct.

18 Q. And Bill O'Brien was coach -- head coach
19 from outside, right?

20 A. He wasn't head coach at the time but he
21 became head coach. He was from the outside.
22 Yes.

23 Q. He was from the Patriots?

24 A. Yes, ma'am.

25 Q. He was not Penn Stater, was he?

1 A. No, ma'am. Not on paper.

2 Q. At that time in point?

3 A. Yes, ma'am.

4 Q. So at the time he was announced he was
5 clearly a new head coach for Penn State that was
6 being brought in from the outside of Penn State,
7 is that correct?

8 A. Yes, ma'am.

9 Q. How did you obtain any information about
10 the staff that Coach O'Brien wanted to bring with
11 him to Penn State?

12 A. Not until they were introduced to us.

13 Q. And when were they introduced to you?

14 A. It would have been almost a week and a
15 half to two weeks after he had his announcement.
16 Obviously they had to go through background
17 checks and the University was implementing new
18 policies and procedures for hiring.

19 Q. Did you -- I apologize for interrupting.
20 Did you follow any of the press releases about
21 the announcement of his coaches?

22 A. No, ma'am.

23 Q. Did you know whether or not when he was
24 interviewed he had a list of coaches that he had
25 already admitted coming with him?

1 A. No, ma'am.

2 Q. He brought Stan Hixon, didn't he?

3 A. Yes, ma'am.

4 Q. That was his wide receivers coach?

5 A. Yes, ma'am.

6 Q. Do you have any have -- did you obtain
7 any information about Coach Hixon's background
8 and experience?

9 A. Before I worked with him or at that
10 time?

11 Q. At any time did you learn --

12 A. Yeah. During my relationship with him I
13 did. Yes.

14 Q. So you developed a working relationship
15 with Coach Stan Hixon?

16 A. Yes, ma'am.

17 Q. And what did you learn about Coach
18 Hixon's experience prior to coming to Penn State?

19 A. His coaching experience was a lot of
20 time in the NFL, also major Division 1 colleges,
21 and he was pretty successful.

22 Q. Did you learn that he had previously
23 coached with Coach O'Brien?

24 A. Yes, ma'am. Yes, ma'am. Georgia Tech I
25 believe.

1 Q. And how about Coach Charles London. Did
2 you get to develop a working relationship with
3 Coach London?

4 A. I did.

5 Q. What was his position on Coach O'Brien's
6 staff?

7 A. He was the running back coach.

8 Q. Did he also have some recruiting
9 responsibilities?

10 A. Yes. He was our head recruiter I guess.

11 Q. And did you obtain any information about
12 Coach London's prior experience? That is his
13 experience before he came to Penn State?

14 A. Yes, ma'am.

15 Q. And what did you learn about Coach
16 London's experience?

17 A. Coach London I believe played at Duke
18 University when Coach O'Brien was there as
19 offensive coordinator and Ted Roof was head coach
20 at Duke at the time. So I believe when Coach
21 O'Brien was hired he brought both Coach Roof as
22 offensive coordinator and Coach London as
23 offensive running back coach.

24 Q. So you just named three assistant
25 coaches that Coach O'Brien brought to Penn State

1 all whom Coach O'Brien had previously coached
2 with at other teams, is that correct?

3 A. That is correct.

4 Q. Did Coach O'Brien retain any of the
5 assistant coaches who coached under Coach
6 Paterno?

7 A. He did.

8 Q. Who did he retain?

9 A. Coach Larry Johnson, who was our
10 defensive line coach, and Ron Vanderlinden, who
11 was our line backer coach.

12 Q. Did you at any time retain any
13 information as to why Coach O'Brien retained
14 Coach Johnson and Coach Vanderlinden?

15 Mr. Strokoff: Your Honor, again this
16 would have to be hearsay I believe.

17 Ms. Conrad: I am asking if he obtained
18 any information --

19 The Court: So he can answer the
20 question yes or no and then you can ask him how
21 and we have the same objection.

22 Ms. Conrad: Yes, sir.

23 The Witness: Yes. I did.

24 By Ms. Conrad:

25 Q. What was your understanding of why Coach

1 O'Brien retained Coach Johnson or Coach
2 Vanderlinden?

3 The Court: From what source did you
4 learn why Coach O'Brien retained those two men?

5 The Witness: In Coach O'Brien's press
6 conference he had said that Coach Johnson
7 embodied everything he wanted as far as someone
8 that can recruit and also take care of the
9 student athletes and he was a pretty good
10 defensive line coach too.

11 By Ms. Conrad:

12 Q. How about Coach Vanderlinden if you
13 know?

14 Mr. Strokoff: Your Honor, if it's from
15 a press conference.

16 The Court: Isn't it hearsay if it is at
17 the press conference? Objection is sustained.

18 Ms. Conrad: Coach O'Brien will be
19 testifying, sir.

20 The Court: Then you can ask Coach
21 O'Brien.

22 Ms. Conrad: Yes, sir.

23 By Ms. Conrad:

24 Q. Is Coach O'Brien still the head coach at
25 Penn State?

1 A. No, ma'am.

2 Q. What was the nature of his ending his
3 relationship at Penn State?

4 A. December of 2013 he accepted employment
5 as head coach of the Houston Texans of the
6 National Football League.

7 Q. I believe you said that was December
8 2013 that Coach O'Brien resigned from Penn State,
9 is that correct?

10 A. Yes, ma'am.

11 Q. What happened then with respect to a
12 head coach at Penn State?

13 A. It was announced by Dave Joyner at the
14 time that Coach Larry Johnson would be interim
15 head coach and that a national search would soon
16 follow.

17 Q. And following that -- and did that
18 national search follow?

19 A. I believe so. Yes.

20 Q. And as a result of that national search
21 was a new head football coach named for Penn
22 State?

23 A. Yes, ma'am.

24 Q. And who was that new head football
25 coach?

1 A. James Franklin.

2 Q. When did Coach Franklin assume
3 leadership as head coach at Penn State?

4 A. I believe once he completed the bowl
5 game from Vanderbilt.

6 Q. So he was previous the head coach at
7 Vanderbilt?

8 A. Yes, ma'am.

9 Q. After he completed the bowl games at
10 Vanderbilt he then assumed his position as head
11 coach at Penn State?

12 A. Yes, ma'am.

13 Q. Do you know when that was?

14 A. Sometimes in the middle of January.

15 Q. What year?

16 A. I am sorry?

17 Q. What year?

18 A. 2014.

19 Q. Okay. And when coach Franklin took over
20 his position as head coach at Penn State how did
21 he staff his assistant coaches?

22 A. He brought in his own staff.

23 Q. What happened to the assistant coaches
24 that were coaches under Coach O'Brien?

25 A. Coach O'Brien brought several of the

1 assistants from Penn State down with him to the
2 Houston Texans. Those that he did not were let
3 go by Coach Franklin.

4 Q. When you say let go what do you mean?

5 A. They weren't retained.

6 Q. Were any of the coaches retained by
7 coach Franklin?

8 A. No.

9 Q. How about Coach Larry Johnson?

10 A. I believe that Coach Johnson came back.
11 I believe he did a sit down with Coach Franklin.
12 They came to a mutual agreement that he would no
13 longer coach at Penn State.

14 Q. So he was not retained by Coach
15 Franklin, was he?

16 A. That is correct.

17 Q. What about Coach Vanderlinden?

18 A. Coach Vanderlinden actually was
19 terminated by Coach O'Brien in December of 2013.

20 Q. So he had already left Penn State?

21 A. That is correct.

22 Q. Do you have -- to this day continue to
23 have any contact with Mr. McQueary?

24 A. Yes, ma'am.

25 Q. And what is the nature of that contact?

1 A. Mostly through text messages or the
2 occasional bump in State College.

3 Q. And you bumped into him on your ride
4 here today at court, didn't you?

5 A. Yes, ma'am.

6 Q. And how did you greet him?

7 A. I gave him handshake and told him I
8 loved him.

9 Ms. Conrad: I have no further
10 questions. Thank you.

11 The Witness: Thank you.

12 Mr. Strokoff: Your Honor, I anticipate
13 this is going to be more than a few minutes. I
14 am perfectly willing to start.

15 The Court: Okay. Well, members of the
16 jury, since we are going to perhaps be breaking
17 earlier today I think what we will do is break
18 examination of the witness at this point in time
19 and let's come back at 1:15. Have in mind my
20 admonition not to discuss the matter.

21 (Whereupon, a lunch break was taken.)
22
23
24
25

C E R T I F I C A T E

I HEREBY CERTIFY THAT THE PROCEEDINGS AND
EVIDENCE ARE CONTAINED FULLY AND ACCURATELY IN
THE NOTES TAKEN BY ME UPON THE HEARING OF THE
WITHIN MATTER AND THAT THIS COPY IS A CORRECT
TRANSCRIPT OF THE SAME.

11/2/14

DATE

Elise A Fitzgerald

ELISE A. FITZGERALD

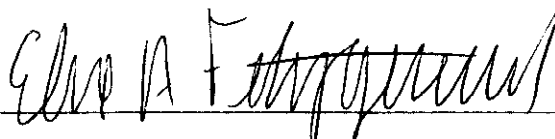
OFFICIAL COURT REPORTER

C E R T I F I C A T E

I HEREBY CERTIFY THAT A COPY OF THIS
TRANSCRIPT WAS MADE AVAILABLE TO COUNSEL OF
RECORD FOR THE PARTIES, ADVISING THEM THAT THEY
HAD UNTIL _____ IN WHICH TO FILE
ANY OBJECTIONS OR EXCEPTIONS TO THE SAME. THAT
TIME PERIOD HAVING ELAPSED WITHOUT RECORDING OF
OBJECTIONS OR EXCEPTIONS, THE TRANSCRIPT IS
THEREFORE LODGED WITH THE COURT FOR FURTHER
ACTION.

11/2/16

DATE



ELISE A. FITZGERALD

OFFICIAL COURT REPORTER

ACCEPTANCE BY COURT

UPON COUNSEL'S OPPORTUNITY TO REVIEW AND TO
OFFER CORRECTIONS TO THE RECORD, THE FOREGOING
RECORD OF PROCEEDINGS IS HEREBY ACCEPTED AND
DIRECTED TO BE FILED.

11-2-16

DATE

Thomas G. Gavin

JUDGE