



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

MICHAEL J. MCQUEARY

: NO. 2012-1804

VS

THE PENNSYLVANIA STATE UNIVERSITY

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ORIGINAL

TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL P.M. DAY 7)

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

DATE: OCTOBER 25, 2016

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

APPEARANCES:

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

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

2016 OCT 25 12:57
PROBATIONARY
CENTRE COUNTY, PA



ORIGINAL

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

(None)

For Defendant:

Kirk Diehl		3	18	
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Admitted:

Plaintiff:

(None)

Defendant:

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P R O C E E D I N G S

THE COURT: Okay. Counsel, go ahead.

CROSS EXAMINATION

BY MR. STROKOFF:

Q. Mr. Diehl, my name is Elliott Strokoff and I represent Mike in this lawsuit. We've never met before; is that correct?

A. That is correct.

Q. Okay. And we've never spoken?

A. No.

Q. You indicated you were employed by The Pennsylvania State University today?

A. Yes, sir.

Q. Do you have an employment contract with Penn State?

A. Yes, sir.

Q. A written contract?

A. No, I don't have a written contract. No.

Q. Okay.

A. I'm sorry.

Q. Are you represented by a union?

A. No.

Q. So you're simply employed under whatever the terms and conditions of the employee policies are?

A. Correct.

1 MS. CONRAD: Objection. This goes beyond the
2 scope. And I don't want to get into the personnel
3 -- I would request that Mr. Diehl's personnel status
4 is not at issue in this case. He was not an
5 assistant coach.

6 MR. STROKOFF: I think if he's an admiral
7 employee, it's relevant, Your Honor.

8 THE COURT: Yes. I think a limited inquiry
9 in this area is appropriate. Objection's overruled.

10 BY MR. STROKOFF:

11 Q. Sir, is it your understanding that you're
12 what is known as an admiral employee?

13 A. I don't know that term.

14 Q. Do you have any contractual right to job
15 security that you're aware of?

16 A. Not to my knowledge.

17 Q. Getting to the lunch bunch. It's not an
18 original name, but how long has that group -- or how
19 long did that group meet for lunch on a regular
20 basis?

21 A. I would say at least four times a week, you
22 know, during the -- myself and Brad every day
23 because we worked in the same room like I stated
24 before. With Tom and with Mike, it would probably
25 have been at least four times a week.

1 Q. Okay. But over how many years did that
2 happen?

3 A. Eleven, twelve.

4 Q. So Tom Venturino during that time was
5 occupying what position?

6 A. Director of football operations.

7 Q. And Mr. Caldwell was occupying what position?

8 A. He would have been the head equipment manager
9 and also facility coordinator.

10 Q. Okay. So Mike was the only assistant
11 football coach who was in the lunch bunch?

12 A. On a consistent basis, yes.

13 Q. Now, you said you regarded Mike as a good
14 friend?

15 A. Yes, sir.

16 Q. What do you mean by good friend?

17 A. Someone that I would let my kids watch. Or
18 watch my kids, I'm sorry.

19 Q. How old are your kids?

20 A. I have a 12-year-old. I have a 12-year-old
21 going on 30 and an eight-year-old boy.

22 Q. You also said something like he's exactly
23 what you would want in a football coach?

24 A. That is correct.

25 Q. What did you mean by that?

1 A. Well, the first and foremost, the football
2 coaches that I've been around, been blessed to be
3 around, they command respect and they give respect.
4 And there's nothing more than that. And you're
5 going to have to make tough decision and tough
6 calls, but if you could do them, that's exactly what
7 you want in any kind of coach.

8 Q. Over the years, did you form an opinion as to
9 his possibilities in the coaching profession?

10 A. Oh, yeah.

11 Q. And what was that opinion?

12 MS. CONRAD: Objection. I believe that this
13 question was raised -- this time period was raised
14 during the direct examination. Counsel objected and
15 as a result, this area -- the objection was
16 sustained.

17 MR. STROKOFF: I don't recall anything like
18 that, Your Honor.

19 THE COURT: Okay. To the extent that you
20 think you were precluded and I have no recall of
21 that, you can, on redirect examination of the
22 witness, revisit that area. So the objection is
23 overruled.

24 THE WITNESS: Could you repeat the question?

25 MR. STROKOFF: Could the court reporter

1 please do that?

2 (Whereupon, the court reporter read back.)

3 THE WITNESS: Yeah, I thought Mike was
4 exactly the kind of coach that he should be. Great
5 coach.

6 BY MR. STROKOFF:

7 Q. What about did you have an opinion about any
8 advancing for him?

9 A. I thought one day he could be -- some day he
10 could be a head coach, yes.

11 Q. Head coach where, sir?

12 A. Anywhere to tell you the truth.

13 Q. Including Penn State?

14 A. Yeah. Penn State. Or anywhere, yes.

15 Q. Did you ever share your sentiment about
16 Mike's potential to be a head coach even at Penn
17 State with anyone?

18 A. I never directly had any conversation of Mike
19 being a head coach at Penn State.

20 Q. With anybody else?

21 A. Correct.

22 Q. Now you said that you saw interactions
23 between Mike and Coach Paterno?

24 A. Yes, sir.

25 Q. And I heard you say that Mike had respect for

1 Coach Paterno?

2 A. Yes, sir.

3 Q. And I didn't quite hear your response about
4 Coach Paterno's attitude toward Mike.

5 A. Well, I think it's pretty self-explanatory
6 when you're employed for that long under a head
7 football coach.

8 Q. But you made some comment about the respect.

9 A. That Joe respected Mike just as well.

10 Q. Now you initially stated with respect to your
11 having worked for and with Athletic Director Curley,
12 that quote, he was a Penn Stater, end quote?

13 A. Yes, sir.

14 Q. What did you mean by that?

15 A. Exactly who Mike McQueary is, who I am,
16 anybody that came to Penn State, we were men of
17 integrity and honor and we did things the Penn State
18 way.

19 Q. Okay. And I believe you testified that based
20 upon your personal observation, Mr. Curley operated
21 at the highest levels of honesty, integrity, and
22 compassion?

23 A. That is correct.

24 Q. Can you give me five examples of how he acted
25 with the -- or at the highest level of compassion?

1 A. I would say two of them -- the top two that
2 stick out in my mind, we had a horrific accident
3 with a pole vaulter at the time that lost his life
4 competing at the Big 10 championships in Minnesota.
5 And Tim reached out to that family directly and
6 continued up until his no longer being employed as a
7 director, having a fundraiser for that -- for that
8 young man, a scholarship in his name.

9 Another time we had a young gentleman on the
10 football field at Ohio State that had a horrific
11 injury. And Tim and the rest of the University
12 stepped up and helped him through that.

13 Also, we had a student manager who had a
14 horrific incident and had a traumatic brain injury,
15 a TBI. And he flew us, myself and Brad Caldwell, up
16 to -- over to Philadelphia to visit with him and his
17 family with no questions asked.

18 So those are the three most powerful
19 statements. Tim never asked me to do anything that
20 was immoral or unethical. That would be a fourth
21 one.

22 And a fifth one was just he had enough faith
23 in me to run the Nike contract for the University.

24 Q. What do you mean run the Nike contract?

25 A. The Nike contract states, it was signed by

1 people way above my pay grade, but Tim really leaned
2 on me a lot to make sure that our, first and
3 foremost, our student athletes were taken care of
4 and safe ways, that they had what they needed to
5 practice and compete.

6 Q. And when were you allowed to do that?

7 A. 1999 until 2014.

8 Q. So right from the get go, you were trusted
9 that pretty much?

10 A. Yeah. Two years, yeah. Yep.

11 Q. Sir, when you got the message from a player,
12 the OMG message on November 4th, did you try to
13 ascertain what the charges were?

14 A. No. At the time everything that was
15 breaking, it was centered around Gerald Sandusky.

16 Q. And you believe you said you never read the
17 presentment until today?

18 A. I still have not read the presentment.

19 Q. But didn't you know rather immediately, if
20 not on the 4th and on the 5th, that Mr. Curley and
21 Mr. Schultz were charged with lying to the grand
22 jury about what a grad assistant reported to them
23 concerning Mr. Sandusky and a boy?

24 A. That would have been probably Saturday
25 morning during the, I forget what they call it,

1 college football thing on ESPN.

2 Q. And you were employed by the University back
3 in 2001 and 2002; isn't that correct?

4 A. That is correct.

5 Q. And didn't you remember that at that time
6 there were only a couple of grad assistants in the
7 football program.

8 A. Yeah, there would have been two on the field
9 and probably two or three down in the academic area.

10 Q. And one of those grad assistants was Mike,
11 right?

12 A. At the time, I don't remember when Mike
13 started his grad assistant position as to when he
14 was employed. When he first came back, he was not a
15 graduate assistant.

16 Q. All right. But when the word -- the news
17 came out Saturday morning, didn't you think about
18 gee, I know who the grad assistants were, let me
19 think about who they were, who it might have been?

20 A. I possibly could have, but I really don't
21 remember.

22 Q. Well, do you remember that by the 6th, the
23 next day after the presentment was publicly
24 announced, the media had reported that Mike McQueary
25 was the grad assistant?

1 A. Yeah, I would say that's an accurate
2 statement. That's when it really hit me, yeah.

3 Q. Now you seemed to pick your words carefully
4 when you said that you had no direct knowledge about
5 an incident between Jerry Sandusky and Mike
6 McQueary?

7 MS. CONRAD: Objection as to the
8 characterization of the witness's testimony.

9 MR. STROKOFF: I'll rephrase, Your Honor.
10 BY MR. STROKOFF:

11 Q. Sir, did you have any indirect knowledge of
12 an incident between Jerry Sandusky and Mike McQueary
13 before November 2011?

14 A. I would say very indirect, yes.

15 Q. And what do you mean by very indirect?

16 A. In part of one of our lunch conversations, we
17 were talking about there was some kind of an
18 incident in NCAA football world of a rules violation
19 that was pretty set forth by the NCAA. And I
20 remember us sitting around talking about, you know,
21 what would happen if we saw a violation or
22 something. And, you know, I remember I was like,
23 well I'd go right to Joe, because that's what he
24 trusted us to do. And at that time I remember Mike
25 McQueary saying that he saw something that was --

1 that was pretty devastating that he went right to
2 Joe with.

3 Q. Say that again. He saw something that was
4 pretty devastating and what?

5 A. And he went right to Coach Paterno with.

6 Q. And when did he say that, sir.

7 A. I don't recall. I've been asked that
8 question several times over this whole experience.
9 It would be in the mid to late 2000s, I don't have
10 an exact date.

11 Q. And when did you first read the Spanier
12 statement that was shown to you by Ms. Conrad?

13 A. Probably two Thursdays ago was the first time
14 I read it.

15 Q. So you hadn't read it since -- well --

16 A. Never.

17 Q. Until two Thursdays ago?

18 A. Correct.

19 Q. Now, you also said you didn't hear anybody
20 talking about Mike after they left the athletic
21 department meeting on the morning of I think it was
22 November 7th, 2011?

23 A. It was whatever that Monday was, correct.

24 Q. Well, what do you remember hearing that
25 people were saying upon leaving that meeting?

1 A. I do remember there were people that I had
2 worked with for several years, and I don't know
3 names, I just remember hearing, like, you know, what
4 did football do to us, look what happened, things of
5 that nature.

6 Q. These are people who were working in the
7 athletic department but outside of the football
8 program?

9 A. That is correct.

10 Q. So that's the only thing you can recall at
11 this time people said after that meeting with Mr.
12 Sherburne and President Spanier?

13 A. That is all I recall, yes.

14 Q. Now you said that week was quite an emotional
15 week, the week of November 5, 2011?

16 A. Yes, sir.

17 Q. Did the emotions change Wednesday night,
18 November 9th, when word got out that Coach Paterno
19 had been terminated?

20 A. For me, I felt -- you know, I don't know what
21 different people say about their heart breaking, but
22 I felt -- I was very hurt, very -- in pain when my
23 wife told me.

24 Q. And you said it was an emotional week?

25 A. Mm-hmm.

1 Q. Aside from you, did you observe anybody else
2 changing their emotions during that week after Joe
3 Paterno was terminated?

4 A. Well, that Thursday we were -- didn't know
5 really what to do. I mean, our leader was gone. Up
6 until then, it really got real when Coach Paterno
7 called us in as a staff and announced that he was
8 retiring after the season. And then about an hour
9 later we got the team together and he told the team,
10 which was real emotional. And I remember the team
11 standing up and giving him a standing ovation and
12 every single one of them went up and hugged him.

13 Q. This was on Wednesday before his termination?

14 A. That is correct. It was Tuesday or
15 Wednesday.

16 Q. Okay. But I'm talking about after he was
17 terminated.

18 A. We just -- again, like I stated earlier, we
19 tried to keep everything the best we could. I still
20 don't know if we did that to this day, but we leaned
21 on each other and we leaned on the student athletes,
22 and I think they leaned on us.

23 Q. Well, what did you observe about Mike
24 McQueary Monday, Tuesday, Wednesday of that week?

25 A. Mike did his job. He was -- he showed up for

1 work every day and did the work meetings and
2 everything.

3 Q. During that Monday, Tuesday, Wednesday, did
4 the lunch bunch still get together for lunch?

5 A. I don't recall.

6 Q. And do I gather from your testimony that you
7 were still in somewhat of a fog even during the
8 Nebraska game?

9 A. Oh, yeah.

10 Q. And that continued for a while thereafter?

11 A. Yes, sir.

12 Q. You also reference the Ticket City Bowl,
13 about there being inexperience leadership. What did
14 you mean by that?

15 A. Well, I think -- we lost our University
16 president, we lost our athletic director, we lost
17 our head football coach. And I mean, that's pretty
18 powerful people when you go to a city to represent
19 the University, first and foremost. And you had an
20 interim president, an interim athletic director, and
21 an interim head football coach.

22 Q. Now, sir, do you know anything about the
23 assistant coaches who were interviewed by Coach
24 O'Brien?

25 A. I'm sorry, by Coach?

1 Q. Coach O'Brien when he was first fired.

2 A. I just know that the coaches had interviews
3 with him.

4 Q. You don't know anything about a list of who
5 was to be interviewed?

6 A. No.

7 Q. Okay. Sir, since November 11th, 2011, okay,
8 that's the day Mike was placed on administrative
9 leave.

10 A. Okay.

11 Q. How many times have you had lunch with him?

12 A. Never.

13 Q. How many times have you seen him socially? I
14 don't mean a bump in, but I mean on a social
15 occasion?

16 A. That was not a bump in? Probably never.

17 Q. You have had a couple of text messages over
18 the years; is that correct?

19 A. Yes. We sure have, yes.

20 Q. Sir, do you recall that one of the members of
21 your lunch bunch, Mr. Caldwell, was given a
22 retirement party before he unretired?

23 A. Yes, sir. I'm well aware of that.

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

25 A. It was June of 2014 I think.

1 Q. And was Mr. McQueary at that retirement
2 party?

3 A. I don't know if I saw him there or not.

4 Q. You don't remember seeing him there?

5 A. No, I do not.

6 Q. Do you know who was invited to the party?

7 A. Should have been all the lettermen.

8 Q. And Mike was a letterman?

9 A. Yes, sir.

10 Q. So, your good friend who you said today you
11 loved --

12 A. Mm-hmm.

13 Q. -- you haven't seen socially or for lunch
14 since that second week of November 2011?

15 A. I would say that's accurate.

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

17 REDIRECT EXAMINATION

18 BY MS. CONRAD:

19 Q. I'm going ask you a few follow up questions
20 so I'm going to stay here. Can we see each other?

21 A. Yes, ma'am.

22 Q. Thank you so much. Prior to November 11,
23 2011, that is when Mr. McQueary was placed on
24 administrative leave with pay, how many times did
25 you have lunch with him outside of the working

1 environment, outside of Monday through Friday or
2 Saturday if there were games?

3 A. Like going to a restaurant or to -- I would
4 say very, very, very seldom.

5 Q. And I believe you testified that Coach
6 Paterno announced to the staff that he was retiring
7 after the season?

8 A. That is correct.

9 Q. After what season?

10 A. After the 2011 season.

11 Q. And when did Coach Paterno make that
12 announcement?

13 A. It was either a Tuesday or a Wednesday. I
14 know he was relieved of his duties on Wednesday
15 evening. So I can't remember if it was Tuesday
16 morning when he told us, or Wednesday morning, but
17 it was definitely one of those days.

18 Q. That was November 8th or 9th?

19 A. Yes.

20 Q. Now, counsel asked you about whether you had
21 indirect knowledge about the Sandusky matter. Do
22 you remember that question?

23 A. Yes, ma'am.

24 Q. And I believe you testified that during a
25 lunch conversation, you were watching a program or a

1 show about a rules violation; is that correct?

2 A. Yeah. I'm not sure if it was on TV or if it
3 was in the news, we were just talking about it, I do
4 remember that.

5 Q. And someone had -- and you had said that you
6 would go right to Coach Paterno if you were facing
7 an issue related to a rules violation; is that
8 correct?

9 A. That's correct. That's what he charged us
10 with.

11 Q. And then I believe you testified that Mr.
12 McQueary made a statement that he saw something
13 devastating that he reported to Joe; is that
14 correct?

15 A. That is correct.

16 Q. Did he provide any details about that
17 devastating thing that he saw?

18 A. No, ma'am. And I thank him every day for
19 that.

20 Q. Did he say any -- did he provide any
21 information that that devastating thing related to
22 Jerry Sandusky?

23 A. No, ma'am.

24 Q. So while you had some direct knowledge at
25 that time Mr. McQueary related that information, you

1 had no information that he was referring to an
2 incident in 2001 between Jerry Sandusky and a young
3 boy; is that correct?

4 A. Not at that time, that is correct.

5 Q. Counsel also asked you some questions about
6 your views on the advancement of Mr. McQueary. Do
7 you remember those questions?

8 A. Yes, ma'am.

9 Q. And I believe you testified that some day you
10 believed that Mike McQueary would be a head coach;
11 is that correct?

12 A. That is correct.

13 Q. Did you believe that he would be a head coach
14 in 2011?

15 A. No, ma'am.

16 Q. He hadn't served as an offensive coordinator
17 at that point, had he?

18 A. No, ma'am.

19 Q. Did you believe in 2012 that Mike McQueary
20 would be a head coach?

21 A. No, ma'am.

22 Q. And so, what did you mean when you said some
23 day he might be a head coach?

24 A. He just has a lot of the same qualities and
25 characteristics that Coach Paterno had.

1 Q. And was that some day, were you referring to
2 three years from now, five years from now, any
3 particular period in time?

4 A. No, I wouldn't have any recollection of how
5 long it would take.

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

8 MR. STROKOFF: None, Your Honor.

9 THE COURT: Counsel, do you want to come up
10 here a moment, please?

11 (Whereupon, the following discussion was held
12 at sidebar:)

13 THE COURT: I have some questions for the
14 witness but I think I don't want to send the jury
15 out this soon. So I assume since he is a Penn State
16 employee, he can stay around and we'll do it when we
17 take a break. Who's up next?

18 MS. CONRAD: Mr. Caldwell. May I inform Mr.
19 Diehl's counsel?

20 THE COURT: Yeah.

21 MS. CONRAD: Thank you. And also, Mr.
22 Caldwell is also represented by personal counsel
23 that is here, as is the next witness. But again,
24 they will only intervene to the point an issue
25 arises.

1 THE COURT: I'm curious, this witness has
2 personal counsel and Mr. Caldwell has personal
3 counsel?

4 MS. CONRAD: Yes, sir.

5 THE COURT: And is it counsel retained on
6 their behalf by Penn State University?

7 MS. CONRAD: I don't know. I'm not a party
8 to that arrangement, sir.

9 THE COURT: We'll ask that. Off the record
10 of course. Go ahead.

11 (End of sidebar.)

12 THE COURT: You can step down, sir. Thank
13 you.

14 MS. CONRAD: Mr. Caldwell.

15 JAMES BRADLEY CALDWELL
16 Was called as a witness and having been duly sworn
17 was examined and testified as follows:

18 THE COURT: Adjust the mic to suit yourself.

19 THE WITNESS: Okay. Sure thing.

20 THE COURT: Why don't you give us your full
21 name while counsel's getting the right folder.

22 THE WITNESS: My name is James Bradley
23 Caldwell.

24 MS. CONRAD: Thank you, sir.

25 DIRECT EXAMINATION

1 BY MS. CONRAD:

2 Q. Good afternoon, Mr. Caldwell.

3 A. Afternoon.

4 Q. My name is Nancy Conrad and I represent The
5 Pennsylvania State University. I have some
6 questions for you today.

7 A. Sure.

8 Q. First, are you currently employed?

9 A. Yes, I am.

10 Q. And with whom?

11 A. Penn State University.

12 Q. And we heard testimony about a retirement and
13 then an unretirement; is that correct?

14 A. Yes, ma'am.

15 Q. Could you describe that to us, please?

16 A. Sure. When Coach Franklin was hired, I
17 worked with him that spring of 2014. And I decided
18 to make a change, I had an opportunity to go be an
19 athletic director at a high school in Vermont. So I
20 decided to make the change. And I think I left June
21 13th I think was my last day. I technically retired
22 from Penn State, you know, because I had many 25
23 years in and you kind of have your medical benefit
24 situation is kind of nice after 25 years, so I
25 settled into retirement but I still needed to work

1 for ten years or so. So I took the high school
2 athletic director job.

3 Q. And where did you take that job?

4 A. It was in Fair Haven, Vermont. My wife and I
5 had property in Vermont for about ten years before
6 that. And I built a small home on it about two
7 years prior -- I'm sorry, my fault. I was building
8 a small home at that current time as I moved up
9 there. It was being built as I took this athletic
10 director job. So I decided to take the job.

11 And I started July 1st in Fair Haven, Vermont
12 as the athletic director. And about three weeks
13 later, I ended up having a little health scare, I
14 had a heart attack and a stroke during the
15 catheterization procedure with the heart attack. So
16 I had to take some time off. I only worked at the
17 high school for three weeks, so I had to take four
18 to six weeks off. And when I did, I just decided, I
19 think with the stress of it all and the job change,
20 I decided it just wasn't the right fit for me. So I
21 resigned from the high school.

22 I went and worked for the Orvis fly fishing
23 company for about three or four months that fall.
24 And then had an opportunity, found out about a
25 position opening up at Beaver Stadium and applied

1 back at Penn State and was rehired about six months
2 later.

3 Q. So just so I understand your testimony, you
4 took the initiative to find an open spot at Penn
5 State after you resigned from that position in
6 Vermont; is that correct?

7 A. Mostly. Yes. A long time acquaintance,
8 knowing I had left the University -- I'm sorry,
9 knowing I had left the high school and resigned from
10 the high school, he informed me that I don't know if
11 you know, but there's an opportunity here. There's
12 a position opening up at Beaver Stadium. You know,
13 it sounds like you would be a great fit for it. If
14 you're interested, you might want to apply. And I
15 said my resume's in the mail. And I come down, I
16 had two interviews, went through the process. There
17 were eight finalists for it. And found out just
18 before Christmas that I was going to be hired.

19 Q. You had to submit an application; is that
20 correct?

21 A. Oh, correct. Yes. Correct.

22 Q. And you took that initiative to, as you said,
23 immediately get your application in; is that
24 correct?

25 A. Correct. I still had to put it in online,

1 which is the protocol and wait for a response, yes.

2 Q. And did you do any follow up as you were
3 getting communications about being interviewed?

4 A. A follow up with?

5 Q. To express your interest in the position.

6 A. Yeah. I think I was -- you know, I think I
7 was calling some people that I knew just to say hey,
8 I'm really interested in that position, I really do
9 want to come back. You know, I think I miss -- I'm
10 missing my Penn State family more than I expected,
11 and it was really -- thought it would be a fit for
12 me, so I made some connections with some people.
13 Yeah.

14 Q. And before we get into your current position
15 and other positions you've held, could you briefly
16 describe for us your educational background?

17 A. I was a graduate at Penn State. I graduated
18 in 1986. I was a student manager as well from 1983
19 to 1986. I went to a branch campus my first year,
20 Du Bois branch campus. I graduated in the fall of
21 '86 after our second national championship with a
22 degree -- a Bachelor's Degree in recreational park
23 management. So --

24 Q. And following your graduation from Penn State
25 and earning your degree in '86, what was your first

1 professional position?

2 A. My senior year that fall, they were building
3 Holuba Hall in '86 and '85.

4 Q. They were building what?

5 A. I'm sorry. That's our indoor practice
6 facility.

7 Q. What was the name?

8 A. It's called Holuba Hall.

9 Q. I apologize for interrupting. Thank you.

10 A. No problem. And so I -- and they were also
11 expanding East Area locker room at the time, so I
12 was able to -- so they were looking for --to hire
13 some more manpower, they wanted to hire a position,
14 so I was approached if I would be interested in
15 staying on full-time. Because they knew I wanted
16 the do that as a career, I was looking to -- you
17 know, I had a couple internships lined up with some
18 NFL teams for equipment. And they knew I wanted to
19 do that as a career, so, you know, there was a
20 position available and I was in the right place at
21 the right time. So in January of '87, I started as
22 a wage payroll, which wasn't a -- it wasn't a
23 benefit position but it was full-time wage payroll,
24 which was full 40 hours and can get some overtime
25 and whatnot. So I worked that for a year and a

1 half, '87 --

2 Q. And Mr. Caldwell, what was that position?

3 A. It was -- what I would do is -- I was kind of
4 a -- you know, I don't know what I was officially
5 called, I think it was -- I basically was -- I come
6 in, I'd do like a second shift during the season, I
7 would come in at noon and I'd work with the football
8 team from noon until after practice. And then I
9 would go up to Holuba Hall and man a little at
10 night, just opening it up and closing it down for
11 other sports teams that used it in the evening for
12 practice.

13 Q. And did you hold other positions during your
14 time at Penn State?

15 A. Yeah. Then I was officially eighty -- in
16 July of '88 was then hired in that position
17 full-time as basically the assistant equipment
18 manager. And then I didn't really have to work
19 Holuba anymore, we hired wage payroll to kind of
20 just man the evening hours at Holuba. So then I was
21 the assistant equipment manager from 1987 until my
22 -- the head equipment manager retired in March of
23 2000 and I took over after he retired.

24 Q. And this was a head equipment manager for
25 football?

1 A. Correct. Correct.

2 Q. And what does a head equipment manager for
3 football do?

4 A. Just logistics of day-to-day operations,
5 inside the locker room, and travel, and game day
6 setup, practice setup. I had, at the time, you
7 know, Kirk was partially my assistant, also kind of
8 an equal because he was also the facility
9 coordinator for Holuba. And I had ten student
10 managers under me that would work with us. They
11 were full-time student managers which is what I was
12 at point and what Kirk was at one point as well.
13 Yes, we just managed the day-to-day operations of
14 the equipment room, laundry, setup practice field,
15 loading trucks for away games so on and so forth.

16 Q. Were you responsible, for example, for the
17 uniforms?

18 A. Correct. Yes.

19 Q. What was your responsibilities in conjunction
20 with the uniforms?

21 A. Uniforms was just, you know, maintaining
22 them, keeping them clean, issuing them, collecting
23 them, you know, just the day-to-day. You know,
24 again, laundry and protector -- protector of the
25 sacred Penn State jersey was an honor.

1 Q. And what about the other equipment? What
2 other equipment were you responsible for managing?

3 A. Well, I was also part of -- you know, besides
4 all the field equipment, the dummies, the practice
5 sleds that is used, you know, I helped oversee the
6 Lasch Building in general, just a maintenance upkeep
7 of basically -- just basically, you know, working
8 with the janitors and whatnot sometimes. And you
9 know, coordinating anything the building needed as
10 well.

11 Q. And your current position, sir, since you've
12 returned from retirement?

13 A. Yeah. Current position is -- I'm the
14 facility coordinator of Beaver Stadium and the
15 assistant club suite and -- the club seats and
16 suites and special events. Kind of a long title but
17 it's, you know, any -- I assist the director of the
18 club seat suites and special events at Beaver
19 Stadium. But then I also just help with mostly the
20 maintenance and upkeep of the south end zone and the
21 suite area, you know, the club areas and stuff.

22 Q. And when you say south end zone, what do you
23 mean by that?

24 A. Well, the south end zone are where our club
25 seats are, which is our -- more of our -- you know,

1 you have to lease certain seats. You know, it's a
2 club area that can be rented in the offseason as
3 well for weddings and receptions and stuff like
4 that. And it's -- so that whole end zone is
5 different than the rest of the stadium. It was the
6 new addition that was added in 2001. You know, so
7 that part as well.

8 Q. So you're responsible for managing that area?

9 A. Correct.

10 Q. So how many years have you been at Penn
11 State?

12 A. Well, I mean -- you know, as a full-time --
13 well counting my student years it would be a total
14 of 33. And now as a staff member, you know, 29 I
15 guess.

16 Q. And in conjunction with your years at Penn
17 State, did you have occasion to get to know Mr.
18 McQueary?

19 A. Absolutely. Yes.

20 Q. And how did you get to know Mr. McQueary?

21 A. Just as, you know, first time was obviously
22 from when he was a player from what was it '92 to --
23 yeah, I'm adding the five years. To '97 when he was
24 a player.

25 Q. And then how about in your -- in his position

1 as an assistant coach, did you get to know him?

2 A. Yeah. I just knew him well from working with
3 him every day.

4 Q. And how did you work with him every day?

5 A. Just, you know, day-to-day contact with --
6 you know, everybody in the building made contact
7 with him in some form, the coaches obviously work
8 with him closely every day, their needs and setups
9 for practice and, you know, obviously -- you know,
10 just being in the same building all the time.

11 Q. Did you consider Mr. McQueary to be a friend
12 based on those years you knew him as a player and
13 then as a coach?

14 A. Absolutely.

15 Q. And how would you characterize him as a
16 coach?

17 A. In my opinion, very good coach. Very good.

18 Q. Now there's been reference today about the
19 lunch bunch. Were you a member of that lunch bunch?

20 A. Yeah. I guess you could say that.

21 Artificial name.

22 Q. Describe for us, please, the number of
23 occasions that the lunch bunch met.

24 A. Well, I think -- you know, we definitely met,
25 you know, every day for lunch in some form, mostly

1 every day. I'm sure there were reasons -- mostly --
2 sometimes it was difficult on Fridays because if
3 away games or home games responsibilities. But
4 definitely throughout the week, Monday through
5 Friday -- Monday through Thursdays for sure. And it
6 was just, you know, it was just kind of a random
7 thing, I don't know it got that name. But we just
8 kind of hung out and visited and watched the TV a
9 lot of times and sometimes we'd play a hunting game
10 on a computer. And we just ate and shot the bull.

11 Q. Did the lunch bunch meet for lunch on the
12 weekends?

13 A. No.

14 Q. Did the lunch bunch meet for lunch or any
15 other activity during time away from work?

16 A. I mean, we would -- not for that particular
17 time period. I mean, not going to lunch because we
18 needed to be in the building. But yeah, sometimes
19 we would go to -- offseason we might run to, you
20 know, Him's here in Bellefonte for, you know,
21 together just as friends and whatnot. But not a
22 ton.

23 Q. Was that during the work week?

24 A. No, it was usually -- well -- no, I mean --
25 well, it might have been. It probably was, yes. It

1 would have been -- there might have been a couple
2 times we met random there for lunch in the offseason
3 or we came down, you know, after hours.

4 Q. That was when you didn't have to be in the
5 building?

6 A. Correct. Correct.

7 Q. Now during the years that you worked with Mr.
8 McQueary, did you have occasion to observe him and
9 his interactions with Coach Paterno?

10 A. Sure.

11 Q. And how would you describe the nature of
12 their relationship as you saw it?

13 A. Fine. I always thought it was, you know,
14 great. Great.

15 Q. In your position over the 31 years, did you
16 have an opportunity to work with Tim Curley?

17 A. Yes.

18 Q. And how would you describe your interactions
19 with Mr. Curley during those years?

20 A. My interactions with Mr. Curley? You know,
21 very cordial. You know, just always checking on how
22 we're doing and anything we need. You know, always
23 respected Tim a lot. You know, how things going
24 down here he'd always ask because he wasn't always
25 in the impulsive day-to-day operations of the state

1 of the practices and the stuff. He'd just say how's
2 everything going, you know, and any issues, and you
3 know -- just work related but always very
4 professional.

5 Q. Based on those work relations that you had
6 with Mr. Curley, did you have occasion to observe
7 that he operated at the highest level of honesty,
8 integrity, and compassion?

9 A. What I observed and saw from my perspective,
10 absolutely.

11 Q. I want to direct your attention now to a time
12 in November of 2011. November 4th, 5th, 2011, the
13 presentment was released and published. Are you
14 familiar with that time?

15 A. Say again?

16 Q. Are you familiar with that period in time?

17 A. Yes. The timeframe, yes.

18 Q. And did you read the presentment?

19 A. I did not.

20 Q. The presentment referenced a graduate
21 assistant in conjunction with an incident that
22 occurred in 2001 between Jerry Sandusky and a young
23 boy. Did you hear any news reports about that
24 graduate assistant?

25 A. I did not.

1 Q. And is it fair to say that in November of
2 2011, you didn't know who that graduate assistant
3 was?

4 A. That's fair to say.

5 Q. Now, prior to the release of the presentment,
6 did you have knowledge and information about a 2001
7 incident between Jerry Sandusky and a young boy?

8 A. I did not.

9 Q. Did there come a point in time that you
10 understood that the -- who the graduate assistant
11 was identified in the presentment or through the
12 news reports?

13 A. I did not.

14 Q. You never learned who the graduate assistant
15 was?

16 A. Well, I mean -- did I ever learn?

17 Q. Yes.

18 A. I'm sorry. I just don't remember how I
19 learned that, but at some point, yeah, obviously I
20 did. Yes.

21 Q. Do you remember about when you learned that?

22 A. I don't remember.

23 Q. I want to direct your attention to D20 in the
24 binder that I believe should be before you. Is
25 there a binder?

1 A. Oh, sure.

2 Q. If you could turn to tab 20, please.

3 A. (The witness complied.)

4 Q. With me?

5 A. Yeah.

6 Q. Thank you.

7 A. Okay. Sure.

8 Q. Are you familiar with the document contained
9 in tab 20? It should be a statement from President
10 Spanier.

11 A. Yes. I am, yes.

12 Q. You're familiar with that?

13 A. Yes.

14 Q. It has a date of November 5, 2011 on it, do
15 you see that?

16 A. Yes.

17 Q. Did you read or access this statement in or
18 around November 5, 2011?

19 A. I did not.

20 Q. Do you remember -- did you ever access this
21 statement in November 2011?

22 A. No, not in November. No.

23 Q. Did there come a point in time that you
24 accessed this statement?

25 A. Yes.

1 Q. And approximately when was that?

2 A. Just -- pretty much just when I was
3 subpoenaed and -- not subpoenaed but -- yes. Yeah.
4 And then saw this was one of the, you know,
5 exhibits.

6 Q. When you received a subpoena to appear and
7 testify at this trial --

8 A. Correct.

9 Q. -- you noticed that the Spanier statement was
10 one of the exhibits or references in the subpoena;
11 is that correct?

12 A. Yes.

13 Q. Now, directing your attention back to
14 November of 2011, did you attend a meeting with
15 intercollegiate athletic staff in which Dr. Spanier
16 addressed the staff?

17 A. I did.

18 Q. And what do you recall about that meeting in
19 November of 2011?

20 A. Just -- you know, I remember -- are you
21 talking about the one that we were in the club area,
22 right?

23 Q. Right. That Monday that Dr. Spanier met with
24 the staff.

25 A. I just remember, you know, Dr. Spanier saying

1 everything's going to be okay. You know, Mr.
2 Curley and Gary are good men. We're going to get
3 through this. I can' remember exact details and
4 stuff, but I remember him talking to the athletic
5 department and being positive.

6 Q. And when he said Gary and Tim are good men,
7 did you form any -- did Dr. Spanier at that time
8 give you any rationale as to what he based that
9 opinion?

10 A. No.

11 Q. During that meeting, did Dr. Spanier make any
12 reference to Mike McQueary?

13 A. No.

14 Q. When Dr. Spanier said or expressed his view
15 that Tim and Gary were good men, did you connect
16 that statement in any way to Mr. McQueary?

17 A. I did not.

18 Q. And when you were in that meeting, did you
19 hear anyone making a comment that raised Mr.
20 McQueary?

21 A. No.

22 Q. When you left that meeting, did you hear
23 anyone referring to Mr. McQueary?

24 A. I did not.

25 Q. Did you hear anyone saying that based on Dr.

1 Spanier's statement, Mr. McQueary must have lied to
2 law enforcement?

3 A. I did not.

4 Q. Did you hear anyone leaving that meeting make
5 any sort of comment that, based on Dr. Spanier's
6 statement, Mr. McQueary must have committed perjury?

7 A. No.

8 Q. Did you hear anyone make any statement
9 leaving that meeting that reflected negatively upon
10 Mr. McQueary?

11 A. No.

12 Q. And have you -- I believe you said you've
13 since read the Spanier statement?

14 A. Yes.

15 Q. And having read this Spanier statement, do
16 you connect it in any way to Mr. McQueary?

17 A. I do not.

18 Q. Do you infer anything -- any negative
19 reference to Mr. McQueary about the content of the
20 Spanier statement?

21 A. I do not.

22 Q. Now, were you present during that November --
23 or during that lunch bunch conversation that focused
24 on, I believe it was NCAA rules violation?

25 A. Yes.

1 Q. And what do you recall about that lunch bunch
2 conversation?

3 A. Well, again, I don't remember. I just
4 remember -- I don't know if it was on TV or we read
5 it in a paper something happened at another school.
6 And that, you know -- and I just remember, you know,
7 we talked about it, you know, what would we do if we
8 saw something like -- something and --

9 Q. And you're referring to a rules violation?

10 A. Rules violation, whatever. What would we do,
11 you know, we got to report it to the right people,
12 you know, whether the coach, whatever and -- but I
13 know, you know, that's when Mike had mentioned -- we
14 were talking about it, Mike mentioned, well, I saw
15 something, too, that changed my life forever.

16 Q. And did you have any -- did Mike provide any
17 details during that conversation that related what
18 he saw to Jerry Sandusky?

19 A. No. I mean, we probed him. We kind of said
20 Mike, what are you talking about? And he was real
21 careful and he just didn't -- he didn't tell us any
22 details at all.

23 Q. He didn't provide any further information
24 about the incident?

25 A. No. Of course we're going to wonder and be

1 curious. You know, what do you mean Mike? What are
2 you talking about? And he just -- you know, and I
3 thank him for that to this day.

4 Q. Now, what was the atmosphere like during that
5 week in November after the presentment had been
6 released?

7 A. The Spanier meeting?

8 Q. After that meeting, what was the atmosphere
9 like --

10 A. Oh, after the meeting.

11 Q. Yes.

12 A. You know, just -- I don't know, I'm trying to
13 remember. I mean, we go back to the locker room,
14 we're just kind of -- you know, just getting just
15 kind of like an oh my goodness what's going to
16 happen here. And you know, I just -- I don't know,
17 kind of confusion you know and whatnot. So -- we
18 still had a job to do, we were still trying to get
19 ready for Nebraska. You know, everyone's still
20 employed at this time. You know, so --

21 Q. You were focused on getting ready for the
22 Saturday game; is that correct?

23 A. Right.

24 Q. Were you aware of any communications that
25 athletics was receiving in conjunction with the

1 presentment that had been released?

2 A. I did not.

3 Q. Were you aware of any communications that
4 athletics was receiving with regard to Jerry
5 Sandusky?

6 A. I didn't.

7 Q. And were you aware of any communications that
8 the athletics or anyone in the University was
9 receiving regarding threats against Mr. McQueary?

10 A. I hadn't heard that at that time, no.

11 Q. Let me take you to Thursday, November 10th.
12 By then Interim Coach Bradley has been named;
13 correct?

14 A. Correct.

15 Q. And that was after Dr. Spanier had been
16 removed from the office of president; correct?

17 A. Yes.

18 Q. And Coach Paterno had been removed from his
19 position as head coach; correct?

20 A. Correct.

21 Q. What was the atmosphere like following those
22 announcements?

23 A. It was awful. Just -- you know, again, you
24 just -- you just felt like we were on a ship that
25 was, you know, we just lost our captain or first

1 mate and our chief navigating officer. You just
2 felt like you just completely was on a ship sinking.

3 Q. Emotional time?

4 A. It was awful. It was very emotional, yeah.

5 Q. And that Thursday morning, Coach Bradley held
6 a press conference, didn't he?

7 A. Yeah. I guess. I guess I forgot that.

8 Q. Were you at that press conference?

9 A. I don't remember.

10 Q. And did you learn anything about the
11 information that was provided at that press
12 conference?

13 A. Again, I'm just not remembering what at that
14 point.

15 Q. I understand. You've already testified your
16 focus was on getting ready for that game.

17 A. Yeah.

18 Q. What was your understanding as of Thursday
19 morning about Mr. McQueary's status?

20 A. That Thursday morning, you know, Mike was
21 still there, you know, still getting ready for the
22 game. I didn't think anything of that.

23 Q. And by that point in time, had you received
24 any information about threats that the University
25 was receiving related to Mr. McQueary?

1 A. No.

2 Q. And did there come a point in time that you
3 learned that Mr. McQueary would not be coaching in
4 the Nebraska game?

5 A. Yeah. I don't remember exactly when, I just
6 -- I do remember, when I was leaving -- like, the
7 first time that I recollect remembering that is when
8 I was leaving the building and, you know, Tom
9 Venturino came out, and I'm in the parking lot and
10 as I'm getting into my and he said, well, we just
11 lot another brother. And I said, what do you mean?
12 He said Mike can't -- he's not allowed to coach this
13 weekend. And he has to -- so I just -- I got in my
14 car and started crying.

15 Q. Because, as you said, you felt like you lost
16 another brother?

17 A. Yeah.

18 Q. And what did you mean by another brother?

19 A. Well, I mean -- you know, I wouldn't call
20 Coach Paterno a brother. But just -- and that was
21 not me saying that, that was Tom Venturino. But I
22 know where he was coming from. You know, I mean,
23 because even Mr. Curley, we had so much respect for
24 him, too, and what happened to him. It was just a
25 devastating situation. It was awful.

1 Q. So you shared that sentiment that you lost
2 another brother?

3 A. Absolutely.

4 Q. Did there come a point in time that you
5 learned the reason that Mr. McQueary was placed --
6 was not permitted to coach that Nebraska game?

7 A. Yeah. At some point I found out he was -- he
8 was getting death threats.

9 Q. And do you recall how you learned that the
10 reason Mr. McQueary was not coaching that Saturday
11 was because he had received death threats?

12 A. I just don't recall from who that I heard
13 that.

14 Q. Well, there was a press release posted on
15 Penn State Athletics that announced Mr. McQueary's
16 status. Had you reviewed that?

17 A. I hadn't, no.

18 Q. Mr. McQueary then was placed on
19 administrative leave with pay. Did there come a
20 point in time that you learned he was put on
21 administrative leave with pay?

22 A. Yeah. Yeah, there was a time when I
23 definitely heard he was put on administrative leave.
24 And yeah, I didn't know with pay, I guess I assumed
25 he was still getting paid.

1 Q. You didn't know, though, for certain at the
2 time whether or not it was with pay or not?

3 A. No. I just assumed.

4 Q. December 2011, I believe maybe starting in
5 November, there were preparations for a bowl game,
6 weren't there?

7 A. Yes.

8 Q. Now, do you engage in work to prepare for
9 that bowl game?

10 A. Absolutely.

11 Q. And what type of work were you doing to
12 prepare for that bowl game?

13 A. Well, our bowl game preparation is more,
14 again, the equipment end of it, just trying to, you
15 know, get everything loaded on the truck and just
16 the logistics of that. Then we work with -- you
17 know, working with the football operations director
18 and stuff and logistics and itineraries and stuff
19 like that. Then they can call us for -- you get all
20 your connections at Dallas, where we were playing,
21 that you get the connections with who you got to
22 talk about laundry, the practice field, what's
23 available at the practice field to actually use. So
24 just a lot of logistics in the facilities and, you
25 know, the loading equipment and unloading it, yeah.

1 Q. So you had to have every piece of equipment
2 ready to travel to the bowl game?

3 A. Correct.

4 Q. And that's from the footballs to the uniforms
5 and everything in between?

6 A. And to even blocking dummies for the practice
7 field. You know, coaches clothes, shoes. Just --
8 yeah, everything.

9 Q. And that was work that was beyond the normal
10 season, wasn't it?

11 A. Bowl games were always an extra add on beyond
12 the season, right.

13 Q. And did you receive a bonus for that
14 additional work that you did after the regular
15 season?

16 A. Yes, I did.

17 Q. I'm going to direct your attention now to
18 January 2012, maybe even late December. Were you
19 aware at that point that the University had a search
20 committee with respect to searching for a new head
21 football coach?

22 A. Yes.

23 Q. Now, you've been in athletics 31 years at
24 Penn State, right?

25 A. Correct.

1 Q. As of November 2011, how many head football
2 coaches had you worked with?

3 A. One.

4 Q. And that was Coach Paterno, wasn't it?

5 A. Yes.

6 Q. When the search began for the new head
7 football coach, were you receiving any information
8 about who that might be?

9 A. Not really. Not that I can remember.

10 Q. And did you have any knowledge or information
11 about what happens when a new head football coach
12 from the outside comes into the program?

13 A. Say that again.

14 Q. Sure. Did you have any knowledge or
15 information about what would happen to the staff
16 when a new head football coach would come in from
17 the outside?

18 A. Yeah. I know the information that anything
19 wasn't going to happen to us, but you always wonder
20 and you're not sure because the new head coach can
21 do anything he wants staff-wise, you know.

22 Q. It was your understanding from working in
23 football for 31 years that a new head football coach
24 had discretion with respect to his staff?

25 A. Right. And I did later on hear, I think this

1 was after the fact, this was after Coach O'Brien was
2 hired that Fran Ganter had come in who was still the
3 football athletic director for football operations.
4 And Fran said, you know, we're kind of on a -- you
5 know the staff that was left, he said we're all on a
6 six month kind of probation, Coach O'Brien can
7 evaluate us and if he wants to get rid of us he can.
8 So we might not know officially where we stand until
9 July 1st of that summer. He had the prerogative to
10 to let us go if he wanted.

11 Q. So it was up to Coach O'Brien to make the
12 staffing decisions?

13 A. Right.

14 Q. And did you have any information that Coach
15 O'Brien had already coaches committed to him even
16 before he was announced as the head coach at Penn
17 State?

18 A. Yeah I had no idea of any of that.

19 Q. Now, sitting here today, and as of January
20 2012 when Coach O'Brien was hired, did you then
21 learn that he brought many of his own coaches with
22 him?

23 A. Yes. Then I would have known that, yes.

24 Q. And did Coach O'Brien retain any of the
25 assistant coaches under Coach Paterno?

1 A. Yeah. Coach Larry Johnson, our D line. And
2 Coach Ron Vanderlinden, linebackers.

3 Q. And do you have any firsthand knowledge or
4 information about his selection of retaining coach
5 Johnson and Coach Vanderlinden?

6 A. I do not.

7 Q. Is Coach O'Brien still the head coach?

8 A. Of Penn State?

9 Q. Yes.

10 A. No.

11 Q. When did he leave Penn State?

12 A. I want to say late December 2013.

13 Q. And what was the reason, if you know, for his
14 leaving Penn State?

15 A. He was offered a position with the Houston
16 Texans for him to be their head coach and took it.

17 Q. And after Coach O'Brien left Penn State to be
18 head coach of the Houston Texans, was there a search
19 for a new head coach?

20 A. Correct.

21 Q. Was a new head coach hired?

22 A. Yes.

23 Q. And who was that head coach -- is that head
24 coach?

25 A. James Franklin.

1 Q. And when was James Franklin named head coach
2 at Penn State?

3 A. I can't remember the exact date or time.
4 Early January as far as I recollect.

5 Q. January of what year?

6 A. '14.

7 Q. 2014. And did he retain any of the assistant
8 coaches that had coached with Coach O'Brien?

9 A. He did not.

10 Q. Did he retain Coach Johnson who had not only
11 coached with Coach O'Brien but also coached under
12 Joe Paterno?

13 A. He did not.

14 Q. Did he retain Coach Vanderlinden who head
15 coached under Coach O'Brien and Coach Paterno?

16 A. He -- Coach Vanderlinden wasn't there when
17 Coach Franklin he come in. He had been fired the
18 year before.

19 Q. I see.

20 A. I'm sorry. No, he had been fired -- before
21 Coach O'Brien took the job at Houston, he actually
22 fired Ron Vanderlinden.

23 Q. So he was fired by Coach O'Brien?

24 A. Correct.

25 Q. And he being Coach Vanderlinden; is that

1 correct?

2 A. Yes. Him and Charlie Fisher, our
3 quarterbacks coach.

4 Q. Again, are the assistant coaches at the total
5 discretion of the head coach?

6 A. Say again. I'm sorry.

7 Q. Are the assistant coaches at the discretion
8 of the head coach?

9 A. Absolutely.

10 Q. And so, who did Coach Franklin bring with
11 him?

12 A. Pretty much his staff from Vanderbilt.

13 Q. He brought his own staff?

14 A. Correct.

15 Q. Now, did you receive any direction from
16 anyone at Penn State to distance yourself from Mr.
17 McQueary?

18 A. No. No.

19 Q. Did you receive any direction from anyone to
20 seize communication with Mr. McQueary?

21 A. Not seize communication.

22 Q. Did you receive any direction about
23 communications related to Mr. McQueary?

24 A. Just to be -- if we have contact with him,
25 just to be careful of talking about his lawsuit case

1 against the University.

2 Q. So the only direction that you received from
3 the University was a recommendation not to speak
4 about the lawsuit that Mr. McQueary filed with Mr.
5 McQueary?

6 A. Yes.

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

9 CROSS EXAMINATION

10 BY MR. STROKOFF:

11 Q. Mr. Caldwell, my name's Elliott Strokoff. I
12 represent Mike.

13 A. Yes, sir.

14 Q. Sir, do you have an employment -- a written
15 employment contract with the University?

16 A. I actually do, yes.

17 Q. And what's the term of that contract. How
18 long does that contract --

19 A. It's a one year fixed-term position.

20 Q. But you have that in writing?

21 A. I do, yes.

22 Q. And when did you first get that in writing?

23 A. When I started -- basically when I was hired
24 in 2014, when I returned.

25 Q. When you came back?

1 A. '15. '15, when I came back. Correct.

2 Q. And what is the length of that term?

3 A. It's one year.

4 Q. Yeah. From when to when?

5 A. It is from -- it is from -- you know, I'm
6 hesitating just because I was thinking I was hired
7 in January -- I think it's from January to January.

8 Q. Okay.

9 A. Yes, I'm pretty sure.

10 Q. So that would be expiring the end of this
11 year?

12 A. Correct. Yes.

13 Q. And --

14 A. It might be from July to July, I'm just not
15 positive. I mean, it's definitely -- I know when I
16 was hire, I can't remember -- I'm just not positive,
17 but it's definitely a one-year term.

18 Q. I'm sorry, I don't want to cut you off.

19 A. That's okay.

20 Q. And does that one year fixed-term contract
21 contain a provision saying you can't be terminated
22 except for just cause?

23 MS. CONRAD: Your Honor, at this point I'm
24 going to object. I've tried to give leeway, but
25 this is beyond the scope of direct examination.

1 THE COURT: He's not limited by your direct
2 examination on the cross-examination of the witness.
3 So overruled.

4 THE WITNESS: Could you repeat that, please,
5 Mr. -- Elliott?

6 BY MR. STROKOFF:

7 Q. Sure. Does this fixed-term contract give you
8 any kind of protection from being terminated except
9 for just cause?

10 A. I don't --

11 Q. If you know.

12 A. I don't think.

13 Q. Okay. All right. Now, I believe you said
14 you came back because a long time acquaintance
15 called you to tell you about the opportunity?

16 A. Yes.

17 Q. Who was it?

18 A. It was Tom Venturino.

19 Q. Another member of the lunch bunch?

20 A. Yes, sir. He had known -- because I had been
21 in communication with him just in general, just as a
22 friend and a long time coworker. And he knew I had
23 -- he knew with my health scare, he knew about that,
24 he knew about, you know, when I decided to resign
25 from the high school. So he saw that job posting

1 and heard about it, because he works with the guy
2 that directly, you know, oversees some of those
3 positions, so --

4 Q. Okay. When do you think you started having
5 lunch with Mike on a pretty regular basis?

6 A. That's -- I'm not exactly sure. You know, I
7 mean, early 2000s I'm sure at some point. I just
8 don't know when.

9 Q. And so, the lunch bunch consisted of you and
10 Mike and who else?

11 A. The consistent ones were Kirk, myself, Mike,
12 Tom Venturino, and John Palmgrin, our video
13 coordinator.

14 Q. John Palmer?

15 A. John Palmgrin. And then we -- it was always
16 coaches -- you know, a coach or two would pop in.
17 Kermitt Buggs did sometimes, he was our running back
18 coach. At times, you know, we had other -- you
19 know, and another coach would pop in for a little
20 bit. But that was the gist.

21 Q. Kirk being Kirk Diehl?

22 A. Yes. Correct.

23 Q. Were you here when he testified?

24 A. I was, sir, yes.

25 Q. And do you agree these lunches were sort of

1 in the area where you and Mr. Diehl --

2 A. Yeah, they were right in the equipment room,
3 right in the middle of the equipment room. And our
4 desk was right in the middle of the equipment room.

5 Q. And I believe you said sometimes after hours
6 or on nonworking days, you would come up here to
7 Bellefonte to go to Jim's?

8 A. Well, that was just one example. I'm not
9 sure -- yeah, maybe it was once or twice.

10 Q. Jim's being the place up --

11 A. It's the Italian restaurant up on the hill.
12 Mike's favorite place.

13 Q. Oh, is it Mike's favorite place?

14 A. As far as I know, yes.

15 Q. Okay. Now, I believe you also said Mike was
16 a good coach?

17 A. Yes, sir.

18 Q. Could you amplify on that a little bit? What
19 do you mean by that?

20 A. Well, again, it's my opinion, but I think
21 just because -- he reminded me of, you know, an Al
22 Golden type. And Al Golden at the time was the
23 coach of the Miami Hurricanes.

24 Q. How did you know Al Golden?

25 A. Al Golden also played at Penn State. Plus Al

1 Golden in -- he was actually -- Al Golden was
2 actually the coach that was hired to replace Jerry
3 Sandusky when he retired. He worked here for about
4 10 months as the linebacker coach. But Al also
5 played here, he was the team captain in the early
6 '90s.

7 Q. So you say he reminded you of Al Golden in
8 what way?

9 A. Yes.

10 Q. In what way did Mike remind you of Al Golden?

11 A. Just very -- you know, great knowledge of the
12 game, football. Very hard worker. Really good with
13 the players, good with the kids, really relate to
14 the players well. Mike was a good recruiter. You
15 know, Al was a great recruiter I think. And Al took
16 over the recruiting when he came here, and Mike
17 really worked closely with him learning even more
18 from Al then.

19 Q. Could you tell if the players liked Mike?

20 A. Oh, absolutely. I never heard anything
21 negative from a player about Mike.

22 Q. Did you ever see him, that is Mike, interact
23 with the parents of the player?

24 A. Oh, absolutely. Especially when you're
25 recruiting, you're always interacting with the

1 parents of the players.

2 Q. And how did he do with interacting with
3 parents of players?

4 A. Just -- I mean, from my perspective, what I
5 saw of it, fantastic. I mean, he was very well
6 respected by them that I could see and the parents
7 loved him.

8 Q. I think you said you regarded Mike as a
9 friend?

10 A. Absolutely.

11 Q. And how would you define a friend?

12 A. Someone you trust. Somebody you just can
13 relate to, confide in, you know, just stuff like
14 that. You know, just enjoy being together at times.

15 Q. All right. You spent a lot of time together
16 all those lunches, right?

17 A. Yeah. You do. And just in general, just
18 working -- the atmosphere in general when you're in
19 football like that, it's just bowl games and
20 everything, it's just a big commitment. You're
21 spending more time with the people at work than you
22 do with your own family and wife. Turning table,
23 eating together, even a turning table pre season.

24 Q. Sir, you testified on direct about some
25 conversation at lunchtime concerning what would the

1 people there do if they witnessed a serious rules
2 violation?

3 A. Right.

4 Q. And you said what Mike said. And then you
5 said when you testified "I thank him for that to
6 this day." Why, sir?

7 A. Just because of the -- pretty much because
8 what this poor man has gone through, you know, I
9 just feel so bad for him.

10 Q. You feel badly for who?

11 A. For Mike. Just -- it's just -- whole thing's
12 just a tragedy.

13 Q. Sir, when Tom Venturino said words to the
14 effect we lost another brother and he told you what
15 happened, you said you went into your vehicle and
16 you cried?

17 A. I did.

18 Q. Why, sir?

19 A. You know, just knowing Mike's love for -- he
20 just loved being on that sideline. You know, he
21 just loved the -- you know, I'm sorry. You know, he
22 had such a -- he just loved game day, he loved
23 calling plays, he loved signaling plays in.
24 Initially, he wanted to be there and it was killing
25 him. I just knew it was going to kill him.

1 Q. At the time Tom Venturino told you that Mike
2 wasn't going to be coaching the Nebraska game, you'd
3 already known that Mike was identified as the
4 graduate assistant that had seen Jerry Sandusky,
5 right?

6 A. It's so confusing to remember how when things
7 went down. I just don't remember exactly. You know
8 it's --

9 Q. At some point in time that week, did you find
10 out that Mike was the grad assistant?

11 A. Yeah. I had to have, I'm sure.

12 Q. And when you found out he was the grad
13 assistant who had witnessed that, what did you
14 think?

15 A. I just felt like I -- you know, I just
16 thought the pain and what he saw, it must have just
17 been so hard for him. I don't know, I just felt
18 like he -- I put myself in his shoes and if I, you
19 know, would have seen that I just feel like I would
20 have -- you know, I respected Jerry and we grew up
21 in this town, he was as legendary as Joe. And I --
22 you know, I just think it would have been even
23 devastating for him to see that. And it just
24 crushed me, just another reason to feel terrible for
25 him, that he had to deal with that sight.

1 Q. Now, in your experience, was Mike a
2 trustworthy guy?

3 A. Absolutely.

4 Q. Highest integrity?

5 A. Yes. With me, absolutely.

6 Q. Sir, I want to go back to March of 2011,
7 about seven or eight months before the presentment
8 came out.

9 A. Yeah.

10 Q. Do you recall there being a newspaper article
11 in The Patriot News reporting about the Sandusky
12 investigation?

13 A. Yes.

14 Q. And do you recall any discussion that you had
15 with Mike about that article?

16 A. I just -- and again, I just vaguely remember
17 the scene. The article was laying on the -- I don't
18 know what paper it was in, but it was laying in the
19 equipment room and when he come down for lunch, he
20 just pointed to the article and said, you know, this
21 is what -- you know, this is what it was about.

22 Q. Pardon me?

23 A. He kind of pointed to it and said this is
24 what I was talking about or something. Not talking
25 about, I can't remember exactly how he said it.

1 Q. He was indicating he was part of that?

2 A. No. He just -- it was more of a vague -- you
3 know, it was just vague. You know, I just don't
4 remember exactly, Elliott.

5 Q. Sir, are you -- let me rephrase this. You
6 said that you first saw the statement from President
7 Spanier when you received a subpoena to appear here
8 in this case?

9 A. Yes.

10 Q. Can you tell us about when that was? We're
11 not going to hold you down to a precise date. Was
12 it the month of October 2016?

13 A. Yes.

14 Q. So, it was this month?

15 A. Yeah. It was just recently, yes.

16 Q. And so, that's the first time that you saw
17 the statement from President Spanier?

18 A. Yes.

19 Q. And you never read the presentment?

20 A. I did not.

21 Q. Lastly, sir, how many times have you had
22 lunch with Mike McQueary since November 11th, 2011?

23 A. Since November?

24 Q. That's when he was placed on administrative
25 leave.

1 A. Right. Right. Yeah, I haven't -- I don't
2 think we have.

3 Q. Pardon me?

4 A. I don't remember exactly, but I don't think
5 we have had lunch since then.

6 Q. And you had a retirement party, did you not,
7 when you retired?

8 A. Yes, sir, I did.

9 Q. And was Mike at that retirement party?

10 A. I honestly don't remember.

11 Q. Was he invited?

12 A. I don't remember because I didn't have the
13 invitation list. I didn't do that.

14 Q. Who did that?

15 A. The lettermen's club. People in charge of
16 the lettermen's club.

17 Q. So these are the lettermen from all the years
18 coming out to honor you?

19 A. Yes, sir.

20 Q. In your premature retirement?

21 A. I'm sorry?

22 Q. In your premature retirement?

23 A. I know right. I know.

24 MR. STROKOFF: Nothing further, Your Honor.

25 MS. CONRAD: Just a few follow ups.

REDIRECT EXAMINATION

BY MS. CONRAD:

Q. Mr. Caldwell, Attorney Strokoff asked you about having read the Spanier statement in conjunction with the subpoena you received to appear at this proceeding; correct?

A. Yes.

Q. Having read the Spanier statement and knowing that Mr. McQueary was the graduate assistant in that 2001 incident, when you read the Spanier statement last month, did you in any way connect it to Mr. McQueary?

A. I still did not, no.

Q. When you read the Spanier statement, did you in any way read it to suggest that Mr. McQueary must have been lying in his testimony to the grand jury?

A. No.

Q. Did you read it and in any way infer that Mr. McQueary committed perjury?

A. No.

Q. And when you read it just what was it, last month?

A. Yes.

Q. Did you in any way conclude that it reflected negatively on Mr. McQueary?

1 A. I didn't get that sense, no.

2 Q. Now you did respond to Attorney Strokoff that
3 I believe you said you never heard a negative
4 statement from a player about Mr. McQueary; is that
5 right?

6 A. That's correct.

7 Q. Since November 2011, have you heard anyone at
8 the University make a negative statement about Mr.
9 McQueary?

10 A. Since November of 2011?

11 Q. Yes.

12 A. No.

13 MS. CONRAD: Thank you. I have no further
14 questions.

15 RE CROSS EXAMINATION

16 BY MR. STROKOFF:

17 Q. Sir, since November 11th, 2011, have you
18 heard anybody at the University make any statement
19 about Mike McQueary?

20 A. No.

21 Q. So he hasn't been part of the Penn State
22 discussion at all since November 11th, 2011 in your
23 presence?

24 A. Like, just in general? I mean --

25 Q. Any talk about Mike McQueary since he's been

1 on administrative leave.

2 A. Well, we've just talked about him in general
3 around, but no, not -- not in a negative form, no.

4 MR. STROKOFF: Nothing further, Your Honor.

5 THE COURT: Counsel want to come up here a
6 second, please?

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

9 THE COURT: Who's next?

10 MS. CONRAD: We have the video of Matt Rhule
11 and I think Mr. Shelow is here but I have to confirm
12 that.

13 MR. FLEMING: Yes, he's here.

14 THE COURT: So I'm going to give them their
15 afternoon break and I'm going to have a few
16 questions for these witnesses, so we'll do it that
17 way.

18 MS. CONRAD: Okay. Thank you, sir.

19 (End of sidebar.)

20 THE COURT: Members of the jury, I believe
21 that we're going to see a video and have another
22 live witness, so this is probably a good time for us
23 to take our afternoon break. Why don't we take 15
24 minutes and take it until three o'clock, and come
25 back at three o'clock.

1 (Whereupon, the jury was excused for a
2 recess.)

3 (Whereupon, the following was held outside
4 the presence of the jury:)

5 THE COURT: We're going back to that phase in
6 the case where I'm hearing it without the benefit of
7 a jury so per agreement, we're asking the questions
8 out of the presence of the jury. Sir, I understand
9 that you are here represented by counsel today?

10 THE WITNESS: Yes, sir.

11 THE COURT: And was it your idea to bring an
12 attorney today?

13 THE WITNESS: Yeah. I mean -- yeah, it was
14 my idea, yes.

15 THE COURT: So, is this an attorney you
16 retained independently?

17 THE WITNESS: No. This was this assigned to
18 me originally by the University.

19 MS. CONRAD: Your Honor, at this point, with
20 all due respect, I just want to note my objection on
21 the record as to relevancy of this matter.

22 THE COURT: Sure. Your objection is noted.
23 So the University decided you should be represented
24 by an attorney here today?

25 THE WITNESS: Well, it wasn't necessarily

1 today. When I -- you know, when I testified in
2 front of the grand jury, and this is going back to
3 the Sandusky trial, I had no representation for when
4 I was in front of the grand jury two different
5 times. And then --

6 THE COURT: And I don't want to know about
7 your grand jury situation. So are you telling me
8 that from that time forward you've had some
9 representation by an attorney provided by the
10 University?

11 THE WITNESS: Correct.

12 THE COURT: Okay. Now, with regard to Mr.
13 McQueary, when did you become aware that he was not
14 permitted to be in any of the athletic facilities of
15 Penn State?

16 THE WITNESS: See I never, like, heard that
17 he wasn't allowed in the facilities. I never really
18 officially ever heard that. I know he was put on
19 administrative leave at some point, but I never
20 heard he was told not to be in the facility.

21 THE COURT: Okay. So one day he was at the
22 facility and after that, you never saw him there
23 again; is that correct?

24 THE WITNESS: Yes.

25 THE COURT: Did you ask any questions as to

1 where he went?

2 THE COURT: I mean, no, I guess I was
3 assuming stuff.

4 THE COURT: Is there a reason why you didn't
5 ask where he went?

6 THE WITNESS: I mean, we just -- I don't
7 know, that's a good question. I just thought maybe
8 -- I guess he was supposed to stay away, I don't
9 know. I don't know.

10 THE COURT: Was this period of time a time
11 when you thought it wasn't in your best interest to
12 be asking questions?

13 THE WITNESS: Yeah. I just kind of -- maybe
14 I was too naive and just went along with the flow.
15 But I never was really pursuing it to -- I don't
16 know. I'm just not sure why, I don't know. But I
17 wouldn't have asked more questions on that regard.

18 THE COURT: Now, what was the relationship
19 between Mr. Venturino and Coach Paterno?

20 THE WITNESS: Well, again, you know, with his
21 working relationship obviously, they were -- I mean,
22 you know, Coach hired him in 1994 I think -- or I'm
23 sorry, 1984, he's been there since 1984. And just
24 worked directly with Coach through the years. And
25 kind of towards the end, you know, was the guy that

1 was right by his side, you know, helping him with
2 his golf cart when he broke his leg and he would
3 drive him around, you know, he was close to Joe.

4 THE COURT: And what was his relationship
5 with Mr. Curley?

6 THE WITNESS: They were friends. And they
7 were actually, besides working relationship, too.
8 They were also friends I could say. You know, they
9 did stuff socially outside of football as well. You
10 know, just going out to eat together and whatnot, so
11 --

12 THE COURT: Okay. Was the relationship
13 closer between Mr. Venturino and Coach Paterno or
14 between Venturino and Mr. Curley? If you know.

15 THE WITNESS: Yeah, I wouldn't really know
16 how to answer that.

17 THE COURT: Okay. What was the relationship
18 you observed between Coach Paterno and Mr. McQueary.

19 A. I always saw a good relationship. I mean, it
20 was just a-- it was pretty much always on the field
21 relationship or at bowl games or in the hospitality
22 room at a bowl game or night before games, but never
23 any -- never negative in anything. It was always
24 positive that I saw.

25 THE COURT: Okay. So when Mr. Venturino said

1 to you we lost another brother, in your mind was he
2 referring to Mr. McQueary or to Mr. Curley or to
3 both?

4 THE WITNESS: No, it was -- he was referring
5 to Mr. McQueary.

6 THE COURT: Mr. McQueary?

7 THE WITNESS: Yes, sir.

8 THE COURT: And this came immediately on the
9 heels of the Board of Trustees terminating Coach
10 Paterno?

11 THE WITNESS: Yeah. That was the day after
12 the termination of Coach Paterno, yes. Yes, on the
13 heels, yes.

14 THE COURT: And was it your understanding
15 that if there was a rule violation that was
16 reportable, that the chain of command was for
17 someone on the athletic team to go to Coach Paterno
18 and report it?

19 THE WITNESS: That's what I would have done,
20 yes.

21 THE COURT: Okay. Either side may follow up
22 if you choose.

23 MR. STROKOFF: None from the plaintiff, Your
24 Honor.

25 MS. CONRAD: Nothing.

1 THE COURT: Okay. You can step down, sir.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Mr. Steel, if you want to come
4 back up, please, sir? Do you know, Ms. Conrad, if
5 Mr. Steel was represented by counsel in an
6 appearance before the grand jury so we don't have to
7 go into this area?

8 MS. CONRAD: As to Mr. Diehl, I don't know
9 the answer to that, sir.

10 THE COURT: Mr. Steel, I understand you're
11 represented by counsel?

12 THE WITNESS: It's Mr. Diehl.

13 THE COURT: I'm sorry.

14 THE WITNESS: That's okay. I am.

15 THE COURT: And I take it you did not appear
16 before the grand jury?

17 THE WITNESS: I did.

18 THE COURT: You did? Okay.

19 MS. CONRAD: Judge, just so the record is
20 clear, I wanted to note my objection to this line of
21 questioning.

22 THE COURT: Right. It's noted. Okay. So
23 I'm not going to go there, we'll let that go. You
24 indicated, sir, that when all of this was developing
25 in those couple days in November, that it was an

1 emotional atmosphere, and then you added a lot of
2 good men lost their jobs?

3 THE WITNESS: Yes.

4 THE COURT: What did you mean by that?

5 THE WITNESS: University president and
6 athletic director, assistant vice president,
7 football coaches, head football coach, those men.

8 THE COURT: Now, directing your attention to
9 the period up to October of 2011, was there anything
10 about Mr. McQueary's performance that you personally
11 observed that would cause you to think his job was
12 in jeopardy?

13 THE WITNESS: No.

14 THE COURT: Was there anything about the Penn
15 State athletic football program that would cause you
16 to believe that Coach Paterno was going to be
17 replaced?

18 THE WITNESS: No.

19 THE COURT: Was there anything about the
20 athletic program, the football program that led you
21 to believe that any of the assistant coaches were
22 likely to be replaced?

23 THE WITNESS: No.

24 THE COURT: Was there any talk whatsoever
25 that you were aware of of a plan to change coaches

1 at the end of the season?

2 THE WITNESS: The only thing I was aware of
3 was that the assistant coaches were given an
4 18-month contract upon -- which would start if they
5 were not retained by a new coach for 18 months as a
6 way, I believe, of Joe taking care of the staff,
7 because we were all together, so close for so many
8 years.

9 THE COURT: And do you have an understanding
10 as to when in time that package was put in place?

11 THE WITNESS: I want to say it was around
12 2010, to my recollection, but I was never told a
13 drop date.

14 THE COURT: Okay. But to your knowledge, was
15 there any word about that Coach Paterno was going to
16 be replaced at the end of the season?

17 THE WITNESS: Not at the end of that season,
18 no.

19 THE COURT: With regard to the succession
20 plan, you indicated that Coach Paterno's practice
21 was to keep coaches long term?

22 THE WITNESS: Yes.

23 THE COURT: Okay. Was there any expectation
24 that you were aware of among the assistant coaches
25 that in the event Coach Paterno retired in a normal

1 fashion that the replacement would be an outside
2 candidate as opposed to an inside candidate?

3 THE WITNESS: No, I thought -- being there my
4 whole professional career and still there, I think
5 that there was an assumption that it would be
6 someone internal, a loyal lieutenant so to speak.

7 THE COURT: And I noted that you said when
8 you heard Mr. O'Brien was the coach, that you noted
9 he was not a Penn Stater. What did you mean by
10 that?

11 THE WITNESS: Well, I paused there because
12 this is my definition -- there's two types of Penn
13 Staters. There's those that came here and those
14 that should have come here. And Coach O'Brien was a
15 Penn Stater to me because he exemplified the same
16 characteristics as Coach Paterno did. That's why I
17 paused there.

18 THE COURT: Okay. Now, did you become aware
19 that Mr. McQueary was not permitted to be on the
20 athletic -- in the athletic areas?

21 THE WITNESS: I was never told that he wasn't
22 allowed to be back. But I was aware that in
23 December of 2011 that he was cleaning out his office
24 with someone from the University. And I was made
25 aware of that by Tom Venturino when he told me on

1 the practice field, that he said it was one of the
2 most difficult days because Mike was cleaning out
3 his office.

4 THE COURT: And what did you take that to
5 mean?

6 THE WITNESS: That he was not going to be
7 around the football building anymore.

8 THE COURT: And when, in the days after
9 November -- well, let's pick it up after the
10 Nebraska game, did you question where he was in
11 terms of being present in the athletic facility?

12 THE WITNESS: No. I knew he wasn't around.

13 THE COURT: But you didn't know why?

14 THE WITNESS: No.

15 THE COURT: And you didn't know who made the
16 decision?

17 THE WITNESS: No, sir.

18 THE COURT: And you also indicated that at
19 some point in time you were told to be careful in
20 your comments if you spoke to Mr. McQueary because
21 he had filed a lawsuit?

22 THE WITNESS: That is correct.

23 THE COURT: Who told you that?

24 THE WITNESS: We had a meeting in Bryce
25 Jordan Center around either August or September of

1 2012.

2 MS. CONRAD: Your Honor, at this point I'm
3 going to caution the witness to the extent this was
4 a privileged conversation in which counsel was
5 involved. That would not -- the University would
6 retain the privilege.

7 THE COURT: Okay. Do not identify any
8 attorneys who were present at this meeting that you
9 attended, but identify all non-attorneys at the
10 meeting that you can recall.

11 THE WITNESS: Okay.

12 THE COURT: Who are they? Who was present?
13 You were there?

14 THE WITNESS: And any of us that were part of
15 the football program or the University that had
16 direct contact with Mike McQueary, including Coach
17 O'Brien was there with myself, all the employees at
18 the football program.

19 THE COURT: So, give me a number. How many
20 people?

21 THE WITNESS: Oh, probably 30 or 40.

22 THE COURT: Okay. And you're invoking the
23 attorney/client privilege?

24 MS. CONRAD: Yes, sir. These were all
25 employees of the University.

1 THE COURT: Okay. Am I correct, sir, in
2 trying to run the mental gymnastics, that no
3 coach -- assistant coach who coached under Coach
4 Paterno is currently at Penn State University in the
5 athletic department?

6 THE WITNESS: Bobby White I believe is -- he
7 coached with us for a year. Bobby is actually still
8 employed by Penn State. He chose to leave Coach
9 Paterno's staff and go to another position within
10 the athletic department.

11 THE COURT: Let me rephrase my question.
12 I've heard mention of nine coaches which, as I
13 understand it, you had Coach Paterno and then you
14 got the core coaches that I'm going to equate to the
15 nine.

16 THE WITNESS: Okay.

17 THE COURT: Are any of them left?

18 THE WITNESS: No, sir.

19 THE COURT: And by -- again, if I've heard
20 the testimony correctly, by December of 2012, all
21 but one were done?

22 THE WITNESS: 2013. All but one, yes.

23 THE COURT: 2013. And you mentioned
24 something about new hiring policies. What did you
25 mean by that in reference to Coach O'Brien coming on

1 board?

2 THE WITNESS: Yeah. When I was the director
3 of football operations, Coach O'Brien, when he made
4 a new hire for a coach, it was a lot lengthier
5 process. He selected his new coach. And then when
6 he submitted to the HR department, there was a bunch
7 -- a new method of checks and balances. They ran
8 reports. And not just hiring, but any kind of
9 volunteerism. We went through -- the University
10 went through a shift of background check upgrades, I
11 guess you could say after 2011.

12 THE COURT: Either side my follow up as you
13 see fit.

14 MR. STROKOFF: Mr. Diehl, you made reference
15 to a Bobby White, a former coach?

16 THE WITNESS: Yes, sir.

17 MR. STROKOFF: Is he employed elsewhere at
18 the University?

19 THE WITNESS: Yes, sir.

20 MR. STROKOFF: In what capacity, sir?

21 THE WITNESS: He's actually Mr. Caldwell's
22 direct supervisor over at Nittany Lion Club and
23 Suites at Beaver Stadium.

24 MR. STROKOFF: So he's employed within the
25 athletic department?

1 THE WITNESS: We're actually development and
2 we service the athletic department.

3 MR. STROKOFF: Okay. Part of the athletic --
4 overall athletic program?

5 THE WITNESS: Correct.

6 MR. STROKOFF: Okay. And how long has he
7 been employed in that capacity? Do you know?

8 THE WITNESS: 2001, 2002.

9 MR. STROKOFF: And you said he's Mr.
10 Caldwell's supervisor?

11 THE WITNESS: That is correct.

12 MR. STROKOFF: Nothing further, Your Honor.

13 MS. CONRAD: Few follow ups. Mr. White's not
14 currently an assistant coach, is he?

15 THE WITNESS: No, he's not.

16 MS. CONRAD: Okay. So I want to make sure I
17 have the timeline straight. Coach O'Brien comes in
18 in 2012; correct?

19 THE WITNESS: January of 2012, yes.

20 MS. CONRAD: And he retains how many
21 assistant coaches from Coach O'Brien? I'm sorry,
22 how many -- it's that midpoint in the day.

23 THE WITNESS: Yes, ma'am. I understand.

24 MS. CONRAD: Coach O'Brien retains how many
25 assistant coaches who coached under Coach Paterno?

1 THE WITNESS: Two.

2 MS. CONRAD: Coach O'Brien leaves what year?

3 THE WITNESS: He leaves in December of 2013.

4 MS. CONRAD: New head coach named?

5 THE WITNESS: In January of 2014.

6 MS. CONRAD: That's coach Franklin?

7 THE WITNESS: Yes, ma'am.

8 MS. CONRAD: And how many assistant coaches
9 remain on Coach Franklin's staff who were on Coach
10 Paterno's staff?

11 THE WITNESS: That would be zero.

12 MS. CONRAD: Now, you were asked about seeing
13 Mike, I believe, December 2011 when he was clearing
14 out his office; is that correct.

15 THE WITNESS: That is correct.

16 MS. CONRAD: In January 2012, were there
17 other assistant coaches cleaning out their office?

18 THE WITNESS: That is correct.

19 MS. CONRAD: Approximately how many other
20 coaches were cleaning out their offices and
21 assistant coaches in January of 2012?

22 THE WITNESS: That would be six.

23 MS. CONRAD: And then you were asked a
24 question about whether -- up to October 2011 I
25 believe the question was, whether there had been any

1 information about Coach Paterno retiring; correct?

2 THE WITNESS: That is correct, yes.

3 MS. CONRAD: And I believe you testified that
4 the assumption was that if Coach Paterno retired,
5 there would be a new head coach named from
6 internally; is that correct?

7 THE WITNESS: Yes, that is my assumption.

8 MS. CONRAD: You didn't have any information
9 from the University about that process, did you?

10 THE WITNESS: No, ma'am.

11 MS. CONRAD: And, in fact, when it came a
12 point in time to hire a new head coach, was somebody
13 from the inside selected?

14 THE WITNESS: No, ma'am.

15 MS. CONRAD: It was somebody from the
16 outside?

17 THE WITNESS: That is correct.

18 MS. CONRAD: Thank you. I have no further
19 questions.

20 MR. STROKOFF: Nothing, Your Honor.

21 THE COURT: Thank you, sir. You're free to
22 go about your business.

23 (Whereupon, a recess was taken.)

24 (Whereupon, the following discussion was held
25 at sidebar:)

1 MS. CONRAD: Good afternoon.

2 THE COURT: Good afternoon.

3 MS. CONRAD: We have, as I originally
4 represented, the video we hope to show today was one
5 hour. However, Mr. Strokoff has just designated his
6 portion of the video and it is now up to and maybe
7 over two hours. So it may not be a prime time for a
8 video after this next witness.

9 THE COURT: Maybe Mr. Fleming can tell us, I
10 haven't seen any movie theaters in the area in my
11 jaunts, that perhaps we can invite them back for a
12 movie tonight or provide the appropriate amenities.
13 Is there a movie theater in the area?

14 MR. FLEMING: There used to be in Bellefonte,
15 Judge. But yes, there are, up in State College.

16 THE COURT: Well, I don't want to -- it will
17 be fairly expensive in State College. So now, what
18 does that do to our entire timeline?

19 MS. CONRAD: I still think we're all right
20 for tomorrow because that would mean we have one
21 short witness to be recalled. We have our two
22 experts, which we will get through one in the
23 morning, maybe one by midday, and then we're going
24 to have to put the videos in.

25 THE COURT: If we do a two-hour video now,

1 we're here until a little after five o'clock.

2 MS. CONRAD: Well, we have a witness to put
3 on, sir.

4 THE COURT: All right. So we're going to do
5 the live witness and then I just tell them to bring
6 their popcorn or whatever else they like to eat,
7 Juju Fruits, that's what I like, but we'll see.
8 Okay. So, we're going to do the live witness, will
9 take us how long do you think?

10 MS. CONRAD: I have no more than probably ten
11 minutes.

12 THE COURT: And you have no idea. Okay. So
13 then we're done with the live witness and there's no
14 point in starting the video so, we'll just have to
15 do it tomorrow.

16 MR. STROKOFF: But if we did the video, we'd
17 be out by 5:15 and we do the ten-minute witness
18 tomorrow.

19 MS. CONRAD: I don't think the witness is
20 available tomorrow.

21 THE COURT: And we don't want to show half of
22 the video today and half tomorrow. And we have the
23 juror who keeps bumping up around 5:30 in the
24 afternoon, which is the problem. So, okay. Let me
25 get them out here and we'll confer with them and see

1 what's what. It will be their call.

2 (Whereupon, the jury was escorted into the
3 courtroom.)

4 THE COURT: Let's have the witness.

5 MS. CONRAD: The University calls Stephen
6 Shelow.

7 STEPHEN SHELOW

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

10 DIRECT EXAMINATION

11 BY MS. CONRAD:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. My name is Nancy Conrad and I represent The
15 Pennsylvania State University. Before we get
16 started, I want to be sure you have a binder in
17 front of you that is marked Defendant's Exhibits if
18 you look at the spine there.

19 A. That's correct.

20 Q. Thank you. Now, I want to direct your
21 attention Mr. Shelow to the time period of November
22 two thousand --

23 THE COURT: Would you state and spell your
24 name, please?

25 THE WITNESS: Absolutely, Your Honor. My

1 name is Stephen with a P H. And the last name is
2 Shelow, S-H-E-L-O-W.

3 THE COURT: Thank you.

4 THE WITNESS: You're welcome.

5 BY MS. CONRAD:

6 Q. I want to direct your attention, and I'm
7 going to limit my questions to the time period of
8 November 2011.

9 A. Okay.

10 Q. November 2011, were you employed?

11 A. I was.

12 Q. With whom?

13 A. Penn State University.

14 Q. And in what position did you hold in November
15 of 2011?

16 A. I was the assistant vice president for police
17 and public safety at Penn State.

18 Q. Now, I want to direct your attention to the
19 exhibit at tab 44 in the binder. This has not yet
20 been admitted so please do not publish.

21 A. Okay.

22 Q. Are you familiar with the document that is
23 contained at D44?

24 A. Yes.

25 Q. What is it?

1 A. It's a Penn State police incident report.

2 Q. And how are you familiar with it?

3 A. Again, as a 27-year veteran of the police
4 department, including leading at the rank of
5 assistant vice president, I've either written or
6 reviewed literally thousands of these.

7 Q. In November 2011, did you review this
8 document contained at Exhibit 44?

9 A. I did.

10 MS. CONRAD: Move for the admission of
11 Defendant 44.

12 THE COURT: I thought it was admitted
13 already. D44?

14 MS. CONRAD: Yes, sir.

15 THE COURT: I had that it was previously
16 admitted over objection.

17 MS. CONRAD: Thank you. Permission then to
18 publish?

19 THE COURT: Well, that became, I think, the
20 issue, that we admitted it and the question was
21 going to be what are we going to do with it. And I
22 think there was some questions asked of the witness
23 what did you do as a result of that.

24 MS. CONRAD: Yes, sir.

25 THE COURT: So now you want to put it in for

1 what purpose? The truth of what's contained in the
2 report or to show what he's doing, et cetera?

3 MS. CONRAD: To show that he received the
4 information contained in this report and what
5 actions he took upon receiving this information.

6 THE COURT: All right. Again, members of the
7 jury, we have the same issue whether we're accepting
8 it for the truth of the statement, what we're saying
9 here is that, again, this is one of these exhibits
10 that came in, he looked at it, and his reaction to
11 it was whatever. But it's not necessarily being
12 offered for the truth of the content. Go ahead.

13 BY MS. CONRAD:

14 Q. Mr. Shelow --

15 MS. CONRAD: Permission to publish then, sir.

16 THE COURT: Yes.

17 BY MS. CONRAD:

18 Q. This is a crime incident report, as least as
19 titled, isn't it?

20 A. Correct.

21 Q. And where did this crime incident report
22 originate?

23 A. Actually, it originated via a submission
24 electronically on the University police website.

25 Q. And who received that information in November

1 of 2011 if you recall?

2 A. There were a number of us who automatically
3 received submissions via our University police
4 website. I'm recalling that back then, there were
5 about a half of a dozen administrators, myself
6 included, who would automatically receive
7 submissions via our website.

8 Q. So, did you receive the submission contained
9 at D44?

10 A. Yes, I did.

11 Q. And the type is noted in the second line,
12 isn't it, the type of crime incident report?

13 A. It is, yes.

14 Q. And what type of incident is it?

15 A. It's titled terroristic threats.

16 Q. And with respect to the second -- well,
17 starting on the bottom of the first page, without
18 reference to the name of the individual, what was
19 the narrative that was received by University
20 police?

21 A. It's basically a summary of a threat that was
22 received via the University police website that I
23 just spoke about.

24 Q. And when was this threat received?

25 A. I believe it was received on November 11th.

1 Q. And does -- is the time indicated in the
2 first page of the narrative?

3 A. Yeah, that's why I'm double checking. It is,
4 yes.

5 Q. And what was that time?

6 A. It looks to be about 1:44 p.m.

7 Q. And turning your attention to the second page
8 -- strike that. What was the nature of this threat
9 as reflected on the first page there?

10 A. It was a threat written by an individual
11 received by our website basically saying that we
12 should add his name to the list of people that were
13 angry at Mr. McQueary.

14 Q. Well, I want to go back to that narrative on
15 that first page there at the bottom.

16 A. Okay.

17 Q. Specifically starting with the bottom line,
18 what does it provide, the email?

19 A. I'm sorry, can you repeat that? I'm on the
20 first page of the incident report.

21 Q. Yes, please. And I'm at the very last
22 sentence of the narrative. What does it provide?

23 A. It's a phone number.

24 Q. Okay. Starting with the email.

25 A. That's not until the second page. I'm not

1 following you, Mrs. Conrad, I apologize.

2 Q. That's fine. I understand. Let me try to
3 clarify my question. Looking at the narrative there
4 are three lines of text there.

5 A. Now I understand.

6 Q. Okay. And in the third line of the text,
7 what information is provided?

8 A. I apologize, now I understand. It says that
9 the email is a threat against Assistant Coach Mike
10 McQueary. And then it goes on to say it reads as
11 follows.

12 Q. And does the next page contain the text of
13 the email that had been received?

14 A. It does.

15 Q. And directing your attention then to the top
16 portion of that page, could you read into the record
17 what information was received by the University on
18 or about November 11th, 2011?

19 A. It says, "Add my name to those who have
20 threatened Mike McQueary. Surely he will never step
21 foot on a football field again. If he does, he
22 needs to be shot. He's surely in my sights and I
23 only hope someone else shoots him before I get a
24 chance." It goes on to say, "By the way, the
25 conduct of your department," which is in reference

1 to the police department, "is disgusting as well.
2 What a bunch of cowards who would put the reputation
3 of the University above the safety of a young boy."

4 Q. Now with respect to this threat that was
5 received by Mike McQueary, what were the next steps,
6 if any, that were taken with regard to this
7 information?

8 A. A police officer in the Penn State University
9 Police Department was assigned to investigate the
10 incident.

11 Q. And following that investigation, what
12 determination, if any, was made about the nature of
13 the threat?

14 A. Well, we were actually able to speak with --
15 one of my former staff members was able to speak
16 with the individual who submitted the online
17 submission form. And in addition to that, that same
18 officer had contact with a deputy sheriff in the
19 state of Florida which is where this originated.
20 And that deputy sheriff also spoke to the author of
21 the email submission. And at the conclusion, we
22 determined that while it was a very serious threat,
23 that we could do nothing more than warn him about
24 the possibility of getting arrested for such threats
25 and to sort of knock it off and not do it again.

1 Q. Well, after receipt of this threat, did
2 University police take any action with respect to
3 safety precautions?

4 A. Well, again, if I think back to that entire
5 week beginning on that preceding Saturday, the
6 answer to your question is that amongst all of the
7 chaos that was kind of unfolding, we were taking all
8 kinds of steps, actions, to try to deal with safety,
9 particularly on Wednesday night I think it was when
10 the decisions were made with respect to the former
11 president and the former head coach and the
12 subsequent formation of crowds on and off campus. I
13 mean, there were preparations among preparations
14 among preparations going on for that entire week.
15 This would have been one of many instances that led
16 to us engaging in preparations.

17 Q. You also had a game coming up that Saturday?

18 A. We had a big game coming up that Saturday,
19 yes, against Nebraska.

20 Q. And in light of these -- and by the way, was
21 this the only threat that University police was
22 aware of with respect to Mr. McQueary?

23 A. I can't answer that. I can tell you, though,
24 that it's the only one that I'm aware of that was
25 directly related to Mr. McQueary.

1 Q. And did you communicate to anyone at the
2 University that University police had received this
3 threat?

4 A. I personally communicated this threat and
5 others that were received, now not against Mr.
6 McQueary. But remember, there were threats against
7 the former president, the former head coach, the
8 chair of the board that made -- I mean, there were
9 threats and I was briefing personally President
10 Erickson, then President Erickson on the various
11 threats that we were trying to either assess or
12 respond to throughout that entire week.

13 Q. And with respect to those threats, what
14 action, if any, did you take with respect to the
15 individuals that you just referenced?

16 A. Well, we did a couple of things I guess. We
17 determined where additional police presence might be
18 needed or necessary throughout the week, including
19 on Saturday. And we worked really, really hard.
20 And I think you need to be mindful of the limited
21 police resources that we have in the center region,
22 so we were working really, really hard to try to
23 obtain far more police presence for the week,
24 including the Nebraska game. So I would say we were
25 deploying police resources throughout the week and

1 certainly on Saturday where we thought was
2 necessary. And we were trying really, really hard
3 to add to our pool of resources because this was a
4 tough week for us.

5 Q. It's been described as an unprecedented week.

6 A. Unbelievably unprecedented in terms of
7 resource demands.

8 Q. And where were you getting this additional
9 help from?

10 A. Well, the only place that we really could
11 draw upon that we hadn't already drawn upon was the
12 Pennsylvania State Police.

13 Q. Now, directing your attention to tab 46. And
14 this document has not been admitted yet, so please
15 do not --

16 A. I have it.

17 Q. Are you familiar with this document?

18 A. I am.

19 Q. What is it?

20 A. It is an email.

21 Q. Is it an email that was copied and received
22 by you?

23 A. Yes.

24 MS. CONRAD: Permission -- strike that. I
25 move to admit Defendant's 46.

1 THE COURT: Just a second until I get there.
2 D46?

3 MS. CONRAD: Yes, sir.

4 THE COURT: Counsel.

5 MR. STROKOFF: Your Honor, I'm sure he will
6 authenticate it, but this appears to be two emails
7 and he's shown as a CC on both of them.

8 MS. CONRAD: Yes, sir. He's shown as a CC on
9 both emails contained at D46.

10 MR. STROKOFF: So the content, because the
11 senders were not Mr. Shelow, the content would be
12 hearsay.

13 THE COURT: Okay. So, can you identify the
14 document, sir?

15 THE WITNESS: I can, Your Honor.

16 THE COURT: Okay. So he's identified it,
17 you're moving its admission, and then what are you
18 going to do with it?

19 MS. CONRAD: I'm going to ask him whether or
20 not this document refreshes his recollection as to
21 any actions taken by the University as well as based
22 on his reading of this actual document whether or
23 not University police took action.

24 MR. STROKOFF: And she did ask for permission
25 to publish, Your Honor.

1 THE COURT: Pardon me?

2 MR. STROKOFF: She asked for permission to
3 publish and that's why I raised this objection.

4 THE COURT: Yeah. It's like everything else
5 that's getting published and it's not being offered
6 for the truth of the matter but it's up there. He
7 can simply say I got this and what did he do as a
8 result. So it's admitted with the provision that
9 it's not going to be displayed to the jury and it's
10 not a document that will go out with the jury.

11 BY MS. CONRAD:

12 Q. Mr. Shelow, what is the document contained
13 an at D46?

14 A. It's an email thread involving two separate
15 emails, both of which I was carbon copied on.

16 Q. And does this email threat contain any
17 information that University police was taking in
18 conjunction on or about November 11, 2011?

19 A. Yes.

20 Q. And what action was University police taking
21 with respect to the events of November 11, 2011?

22 A. We were addressing enhanced security concerns
23 and additional police presence at Beaver Stadium.
24 And we were coordinating with the local off campus
25 police regarding police coverage not on the Penn

1 State campus.

2 Q. And what efforts and actions were taken by
3 Penn State University Police in coordinating with
4 local police?

5 A. Well, it's common at Penn State home football
6 games, at least from my tenure at the University
7 police, for the local police to greet the visiting
8 team when they typically arrived at University Park
9 Airport on Friday. The visiting team often, if not
10 always, stayed at the local Ramada Inn on South
11 Atherton Street. So the email was talking about
12 security concerns regarding those kinds of
13 logistical considerations between my then deputy
14 police chief and the police police chief downtown in
15 the State College Police Department.

16 Q. Was University police coordinating any extra
17 security for the arrival of the Nebraska team?

18 A. Yes.

19 Q. And was University police coordinating with
20 any other police entity checks on various individual
21 homes?

22 A. Yes.

23 Q. What was the nature of those checks?

24 A. The University police was providing, as I
25 recall, around-the-clock coverage with a student

1 auxiliary, this is a non-sworn part-time student
2 wage employee at what we know as the Shcreyer House,
3 which is a house on campus at Penn State University
4 in which the president resides. The local State
5 College Police were, according to this at least,
6 were providing staffing at the residences of Joe
7 Paterno, Mike McQueary, and Gerald Sandusky
8 throughout the weekend, it says.

9 Q. And directing your attention then to D47.
10 Are you familiar with that document, sir?

11 A. Yes.

12 Q. And again, it has not yet been admitted.
13 What is this document?

14 A. It is an email.

15 Q. Is it an email in which you were copied?

16 A. It was an initial email message in which I
17 was not copied, but that I was subsequently
18 forwarded.

19 Q. And based on the information contained in
20 this email, did you take -- did that contribute to
21 the coordination efforts with University police and
22 State College Police?

23 A. Not immediately.

24 MS. CONRAD: Well, first let me move for the
25 admission of D47.

1 MR. STROKOFF: Again, Your Honor, the
2 objection is with respect to the content of the
3 email which is a hundred percent hearsay.

4 THE COURT: Yes. It's admitted. And you can
5 ask him what he did as a result of seeing this
6 email.

7 BY MS. CONRAD:

8 Q. Did you, as a result of receiving this email,
9 receive any information about the state police
10 efforts in conjunction with the events of November
11 11, 2011?

12 A. Not directly, no.

13 Q. Well, did you receive any information about
14 what the state police had done in conjunction with
15 the events in November 2011?

16 A. The email suggests --

17 THE COURT: Sir, does the email refresh your
18 recollection with regard to what the state police
19 did or did not do without reading the content to
20 reply upon what it says?

21 THE WITNESS: No, because I was not aware of
22 this encounter or this exchange until I saw this
23 email. It gendered no further activity or response
24 on my part.

25 BY MS. CONRAD:

1 Q. That's because the action had already been
2 taken?

3 A. Correct.

4 Q. Okay. Directing your -- and directing your
5 attention to D48.

6 MS. CONRAD: D48 has been admitted, sir.
7 Permission to publish.

8 THE COURT: Well, it was admitted over
9 objection. And I'm certain the objection was the
10 same, as to the content, and that we permitted
11 someone to talk about it as to what they did upon
12 receipt of the document. So I could be wrong,
13 because I can't recall exactly when that occurred,
14 but it is consistent with everything else that's
15 going on. So you can ask him is he familiar with
16 the email, does it refresh his recollection, and
17 what did he do.

18 BY MS. CONRAD:

19 Q. Are you familiar with this email, sir?

20 A. Yes, I am.

21 Q. Does it refresh your recollection as to any
22 events that were taking place in November of 2011?

23 A. It does.

24 Q. And what can you tell us about the
25 information that you obtained from this email?

1 A. Well, I was made aware, as I was at home on
2 Friday evening, that a bomb threat was made some
3 time I think after 9:00 p.m., maybe after 9:30 p.m.
4 on the Friday preceding the Penn State/Nebraska
5 game. And so, in spite of the fact that I was
6 trying to get some rest before an early morning
7 report time, as is normally the case for me on a
8 game day Saturday, we sort of sprung into action and
9 began to address the nature of the bomb threat.

10 Q. And did you come to a determination as to
11 your assessment of the nature of the bomb threat?

12 A. Well, as we would in any case, we made a very
13 thorough search of the facility. And when we found
14 nothing out of the ordinary, I suppose I made the
15 determination that while very serious, we probably
16 were in a good position to continue on with business
17 as usual on game day Saturday.

18 Q. And is it fair to say based on your testimony
19 that when you received information that a bomb
20 threat had been received, you viewed it as serious;
21 is that correct?

22 A. Very serious.

23 Q. And do I understand then that action was
24 taken to do a thorough check of the stadium as a
25 result of receiving this bomb threat?

1 A. I would say we took two chief courses of
2 action. One is exactly what you just said. The
3 second is that we tried to determine what messaging
4 we would do throughout the night and throughout the
5 day leading up to kick off so as to inform fans
6 about the threat having been received and so as to
7 allow them to make an independent judgment about
8 whether or not they still wanted to come to the game
9 in spite of the bomb threat.

10 Q. And so I understand your testimony,
11 University police assessed this threat as a serious
12 one?

13 A. That is correct.

14 MS. CONRAD: Thank you. I have no further
15 questions.

16 CROSS EXAMINATION

17 BY MR. STROKOFF:

18 Q. Sir, do you know how many people came to the
19 game?

20 A. I don't remember, but I'm recalling it was in
21 the 90,000 range.

22 Q. And that was after notifying the public that
23 there was a bomb threat but that the University
24 police had examined Beaver Stadium and found no
25 bomb?

1 A. I think we even told them that we elicited
2 the help of the Pennsylvania State Police bomb
3 sniffing dogs. So I think we were pretty detailed
4 on what we provided. My only point is that I don't
5 think it was just our own independent assessment,
6 but I think it was a comprehensive messaging
7 strategy that we tried to employ throughout the day
8 so that they were aware of what actions we took.

9 Q. Okay. I'd like to go back over just a few of
10 these exhibits which you were referred to. The
11 first one is Defense Exhibit 44, your crime/incident
12 report.

13 A. I have it.

14 Q. Okay. At the top right hand corner, it says
15 report date, 11/11/11, 13:44.

16 A. That's correct.

17 Q. That's 1:44, isn't it?

18 A. It's 1:44 p.m., yes.

19 Q. Okay. And when we go down to the narrative,
20 it says that, "On 11/11/11 at approximately 1400
21 hundred, I was provided with a copy of a message."
22 So is that when your department received this
23 report, around two o'clock?

24 A. Well, I'm assuming that we received it around
25 some time after one and the officer who wrote this

1 report and who was assigned the investigation was
2 assigned it at around 2:00 p.m.

3 Q. Okay. And this was a copy of an email you
4 said that was received in the police website?

5 A. Yeah. We're using the word email, but it's
6 an online submission form that, again, when I was
7 there folks could access to make inquiries, report
8 things that they wanted us to be aware of. So from
9 the user's point of view, it was a website. And on
10 the website, you can gain information or you could
11 go to the section where you could submit something.
12 On the back end, it generates an email to me and
13 others.

14 Q. Okay. So the Penn State Police had a website
15 and somebody typed in a message on that website that
16 was deemed to be a possible crime/incident?

17 A. That's correct.

18 Q. Okay. And you assigned one of your staff to
19 investigate what this person had filled out on the
20 police website, right?

21 A. That is correct as well.

22 Q. And the person who had filled out the
23 potential crime was from Melbourne, Florida?

24 A. That is correct as well.

25 Q. And the individual you assigned to

1 investigate this contacted the individual by phone,
2 right?

3 A. That is correct.

4 Q. About what time did he contact the
5 individual?

6 A. I would need to check. I'm not sure that I
7 remember. But my recollection was relatively soon
8 after he was assigned the case. But let me check.
9 Actually, I can't tell.

10 Q. Okay.

11 A. I'm sorry.

12 Q. But then after the Melbourne, Florida citizen
13 was indignant about being called --

14 A. I'm sorry, I didn't hear you.

15 Q. After the Melbourne, Florida citizen was, I'm
16 being diplomatic, indignant after receiving a call
17 from your officer, your officer then went and
18 contacted the Melbourne, Florida PD?

19 A. That is correct. Actually, I think it was a
20 county -- I believe it was Brevard County Sheriff's
21 Office to be exact. And so it was a deputy sheriff
22 in a county agency as opposed to a local Melbourne
23 city or municipal agency I think.

24 Q. Now, your Penn State police officer then
25 spoke to the Brevard County Sheriff's Office?

1 A. That is correct.

2 Q. Identified the individual, right?

3 A. They did.

4 Q. And the Brevard County Sheriff's Office said
5 oh, we know that guy?

6 A. They knew him and went and talked to him.

7 Q. He was a hot head, right?

8 A. I'm sorry?

9 Q. He was a hot head?

10 A. Well, they seemed to have prior interaction
11 with him and they weren't surprised about his
12 demeanor with our officer.

13 Q. Okay. And the end result was nobody was ever
14 charged with a crime, right?

15 A. That is correct.

16 Q. And this is the only threat against Mike
17 McQueary of which you have any knowledge?

18 A. Myself, yes.

19 Q. Tab 46.

20 A. Okay. Got it.

21 Q. Who was Thomas Sowerby?

22 A. Tom Sowerby is -- I'm sorry, was at the time
23 and still is the deputy police chief at Penn State
24 University Police.

25 Q. So he's one of your subordinates?

1 A. I'm not there anymore but he was when I was
2 there and he still there and is still employed in
3 that same capacity.

4 Q. He's with the University police?

5 A. That is correct.

6 Q. And Mr. Sowerby is sending on the 11th at
7 3:39 p.m. an email to John Gardner?

8 A. That's correct.

9 Q. Who's John Gardner?

10 A. So at the time, John Gardner was the deputy
11 police chief down at State College Borough Police.
12 Within the last couple of weeks or months, I'm not
13 sure which, he's been named most recently the police
14 chief at State College.

15 Q. So on November 11th at 3:39 p.m., Mr.
16 Sowerby's reaching out to Gardner. First paragraph
17 is just concerned about, you know, security measures
18 for the Nebraska football team, right?

19 A. Yeah. I was contacted by then athletic
20 director Tom Osborne. And Director Osborne wanted
21 to know from me very clearly what Penn State was
22 doing to protect his team, his staff, and fans from
23 Nebraska that would be coming to the game. In fact,
24 I met with him, I don't even remember what time, but
25 on Friday afternoon prior to the Nebraska game I met

1 with him at the stadium and we talked in great
2 detail about what we were doing and so forth. But
3 this email suggests that I was having those
4 conversations with the athletic director and others
5 at Nebraska frankly.

6 THE COURT: Excuse me. Counsel, we're just
7 using the reference to the email to refresh his
8 recollection, we're not reading it.

9 MR. STROKOFF: I'm sorry.

10 BY MR. STROKOFF:

11 Q. So the first concern was because of something
12 that had happened in 2002, right?

13 A. Well, yes.

14 Q. Okay. And then Gardner responded as to what
15 the State College Police Department was going to do
16 in response to Sowerby's email, right?

17 A. It appears to me that at some point John
18 Gardner and Tom Sowerby must have had a
19 conversation. What I'm seeing is a summary of that
20 conversation by Tom Sowerby, not from John himself.

21 Q. Do you have any personal knowledge that the
22 State College Police provided any security measures
23 for Mike McQueary or his family ever?

24 A. Just what I'm seeing here. That would be --
25 that would be the extent of my personal knowledge of

1 what you just asked about.

2 Q. Well, this isn't your personal knowledge,
3 this is just knowledge from an email, right?

4 A. I think we're saying same thing, but you're
5 right, yes.

6 Q. And this has nothing to do with the personal
7 security of Mr. McQueary, it simply has to do with
8 his residence over the weekend when he wasn't going
9 to be there?

10 A. I don't know when he was or wasn't going to
11 be there. But the first part of your question I
12 believe is correct.

13 Q. And lastly, this bomb threat report came in
14 at 9:27 p.m. on November 11th?

15 A. That sounds right, yes.

16 Q. That's Friday night?

17 A. That's Friday night.

18 MR. STROKOFF: Nothing further, Your Honor.

19 MS. CONRAD: Nothing further, sir.

20 THE COURT: Thank you.

21 THE COURT: You may step down. You're free
22 to go about your business.

23 THE WITNESS: Thank you.

24 THE COURT: It's five minutes of four. Two
25 hours, I take it we're going to be watching the

1 movie in the morning. Is that your pleasure?
2 Collective? Everybody's nodding yes. All right.
3 So having said that, members of the jury, please
4 have a safe trip home and we will see you tomorrow
5 morning to watch the video among other things.

6 (Whereupon, the jury was excused for an
7 overnight recess.)

8 THE COURT: Since events are moving a little
9 quicker than we thought and we need to have the
10 opportunity to discuss the closing instructions.
11 And since we're watching a video tomorrow, I would
12 propose that we try to multitask and kill a couple
13 birds with one stone. So what I'm suggesting is
14 that we have such a deep bench array of legal talent
15 here that, perhaps, each side can leave one counsel
16 to sit there and make sure that the video is played
17 accurately and that other counsel can be freed up so
18 that we can discuss the Court's instructions to the
19 jury, that way I'm not asking you to come in at 7:30
20 tomorrow morning so we can have that discussion.
21 But it would seem to me that I can explain to the
22 jury that it's not that we don't think this is
23 important while we're stepping out, we're trying to
24 multitask so that we can keep on track and meet the
25 timeline that we gave to them because otherwise, I

1 don't know when we sit down and get to talk about
2 the instructions so that you folks would have the
3 time tomorrow evening to be getting your closing
4 arguments in sync. So you can confirm among
5 yourselves, you can either opt for 7:30 tomorrow
6 morning for a discussion about the closing
7 instructions or we can agree that the Court will
8 explain to the jury that we're going to absent
9 ourselves probably for a half hour or so so that we
10 can get all of that out of the way and make
11 efficient use of our time.

12 MR. STROKOFF: We're agreeable to
13 multitasking, Your Honor.

14 MS. CONRAD: We agree also to multitasking.
15 I would ask, though, permission to reexamine the
16 schedule. As I mentioned, I have two experts coming
17 in. And while I just want to confirm they're
18 available to stay through the afternoon, as opposed
19 to they were scheduled to appear first thing in the
20 morning.

21 THE COURT: Okay. Well, we can be flexible.
22 You can do it any way you want. I don't care the
23 order in which we proceed. I'm just saying that
24 when it's video time, we're going to have the
25 opportunity to talk. Obviously, the earlier we have

1 the opportunity to talk, the more time it gives me
2 to do what I need to do.

3 MS. CONRAD: Yes, sir.

4 THE COURT: Okay. So we'll see you at the
5 usual time. Have a nice evening.

6 E N D O F P R O C E E D I N G S
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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me upon the hearing of the within matter and that this copy is a correct transcript of the same.

11/2/16

Date

Jennifer E. Amentler

Jennifer E. Amentler

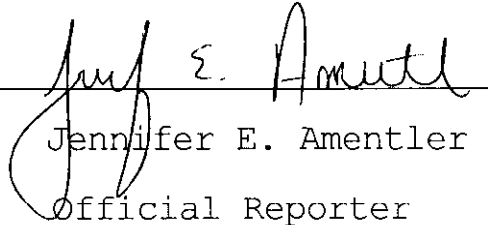
Official Reporter

C E R T I F I C A T E

I hereby certify that a copy of this transcript was furnished and made available to counsel of record for the parties, advising they had until November 1, 2016, in which to file any objections or exceptions to the same. That time period having elapsed without recording of objections or exceptions, the transcript is therefore lodged with the Court for further action.

11/2/16

Date


Jennifer E. Amentler
Official Reporter

ACCEPTANCE BY COURT

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

11-2-16Thomas G. Gavin

Date

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