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IN THE COUNTY OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH : CP-14-CR-2421-2011
VS : CP-14-CR-2422-2011
GERALD A. SANDUSKY :

TRANSCRIPT OF PROCEEDINGS
(DEFENDANT'S POST CONVICTION RELIEF ACT PETITION
HEARING)

BEFORE: JOHN M. CLELAND, SENIOR JUDGE
SPECIALLY PRESIDING

DATE: AUGUST 12, 2016

PLACE: CENTRE COUNTY COURTHOUSE
COURTROOM NO. 1
102 SOUTH ALLEGHENY STREET
BELLEFONTE, PA 16823

APPEARANCES:

FOR THE COMMONWEALTH:
JENNIFER PETERSON, ESQUIRE

FOR THE DEFENDANT:
ALEXANDER LINDSAY, ESQUIRE
J. ANDREW SALEMME, ESQUIRE

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2016 NOV -4 PM 3:04
JENNIFER PETERSON

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	Direct	Cross	Redirect	Recross
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For Commonwealth:

(None)

For Defendant:

Gerald Sandusky	14	41		
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Admitted:

Commonwealth:

(None)

Defendant:

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P R O C E E D I N G S

(The following discussion was held in chambers.)

THE COURT: I'll note for the record that we are in chambers, nine o'clock, the first day of the PCRA hearing. The purpose of meeting this morning is to place on the record a ruling I made in the telephone conference call yesterday morning. The question presented by the Commonwealth is the scope of the direct testimony of Mr. Sandusky when he testifies. The issue being what constitutes the proceeding, which would have been different for purposes of the Strickland analysis. Commonwealth cites Commonwealth versus Walker. And the defense refers to Commonwealth versus Neal. I've also reviewed Commonwealth versus Mallory and Commonwealth versus Nieves.

The defense has argued that for purposes of protecting the record on any subsequent federal habeas corpus proceeding, it would be prudent to create a record in which the defendant is permitted to testify with regard to his actions for each individual defendant or denying any illegal conduct in each individual defendant.

MR. LINDSAY: I think you said individual

1 defendant, I think it's witness.

2 THE COURT: I'm sorry.

3 MR. LINDSAY: I didn't mean to interrupt you,
4 sir.

5 THE COURT: No, no, thank you. Change that
6 to victim slash witness. While I appreciate, as I
7 indicated yesterday morning, the practical
8 implications of that, I believe that the current law
9 of Pennsylvania is that proceeding means the
10 proceeding itself which is at question and not the
11 trial as a whole. And in the absence of some
12 definitive federal case law that that is to the
13 contrary, I'll apply Pennsylvania law rather than
14 predict what federal law might be in the future.

15 Consequently, the scope of direct testimony
16 with regard to these matters will be limited to a
17 statement that if called to testify he would have
18 denied the unlawful conduct. Anything you want to
19 add on the record, Mr. Lindsay, about that issue?

20 MR. LINDSAY: Just so we're clear, we're
21 permitted to ask him a general denial of the
22 charges?

23 THE COURT: Sure. Sure. You got to
24 establish prejudice and the prejudice would be, I
25 didn't have an opportunity to say that.

1 MR. LINDSAY: All right.

2 MR. SALEMME: And I'm also assuming that down
3 the road the Commonwealth can't argue, well, Walker
4 was wrong, you have to -- you had to show the
5 outcome of the trial would be different, I mean
6 obviously because we're saying the prejudice
7 analysis is his decision not to testify then.

8 THE COURT: I don't know what will happen
9 down the road, we'll have to see.

10 MR. LINDSAY: We just want to make a record
11 that we offered to produce that evidence and we
12 argued in favor of producing that evidence and the
13 Commonwealth objected and the Court ruled in the
14 Commonwealth's favor. And that's the reason why we
15 didn't present that evidence.

16 THE COURT: That's fine. That's clearly
17 understood. I just don't want to anticipate a
18 ruling on an objection which may or may not be made.

19 MR. LINDSAY: Very good.

20 THE COURT: Anything that we need to address
21 just on practical issues before we proceed here
22 today?

23 MR. SALEMME: I would. There was -- in the
24 original order, there was the suggestion, or it may
25 actually be explicit, that the court reporter was

1 going to be presented. And I was wondering if she's
2 going to be taking the stand, if the Court is
3 calling her, the Commonwealth is calling her, if
4 she's taking the stand first.

5 THE COURT: No. No. I figured that's a
6 clean up little issue at some point. I don't want
7 to interrupt the flow of what you have planned for
8 today. At some point, we'll -- she's on notice and
9 we'll get her at some point. I think this is --

10 MR. LINDSAY: The other thing I guess is,
11 I've been doing this a long time, I can't predict
12 how long anything's going to be.

13 THE COURT: No. I understand.

14 MR. LINDSAY: We scheduled what we think are
15 witnesses that will fill the day. If Ms. Peterson
16 is an abrupt cross-examiner, I may not have them
17 here, and I hope the Court understands that. Of
18 course one judge said -- you used to work for judge
19 McEwn, didn't you?

20 THE COURT: Mm-hmm.

21 MR. LINDSAY: I almost got into that bind
22 with him. And as he put it, when you get out of
23 lawyers for that, they only do worse. So what I'm
24 saying is that we're doing the best we can to fill
25 the day.

1 THE COURT: I don't doubt that.

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

4 THE COURT: Anything from your end, problems,
5 things we need to talk about?

6 MS. PETERSON: Just one point of
7 clarification I'd like to seek before we go in.
8 Pursuant to Your Honor's June 15th order, there are
9 11 discrete issues that are the subject of the
10 hearing today. And when the witness certifications
11 were submitted in this case, obviously some of these
12 certifications included more issues than the ones
13 that are set forth in this Court's order.

14 And the reason that I raise this is, one of
15 the witnesses today is Lindsay Kowalski. And from
16 reading her witness certification, it wasn't clear
17 to me that it fell within one of these discrete
18 issues that the Court set forth in its order. So
19 therefore, I don't know how to address it if it's
20 beyond the scope of the hearing, is that the way you
21 would like me to bring my objection to the Court's
22 attention or -- just as a practical matter.

23 THE COURT: Mm-hmm. Well, I suppose her
24 testimony is somehow going to buttress some
25 cross-examination of Mr. Amendola that he wasn't

1 prepared, he didn't know what he was doing, and he
2 was overwhelmed.

3 MR. LINDSAY: Well, that's one of the areas
4 we'd like to get into. I don't know that that is
5 not one of the discrete issues.

6 MS. PETERSON: Correct.

7 MR. LINDSAY: We think it is. I think we've
8 indicated to the Court we believe that that is an
9 issue of fact as to how well prepared he was, it
10 would be as what we call the umbrella issue. We
11 think that that should be inquired into, not only
12 from Mr. Amendola but also Mr. Rominger and Lindsay
13 Kowalski.

14 MR. SALEMME: She also provides -- well, what
15 we anticipate will provide evidence regarding the
16 issue dealing with Dr. Atkins.

17 MR. LINDSAY: That's -- that is clearly, you
18 know, the reason. But I guess I should inquire, one
19 of the things -- we think his preparation factually
20 is a significant issue. And I guess what we would
21 say to the Court is eventually after we're done with
22 this round of hearings, we would come back and ask
23 the Court we need to have testimony concerning those
24 other issues, and that would put us in the position
25 of having to recall these witnesses, to have him

1 testify in the event that the Court may agree with
2 this that that is a factual issue concerning how
3 prepared they were and what they were doing and what
4 Lindsay was doing in the trial.

5 THE COURT: My preference is that you would
6 recall them.

7 MR. LINDSAY: We understand.

8 THE COURT: Okay. Does that answer your
9 question?

10 MS. PETERSON: Yes, Your Honor. And just for
11 clarification, Mr. Lindsay has indicated that he
12 believes the lack of preparation in general is a
13 fair inquiry, this morning, of the witnesses. And I
14 would object to that, unless it's tied to one of the
15 issues identified for the Court's order.

16 THE COURT: Well, I think that's right.

17 MR. LINDSAY: No, I think that's what you
18 ruled.

19 THE COURT: Yes.

20 MR. LINDSAY: I think that we need to, I
21 guess, make her record is we have with all four of
22 these witnesses today, a lot of their testimony is
23 intertwined with the discrete issues which will show
24 a lack of preparation. But the overall testimony
25 concerning the lack of preparation, the lack of

1 being able to deal with whatever occurred is there.
2 But as I understand, that issue, as a discrete
3 issue, that is the lack of preparation and so forth.
4 The Court is ruling it's not before me today, and if
5 we do get into it on a later date, you're going to
6 have to recall the witnesses. Am I correct?

7 THE COURT: Yeah. And I don't think there's
8 any great burden here. I mean, Mr. Amendola
9 practices locally; Mr. Rominger, we'll know where
10 he's going to be; Ms. Kowalski, I assume, is still
11 local.

12 MR. LINDSAY: Right.

13 THE COURT: So it's not a burden on the
14 defense to do that.

15 MR. LINDSAY: I just want to make it clear
16 that the Court's making a ruling today and that we
17 will try to adhere to that ruling.

18 THE COURT: Do you intend to get into Dr.
19 Atkins, the decision regarding Dr. Atkins this
20 morning?

21 MR. LINDSAY: Yes. Well, yes, I do.

22 THE COURT: Okay. I have a note from a
23 conference call that occurred on June 15, 2012
24 during the trial. It was late on a Saturday
25 afternoon, I received a call from, a conference call

1 from Mr. Fina and Mr. Amendola, this is in
2 circumstances regarding Matt Sandusky's statement.
3 And I'll give you copies of my notes from that call
4 since it was not on the record.

5 And I'll also give you copies, or a copy of
6 this letter from Edward Detzel. I have no idea who
7 he is. He writes to me, I don't read them. But if
8 there's something in there, I don't want to have ex
9 parte correspondence that you're not aware of. I
10 don't have any idea what it says. Okay.

11 Anything --

12 MR. LINDSAY: This is your summary?

13 THE COURT: That's my note. That's my file
14 note from that conversation. And again, I go back
15 to my previous ruling, I don't know that that
16 constitutes disqualifying information since it's
17 information that came to me in the course of the
18 proceedings. And the only reason -- well, the
19 reason I'm providing you it is you wouldn't
20 otherwise have notice that that conversation
21 occurred unless you discovered it in somebody's
22 file.

23 MR. LINDSAY: I guess what -- I just -- it
24 says received from Fina and Amendola, Matt's
25 statement taken forward to Amendola, he will not be

1 called on direct. Sandusky to make available for
2 examination. And you had mentioned the possibility
3 this could open the door, that examination is what
4 you're referring to, the Atkins matter?

5 THE COURT: Yes. Yes.

6 MR. LINDSAY: Very good.

7 THE COURT: Okay. Anything more that we need
8 to do?

9 MS. PETERSON: Your Honor, just as a
10 housekeeping matter, with respect to the grand jury
11 exhibits, again, I apologize the package arrived so
12 late. I do not have the telephone calls or the two
13 disks that had recorded calls.

14 THE COURT: Am I going to need these today?

15 MR. SALEMME: I don't believe so.

16 THE COURT: You can send those to my
17 residence address rather than to the courthouse. I
18 live about 30 miles from the courthouse. So if you
19 send -- I think you sent some last -- last thing you
20 sent was to my residence address, which is fine. So
21 maybe didn't want to send grand jury stuff to a
22 residence, I appreciate that.

23 MR. LINDSAY: I was going to suggest maybe
24 before we start today you read the phone records.

25 (Laughter)

1 MR. LINDSAY: That was a joke, sir.

2 THE COURT: Yeah. Anything else? I have no
3 reason to think that I need to say this, but I'm
4 going to say it anyway because I said it before the
5 trial and I'll say it here now that -- I think that
6 these proceedings have significance beyond anything
7 that goes on here in this courtroom today, and that
8 how we all conduct ourselves sends a message to
9 society at large and to, you know, in some respects
10 the whole world about how our democracy and how the
11 rule of law works. And I hope to comport myself in
12 that tradition and I feel sure that you all will,
13 too, because it's a service responsibility beyond
14 even the duty to your respective clients.

15 MR. LINDSAY: I couldn't agree more. And I
16 will do the best. I generally try to comport myself
17 in that manner because I'm scared all the time. I'm
18 scared I'll be held in contempt.

19 THE COURT: Anyhow, that's not the way I try
20 to do business, that's not the way I work. But I
21 think this all works better when it's in an
22 atmosphere of mutual trust and respect. And again,
23 I have no reason to say that other than -- I know
24 the attention this is getting and I think it's an
25 important public lesson about how we all conduct

1 ourselves.

2 MR. LINDSAY: I will say this, we've been
3 involved with the Attorney General's Office on this
4 case I guess for about a year and a half and we've
5 had numerous dealings with Ms. Peterson and I would
6 suggest that our relationship has been as cordial as
7 anything I remember in my 45 years. I think perhaps
8 -- I would be very surprised if it suddenly went
9 sour.

10 (End of conversation in chambers.)

11 THE COURT: Good morning. I think we are
12 about ready to proceed. Mr. Lindsay, go ahead.

13 MR. LINDSAY: May it please the Court. At
14 this time, the petitioner calls the defendant,
15 Gerald Sandusky, to the stand.

16 GERALD SANDUSKY

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

19 THE COURT: Be seated, sir.

20 DIRECT EXAMINATION

21 BY MR. LINDSAY:

22 Q. Would you state your name, please, for the
23 record?

24 A. Jerry Sandusky.

25 Q. Mr. Sandusky, do you recall the events of

1 June of 2012 when you were placed on trial for
2 various sexual offenses?

3 A. Yes.

4 Q. Was it your intention to testify on your own
5 behalf in that trial?

6 A. Absolutely. That was the plan.

7 Q. All right. Sir, I'd like to ask you just
8 very generally about what your testimony would have
9 been. Did you listen to the various allegations,
10 various testimonies of witnesses who accused you of
11 sexual acts?

12 A. Yes. Certainly.

13 Q. Did you commit any of those acts?

14 A. Absolutely not.

15 Q. Have you ever engaged in oral sex with any
16 individual at any time in your life?

17 A. Absolutely not. That idea is totally foreign
18 to me. It's disgusting and dirty. It's something I
19 would never have thought of or did with anybody.

20 Q. Did you ever engage in anal sex with any
21 individual in your life?

22 A. Absolutely not with nobody. And same
23 thought.

24 Q. Sir, do you recall that you gave a telephone
25 interview with Bob Costas?

1 A. Yes, I do.

2 Q. When did you become aware that you were going
3 to give a telephone interview with Bob Costas?

4 A. I would estimate about 15 minutes before I
5 did the interview.

6 Q. Did you have any idea that there was anybody
7 going to be interviewed with regard -- or by Mr.
8 Costas?

9 A. My understanding was Joe Amendola was going
10 to be interviewed by Mr. Costas, and he was going to
11 go on the NBC Today Show the next day. That was my
12 understanding from him.

13 Q. All right. How did you learn that you were
14 to -- and you have to wait until I finish my
15 question, sir. How did you learn that you were to
16 be the interviewee?

17 A. Mr. Amendola called me just prior to when the
18 interview occurred. At that time, he said to me,
19 "Jerry, they want to interview you." And he said,
20 "All you have to do" -- he said, "I think you should
21 do it. All you have to do is say you're innocent."
22 That was the extent of what I was expecting.

23 Q. Did Mr. Amendola give you any information as
24 to what you might be asked by Mr. Costas?

25 A. No. The only thing he said was, "You just

1 have to say you're innocent, which you are."

2 Q. All right. Was there any preparation of what
3 Mr. Amendola might, the kind of cross-examination he
4 -- not Mr. Amendola, Mr. Costas might do of you?

5 A. No. I had no idea what was going to happen.
6 My -- you know, I thought maybe they were just going
7 to tape my response of innocence. That was the
8 extent of what I thought was going to happen. I had
9 no preparation. There was no -- Mr. Amendola didn't
10 suggest any questions that they might ask. No.

11 Q. Whose idea was it that you be interviewed?

12 A. Well, it had to be -- well, I assumed that
13 the people who ran the show wanted to interview me
14 and they talked to Joe Amendola and Joe Amendola
15 thought that it was a good idea.

16 Q. Okay. Were you surprised at the questions
17 that were asked of you by Mr. Costas?

18 A. Absolutely surprised. I didn't expect
19 anything that happened. I was not in a very good
20 emotional state based on all the things that had
21 happened to all the people who were dear to me.

22 Q. All right. Do you recall that there was a
23 preliminary hearing scheduled for your case?

24 A. Yes.

25 Q. Prior to that preliminary hearing, were you

1 made aware of what would occur at a preliminary
2 hearing?

3 A. Very little. I knew that -- I had asked did
4 I have any kind of role in the preliminary hearing,
5 and my understanding was that I had no role. I
6 didn't understand -- you know, this was new to me, I
7 had never been to a preliminary hearing so I didn't
8 totally understand what would occur. I knew that
9 there would be testimony. I didn't know what could
10 be cross-examined and things like that. I felt that
11 was the attorney's role to do that.

12 Q. All right. Did you -- were you -- did you
13 understand the concept of waiving the preliminary
14 hearing? Do you know what that meant?

15 A. Not totally. I understood what Mr. Amendola
16 told me about what was happening with the
17 preliminary hearing. I couldn't tell you at that
18 point in time -- I know a lot more now. I couldn't
19 tell you at that point in time the significance of
20 it and what it meant.

21 Q. Let me ask you this question. Do you recall
22 prior to the preliminary hearing having a discussion
23 with Mr. Amendola concerning waiving the preliminary
24 hearing?

25 A. Yes. That occurred the night before the

1 preliminary hearing was scheduled. He called me.

2 Q. All right. And could you tell us what the
3 substance of that telephone call was? First of all,
4 before you do that, how long did that call take?

5 A. I would estimate, again, 15 minutes, in that
6 neighborhood.

7 Q. Okay. And what do you recall about that
8 telephone call with Mr. Amendola?

9 A. Well, Mr. Amendola called me and said that we
10 needed to consider waiving the right to the
11 preliminary hearing. He indicated to me -- the
12 things that I remember that he said was that he was
13 concerned that the prosecution was saying that they
14 might bring forward additional charges. He was
15 concerned about me sitting through these testimonies
16 that he anticipated happening. And he was concerned
17 about the public perception and how it might taint
18 the jury pool. Those were the three areas that I
19 recall.

20 Q. Did he tell you what the advantages of having
21 the preliminary hearing were?

22 A. No, we didn't get into that. You know, I
23 mean it sounded like -- I mean he was recommending
24 that we not -- that we waive it. He didn't talk
25 about the advantages, no.

1 Q. Did he tell you, for example, that the
2 witnesses, if they testified, there would be a
3 record that you could use at your trial?

4 A. I didn't understand that. You know, I might
5 have thought that we would have some access to
6 information, but I didn't understand, no.

7 Q. What my question is, is did you discuss that
8 with Mr. Amendola?

9 A. No. No. No.

10 Q. And once again, Mr. Sandusky, I'm going to
11 request that you wait until I finish my questions.
12 You'll find that this lady in front of you will get
13 irritable if we both talk at the same time. Okay?
14 So my question is, did you discuss the advantages of
15 a preliminary hearing, having it, with Mr. Amendola?

16 A. No.

17 Q. Did he tell you that if you had a preliminary
18 hearing, it would give you testimony of the accusers
19 that could be used?

20 A. No, we didn't get into that, any of that.

21 Q. Did Mr. Amendola inform you that he had any
22 kind of arrangement with the prosecution concerning
23 your waiver of the preliminary hearing?

24 A. Not directly. I assumed that he was
25 communicating with the prosecutors because they were

1 the ones he was -- basically, what it sounded to me
2 was that they were making a deal. All right? That
3 if, you know, we do this, then we'll do that or
4 whatever. That's what I understood, that there was
5 communication with the prosecutors, but that was the
6 extent of it. But I didn't know whether that was
7 ongoing at the moment or what.

8 Q. What did you understand at that time the deal
9 was with the prosecutors? If you had any true
10 understanding at all.

11 MS. PETERSON: Objection.

12 MR. LINDSAY: I don't understand.

13 MS. PETERSON: Your Honor, it's improper
14 commentary, if he had any understanding at all?

15 THE COURT: Well, I think -- the objection
16 is, was there any understanding at all, I think you
17 have to lay the groundwork for that question.

18 BY MR. LINDSAY:

19 Q. Did you have any understanding at all as to
20 whether there was a specific deal with the
21 prosecution?

22 A. I assumed that they were negotiating, you
23 know, that if you waive the preliminary hearing,
24 this will happen. I assumed that that was just in
25 conversation.

1 Q. Were you told that by Mr. Amendola?

2 A. I don't recall.

3 Q. Sir, did Mr. Amendola discuss with you a
4 meeting at the Hilton Garden Inn hotel the night
5 before the preliminary hearing?

6 A. No.

7 Q. Did he discuss with you the prosecution team,
8 Mr. McGettigan, Mr. Fina, Ms. Eshbaugh, were present
9 at that meeting?

10 A. No.

11 Q. Did he discuss with you that the district
12 magistrate judge involved in that preliminary
13 hearing was at that meeting?

14 A. No.

15 Q. Did he discuss with you that Judge Cleland
16 was present at that meeting?

17 A. No.

18 Q. When did you first learn that that meeting
19 occurred?

20 A. Just recently, from you.

21 Q. All right. Within the last several months?

22 A. Yes.

23 Q. Did Mr. Amendola, prior to your -- prior to
24 the preliminary hearing, discuss with you whether
25 there was any arrangement with regard to your bail?

1 A. I don't recall any mention of that, no.

2 Q. Sir -- well, I guess I should ask you this
3 follow up question before I move on. Did you waive
4 your preliminary hearing, sir?

5 A. Yes.

6 Q. You indicated, I think, when you began your
7 testimony that you intended to testify in your own
8 defense?

9 A. Absolutely. That was the plan. And Mr.
10 Amendola even stated that in his introductory
11 remarks, that I would be testifying. That's what I
12 had prepared to do in my own mind.

13 Q. Okay. The -- did you have a discussion with
14 Mr. Amendola concerning whether you should testify
15 in your own behalf?

16 A. Yes.

17 Q. Explain.

18 A. Well, it was an ongoing process. It was
19 related -- the whole issue surrounded our former
20 son, Matt. All right? On Thursday evening --

21 Q. Could I interrupt you for a minute just to
22 put in a time slot? Your trial took place over two
23 calendar weeks; correct?

24 A. Correct. Two weeks.

25 Q. And there were --

1 A. The first week ended on Thursday.

2 Q. All right. What happened on Thursday night?

3 A. On Thursday night, Mr. Amendola called me,
4 extremely upset and concerned, because Matt was
5 going to testify for me, and I believed the words he
6 used, he flipped, he changed his story. He would
7 testify against me if the prosecution requested or
8 used him to do that. He was very upset. He was
9 extremely concerned. He did not want Matt to
10 testify against me. He planned to have him testify
11 for me, Matt had planned to testify for me. So he
12 was very upset, even to the point where he said I
13 don't know whether I could go on. And I shared that
14 information with others and they said he'll go on.
15 And then he settled down after that.

16 We went through the weekend with a number of
17 different issues to consider. On Monday morning, we
18 were -- Joe -- Mr. Amendola was driving the car in
19 which I was sitting in the front seat, our two sons,
20 our one son John and our one son EJ were sitting in
21 the backseat. They had planned to testify also.
22 Okay? Mr. Amendola informed us on the trip, on the
23 way, which is about a 10 to 15-minute drive, he
24 said, "I don't think any of you should testify.
25 None of us should testify. "Because all the

1 prosecution had to do was ask one question to one
2 person and if the question would be, was there
3 anybody else, obviously we would have answered no,
4 and then he said that they would bring forward Matt
5 as a rebuttal testimony.

6 Q. That, being the prosecution?

7 A. Yeah, the prosecution would bring him
8 forward. And he didn't want that to happen. I
9 shared with him at that time, I said, "There is so
10 much that we could say to refute Matt's testimony."
11 The feeling was, at that time, that we didn't have
12 the time to prepare to adequately rebut Matt's
13 testimony.

14 Q. All right. Did you indicate to Mr. Amendola
15 in the car on the way to this courthouse that there
16 was ample information to cross-examine and impeach
17 the testimony of Matt Sandusky?

18 A. I indicated that I believed that there was
19 ample, there was plenty of information to
20 cross-examine Matt. That's it.

21 Q. What did you have in mind, sir?

22 A. Well, I had all kind of things in mind
23 relative to Matt. Matt was a young man that came
24 into our lives. He chose to be adopted at the age
25 of 18. He interviewed with Sports Illustrated on

1 his own and talked about our family --

2 MS. PETERSON: I'm going to object. It's
3 non-responsive, Your Honor.

4 THE COURT: Wait just a second, there's an
5 objection. What's your objection?

6 MS. PETERSON: It's non-responsive to the
7 question.

8 THE COURT: Sustained.

9 THE WITNESS: I'm just answering what he
10 asked me when I -- what I would have brought
11 forward.

12 THE COURT: If you would refine your question
13 in a little more pointed way.

14 BY MR. LINDSAY:

15 Q. You said you had various things that Mr.
16 Amendola could use to cross-examine Matt Sandusky?

17 A. Absolutely.

18 Q. To discredit him?

19 A. Absolutely.

20 Q. And Mr. Amendola's response to your
21 suggestion that Matt Sandusky was vulnerable to
22 cross-examination was what?

23 MS. PETERSON: Objection. It's leading.

24 THE COURT: Overruled.

25 THE WITNESS: Mr. Amendola understood,

1 because Matt Sandusky had talked -- he was going to
2 testify for me. He sat with my family. He came --
3 he was -- he testified for me one other time. He
4 begged to have his children visit me. He moved back
5 in our house when he was in his 30s.

6 Q. You're not answering my question. It's all
7 right. My question is -- Mr. Sandusky, my question
8 is, when you suggested to Mr. Amendola that there
9 was ample information to impeach or discredit Matt
10 Sandusky, what did he say about cross-examining Matt
11 Sandusky?

12 A. He said yes, but we don't have time.

13 Q. Okay. Did -- was there any reference to --
14 well, first of all, I guess I should start with
15 this. Did you speak to Matt Sandusky after he had
16 testified to the grand jury?

17 A. Absolutely. Matt testified at grand jury.
18 He interviewed with police earlier. After he
19 interviewed with police, he and his first wife came
20 to our home. He talked about what he said, he
21 talked about what -- how he was handled by the
22 police.

23 And then he went to grand jury testimony. He
24 made a point to come to our house -- at that point
25 he had moved out -- he made a point to come to our

1 house and explain to us what had transpired at grand
2 jury testimony and how he felt so good that he was
3 able to help me.

4 Q. All right. Now Mr. Sandusky, did you bring
5 up the question, when you were talking to Mr.
6 Amendola in the car, or prior to the decision to
7 testify, what about Matt Sandusky's grand jury
8 testimony?

9 A. I believe I said that. I said, you know, "He
10 testified at grand jury for me." I was mentioning a
11 number of things. I don't recall specifically all
12 of them, but I would --

13 Q. Do you recall whether Mr. Amendola had read
14 Matt Sandusky's grand jury testimony?

15 A. He didn't say that he had read it. He didn't
16 respond.

17 Q. I take it from your testimony that Mr.
18 Amendola indicated to you that if you said one word
19 denying was there anybody else, the prosecution
20 could call Matt Sandusky as a rebuttal witness.
21 That's what you said; correct?

22 A. Yes. That was my understanding.

23 Q. Did Mr. Amendola discuss with you the
24 possibility of filing what we call a motion in
25 limine to prevent the prosecution from doing that?

1 A. I don't know what a motion in limine was.
2 And I don't remember hearing it, no.

3 Q. Well, did he suggest to you that he could
4 file any motion to prevent the prosecution from
5 engaging in that type of --

6 A. I don't recall that, no.

7 Q. Mr. Sandusky, you indicated that it was your
8 intention to, always to testify on direct
9 examination?

10 A. Yes. That was the plan, to testify.

11 Q. Were you prepared to testify by Mr. Amendola?

12 A. No. Mr. Amendola did not discuss -- he did
13 not give me any questions he would ask. Everything
14 was in a state of chaos. There wasn't time to
15 discuss -- I kept waiting to discuss discovery. I
16 kept waiting for a lot of things. But there wasn't
17 time. We didn't have time for investigators, a
18 number of things. So he didn't discuss -- now I did
19 meet with one other person who talked about what
20 some questions might be. And I was trying to
21 prepare myself.

22 Q. Well Mr. Sandusky, in our relationship, have
23 we discussed your testimony here today?

24 A. Yes.

25 Q. On a number of occasions?

1 A. On a number of occasions, you and Mr.
2 Salemme.

3 Q. Questions that you'll be asked, what you
4 might be asked on cross-examination?

5 A. Some of them, yes.

6 Q. Did Mr. Amendola engage any of that behavior?

7 A. No.

8 Q. Mr. Sandusky, are you familiar with the name
9 of Dr. Elliot Atkins?

10 A. Yes, I am.

11 Q. When did you become aware of Dr. Elliot
12 Atkins?

13 A. Dr. Elliot Atkins is a psychologist. When it
14 became known to us that we had insurance and there
15 would be money available for experts, Mr. Amendola
16 said that we needed to get a psychologist. And at
17 that time a Dr. Berlin was contacted, who sounded
18 like a very strong candidate, very supportive of my
19 position, very supportive of everything. But Dr.
20 Berlin had to withdraw. He didn't have the time to
21 review everything that he needed to review. So he
22 withdrew. Now we were stuck without a psychologist.
23 Mr. Amendola, I don't know, but he thought that it
24 was important to have one, so he contacted Dr.
25 Atkins.

1 Q. Did you discuss what the purpose of Dr.
2 Atkins' testimony was?

3 A. I didn't discuss -- I assumed that Dr. Atkins
4 would be supporting me, would be giving
5 documentation and information that I wasn't a
6 pedophile, that I wasn't someone who was a
7 preferential sex abuser of young people, that I
8 wasn't the monster that I was made out to be.
9 That's what I assumed. I assumed that he would be
10 stating, giving information that would help people
11 understand that I was married for 50 years. Okay?
12 I had one relationship with one person --

13 MS. PETERSON: Objection. It's
14 non-responsive.

15 THE COURT: Mr. Lindsay, do you want to have
16 a word with your client?

17 MR. LINDSAY: No. I --

18 THE COURT: Okay. Let's make sure the
19 questions -- the answers are responsive to the
20 questions.

21 BY MR. LINDSAY:

22 Q. All right. Mr. Sandusky, the question was,
23 was it your understanding -- what was your
24 understanding that Dr. Atkins was going to testify
25 about? And I think you stated that it generally,

1 and I don't mean to lead the witness --

2 THE COURT: It's all right.

3 BY MR. LINDSAY:

4 Q. I think your testimony was you thought that
5 his testimony would be testimony that would indicate
6 to the Court and jury that you were not a pedophile,
7 that you were not a preferential sex offender, that
8 I guess you were a normal person; correct?

9 A. Absolutely.

10 Q. Now, prior to -- well first of all, were you
11 interviewed by Dr. Atkins?

12 A. Yes. He came -- after probably a week or so
13 after he was contracted, he came and visited and I
14 met with him.

15 Q. Was there any indication to you at that time
16 that Dr. Atkins' testimony would be different from
17 what you had anticipated?

18 A. Not at that time, no.

19 Q. All right. Now, at subsequent to you being
20 interviewed by Dr. Atkins, were you interviewed by
21 another psychologist?

22 A. Yes. The Commonwealth had a psychologist
23 interview me on the Sunday between sessions.

24 Q. And we're going back to that weekend, that
25 long weekend that you were stopped Thursday, you

1 started on Monday.

2 A. Correct.

3 Q. And on that Sunday, you were interviewed by a
4 psychologist hired by the Commonwealth; is that
5 correct?

6 A. Yes.

7 Q. Who was present at that interview?

8 A. Mr. McGettigan was present with the
9 psychologist, and Mr. Rominger accompanied me. And
10 myself.

11 Q. Prior to that interview, or I guess prior to
12 Mr. Atkins interviewing you and obtaining his
13 report, did Mr. Amendola inform you that by
14 presenting that report, it would open you to being
15 interviewed by a Commonwealth psychologist?

16 A. No.

17 Q. Were you informed that during that interview,
18 one of the prosecutors would be present?

19 A. No.

20 Q. Did Mr. Amendola inform you that by placing
21 Dr. Atkins on the stand, you would open yourself to
22 psychological testimony that you were, in fact, a
23 pedophile?

24 A. No. If he would have, I would have exploded.

25 Q. And as a matter of fact, Mr. Sandusky, that's

1 exactly what happened, wasn't it?

2 A. That was my interpretation of what
3 transpired.

4 MS. PETERSON: Objection.

5 MR. LINDSAY: She made an objection.

6 THE COURT: The record speaks that that's
7 what happened.

8 MR. LINDSAY: Okay. All right.

9 BY MR. LINDSAY:

10 Q. Mr. Sandusky, when did you first learn the
11 substance of your expert, Dr. Elliot Atkins'
12 testimony, his report?

13 A. The first -- okay. We had a meeting on
14 Friday in between sessions that was attended by a
15 number of people, some civil attorneys; Lindsay
16 Kowalski, who had assisted Joe Amendola; an
17 investigator, Curtis Everhart; and Dr. Atkins
18 attended. At that meeting, he said to me, "Jerry, I
19 did not have enough time to talk to you about this,
20 but I think that I have information that will help
21 you, especially relative to the letters that they
22 were talking about that I sent." And he mentioned
23 something about a histrionic personality disorder.
24 I didn't understand. I had no knowledge of what
25 that meant. I assumed that the people around the

1 table would have had knowledge about it. I didn't
2 realize what it meant until he testified here. When
3 I recognized what he was talking about, I became
4 extremely upset, emotional, sitting next to Lindsay
5 Kowalski. And she actually had told me to calm down
6 because I said, "This isn't me. This isn't the
7 person I am."

8 Q. All right. And then you later heard the
9 testimony of the Commonwealth's psychologist;
10 correct?

11 A. Yes.

12 Q. And what was your reaction to that, sir?

13 A. At that point in time, I didn't know what
14 people were going to say here or there. I was upset
15 about the whole process. It just added to it.

16 Q. Mr. Sandusky, in the course of this
17 investigation, did you become aware of grand jury
18 leaks?

19 A. Yes.

20 Q. Can you be specific as to what you became
21 aware of?

22 A. Well, I became aware Sara Ganim had gotten
23 information. Sara Ganim had contacted the mothers
24 of accusers. She said I was connected with the AG's
25 office. She recommended that these people contact

1 the investigators, she gave them the name of
2 investigators. All right? Then she printed an
3 article, an article that disclosed grand jury
4 information. She wrote an article about Matt,
5 formerly Sandusky, okay, that came verbatim from
6 discovery. So that started. That gave me an
7 indication of it. Then the grand jury presentment
8 was leaked somehow. And then Mr. Gillum, the
9 psychologist, testified -- said in his book --

10 MS. PETERSON: Objection. This is
11 non-responsive.

12 THE COURT: Wait. Let's go back here and try
13 to get some more pointed questions and responses so
14 that the record is clear and the Commonwealth has an
15 opportunity to object if otherwise appropriate.

16 MR. LINDSAY: I'm loathed to lead and ask
17 open-ended questions.

18 THE COURT: I would rather that you lead in
19 order to control the proceedings. And if you exceed
20 that, I'll let you know.

21 MR. LINDSAY: I will.

22 THE COURT: Okay.

23 MR. LINDSAY: With pleasure.

24 THE COURT: Go ahead.

25 MR. LINDSAY: I like leading.

1 BY MR. LINDSAY:

2 Q. Mr. Sandusky, going back, you heard these
3 various matters which you consider to be grand jury
4 leaks, or abuse of the grand jury process; correct?

5 A. Correct.

6 Q. Did you confront your attorney with the fact
7 that this was not right?

8 A. I remember stating to Mr. Amendola I had read
9 Mike McQueary's testimony at the preliminary hearing
10 of Mr. Curley and Mr. Schultz. When I read that
11 testimony, it really struck me, I said -- I said to
12 him, I said, "The only inconsistent thing in this
13 whole process was what the presentment said, that
14 Mike McQueary didn't say those things" --

15 MS. PETERSON: Objection, Your Honor. This
16 is non-responsive.

17 BY MR. LINDSAY:

18 Q. All right. Did you discuss with Mr. Amendola
19 that he should do something about these leaks?

20 A. I said I was extremely upset. I didn't know
21 -- at that point in time, I don't know whether I
22 said that because -- I was naive to this whole
23 process. I didn't know what he could or could not
24 do. I thought that he would take my information and
25 do something about it because it was a very serious

1 matter to me.

2 Q. Did you discuss with him that it was a very
3 serious matter with you?

4 A. Certainly.

5 Q. Mr. Sandusky, you became aware of the
6 apparent testimony of Mike McQueary; correct?

7 A. Correct. I followed all of his information
8 in discovery. I received -- I read the transcripts
9 of his preliminary and I was here when he testified.

10 Q. Mr. Sandusky, you're aware that he testified
11 that he was a witness, in some respect, to an
12 incident which occurred in Lasch Hall; correct?

13 A. Correct.

14 Q. Involving you in a shower room with a young,
15 I guess, preadolescent or adolescent male; correct?

16 A. Correct.

17 Q. Now, in fact, during the relevant timeframe,
18 had you been at Lasch Hall with a preadolescent or
19 adolescent male?

20 MS. PETERSON: Your Honor, I'm going to
21 object.

22 THE COURT: Sustained.

23 MR. LINDSAY: I don't want to step where I'm
24 not supposed to step. But I'm a little perplexed.
25 Can we approach sidebar for a minute?

1 THE COURT: Mm-hmm.

2 (Whereupon, the following discussion was held
3 at sidebar:)

4 THE COURT: If you're laying the groundwork
5 into identifying who he thinks Victim 2 is -- it's
6 on the record. Is that what you're doing? Where
7 are you headed with this?

8 MR. LINDSAY: Yes. That's what I'm doing.

9 MS. PETERSON: Your Honor, our objection
10 would be twofold. Pursuant to this Court's order,
11 with respect to Victim Number 2, Mr. McGettigan's
12 closing argument, it specifically noted that the
13 evidentiary hearing would not delve into the
14 identity of Number 2, about whether or not it was
15 Allan Myers. And second, the only other issue
16 that's with Allan Myers is whether or not there was
17 an agreement between Mr. Amendola and Mr. McGettigan
18 with regard to calling this witness. Mr. Sandusky's
19 beliefs as to who Victim Number 2 is in the shower
20 is not relevant.

21 THE COURT: Let's let Mr. Lindsay talk.

22 MR. LINDSAY: All right. The issue of who
23 Victim Number 2 is and Mr. McGettigan's response is
24 an issue. Now, the question obviously concerning
25 whether Mr. McGettigan was truthful would depend a

1 lot on whether Allan Myers was, in fact, Victim
2 Number 2, and there really was a Victim 2 and
3 everybody knew it.

4 THE COURT: No. I think what everybody knew
5 is something that has to be proved. But what's
6 important is what McGettigan thought was true. Your
7 allegation is that he lied?

8 MR. LINDSAY: That is an allegation we have
9 here.

10 THE COURT: Okay. So -- and that there was
11 an agreement not to call him?

12 MR. LINDSAY: Yes.

13 THE COURT: So, what anybody else thought
14 isn't particularly important because it's what
15 McGettigan -- if McGettigan lied, that's the issue.

16 MR. LINDSAY: I think the groundwork of all
17 the various interviews conducted by Mr. Amendola's
18 office, conducted by the prosecution, conducted by
19 the personal inspectors and so forth concerning
20 Allan Myers are pertinent to what everybody knew.
21 And I think that the question is that what we're
22 starting is to go through the whole Allan Myers
23 saga. And you can't consider that in a vacuum.

24 THE COURT: I'm not saying that it's
25 considered in a vacuum, but this witness isn't going

1 to help you get there and the objection's sustained.

2 MR. LINDSAY: The Court's made a ruling.

3 (End of sidebar discussion.)

4 BY MR. LINDSAY:

5 Q. Mr. Sandusky, with regard to the Bob Costas
6 interview, do you recall Mr. Amendola informing you
7 that that interview could be used in court against
8 you, in a court of law?

9 A. No.

10 MR. LINDSAY: Okay. I believe that's all I
11 have on direct examination, sir.

12 THE COURT: Cross.

13 MS. PETERSON: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. PETERSON:

16 Q. Sir, your preliminary hearing was December
17 13, 2011?

18 A. I believe so. I don't recall a date, but --

19 Q. After you waived that hearing, Mr. Amendola
20 held a press conference outside this courthouse. Do
21 you remember that?

22 A. No, I don't.

23 Q. You don't recall a televised one-hour press
24 conference where Mr. Amendola outlined all of the
25 reasons why he waived the preliminary hearing and

1 how it benefitted you?

2 A. I wasn't present at that conference.

3 Q. You don't recall calling Mr. Amendola later
4 that day and telling him that you and your family
5 had watched it on television?

6 A. No, I don't recall that.

7 Q. You don't recall telling him that you loved
8 it because your side of the story got out there?

9 A. I remember -- what I recall was that I spoke
10 to the media after the preliminary hearing and was
11 able -- in fact, Matt Sandusky and his wife were
12 standing alongside of my wife, and I recall that I
13 presented to the media that I was going to continue
14 to battle, that this was going to be a fourth
15 quarter battle. That's what I remember. I did not
16 recall what Mr. Amendola said, no.

17 Q. At trial, Mr. Amendola, he attacked the
18 credibility of all the victims who testified against
19 you. Do you recall that?

20 A. I believe he tried to do that. I don't think
21 he did it as strongly as I would have liked.

22 Q. One of the ways that he did that was by
23 arguing that they were coached by investigators and
24 prosecutors; correct?

25 A. Correct.

1 Q. He also said that they had a financial
2 motivation to fabricate their testimony?

3 A. Correct.

4 Q. And you recall that prior to your preliminary
5 hearing, Mr. Amendola explained to you that the
6 credibility of victims cannot be challenged at a
7 preliminary hearing?

8 A. I believe he said that to me, the
9 credibility. I think we were talking about -- we
10 should have been talking about a reliability issue,
11 not a credibility issue.

12 Q. The answer to my question is, he did talk to
13 you about the fact that credibility of the victims
14 is not an issue at a preliminary hearing?

15 A. He may have.

16 Q. You did discuss with him prior to December
17 13, 2011, the date of your preliminary hearing,
18 whether or not you should waive that hearing;
19 correct?

20 A. The evening before, as I stated in a
21 15-minute phone call.

22 Q. When you arrived at the courthouse on
23 December 13th, all of the Commonwealth witnesses
24 were present and willing to testify against you. Do
25 you recall that?

1 A. I think I found out that they were there.

2 Q. And the reason that they were there was in
3 case you changed your mind and did not want to waive
4 the preliminary hearing; correct?

5 MR. LINDSAY: Excuse me.

6 THE WITNESS: I don't know why they were
7 there. That wasn't my job.

8 MR. LINDSAY: I withdraw my objection as
9 inartfully made.

10 BY MS. PETERSON:

11 Q. You had the opportunity the morning of your
12 preliminary hearing to speak with Mr. Amendola?

13 A. Would you repeat that, please?

14 Q. The morning of your preliminary hearing when
15 you arrived at the courthouse, you had the
16 opportunity to speak with Mr. Amendola?

17 A. Yes, we met in that room.

18 Q. And you had the opportunity to ask him any
19 questions that you wanted?

20 A. It was a short time.

21 Q. You had the opportunity to ask him any
22 questions that you wanted?

23 A. I would say that I didn't have an opportunity
24 to have a long discussion over the questions that I
25 would have had, no.

1 Q. Was there anything that you told him you were
2 confused about that day?

3 A. No. I was very new to this entire process.
4 I trusted Mr. Amendola. He was the expert on this.
5 I was told that I should do what he recommended, and
6 that's what he was recommending.

7 Q. You did not tell him you were confused about
8 anything that day; correct?

9 A. No, because I understood that he wanted to
10 waive the preliminary hearing and why.

11 Q. The second time that you were arrested, bail
12 was set at \$250,000; correct?

13 A. Correct.

14 Q. And you did not have \$250,000 in cash?

15 A. I didn't -- did you say -- would you repeat
16 that again?

17 Q. You did not have \$250,000 in cash in order to
18 post that bail?

19 A. No.

20 Q. So as a result, you were incarcerated for a
21 short period of time?

22 A. For one day, I believe.

23 Q. And ultimately, you raised the money for bail
24 by using your home as equity for \$200,000; correct?

25 A. Correct.

1 Q. And then \$50,000 came from retirement money?

2 A. I believe my wife would have known. I don't
3 know, my wife would know better than I. I don't
4 know. I don't know where the money came from.

5 Q. So if your bail would happened to have been
6 increased after that day, it's fair to say, Mr.
7 Sandusky, you might not have been able to afford it?

8 A. I don't know that. There have been ways.
9 There might have been ways that we could have come
10 up with money. I don't know that.

11 Q. You don't know whether you would have been
12 able to afford more bail money; correct?

13 A. It would depend what the bail money was, you
14 know, at what level it was. If we were talking
15 about -- how much money we're talking about would
16 determine how much whether or not we would have been
17 able to come up with, the money. I don't know. It
18 didn't enter my mind.

19 Q. You're aware that the prosecution originally
20 asked for \$5 million bail; correct?

21 A. No, I'm not aware of that.

22 Q. When you spoke to Mr. Amendola about whether
23 or not you should waive the preliminary hearing, he,
24 in fact, informed you that he had reached an
25 agreement with the prosecution where your bail would

1 not be increased and you would not go back to jail.
2 Do you remember him telling you that?

3 A. Again, what I said to Mr. Lindsay is what I
4 recall, the phone conversation. You know, and
5 basically he was saying that -- he was recommending
6 that we waive the preliminary hearing. The three
7 areas that I remember is what I said, you know --

8 Q. You don't recall telling Mr. Amendola that
9 you absolutely did not want to go back to jail? You
10 don't recall telling him that?

11 A. If we entered into that conversation, I
12 certainly didn't want to go back to jail. You know,
13 I'm not sure.

14 Q. Staying out of jail before your trial is
15 obviously a benefit to you; correct?

16 A. Staying out of jail is a benefit period,
17 yeah.

18 Q. You could call Mr. Amendola any time you
19 wanted if you were out of jail; correct?

20 A. Yes.

21 Q. He could come to your house and visit you?

22 A. Yes.

23 Q. You were originally arrested on November 5,
24 2011?

25 A. Correct.

1 Q. And then four days later, Joe Paterno was
2 fired and there were riots. Do you recall that?

3 A. Absolutely.

4 Q. And then two days after that, November 11th,
5 that's when there was a candlelight vigil here in
6 the State College area for the victims; correct?

7 A. Absolutely. What they call victims.

8 Q. And while all of that was occurring, you and
9 Mr. Amendola were very concerned about how the media
10 was portraying you, what your side of the story was;
11 correct?

12 A. He was very concerned about how the media
13 was. I didn't like what was transpiring.

14 Q. Do you recall telling Mr. Amendola that you
15 wanted to get your side of the story out there
16 because there were two sides to this story?

17 A. Would you repeat that, please?

18 Q. Do you recall telling Mr. Amendola that you
19 wanted to get your side of the story out there,
20 because there were two sides?

21 A. I may have said that to him. I believe that
22 there were two sides to this story, and that my side
23 had never been told, and still hasn't been told.

24 Q. And the way to get your side of the story out
25 was through the media?

1 A. Mr. Amendola took that challenge on. He said
2 to me that, "Jerry, normally this would not be an
3 approach that we would use," but he said in this
4 particular instance, he was very concerned. He was
5 much more concerned than -- I didn't understand. He
6 was very concerned about public reaction to this,
7 how it might taint the jury pool and public
8 perception. So he chose to take that course of
9 action. I did not influence that one way or
10 another.

11 Q. Is it your testimony then that you did not
12 want to speak to the media?

13 A. That I did not want -- no, I was willing to
14 do what he wanted me to do.

15 Q. In fact, after the interview with Bob Costas,
16 you did an interview with the New York Times?

17 A. Correct. At his suggestion.

18 Q. It was your choice; correct?

19 A. Certainly. I could have refused to go. But
20 again, I was a novice in this and that he was
21 recommending that I do it, just like he recommended
22 that I spoke with Mr. Costas.

23 Q. And to this day, Mr. Sandusky, you still use
24 the media to get your side of the story out;
25 correct?

1 A. Very, very little.

2 Q. Do you recall in May of this year sending
3 several letters to a television station in
4 Pittsburgh?

5 A. I recall Courtney Brennan contacting me and
6 stating that she was anxious to present a different
7 side of the story. And I responded saying that I
8 believed we had a compelling argument that we could
9 present to her. I never met with her, I just
10 corresponded a couple of times with short letters.

11 Q. And in those letters, you urged her to get
12 your side of the story out?

13 A. You know, she contacted me. She was
14 interested in doing that. That excited me. Here
15 was somebody who was going to tell the truth. Here
16 was somebody that recognized that there was another
17 side of the story. Why wouldn't I have wanted her
18 to do that?

19 Q. When you spoke with Bob Costas, you had the
20 interview before speaking with him, obviously, to
21 speak to Mr. Amendola; correct? Before you spoke
22 with Bob Costas.

23 A. Would you repeat that, please?

24 Q. Sure. You spoke with Mr. Amendola,
25 obviously, before you spoke with Mr. Costas?

1 A. Correct.

2 Q. And you indicated on direct that Mr.
3 Amendola told you that he thought you should do the
4 interview; correct?

5 A. Correct.

6 Q. He didn't tell you you had to do the
7 interview?

8 A. No. He didn't tell me that I had to do it,
9 no. But it was very strong what he said.

10 Q. And you didn't tell Mr. Amendola I want no
11 parts of this, I don't want to do this interview?
12 You didn't say that, did you?

13 A. No. I wouldn't have done that because I
14 trusted him.

15 Q. And Mr. Amendola had been representing you
16 since late 2008, early 2009, which is when Aaron
17 Fisher's allegations were made to the Clinton County
18 Children and Youth; correct?

19 A. Correct.

20 Q. So he had been representing you for several
21 years at that point, well at least two years;
22 correct?

23 A. I don't recall the dates. But yeah, I would
24 assume you're correct.

25 Q. And it's fair to say that you had regular

1 communication with Mr. Amendola?

2 A. I had communication with Mr. Amendola when he
3 had the time to do that, yeah. He had other
4 obligations. And yes, if I had a serious issue, I
5 could contact Mr. Amendola.

6 Q. On Wednesday, June 20th, of your trial, Judge
7 Cleland asked you a series of questions as to
8 whether or not you wanted to waive your right to
9 testify before the jury. Do you recall that?

10 A. Yes.

11 Q. And you recall indicating to Judge Cleland
12 that you voluntarily wanted to give up your right to
13 testify; correct?

14 A. Correct.

15 Q. And prior to Judge Cleland's questioning of
16 you, you heard Mr. Amendola -- I'm sorry, Mr.
17 Amendola put certain things on the record with
18 respect to what had transpired between him and the
19 prosecution and the Matt Sandusky issue; correct?

20 A. I was present. I don't recall what exactly
21 was said. I was present at that meeting. I don't
22 recall exactly what Mr. Amendola was stating,
23 though.

24 Q. And you had found out about Matt Sandusky
25 issue the week prior; correct?

1 A. No, it was -- well yeah, I found out about
2 it, right. But I didn't find out I wasn't going to
3 testify until the week of.

4 Q. And when you were before Judge Cleland, you
5 didn't indicate that you had any reservations about
6 giving up your right to testify; correct?

7 A. No, I didn't. Because I was a novice and I
8 was -- I was -- I assumed that Mr. Amendola was the
9 expert on this and that I would take his advice, and
10 that he was recommending that he -- if he had given
11 me any indication whatsoever that I should testify,
12 I would have testified. He didn't do that.

13 Q. Did you tell Mr. Amendola you were concerned
14 about giving up your right to testify?

15 A. We had talked in the car, as I said. Mr.
16 Amendola was adamant, he was so emotional about Matt
17 Sandusky testifying that I assumed, I believed that
18 he knew a lot more than I did about this whole
19 matter, and I had trusted that to him. And I was
20 told that I should do that by people that I
21 respected. Because I didn't do that always, I
22 didn't do that -- I went to CYS in Clinton County
23 against his advice. So from that point in time, I
24 said, and I was told that I better follow what he --
25 he was the expert in this matter.

1 Q. You didn't assert yourself and tell Mr.
2 Amendola that you wanted to testify and you didn't
3 want to give up that right?

4 A. No, I didn't. I didn't scream about it. You
5 know, I presented in the car in a brief -- there
6 wasn't much time. I presented, but I didn't
7 understand. If I had understood enough, I would
8 have screamed, but I didn't understand enough of
9 what was happening, what was transpiring, what was
10 going on.

11 Q. You didn't ask any follow up questions,
12 though?

13 A. Well, I asked questions about, you know, we
14 could rebut Matt's testimony certainly, I had all
15 kinds of reasons that we could do that. But you
16 know, the indication was that there wasn't enough
17 time to do that. So what was I going to say? And
18 time was a terrible issue, it was a terrible issue
19 for the whole thing. One thing after another, he
20 couldn't meet with investigators, he couldn't do
21 this, he couldn't do that. He had this hearing, we
22 were trying to get subpoenaed information, we were
23 doing all these things. So, why wouldn't I believe
24 that he didn't have time? Because he didn't have
25 time to do half the things I wanted him to do. He

1 didn't read certain things that Mr. Everhart was
2 collecting.

3 Q. Sir, when you were before Judge Cleland, you
4 didn't have any reservations about giving up your
5 right; correct?

6 A. I had decided to go with what Mr. Amendola
7 said. When you're a novice in this, I thought that
8 I was making the best decision relative to all the
9 circumstances that I could make. So that's -- I
10 thought I was making an intelligent decision.

11 MS. PETERSON: I have no further questions,
12 Your Honor.

13 MR. LINDSAY: I have no redirect of this
14 witness, Your Honor. You could step down.

15 THE COURT: Wait, wait, just a second.

16 MR. LINDSAY: I'm sorry. Does the Court have
17 questions?

18 THE COURT: I have no questions, sir, thank
19 you. You can step down.

20 THE WITNESS: Thank you.

21 THE COURT: Counsel, approach the bench.

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

24 THE COURT: Good time for a recess?

25 MR. LINDSAY: Yes.

1 THE COURT: Can I say we're going to be in
2 recess?

3 MR. LINDSAY: Judge, this is your court, I'm
4 just a player.

5 THE COURT: No, no, no. I don't want to
6 interfere with your case.

7 MR. LINDSAY: No.

8 (End of sidebar discussion.)

9 THE COURT: We'll be in recess until ten
10 minutes to 11. We'll remain seated, you can all
11 leave, we have some matters here to discuss at
12 sidebar.

13 (Whereupon, the following discussion was held
14 at sidebar:)

15 MR. LINDSAY: I think we should have a
16 sequestration. I didn't ask for that.

17 MS. PETERSON: Just Mr. Amendola is the only
18 one.

19 MR. LINDSAY: They are sequestered. We asked
20 them not to come.

21 THE COURT: Who are you concerned about? Are
22 there Commonwealth witnesses here or something?

23 MR. LINDSAY: No. All right. Then there's
24 no sequestration.

25 THE COURT: I'm sorry, I missed what your

1 concern is.

2 MR. LINDSAY: It was our concern when we
3 started that there would be a sequestration order.
4 However, I had planned with our witnesses that there
5 would be a sequestration order. And that's what I
6 thought and I forgot to get that clarified. Because
7 we have witnesses that are not here in the
8 courtroom. But the more I think of it, it's better
9 that nobody knows there's a sequestration order. I
10 don't care. If she doesn't care, I don't care.

11 THE COURT: Okay.

12 MR. LINDSAY: So that's it.

13 THE COURT: Let me clarify my ruling about --
14 this doesn't have to be on the record. Unless you
15 want it on the record. Okay, we'll put it on the
16 record. Let me clarify my ruling about Mr. Sandusky
17 identifying who he thought was with the Victim 2.
18 Now, I'm not going to preclude you from asking
19 McGettigan what his investigators thought about
20 Victim 2 as a basis for asking McGettigan what he
21 thought. But I don't see the relevance of what Mr.
22 Sandusky said. That's the basis of the ruling. I
23 didn't want you to misunderstand. I'm not -- I
24 haven't heard an objection yet, but I'm not going to
25 necessarily preclude you from asking if some

1 investigator thought it was Victim 2 or if some
2 agent thought it was Victim 2 and told McGettigan
3 that.

4 MR. LINDSAY: The next witness, Mr. Rominger,
5 will testify with some detail about those
6 conversations between he and Mr. Fina and Mr.
7 McGettigan and Mr. Amendola concerning that. And I
8 do think that's pertinent.

9 MS. PETERSON: Your Honor, because Mr.
10 Amendola was the only one that could object to Mr.
11 McGettigan's closing, so again, it had to have been
12 what Mr. Amendola believed that Mr. McGettigan knew.

13 MR. LINDSAY: Well no, but I mean it's
14 conversations that Mr. Rominger had with Mr. Fina
15 and Mr. McGettigan about Victim 2 and Mr. Myers I
16 think are pertinent.

17 THE COURT: Some of this is problematic
18 because it's flipped. If you put McGettigan on the
19 stand and he flips, I was at a million meetings
20 where Victim 2 was identified as Allan Myers and I
21 never believed it for a minute, then, you know, I'm
22 not sure how this other stuff is important. But
23 because McGettigan's coming on later, you have to
24 raise some foundation, that's the problem.

25 MR. LINDSAY: Can I answer? I think Mr.

1 McGettigan says I didn't believe him for a minute.
2 I have a right to challenge his credibility that I
3 think, based on all the evidence, he did believe
4 him.

5 THE COURT: Well, we don't know what
6 McGettigan's going to say. That's why I'm giving
7 you some leeway, because you've got all your
8 witnesses lined up and we'll put all the record
9 together at some point I guess.

10 MR. LINDSAY: Well, what we will bring in
11 with Mr. Rominger is his conversations with Mr.
12 McGettigan. The Commonwealth I think has raised the
13 issue of whether or not Mr. McGettigan believed that
14 Allan Myers was Victim 2.

15 THE COURT: No. Well, at least, I raised it.

16 MR. LINDSAY: All right. Well, I think that
17 that's the basis for -- whoever raised the issue,
18 that's the basis of it. And so, I think that his
19 credibility is in play. And if you're saying that
20 his credibility is not in play until he testifies,
21 then we call the witnesses back at a later time.

22 MS. PETERSON: If I may be heard, Your Honor.
23 My understanding from reading Mr. Rominger's
24 affidavit and his witness certification is simply
25 that he had had conversations with a subpoena about

1 Attorney Shubin secreting Allan Myers and neither
2 side being able to access Allan Myers, not whether
3 Joe McGettigan thought that Allan Myers was Victim
4 2. I mean, I think they're totally separate issues.
5 Whether or not Allan Myers is being picked now, I
6 don't know how that's relevant to whether Joe
7 McGettigan believes he is Victim 2. That's my
8 understanding from reading the affidavit, the
9 substance of his testimony.

10 MR. LINDSAY: I mean, I stated I think that
11 Mr. McGettigan's credibility is in play. If the
12 Court wishes to hear, after Mr. McGettigan
13 testifies, we'll bring in his testimony. Whatever
14 the Court wishes, Your Honor.

15 THE COURT: Let me think about it.

16 MR. LINDSAY: Sure.

17 (End of sidebar discussion.)

18 (Whereupon, a recess was taken.)

19 THE COURT: Counsel, approach the bench.

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

22 THE COURT: What's McGettigan going to say?

23 MS. PETERSON: Pardon me?

24 THE COURT: What's McGettigan going to say
25 about Victim --

1 MS. PETERSON: That he did not believe him.

2 THE COURT: Okay. I'll let you lay some
3 groundwork.

4 MR. LINDSAY: Thank you.

5 THE COURT: Okay.

6 (End of sidebar discussion.)

7 THE COURT: Mr. Lindsay.

8 MR. LINDSAY: May it please the Court. At
9 this time, the petitioner calls Karl Rominger to the
10 stand.

11 KARL ROMINGER

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

14 DIRECT EXAMINATION

15 BY MR. LINDSAY:

16 Q. Would you state your name, please, for the
17 record?

18 A. Karl Rominger.

19 Q. And are you currently -- well, have you ever
20 been a lawyer?

21 A. I have.

22 Q. Are you currently practicing law?

23 A. I resigned from the profession and turned my
24 license in about two and a half years ago.

25 Q. Mr. Rominger, in June or July of 2012, what

1 was your occupation at that time?

2 A. I was an attorney here in the Commonwealth
3 admitted to the Pennsylvania bar and several federal
4 bars.

5 Q. Did you become involved in the defense of
6 Jerry Sandusky?

7 A. I did eventually, yes.

8 Q. How did you become involved?

9 A. I was contacted by Curtis Everhart, who was
10 an investigator that I had used in several death
11 penalty trials, who apparently had come to work with
12 Joe Amendola on Mr. Sandusky's case.

13 Q. And you indicated you weren't involved
14 initially; is that correct?

15 A. Correct.

16 Q. When did you become involved?

17 A. Well, I remember Curtis calling me. I had
18 not been able to get a hold of Curtis for several
19 months. I had some files I wanted him to look at
20 out of Lancaster County. The practice was he would
21 look at certain files and tell me if there was
22 something he could do in an investigative capacity.
23 So I sent the files to him electronically, like I
24 usually did, and hadn't heard back from him. I
25 didn't realize that he had gotten busy with this

1 case, obviously.

2 I was driving down the road heading to
3 Harrisburg, had just gotten to Interstate 81 when
4 Curtis called me. And I was glad he called me
5 because I thought we were going to talk about those
6 cases. At which point, he said he wanted to know if
7 I wanted to get involved in a case up in State
8 College. And I said to him, I remember saying to
9 him, "This isn't the guy that was on Bob Costas like
10 two nights ago, is it?" And he said, well yes, it
11 is. And that's the beginning of the conversation.
12 So I can give you almost the exact timeframe because
13 he'd been on Costas like a few days before.

14 Q. Was it prior to Mr. Sandusky's preliminary
15 hearing?

16 A. Yes.

17 Q. Had you done anything on the case prior to
18 his preliminary hearing?

19 A. Well, after I got that phone call, I believe
20 I arranged to come up on a weekend, I think maybe a
21 Saturday. Curtis gave me a time to meet with
22 Attorney Amendola and Jerry. I went to his house,
23 and I recall there was a camera out front, which was
24 the first clue I was in the right place I guess. I
25 went in, I met Jerry and I met Joe for several hours

1 and we discussed the possibility of me getting
2 involved. I'm not sure how committal I was at this
3 exact juncture.

4 THE COURT: We got the same problem here.
5 You're being asked specific questions and I'll ask
6 you to respond directly to the question being asked.

7 THE WITNESS: Okay.

8 BY MR. LINDSAY:

9 Q. The specific question was, were you involved
10 with the case prior to the preliminary hearing?

11 A. And I guess that's where I was going with
12 that, is that I had an initial conversation --

13 THE COURT: It only requires a yes or a no,
14 Mr. Rominger.

15 THE WITNESS: I didn't do any legal work on
16 the case prior to the preliminary hearing.

17 BY MR. LINDSAY:

18 Q. Had you consulted with Mr. Amendola prior
19 to --

20 A. I had.

21 Q. Had you consulted with Mr. Sandusky?

22 A. I did.

23 Q. Had you had conferences with them?

24 A. I did talk with them, yes. And I believe I
25 began researching the factual aspects of the case.

1 Q. Mr. Rominger, you're aware that Mr. Sandusky
2 waived his preliminary hearing?

3 A. I am aware of that.

4 Q. Did you at all participate in that decision
5 to waive the preliminary hearing?

6 A. No.

7 Q. All right. Did you understand there was some
8 sort of a deal?

9 A. Well -- and to answer the question, yes, I
10 was informed --

11 MS. PETERSON: Objection, Your Honor. It's
12 irrelevant. If he did not participate in the
13 decision, then it's irrelevant.

14 MR. LINDSAY: Well, he's -- I think if Mr.
15 Amendola participated in the deal and he is
16 conversing with Mr. Amendola about the case, I think
17 he could state that he was informed by Mr. Amendola
18 that there was a deal. And I think counsel for the
19 Government, or excuse me, the Commonwealth, has
20 pretty well established that there apparently was
21 such a deal.

22 THE COURT: You're going to have to -- either
23 he's going to have to be responsive to your
24 questions or your questions are going to have to be
25 more focused.

1 MR. LINDSAY: More?

2 THE COURT: Focused.

3 MR. LINDSAY: Focused.

4 BY MR. LINDSAY:

5 Q. Were you or were you not aware that there was
6 some type of deal before the preliminary hearing
7 concerning him waiving the preliminary hearing?

8 A. The night before, Jerry called me and
9 informed me that he was going to be waiving his
10 preliminary hearing. To my surprise.

11 Q. And why were you surprised?

12 MS. PETERSON: Objection. It's irrelevant.

13 THE COURT: Sustained.

14 MR. LINDSAY: All right.

15 BY MR. LINDSAY:

16 Q. Let me ask you this question, were you aware
17 at that time of a meeting at the Hilton Garden Inn?

18 A. No.

19 Q. When did you first become aware of that
20 meeting?

21 A. I believe the first time I became aware of
22 that meeting was last night when you told me there
23 had been such a meeting.

24 Q. All right. Sir, in the course of defending
25 Mr. Sandusky, did you become aware of an allegation

1 of what we would call, I guess, Victim Number 2?

2 A. Yes.

3 Q. And that would be the individual -- well, who
4 was Victim Number 2 in the -- I'm not asking for his
5 name, I'm asking from the panaplee of alleged
6 victims, who was this guy?

7 A. He was the victim that was witnessed by Mr.
8 McQueary. Allegedly.

9 Q. All right. Were you made aware of who that
10 individual was?

11 A. I was.

12 Q. And who was he?

13 A. Allan. And the last name you'd have to
14 refresh my recollection.

15 Q. Was it --

16 MS. PETERSON: Your Honor, I'm going to
17 object for lack of foundation.

18 THE COURT: Overruled. Got to get to this.
19 Go ahead.

20 BY MR. LINDSAY:

21 Q. Was it Mr. Myers?

22 A. Yes.

23 Q. All right. And were there -- were you
24 informed -- I guess, were you informed by Mr.
25 Amendola what the sequence of events was leading to

1 him being identified as Victim Number 2?

2 A. In part by Mr. Amendola.

3 Q. Okay. And in part by who else?

4 A. Curtis Everhart.

5 Q. All right. And what did they tell you?

6 A. It was my understanding that they had been
7 told by Mr. Sandusky who the individual might have
8 been. They had talked to him and he had said that
9 nothing had happened in this shower or this room.
10 And in fact, then I believe Curtis Everhart
11 interviewed him at length to establish that. That
12 was Curtis' training. And there was a report of
13 that I believe from Curtis.

14 Then my understanding was, as related by those
15 gentlemen, at some point, Andrew Shubin became
16 attorney for this young man. And I was told by the
17 investigator and Amendola that he had been contacted
18 because he had been a previous client of Mr.
19 Shubin's for a DUI, which would have been expunged,
20 so it didn't show on the record due to ARD rules.
21 And it was believed that Mr. Shubin was calling all
22 the Second Mile kids he could identify to look for
23 potential plaintiffs cases.

24 Q. All right. Did you -- well, in the course of
25 your defense of Mr. Sandusky, did you engage in

1 conversation with the prosecutors in the case?

2 A. I did. I sat at that table just to your
3 right and Mr. Fina and McGettigan sat directly to my
4 left. And there was definitely, much as in a
5 sporting event, a lot of shoptalk and a little trash
6 talk going on between the Attorney General's Office
7 and myself.

8 THE COURT: Now wait a minute. Is he going
9 to answer the question? So we're going to have
10 to --

11 MR. LINDSAY: Mr. Rominger, I would ask that
12 you confine yourself to the questions that are
13 asked.

14 BY MR. LINDSAY:

15 Q. Did you have conversations?

16 A. I did.

17 Q. And did you have any conversations concerning
18 this individual, Allan Myers, with Mr. Fina and Mr.
19 McGettigan?

20 A. I did.

21 Q. Can you explain what they were?

22 A. The conversation was along the lines of how
23 they wanted to arrest Attorney Shubin for hiding,
24 quote, "a material witness." They had become aware
25 that this person had information and was, in fact,

1 Victim Number 2. They had interviewed or wanted to
2 interview him and couldn't find him. And according
3 to McGettigan, I believe, he'd been secreted in a
4 cabin somewhere and Mr. Shubin was offering to make
5 him available only if Mr. Shubin was present.

6 Q. All right. Was there any discussion between
7 you and Mr. McGettigan, Mr. Fina, Mr. Amendola
8 concerning whether or not this witness would testify
9 at trial?

10 A. There was.

11 Q. And what was that information?

12 A. I wanted to call him, or at least suggested
13 that I wanted to call him. I was told that there
14 was a detente and an understanding that both sides
15 would simply not identify Victim Number 2. It was
16 explained to me by Attorney Amendola that the
17 understanding was that if the Commonwealth called
18 him, they were going to have a victim on their hands
19 who recanted or changed his story. After getting a
20 plaintiff's attorney, had originally said nothing
21 happened, it was very clear with the statement
22 obtained from a very skilled investigator, Mr.
23 Everhart, that'd be a problem for them.

24 The flip side from the defense side aspect,
25 the problem was that this would add some

1 corroboration to Mr. McQueary's story albeit perhaps
2 a challenged witness. The two together could be
3 problematic for the defense, and so they decided to
4 use an analogy, punt, on that and simply not tell
5 the jury who Victim Number 2 was.

6 Q. This information you received from Mr.
7 Amendola?

8 A. That was my discussion with Mr. Amendola
9 about why we couldn't call him as I wanted to. The
10 other information about the cabin and the fact that
11 Shubin was interfering with a material witness,
12 those aspects of the discussion came from the
13 Commonwealth.

14 Q. Was there any discussion about this punt or
15 this deal with the Commonwealth representatives?

16 A. I believe it was discussed on the floor here
17 generally. I can't remember exact wording, but
18 yeah, it was discussed on the idea like, oh, yeah,
19 you know, McQueary's testifying and sort of joking
20 around a little bit about how, you know, everybody
21 knows who the kid is but nobody's saying who the kid
22 is.

23 Q. All right. Was Mr. Myers, in fact, called by
24 either the Commonwealth or the defendant?

25 A. Not that I recall. Not at trial for sure.

1 Q. Did you hear a reference to Victim Number 2
2 in the Commonwealth's closing argument?

3 A. I did.

4 Q. And what specific did you hear?

5 A. I remember him saying, to my surprise, that
6 nobody knew -- only God, I believe, knew who Victim
7 Number 2 was. But that was overwhelmed by the
8 second follow up statement that somehow Jerry knew
9 who that person was and could have come forward and
10 testified. And I believe that's what drew my focus,
11 as I've tried to remember the things I was going to
12 have to object to at the end of the closing.

13 Q. Did you object?

14 A. I believe I objected to several things. And
15 I believe the reversal of the burden was clearly
16 something that concerned me. I don't know if I
17 articulated that fact about Allan Myers at the time.

18 Q. All right. You recall that you did object to
19 the fact that the burden had been shifted, that is
20 that there was a comment on --

21 A. Defendant's silence.

22 Q. Yes. All right. You did object to that?

23 A. I'm sure I did that.

24 Q. Did you request any remedy from the Court?

25 A. I think I was asking for mistrial or

1 something. I'd have to look at the transcript to
2 refresh my recollection as to exactly. My general
3 gist in making an objection would be to do that and
4 then ask for a curative instruction if the Judge
5 refused to grant a mistrial. But I remember it
6 being very rushed.

7 Q. So you don't know whether you asked for a
8 mistrial curative instruction?

9 A. I don't. But the transcript should reflect
10 what I said.

11 Q. If I were to tell you that the transcript
12 reflects that you made no such request either for a
13 mistrial or a curative instruction, would that be
14 accurate?

15 A. It's possible. Again, I felt very rushed at
16 that moment.

17 Q. Is there any reason that you can conceive of
18 that you would not have requested a mistrial or a
19 curative instruction?

20 A. Not one strategic or logical reason, no. But
21 I wouldn't have raised the objection if I wasn't
22 going to do that, so --

23 Q. All right. Did you specifically object to
24 Mr. McGettigan making reference to the fact that
25 Victim 2 was known only to God?

1 A. I don't think I did. I don't think I did.

2 Q. Is there any reason that you can give why you
3 would strategically not have made that objection?

4 A. Now I can think, right now, three reasons why
5 it was objectionable.

6 Q. You can think of three reasons?

7 A. Right off the top of my head, so I can't
8 imagine that there was any strategy to that.

9 Q. What are the three reasons?

10 A. Well, number one, referencing God is
11 problematic for prosecutors, sort of puts a
12 religious intone into the prosecution. I would have
13 found that objectionable, which I believe I did.
14 Also, because we all knew who the person was, and
15 that was a factual misstatement and a lack of candor
16 to the Court, although the Court wouldn't know that
17 because it's a secret agreement. And then the other
18 was the final part of it, which was that it played
19 into the second half of the statement that, you
20 know, and Jerry was the guy. So that was -- those
21 are all the reasons I would have thought we should
22 have had a mistrial as I sit here today.

23 Q. And you can conceive of no reason that you
24 didn't ask for one?

25 A. There was no strategic reason whatsoever.

1 And no -- I can't explain why I wouldn't have asked
2 for the mistrial at that point or objected to those
3 things.

4 MR. LINDSAY: Excuse me, just a moment, Your
5 Honor.

6 BY MR. LINDSAY:

7 Q. Mr. Rominger, you're aware that Mr. Sandusky
8 did not testify in his own defense?

9 A. Correct.

10 Q. Did you participate at all in that decision?

11 A. I did.

12 Q. To what extent?

13 A. I -- I believe we decided that, given the
14 Commonwealth's surprise revelation at trial about
15 Matt Sandusky, that it may have been in his best
16 interest not to testify. But there were a lot of
17 conversations back and forth on that.

18 Q. All right. Was there any other reason for
19 Mr. Sandusky not to testify, other than the
20 introduction of the Matt Sandusky factor?

21 A. Not per se.

22 Q. All right. And do you recall having, do you
23 personally, having discussions with Mr. Sandusky
24 about dealing with the Matt Sandusky factor?

25 A. We did. And we had discussions just

1 generally about testifying. I believe it was very
2 lengthy discussions.

3 Q. All right. Are you aware, sir, of three
4 individuals by the name of Tim Curley, Gary Schultz,
5 and Graham Spanier?

6 A. Yes. I believe they're pending trial in
7 Harrisburg.

8 Q. Yes. Do you recall whether or not these
9 three gentlemen were available to testify in the
10 Sandusky trial?

11 A. My recollection is we wanted to bring them to
12 testify, but they were going to assert the
13 privilege. At least two of the three, but maybe all
14 three.

15 Q. Do you recall whether they were available to
16 testify for that reason?

17 A. Oh. Oh, you mean physically available or
18 legally available? I guess I'm misunderstanding the
19 question.

20 Q. Either one.

21 A. My understanding is they were physically
22 available but they would take their Fifth Amendment
23 privileges. And there's a bar in Pennsylvania about
24 calling a witness that you know is likely to take
25 their Fifth Amendment privilege in front of the

1 jury. And I believe the Commonwealth was bringing
2 in information, there was a special hearing that the
3 Judge scheduled on that.

4 Q. Well, do you recall that the Commonwealth
5 told you that they would exercise their Fifth
6 Amendment provision and not testify?

7 A. That's -- that was -- unless Attorney
8 Amendola got the information from somewhere else, I
9 believe that came directly from Frank Fina.

10 Q. Now, were you aware, sir, that these three
11 gentlemen had testified under oath in grand jury
12 proceedings?

13 A. I believe we would have been at that point.
14 But maybe not because we didn't get the grand jury
15 materials until -- we were getting a lot of material
16 late, I don't know when the grand jury material
17 first arrived versus that hearing. One could have
18 proceeded the other, I don't know.

19 Q. Did you -- was there any effort on your part
20 to seek to introduce the grand jury testimony of
21 these three people?

22 A. I think there was some discussion about the
23 use of out of court statements that were -- would
24 tend to exculpate the defendant from an unavailable
25 witness. I'm not sure if I filed any motions on

1 that or not.

2 MR. LINDSAY: Could I mark a document for
3 identification, sir? May I proceed to approach the
4 witness, Your Honor?

5 THE COURT: Yes.

6 BY MR. LINDSAY:

7 Q. Mr. Rominger, I'm going to show you what's
8 been marked for identification purposes only as
9 Defendant's Exhibit 1. I want you to look at that
10 for a moment. Have you seen that before?

11 A. I have.

12 Q. And what is it?

13 A. That is a motion in limine to admit the out
14 of court statements of unavailable witnesses,
15 Spanier, Curley, and Schultz. And I was going to
16 say it's an 804(b)(3). So yeah, that is familiar to
17 me.

18 Q. Did you ever file the motion?

19 A. Well, I signed it and it's dated June 11,
20 2012. And it looks like it was filed on June 11th
21 at 8:28 a.m., 2012, based on the Court seal.

22 MR. LINDSAY: All right. Your Honor, I'd
23 offer this into evidence as Defendant's Exhibit 1.

24 MS. PETERSON: No objection.

25 THE COURT: Admitted.

1 BY MR. LINDSAY:

2 Q. Is there any reason that you can think of why
3 you and Mr. Amendola did not argue for the admission
4 of the prior testimony under oath since Mr. Curley,
5 Mr. Schultz, and Mr. Spanier were not available at
6 trial?

7 A. When you say argue, do you mean by motion or
8 later in the proceeding?

9 Q. Argue it in front of Judge Cleland.

10 A. I don't recall. I see the motion, I remember
11 it being an issue. I prepared a lot of what I
12 thought were okay technical motions. But why that
13 was never argued or presented, I don't know beyond
14 that right now.

15 Q. Were you aware that there were grand jury --
16 there are allegations of grand jury leaks and
17 misconduct on the part of the prosecution?

18 A. Correct.

19 Q. Was there anything done between you and Mr.
20 Amendola concerning those specific allegations of
21 grand jury leaks and any government misconduct?

22 A. I think I may have asked to kick the Attorney
23 General's Office off the case based on their
24 misconduct. I think.

25 Q. Mr. Rominger, I want to show you what has

1 been marked for identification purposes only as
2 Defendant's Exhibit 2. Would you look at that,
3 please?

4 A. (The witness complied.) Okay.

5 Q. Can we agree, sir, that this purports to be a
6 fax simile, a fax sent from your office to Mr.
7 Amendola's office?

8 A. I can. And it has a cover sheet that shows
9 it was, in fact, faxed and received.

10 Q. This appears to be -- does it not purport to
11 be a draft of what was titled special motion?

12 A. Special motions. And then it goes on to list
13 what the special motions are.

14 Q. And they include motion for early release of
15 grand jury testimony; correct?

16 A. Pursuant to PA Rule of Criminal Procedure
17 230.

18 Q. Motion to disqualify the state Attorney
19 General's Office and/or dismiss the charge; correct?

20 A. Correct.

21 Q. Mr. Rominger, was this draft motion ever
22 filed?

23 A. I don't think it was. But this would have
24 been something I prepared for Mr. Amendola. And I
25 didn't make the final decisions on what was filed.

1 So if he didn't file it, that would be the person
2 you'd have to ask, although I obviously spent some
3 time preparing it.

4 Q. Is there any reason you can think of that you
5 would not file this motion?

6 A. No. Particularly because it was obvious that
7 it was leaked by the Attorney General's Office.

8 MR. LINDSAY: Excuse me for just a moment,
9 Your Honor.

10 BY MR. LINDSAY:

11 Q. Mr. Rominger, with regard to the Matt
12 Sandusky matter, did you discuss or did you file a
13 motion in limine to preclude the Commonwealth from
14 calling Matt Sandusky?

15 A. I don't recall the answer to that.

16 Q. Is there any reason you would not?

17 A. I would have thought that would be somebody
18 we would want to keep off the stand after the trial
19 collapsed into less than a week.

20 Q. Let me ask you this question. Can we agree
21 from your prior testimony that the reason,
22 apparently, that Mr. Sandusky was advised not to
23 testify was the presence of Matt Sandusky's proposed
24 testimony?

25 A. Yes. And I think there was some kind of

1 understanding with McGettigan about they wouldn't
2 try to press putting Matt Sandusky on if Jerry
3 didn't testify or something along those lines. I
4 recall discussions along those lines.

5 Q. Was there any discussion between you and Mr.
6 Amendola about simply getting a court order that he
7 couldn't testify?

8 A. I don't recall any conversations on that
9 issue. Sounds like something we should have
10 discussed.

11 MR. LINDSAY: All right. I believe that's
12 all I have on direct examination, sir.

13 THE COURT: Ms. Peterson.

14 MS. PETERSON: Thank you.

15 CROSS EXAMINATION

16 BY MS. PETERSON:

17 Q. Mr. Rominger, when you practiced law in
18 Pennsylvania, you were familiar with the statewide
19 investigating grand jury process; correct?

20 A. I appeared in front of several of them.

21 Q. And you're aware then that the statewide
22 investigating grand jury issues a presentment if
23 they recommend criminal charges; correct?

24 A. I believe that's correct.

25 Q. And that's different from the federal system

1 wherein grand juries issue indictments; correct?

2 A. There are investigatory grand juries at the
3 federal level. But if you're talking about an
4 indicting grand jury, we don't have those in
5 Pennsylvania generally.

6 Q. And when a presentment is issued by an
7 investigating grand jury in Pennsylvania, that is
8 simply a recommendation of charges; correct?

9 A. Generally.

10 Q. It has no legal significance in and of
11 itself; correct?

12 A. Disagree.

13 Q. Someone cannot be arrested simply because a
14 presentment is issued; correct?

15 A. No. But a person can lose their coat ship
16 (sic), for instance.

17 Q. My question is, no one can be arrested just
18 because a presentment was issued?

19 A. Not on the legal face of the presentment,
20 you're correct.

21 Q. Criminal charges have to be instituted by a
22 legal authority; correct?

23 A. Correct.

24 Q. The motion that you prepared that's been
25 marked as Exhibit 2, that has to deal with, and I'm

1 directing your attention to what would be, not
2 counting the cover pages, the third and fourth pages
3 of this motion. And that deals specifically with
4 your motion to disqualify the state Attorney
5 General's Office and/or dismiss the charges?

6 A. Okay.

7 Q. If I heard you correctly on direct, you said
8 this had to do with the fact that there were leaks?

9 A. I thought that's, off the top of my head,
10 what it was about.

11 Q. That's not what this motion states; correct?

12 A. Let me read it and I'll tell you.

13 THE COURT: Do you have a copy of that?

14 MR. LINDSAY: I'm sorry, I do. I apologize.
15 I'll give you copies of Exhibit 1, too. May I
16 approach with the other copy?

17 THE COURT: Yes.

18 THE WITNESS: So can you repeat your
19 question?

20 BY MS. PETERSON:

21 Q. Yes. This particular motion does not have
22 anything to do with leaks; correct?

23 A. I disagree.

24 Q. The motion specifically deals with the
25 presentment as far as the recounting of Mike

1 McQueary's testimony?

2 A. It does deal with the presentment and the
3 salacious and false detail.

4 Q. My question is, sir, this has to deal with
5 the presentment and how it recounted Mike McQueary's
6 testimony; correct?

7 A. And it's released to the public, which
8 includes the leak.

9 Q. This motion said nothing about an improper
10 leak of grand jury secrecy information?

11 A. Ma'am, I will agree that this draft motion
12 was not complete and did not contain those
13 allegations at that time.

14 Q. My question to you is, this motion does not
15 contain any information about an improper leak of
16 grand jury secrecy materials?

17 A. It does reference their release, yes.

18 Q. There is nothing specific in this motion,
19 sir, where you talk about the improper release of
20 grand jury secrecy materials?

21 A. Granted it doesn't make a distinction between
22 the time you guys released it officially and the
23 time you guys leaked it. It does not meet that
24 distinction.

25 MS. PETERSON: Your Honor, if the witness can

1 please answer my question.

2 THE COURT: I think the motion speaks for
3 itself. And that Mr. Rominger's answer aside, it
4 makes no reference whatsoever to a leak.

5 BY MS. PETERSON:

6 Q. Mr. Rominger, you appeared for Mr. Sandusky's
7 preliminary hearing; correct?

8 A. I appeared at a waiver of a preliminary
9 hearing.

10 Q. And when you arrived at the preliminary
11 hearing, you had the opportunity to speak with Mr.
12 Amendola and Mr. Sandusky?

13 A. I did have the opportunity to speak with
14 them.

15 Q. After the preliminary hearing was waived, you
16 stood next to Mr. Amendola while he gave a press
17 conference outside the courthouse; correct?

18 A. That would be true.

19 Q. And at no time did you tell Mr. Sandusky or
20 Mr. Amendola that you had concerns about waiving the
21 preliminary hearing?

22 A. I'm glad you asked that. I did tell Jerry I
23 had concerns. He called me the night before, I
24 could tell you about that.

25 Q. I'm talking about the day of the preliminary

1 hearing. When all three of you were together here
2 at the courthouse, you did not discuss those
3 concerns?

4 A. Not true.

5 Q. Who did you discuss the concerns with?

6 A. I told Jerry that I wrote an article, Don't
7 Waive your Preliminary Hearing.

8 Q. You didn't share that with Mr. Amendola, your
9 concern? He's your co-counsel?

10 A. Do you want to know what I told Mr.
11 Amendola?

12 Q. Yes.

13 A. I told Mr. Amendola that when you deal with
14 the state Attorney General's Office in a major sex
15 case, there is zero possibility of a plea that
16 doesn't result in jail time. And it was my opinion
17 that it was a fallacy to believe that waiving the
18 preliminary hearing would grant any benefit or
19 anything from your office whatsoever. And that the
20 likelihood of going to jail only increases. And
21 that one does not have to worry so much about the
22 bail on the front end. If one does not want to go
23 to jail for the rest of their life, one needs to
24 worry about getting the witness testimony in a sex
25 case. Part of the reason I was brought into this

1 case is I've successfully tried these cases before.

2 Q. You're familiar then with preliminary
3 hearings in sex cases, that credibility is not an
4 issue that can be delved into at a preliminary
5 hearing; correct?

6 A. That is not why we take them as defense
7 attorneys.

8 Q. My question to you is, you're aware that
9 under the law of Pennsylvania, credibility is not an
10 issue at a preliminary hearing that can be explored
11 on cross-examination?

12 A. That's a true statement of the law.

13 Q. And Mr. Rominger, when were you officially
14 retained by Mr. Sandusky?

15 A. I don't know the date. I probably wrote a
16 fee letter at some point. That would be in the
17 file, which I no longer have. And I do know that I
18 didn't enter my appearance until late in the
19 proceedings.

20 Q. Yes. You entered your appearance April 5,
21 2012.

22 A. If that's what you believe it is, then
23 perhaps that's what it is.

24 Q. Well, the document will speak for itself.
25 And your role in this case, sir, was to be a second

1 chair to Mr. Amendola?

2 A. To assist Mr. Amendola, correct.

3 Q. In a second chair capacity; correct?

4 A. I don't know what second chair capacity means
5 exactly.

6 Q. You couldn't devote your full-time attention
7 to this case; correct?

8 A. I don't believe I agreed to devote my entire
9 practice to this case.

10 Q. And that's because you had a practice in
11 Carlisle, Pennsylvania at that time?

12 A. Yeah. I had, like, five lawyers working for
13 me.

14 Q. And you had no set schedule, whereby you'd
15 come to State College a set day of each week to work
16 on this case; correct?

17 A. Well, with computers these days, you can work
18 on them from Carlisle.

19 Q. You didn't have a set schedule, Mr. Amendola,
20 where you would come to State College -- I'm sorry,
21 Mr. Rominger -- and you'd come to State College and
22 meet with Mr. Amendola?

23 A. We didn't have like a, you know, coffee day
24 of the week, Wacky Wednesday or something. No, we
25 didn't do that.

1 Q. And Carlisle's about two hours away from
2 here?

3 A. Depends on what time of day you drive it.
4 Sometimes it's two hours, sometimes it's an hour and
5 20 minutes.

6 Q. And there were some periods of time, sir,
7 where you didn't work on this case at all; correct?

8 A. Some periods of time where I didn't work on
9 this case at all?

10 Q. Yes.

11 A. What periods of time are you talking about?
12 Because I certainly didn't work on some periods or
13 others. But during other periods of time I worked
14 relentlessly. So if you can give me --

15 Q. Between January 24, 2012 and April 5th, when
16 you entered your appearance, 2012?

17 A. I did a fair amount of work on the case. But
18 it wasn't a 24/7 endeavor at that point.

19 Q. Well, certainly if you were doing work on
20 this case, you would have billed for that time?

21 A. No, not necessarily.

22 Q. That's your practice, when you were -- as an
23 attorney, that you wouldn't bill for almost two
24 months when you were working on a high profile case?

25 A. Well, when I initially took the case, I

1 didn't really expect that Jerry would have a lot of
2 money to pay me. Keeping track of my time only
3 became an imperative when the insurance company
4 agreed to pay me \$275 an hour. Then I sort of
5 started keeping track of what work I was doing so
6 I'd get the money.

7 Q. When did you start keeping track of your
8 time?

9 A. Don't recollect. But I remember getting the
10 phone call that a federal judge had ordered Chuck to
11 pay me and I was pretty happy.

12 Q. After the preliminary hearing, you appeared
13 on CNN; correct?

14 A. Probably.

15 Q. And was that at the request of Mr. Sandusky?

16 A. I don't know.

17 Q. You testified that Mr. McGettigan, in his
18 closing, said that Victim Number 2 was known only to
19 God; correct?

20 A. I believe that's what he -- I believe that's
21 my recollection, but the transcript would probably
22 be the best evidence of exactly what he said.

23 Q. The transcript would be the best evidence
24 because he said there are victims known only to God
25 and not to us. You stated that you had no strategic

1 reason for requesting a mistrial in connection with
2 some of Mr. McGettigan's arguments. But sir, being
3 disbarred, there's no repercussion for you coming in
4 here today and saying you had no strategic reason
5 for doing things; correct?

6 A. I disagree.

7 Q. The Pennsylvania Disciplinary Board cannot do
8 anything to you at this point because you're
9 disbarred; correct?

10 A. Incorrect.

11 Q. You don't have to worry about retaining
12 clients; correct?

13 A. I tend to get my law license back. I
14 surrendered it and I have the ability to get it
15 back, which means I need to continue to comport
16 myself as best as possible and in a professional
17 manner, ma'am.

18 Q. Your law firm no longer exists, Rominger and
19 Associates?

20 A. That's correct.

21 MS. PETERSON: One moment, please, Your
22 Honor.

23 BY MS. PETERSON:

24 Q. Is it your testimony that Mr. McGettigan told
25 you that Victim Number 2 was Allan Myers?

1 A. If you're asking me did he say Allan Myers is
2 Victim 2 period --

3 Q. That is my question.

4 A. I don't think he said it in that short of a
5 sentence.

6 Q. Frank Fina never said to you Allan Myers was
7 Victim Number 2?

8 A. If you're asking if he said it in five words
9 or less, no.

10 MS. PETERSON: That's all the questions I
11 have, Your Honor.

12 MR. LINDSAY: May I inquire?

13 REDIRECT EXAMINATION

14 BY MR. LINDSAY:

15 Q. Mr. Rominger, you were questioned on
16 cross-examination about discussions you had about
17 the waiver of the preliminary hearing with Mr.
18 Amendola --

19 A. Correct.

20 Q. -- the night before the hearing and the day
21 of the hearing. Do you recall those questions on
22 cross?

23 A. I do.

24 Q. And you said that -- you said that you
25 expressed concerns and that's what you said;

1 correct?

2 A. I did.

3 Q. Could you explain how precisely, on the night
4 before the preliminary hearing, you expressed those
5 concerns to Mr. Amendola?

6 A. Well, Jerry called me and told me about it.
7 And I believe then I had a follow up conversation,
8 because I was trying to call Amendola to find out
9 why we were doing this. We had discussions about
10 it, but then I believe it was tabled until the
11 morning of, which was coming here.

12 Q. Can I interrupt you for a minute? With
13 regard to your discussion you had with Mr. Amendola
14 the night before the preliminary hearing, did he
15 expound at all on why he wanted to waive a
16 preliminary hearing?

17 A. There was some belief that he was going to --
18 that the Government would not change the bail on Mr.
19 Sandusky, therefore he could stay out and/or not
20 bring another set of charges to try to jack the bail
21 up so he could stay out. So basically they were --
22 as I understood it, Jerry was being threatened with
23 his pretrial release in exchange for a waiver.

24 Q. That was a discussion you had with Mr. --

25 A. Amendola.

1 Q. And that was the night before the preliminary
2 hearing?

3 A. Correct.

4 Q. Did you express any concerns about a deal
5 like you've said?

6 A. Yes. I'm more of a run it out to first base
7 kind of guy than Joe is, and I really wanted to say
8 hey, you've got a magistrate who's got to prove
9 that, you got recourse with the common pleas through
10 a bail petition, and if you have to get a dip in the
11 jail for a couple days while we straighten things
12 out, that's not so bad. Because you need that
13 testimony from the preliminary hearing.

14 Q. Did you have discussions with Mr. Amendola
15 expressing your concerns the day of the preliminary
16 hearing?

17 A. I believe I did in the morning. But it was
18 fait accompli at that point.

19 Q. You were questioned at some length, well not
20 at some length but certainly some insistence about
21 the fact that pursuant to the law, credibility is
22 not an issue at a preliminary hearing. Do you
23 recall those questions?

24 A. I do.

25 Q. And you indicated that credibility is not the

1 issue as for your reasons for having the preliminary
2 hearing. Do you recall that?

3 A. Correct.

4 Q. Why would you want to have a preliminary
5 hearing if you're a defense attorney and credibility
6 is not legally the issue?

7 A. Well, the --

8 MS. PETERSON: Objection, Your Honor. This
9 is spec --

10 THE COURT: Sustained. I think this is the
11 expert testimony that Peterkin says you can't put
12 in.

13 MR. LINDSAY: But he was asked that on
14 cross-examination. He's been asked to speculate at
15 some length about why it would be important to have
16 a preliminary hearing if credibility's not the
17 issue. That was the question on cross-examination,
18 and I think the door is open now for him to answer
19 the question. He was cut off.

20 THE COURT: For what the testimony is worth,
21 put it in.

22 THE WITNESS: When you have a preliminary
23 hearing, several things important can happen.
24 Number one, some of the charges don't necessarily
25 make it through because even though the affidavit of

1 probable cause and/or grand jury presentment say one
2 thing, the witness says another, and the Judge then
3 says well, there's not a prima facie case on Count 2
4 but I'm cutting up Counts 1 through 10. So
5 sometimes you lose some charges as you go. That's a
6 good thing for the defense.

7 Most importantly, you get a feel for the
8 witnesses. You get to see their credibility, not
9 judge it. And you get to build the transcript,
10 particularly in a case where you know that there are
11 grand jury transcripts or likely to be grand jury
12 transcripts. Getting a preliminary hearing
13 transcript means you now have two separate
14 transcripts of each witness which become intensely
15 valuable for impeachment later at trial.

16 I could go on. But the other reason is simply
17 that it's your only chance to see the Government's
18 case short of the jury trial. You know, they've
19 seen their witnesses in front of the grand jury, for
20 instance, so they know whether he's flaky or not
21 flaky. I don't know that, I'm just listening to a
22 detective tell me he's rock solid. So that
23 preliminary hearing also shapes how you're going to
24 handle the case for potential trial strategies and
25 plea strategies. It's important. It's the most

1 important hearing in a criminal case.

2 BY MR. LINDSAY:

3 Q. Mr. Rominger, you were also questioned about
4 the fact that you were disbarred, you have nothing
5 to lose by testifying here?

6 A. Correct.

7 Q. Are you subject to the loss of perjury?

8 A. I am. And I'm also just subject to trying to
9 get back in the good graces of the bar. I got to
10 pay back a lot money and I've got to keep my nose
11 clean in the meantime. And I have a goal, so I tend
12 to want to continue to do that.

13 MR. LINDSAY: I believe that's all.

14 MS. PETERSON: No recross.

15 THE COURT: You can step down.

16 THE WITNESS: Thank you your Honor. May I be
17 excused from the courthouse?

18 THE COURT: Can this witness be excused?

19 MR. LINDSAY: Yes, indeed.

20 MS. PETERSON: Yes, Your Honor.

21 THE COURT: Yes, you're excused.

22 THE WITNESS: Thank you, Your Honor.

23 MR. LINDSAY: Call the next witness? At this
24 time, the petitioner calls Joseph Amendola to the
25 stand.

1 THE COURT: Counsel, would you approach the
2 bench?

3 (Whereupon, the following discussion was held
4 at sidebar:)

5 THE COURT: Just a practical point, once an
6 exhibit's introduced into evidence and admitted, it
7 becomes a public record and available. If you
8 choose to put all of your exhibits in at the end, I
9 would honor that. Okay? Maybe makes no difference,
10 I'm just pointing that out.

11 MR. LINDSAY: So far so good.

12 THE COURT: Only 1 is admitted. 2 hasn't
13 been moved yet.

14 MR. LINDSAY: All right. Now, the next
15 question I have, as a practical matter, it's 20
16 minutes to 12.

17 THE COURT: We'll break at noon. When you're
18 at a break point, just tell me.

19 MR. LINDSAY: All right. Because I
20 anticipate this witness is not going to be a quick
21 one.

22 THE COURT: No, I assume. But just tell me
23 when you're at a good break point around noon and
24 we'll break at that point.

25 MR. LINDSAY: Perfect.

1 THE COURT: Is this 1 or 2?

2 MR. LINDSAY: That's two. Why don't we --

3 THE COURT: That's all right, I'll mark it.
4 It's fine.

5 MR. LINDSAY: On the record, why don't I
6 offer it into evidence.

7 THE COURT: Let's -- why don't you do it from
8 the microphone.

9 (End of sidebar discussion.)

10 THE COURT: With regard to Exhibit 2, Mr.
11 Lindsay, do you have a motion?

12 MR. LINDSAY: Yes. I move to offer what has
13 been previously marked as Defendant's Exhibit 2 for
14 identification purposes into evidence as Defendant's
15 Exhibit 2.

16 THE COURT: Ms. Peterson?

17 MS. PETERSON: No objection.

18 THE COURT: It's admitted.

19 MR. LINDSAY: My assistant went to get my
20 witness, Your Honor.

21 JOSEPH L. AMENDOLA

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

24 THE COURT: Please be seated.

25 MR. LINDSAY: I'm calling Mr. Amendola as an

1 adverse witness. Just wanted to state that.

2 MS. PETERSON: Your Honor, I would object to
3 that. There has to be a basis for that statement.
4 And until --

5 THE COURT: There's no indication yet that
6 he's adverse.

7 MR. LINDSAY: All right. If it develops, I
8 will ask for that.

9 THE COURT: Okay. I've already indicated I'm
10 going to give you some latitude to lead witnesses if
11 that's what you're trying to get at.

12 MR. LINDSAY: That's what I'm trying to get
13 at.

14 THE COURT: Well, I've already given you some
15 latitude there, unless it gets out of bounds and
16 there's an objection. So, may not make any
17 practical difference.

18 DIRECT EXAMINATION

19 BY MR. LINDSAY:

20 Q. Mr. Amendola, would you state your name?

21 A. Joseph L. Amendola, A-M-E-N-D-O-L-A.

22 Q. And what is your occupation?

23 A. I'm an attorney.

24 Q. How long have you been an attorney, sir?

25 A. Since 1973 in October. So I guess that makes

1 it almost 43 years.

2 Q. And what type of law do you practice?

3 A. For the last 30 years or so, criminal defense
4 work primarily.

5 Q. Did you become involved with the defense of
6 Jerry Sandusky?

7 A. Yes.

8 Q. How did that occur?

9 A. Well, I had known Jerry socially through his
10 work with the Second Mile and I had been involved
11 with some work, some volunteer work with the Second
12 Mile. But in either late 2008 or very early in
13 2009, Jerry contacted me, I thought initially it had
14 to do with the Second Mile because there had been
15 some discussions about me becoming a member of their
16 board of directors. But when he came in, he started
17 talking about the situation in Clinton County
18 involving Accuser Number 1. I still refer to
19 them -- and excuse me if I refer to numbers, because
20 we were so careful not to divulge their identities
21 because of court orders, that I've always treated
22 them as numbers rather than individuals.

23 Q. All right.

24 A. And that started the process where I was
25 involved with Jerry and the CYS, the Children and

1 Youth Services situation, that evolved out of
2 Clinton County.

3 Q. All right. When did you become aware that
4 Mr. Sandusky was under investigation by a statewide
5 investigating grand jury?

6 A. Well, I didn't know that for a long time.
7 However, in the course of the CYS investigation in
8 Clinton County, after Jerry received a letter saying
9 that the abuse was indicated and he wanted,
10 vehemently wanted to fight that, appeal it, we set
11 up an administrative hearing. And the
12 administrative hearing was going to be held, I
13 believe, in Wilkes Barre before the administrative
14 law judge. And at the last minute, within two or
15 three days prior to the hearing, I received a fax
16 from Clinton County CYS saying that, what it
17 initially was, Jerry went on some sort of football
18 camp trip with Number 1, touching him above the
19 clothing, it now escalated into oral sex, anal sex,
20 and all kinds of very serious allegations involving
21 Jerry's residence. And at that point, I knew there
22 was something else going on.

23 Now, probably it was after that that I found
24 out that there might be, and again, wasn't sure, but
25 there might be a statewide investigation.

1 THE COURT: I'm going to ask Mr. Amendola, as
2 I have done with other witnesses, to answer the
3 question as specifically and precisely as you can.
4 And I think the question was, when did you find out
5 that there was an investigating grand jury?

6 THE WITNESS: So it would have been some
7 time, most likely, in 2009.

8 BY MR. LINDSAY:

9 Q. All right. When did you become actively
10 involved in the defense of Mr. Sandusky for the
11 charges in this case?

12 A. Well --

13 Q. And can I ask you, too, can you pull that
14 microphone, I don't hear well, maybe pull that a
15 little closer to you.

16 A. Let me shift my body without falling off the
17 stand. I was only involved in the investigation
18 concerning Accuser Number 1 out of Clinton County.
19 I had no idea that there were other accusers until
20 the Attorney General's Office filed their
21 presentment on November 5, 2011. So, does that
22 answer your question?

23 Q. Is that when you became actively involved in
24 Mr. Sandusky's defense?

25 A. Other than Number 1.

1 Q. All right.

2 A. Because Number 1, we were involved from late
3 2008, early 2009.

4 Q. All right. Do you recall that there was an
5 interview of Mr. Sandusky by Bob Costas?

6 A. Yeah, of course.

7 Q. And are you familiar with the arrangement of
8 that interview? How did that come about?

9 A. After the charges were filed, during the week
10 between the charges on November 5, 2011 being filed
11 and the interview with Costas on November 14th,
12 Coach Paterno was fired on, I believe, November 9th.
13 That resulted in riots in State College by the
14 students. On November 11th, there were -- there was
15 a candlelight vigil at which they say several
16 thousand people participated in support of the
17 victims. Not the alleged victims, but the victims.
18 And what I was being told by media people was that
19 Jerry was even above people like Adolph Hitler, most
20 despised people in the world. And so, I said to
21 Jerry, "We have to try to get our side out. We have
22 to try to do something." And we talked about
23 options.

24 I was being, at that point, approached by
25 numerous people, I didn't even know who they were at

1 the time. Anderson Cooper, I now know who he is,
2 but I didn't even know these names at the time. But
3 Bob Costas, his people called. And I said, you
4 know, here's a sports person, Jerry is a sports
5 icon, I said if we're ever going to get a fair
6 shake, here's the chance to get it. Jerry and I
7 talked about, how do we handle that? Because Jerry
8 agreed, let's get our side out, let's try to say to
9 people we're innocent.

10 And we talked about him potentially giving an
11 interview. He was reluctant. And I said, "Well,
12 it's not mandatory, obviously. I can go to New
13 York, I can do the interview." But when I got to
14 New York, during the course of the afternoon of
15 Monday, which would have been I think November 14th,
16 it became apparent that everybody, everybody who
17 came up to me and approached me, was saying, well
18 yeah, your client's guilty as heck, used different
19 words.

20 And I said at some point, you know, maybe it
21 would be great, because Jerry and I had been
22 together now -- you have to understand, this wasn't
23 a situation where I was just brought into the case
24 by Jerry a week earlier, Jerry and I had been
25 together fighting Number 1 for the last couple of

1 years. And he had always maintained his innocence
2 and he always wanted to testify, he always wanted to
3 give statements, he always wanted to explain that he
4 was innocent. And I said, "Here's a golden
5 opportunity. All you have to say, if you go through
6 with this interview," when I called him the night
7 before, before the interview but on the same night,
8 I said, "All you have to say is I'm innocent, we're
9 going to prove my innocence at trial." And although
10 Jerry had some, I think, some reservations, he
11 agreed to do that.

12 Q. Can I interrupt you for a minute?

13 A. Pardon? Okay.

14 Q. I just want to interrupt you to recapitulate.
15 Am I to understand that some time during that week
16 between the issuance of the presentment and the
17 Costas interview, you indicated that there was
18 substantial negative information about Jerry
19 Sandusky?

20 A. After the presentment. Before the interview.

21 Q. Right. Okay. And you indicated you had been
22 contacted by, I guess, national personalities such
23 as Anderson Cooper and Bob Costas with regard to
24 getting an interview; is that correct?

25 A. Yes.

1 Q. And from what I understand your testimony is,
2 that Jerry was reluctant but --

3 A. But willing.

4 Q. But willing. But when you went to New York
5 to do the interview, it was the understanding before
6 you went to New York that you were going to give the
7 interview; correct?

8 A. That's correct.

9 Q. And after you got to New York, you found that
10 they wanted to interview Jerry, and you thought it
11 was a good idea because they all thought he was
12 guilty?

13 A. And Jerry and I had talked about things that
14 he would say. He wanted to testify at the CYS
15 proceeding, for example. And so, we had talked
16 about his ability to say to people I'm innocent and
17 these are explanations as to what happened.

18 Q. All right. But that's prior to the CYS
19 hearing; correct?

20 A. When you say prior to the CYS hearing --

21 Q. All right. You indicated that your
22 discussions with Jerry Sandusky about giving a
23 statement, interview, were related to the matter
24 with the CYS in Clinton County which occurred in
25 2008 or 2009; is that correct?

1 A. I believe -- yeah, I believe the meeting with
2 CYS in Clinton County was in early January 2009.

3 Q. Early January 2009, you discussed him giving
4 testimony at that CYS hearing; correct?

5 A. Yes.

6 Q. All right. Now we're talking in two thousand
7 -- November of 2011 where you had discussions with
8 Mr. Sandusky about doing an interview with Mr.
9 Costas; correct?

10 A. Oh, yes, we did. Of course.

11 Q. All right. And that discussion was that you
12 were going to give the interview; correct?

13 A. But we also discussed the possibility that
14 Jerry could also give an interview.

15 Q. At that time?

16 A. During that week, before the interview, yes.

17 Q. The interview -- did you discuss with him
18 that he was going to do the interview with Bob
19 Costas?

20 A. We discussed that. He had reservations.

21 Q. So it was decided that you would do the
22 interview?

23 A. That's how it was left when I went to New
24 York.

25 Q. All right. But when you got to New York, you

1 changed your mind; correct?

2 A. Well, I had reservations because of what I
3 was hearing. And what I was hearing from the media
4 on a national level in New York was that Jerry's
5 guilty as heck. And I said to myself, and I thought
6 about Jerry and his ability to express his innocence
7 which he had done to me many times, that this was a
8 golden opportunity for him to tell the national
9 media, to tell the public that I'm not guilty, to
10 hear it from him rather than his spin doctor, which
11 was what most people think an attorney is.

12 Q. All right. When you -- I guess you contacted
13 Mr. Sandusky prior to the interview; correct?

14 A. Of course, yes.

15 Q. All right. How long before the interview did
16 that contact take place?

17 A. I'm thinking maybe a half an hour, 45
18 minutes. I mean I'm not certain, but it would
19 probably be in that time period.

20 Q. And as I understand from your prior testimony
21 in this -- was it a telephone conversation?

22 A. Telephone, yes.

23 Q. In this telephone conversation, you
24 recommended that he be interviewed?

25 A. What I said to Jerry was that this was an

1 opportunity for him to tell the world, because I
2 knew there'd be millions of watchers, that he was
3 innocent and that he intended to prove his
4 innocence. It was a golden opportunity with a
5 sports journalist with a sports icon to get his
6 message out at least on a preliminary basis.

7 Q. Mr. Amendola, as I understand your prior
8 testimony, you told Jerry that all he had to do was
9 to say he was innocent; is that correct?

10 A. And intended to prove his innocence at trial.

11 Q. And that was it?

12 A. That was essentially the bottom line, that he
13 didn't need to answer other questions.

14 Q. Beyond what you've just said, did you at all
15 indicate to Mr. Sandusky what the questions of Mr.
16 Costas might be?

17 A. No.

18 Q. Did you -- did you ask Mr. Costas what the
19 questions might be prior to the interview?

20 A. Yes.

21 Q. And what did he tell you?

22 A. What he said was that he was going to ask
23 questions and didn't want to give me a heads up on
24 them. But I felt confident, I felt confident that
25 Jerry could answer any question that was posed to

1 him because of his constant constant maintenance
2 that he was innocent.

3 Q. Can we agree from your evaluation as a trial
4 lawyer, the interview did not go well?

5 A. Well, one part of it didn't. I think
6 generally the interview did. But the pregnant pause
7 that will I guess haunt all of us forever was when
8 Bob Costas said, "Are you sexually attracted to
9 young boys?" And I wanted to jump out of my chair
10 when there was a pause because the obvious answer,
11 and Jerry and I have talked about this many times,
12 "Of course not. I love kids, but I'm not sexually
13 attracted to kids." Never in the world did I
14 anticipate that kind of response.

15 Q. Well, what his response was was simply to
16 repeat the question; correct?

17 A. Yes.

18 Q. The -- can we agree a tape of this interview
19 was introduced in evidence at trial?

20 A. It was.

21 Q. And can we agree that the Commonwealth put
22 great stock in this particular interview?

23 A. They did. But we played into it also because
24 as it turned out, when Matt Sandusky came forward
25 and alleged that Jerry had abused him, and I said in

1 my opening statement believing fully that Jerry
2 would testify as he always wanted to do, that since
3 we were in the process of deciding that Jerry maybe
4 couldn't testify because of Matt, that this was a
5 way for me to get in Jerry's statement that he was
6 innocent. So we actually played it on our side,
7 too, because of what happened with Matt Sandusky and
8 Jerry's inability to testify.

9 Q. Well, the Commonwealth certainly referred to
10 it several times in the closing argument; correct?

11 A. Absolutely.

12 Q. And can we agree, sir, that the significance
13 of the interview was not the answers that Mr.
14 Sandusky gave, but rather the way that he answered
15 the questions?

16 A. That's true.

17 Q. In other words, there's nothing that he said
18 in the interview that would indicate that he was
19 guilty of the crimes; correct?

20 A. I agree. And you may recall from I'm sure
21 all the work you've done, the way I played it to the
22 media afterwards was that Jerry had a habit of
23 pausing or asking a question. And that's exactly to
24 what I played it in interviews following that
25 interview on the phone.

1 Q. Mr. Amendola, when you prepare a witness for
2 trial -- you're an experienced attorney; correct?
3 Trial lawyer. You're a trial lawyer, right?

4 A. Yes.

5 Q. When you prepare a witness for trial, do you
6 not emphasize to them how they answer the questions
7 is of sublime importance?

8 A. Absolutely.

9 Q. I mean, the tone of voice, where they look,
10 how they answer them, all of these matter?

11 A. Absolutely. And Jerry was always adamant he
12 was innocent. I had no, no possible way to know
13 that that question would be responded to by Jerry
14 the way it was.

15 Q. Mr. Amendola, you had no way to possibly know
16 that Jerry would be asked such a question, did you?

17 A. Well, it would be logical to think that he
18 might. But the answer was really simple, I'm
19 innocent. That was the whole point.

20 Q. But the issue was, the answer to the question
21 was not whether Jerry was innocent, but the way that
22 he answered that particular question?

23 A. And I had no control over that.

24 Q. And the reason you had no control over that,
25 Mr. Amendola, was because unlike a police interview,

1 you couldn't stop it, could you?

2 A. Well, of course not.

3 Q. All right. But it had the same significance
4 in this trial as a police interview, did it not?

5 A. It did.

6 Q. And the reason, of course, you couldn't stop
7 it and say this is not working is because you're on
8 nationwide TV?

9 A. That's correct.

10 Q. And it would look bad; correct?

11 A. I'm sorry, what was the last --

12 Q. It would look bad?

13 A. Well, it would look terrible.

14 Q. Prior to this interview -- I guess we've
15 already agreed that he only knew about this
16 interview within a half an hour, I guess, of the
17 actual interview; correct?

18 A. Well, Jerry knew about the interview days in
19 advance. But in terms of his saying something on
20 the phone and being interviewed by phone, it was
21 within an hour of the interview.

22 Q. And in that hour, did you inform him that
23 this interview could be introduced in evidence
24 against him at trial?

25 A. I don't know that I specifically said that.

1 But I had told him a number of times over the course
2 of my representations, particularly in regard to
3 Number 1 in Clinton County, that anything you said
4 to anybody, including family members except for
5 Dottie, could be used against him in court.

6 Q. Okay. So what you're saying is, since the
7 Clinton County matter back in 2009, you informed him
8 that he had to be careful what he said to anybody
9 because it could be used in court?

10 A. Actually, I told him that in the week
11 preceding the interview in regard to other people he
12 was calling looking for character witnesses thinking
13 that they were going to help him. And I admonished
14 him by saying, "Jerry, it's not a good idea to call
15 these people because they may be the accusers." And
16 Jerry called them anyway. And it turned out that
17 they were accusers and the phone conversations were
18 recorded. And the Commonwealth had used those
19 against him.

20 Q. But in this case, Mr. Amendola, you
21 encouraged Mr. Sandusky to give a statement to Bob
22 Costas?

23 A. This was a trial in a case unlike any one
24 I've ever had where the entire public and media was
25 convinced he was guilty. And yes, I said this would

1 be a great time with Bob Costas to say I'm innocent
2 and I intend to prove my innocence. It was a golden
3 opportunity.

4 MR. LINDSAY: I think it's time.

5 THE COURT: Okay. We'll take a break for
6 lunch now. And we will reconvene at five minutes
7 after one. We'll be adjourned.

8 (Whereupon, a luncheon recess was taken.)

9 THE COURT: Good afternoon. We'll be in
10 session. Please be seated. Mr. Amendola.

11 MR. LINDSAY: May I inquire?

12 THE COURT: You may, Mr. Lindsay, go ahead.

13 BY MR. LINDSAY:

14 Q. Mr. Amendola, in the last 24 hours, you and I
15 have had a discussion about identification of
16 witnesses in the courtroom; is that correct?

17 A. That's correct.

18 Q. And I guess, what was the significance of
19 that?

20 A. Well, as I went through the paperwork, I went
21 through the trial transcript, I noticed that Joe
22 McGettigan, one of the trial attorneys for the
23 Commonwealth, would ask the witnesses, primarily the
24 accusers, if they knew the defendant, Jerry
25 Sandusky. But I noted there was a common pattern

1 that there was never technically an in-court
2 identification where, as traditionally is done as
3 you know, the lawyer will say, well, would you point
4 to the defendant or identify the defendant and the
5 witness points over and says, the person in the
6 orange jumpsuit, for example. And I noticed that
7 that was apparently missing in a number of witnesses
8 who were examined.

9 Q. You think that had some significance?

10 A. Well, my thought was, without researching it,
11 because it was late last night as I was preparing
12 for today, I contacted you figuring you guys are the
13 attorneys and maybe you could research it. And
14 perhaps if that is an issue, then that's an issue I
15 would think that you should raise and certainly one
16 that I did not raise.

17 Q. Did you object to the fact that this
18 identification was not made or bring it to the
19 Court's attention?

20 A. Did not. And again, there's a practical
21 matter, had I objected, obviously Mr. McGettigan
22 would have said, oh, by the way, Mr. So and so, is
23 the defendant in court, would you point him out.
24 But no, I did not object.

25 Q. I mean I'm just -- exactly how was the Court

1 to make something of that? Do you have any idea?

2 MS. PETERSON: Objection. Speculation.

3 THE WITNESS: Well, I guess the issue on a
4 PCRA --

5 THE COURT: Wait a second. I'm sorry, I
6 didn't hear your objection.

7 MS. PETERSON: I'm sorry. Objection.
8 Speculation. Asking what he thought the Court would
9 have done.

10 THE COURT: Well, I think if he had some
11 expectation of what might happen I guess. He can't
12 speculate on what would happen.

13 BY MR. LINDSAY:

14 Q. Did you have some speculation as to what
15 might happen if you had made an objection?

16 A. Yes, that the trial counsel would ask the
17 witness to identify the defendant in court.

18 Q. But the fact that -- this was never brought
19 to the Court's attention, was it?

20 A. That's correct. In fact, before last night,
21 it was not brought to anyone's attention. No one
22 had ever raised it.

23 Q. Do you think that issue has significance in
24 our inquiry today?

25 A. I think it could. I'll leave it up to

1 current counsel to figure that out. But I wanted to
2 raise it as a potential issue.

3 Q. All right.

4 A. In fairness to both sides. In fact, I
5 informed the Commonwealth attorney just a few
6 minutes ago that I had seen that issue. And I
7 raised it with you earlier.

8 Q. All right. Mr. Amendola, I'd like to go now
9 to the issue about the preliminary hearing. Do you
10 recall that a preliminary hearing was scheduled in
11 this case?

12 A. I do.

13 Q. Was there, in fact, a preliminary hearing
14 that took place?

15 A. There was not.

16 Q. Why not?

17 A. Because several days, perhaps two or three,
18 I'm not certain of the timeframe, out of concern
19 that the Commonwealth was going to add additional
20 charges against Jerry, I called Mr. McGettigan and I
21 proposed to him that if we were to consider, I
22 didn't make it a done deal, but if we considered
23 waiving the preliminary hearing, could the
24 Commonwealth give us a promise, a commitment, that
25 they would not ask for additional bail moneys in the

1 event that additional alleged victims were
2 identified and charges were brought. Because you
3 may recall, after the initial charges were filed,
4 the Commonwealth was not very happy about the bail
5 situation, which was unsecured.

6 And they went out within several weeks, I
7 think maybe four weeks, because the first charges
8 were filed on the 4th, Jerry was arrested on the 5th
9 of November. And the second series of charges were
10 filed on, I believe, December 7th when Jerry was
11 taken into custody again, but Jerry was put in jail.
12 And I thought it was critical to our defense that
13 Jerry not be incarcerated. As you know, when people
14 are incarcerated, all their phone calls are
15 recorded, all their visits are recorded except for
16 privacy with their attorneys.

17 And the last thing I needed was Jerry in a
18 jail cell perhaps really really disabled in terms of
19 helping himself prepare his defense. And Jerry
20 obviously didn't want to be in jail, so I proposed
21 to Mr. McGettigan if we waived the preliminary
22 hearing, could we have a commitment from the
23 Commonwealth, in the event there were other charges,
24 other alleged victims, there be no increase in bail.
25 And he came back, not right away, maybe the next day

1 I believe and said he could make that commitment.
2 So that was part one of it.

3 But part two of that process was that we knew
4 that the preliminary hearing was only going to be
5 for Commonwealth witnesses to say what they said
6 happened. We were not going to be able to get into
7 credibility issues. We were not going to be able to
8 expose or explore their motives. And it was going
9 to be an ugly day in an ugly case where people had
10 already been convinced that Jerry was guilty. So we
11 saw it from two standpoints a, kind of, win win for
12 us.

13 Q. So let's go back. Mr. Sandusky waived the
14 preliminary hearing?

15 A. Yes.

16 Q. And he waived it based on your advice; is
17 that not correct?

18 A. Well, yes. And we discussed these very
19 issues.

20 Q. All right. When did you discuss these issues
21 with regard to waiver of the preliminary hearing?

22 A. Well, it was between the time I had the phone
23 conversation with Mr. McGettigan and the time of the
24 night we had the meeting with the Judge and the
25 district judge and counsel for the Commonwealth at

1 the, I believe, the Hilton Garden or the Garden
2 Hilton, whatever that place is.

3 Q. All right. When did you -- how did you
4 inform Mr. Sandusky about this arrangement you had
5 with Mr. McGettigan?

6 A. Well, I didn't have the arrangement. I
7 discussed it with him after I proposed it but before
8 there was any arrangement.

9 Q. All right. At what -- I guess I'm asking,
10 did you call him on the phone and tell Mr. Sandusky
11 about this? Did you tell him the day of the hearing
12 that you had some kind of an arrangement?

13 A. We discussed it, I'm sure by phone, but also
14 I believe in person. At that point -- at that
15 point, Jerry would have been out on bail. I believe
16 he was incarcerated in lieu of the new bail, the
17 second set of charges, for about a day and a half.
18 So I either would have stopped over and/or talked
19 with him on the phone, probably both, and explained
20 the pros and cons, and explained the pros and cons
21 of waiving his hearing versus having the hearing,
22 giving up the right to ask questions of the accusers
23 versus being assured that he would not be
24 incarcerated in lieu of additional bail if there
25 were additional charges filed.

1 Q. You mentioned in your course of your
2 testimony just now that there was something out at
3 the Hilton Garden Inn, some type of a get together?

4 A. And I believe it was the night before the
5 scheduled preliminary hearing. I think the hearing
6 was scheduled December 13th. So if my memory serves
7 me right, and again, we're going back four or five
8 years, but I believe it would have been the night
9 before.

10 Q. All right. Was this a scheduled meeting?

11 A. I -- you know --

12 Q. How did you happen to be there?

13 A. I'm not sure whether the Court scheduled it,
14 whether the Commonwealth asked for a meeting. I
15 don't recall me asking for a meeting. It might have
16 been just an administrative-type meeting to see,
17 make sure how things were going to be conducted at
18 the preliminary hearing. That's my recollection.
19 But I'm not certain as to what generated that
20 meeting.

21 Q. You were there?

22 A. Yes.

23 Q. Who attended the meeting?

24 A. My recollection is Judge Cleland, the
25 district court judge from western Pennsylvania, Mr.

1 McGettigan, Mr. Fina, there might have been another
2 gentleman from the AG's office. I believe the
3 Judge's clerk was there. I was there. Jerry
4 Sandusky was not there.

5 Q. Did you tell him that this meeting occurred?

6 A. Oh, yes.

7 Q. Did you discuss with him -- did you discuss
8 at this meeting this arrangement that you were
9 talking about with Mr. McGettigan involving waiving
10 the preliminary hearing in exchange for bail?

11 A. Absolutely.

12 Q. That was discussed at that meeting?

13 A. It was brought out that we were waiving the
14 preliminary hearing based upon this agreement that
15 we had, because my concern was we wanted to make
16 sure the judges, the Court was on board with that,
17 too. And we discussed that as part of what we were
18 doing.

19 Q. All right. So at this meeting, you did
20 discuss the arrangement you had with Mr. McGettigan,
21 whereby Mr. Sandusky would waive the preliminary
22 hearing and his -- the Commonwealth agreed that his
23 bail would not be jacked up?

24 A. In the event of new charges.

25 Q. In the event of new charges.

1 A. Although Mr. McGettigan also threatened at
2 that time, and I'll say threatened, to ask for a
3 bail increase if there was a preliminary hearing.
4 But I wasn't concerned about a bail increase on the
5 then current charges because my position was bail
6 had already been set and there weren't any change in
7 circumstances to justify it. But as far as new
8 cases were concerned, they'd already shown that they
9 could file new charges and new alleged victims. And
10 I was concerned about that happening.

11 Q. Mr. Amendola, was -- this was discussed in
12 front of the district magistrate judge and Judge
13 Cleland?

14 A. That's my recollection. Now, can I be a
15 hundred percent certain? I guess I can't, but that
16 was my recollection.

17 Q. It was brought to their attention?

18 A. I believe so.

19 Q. Was there approval of this deal?

20 A. Well, there were no objections if that's what
21 you're asking. I don't know if there was an
22 approval in the form of some sort of order
23 generated.

24 Q. I'm not asking about an order, I'm asking
25 whether or not this arrangement that you discussed

1 you had with Mr. McGettigan was submitted to these
2 two judges?

3 A. I don't think it was submitted, I think it
4 was just explained that that's what we were doing.

5 Q. And there was no objection?

6 A. Pardon me?

7 Q. There was no objection from the Court?

8 A. Well, nobody objected to what we were trying
9 to do, no. My concern was to keep Jerry out so he
10 could assist me in preparing for his case.

11 Q. Were there any other decisions made at this
12 conference at the Hilton Garden Inn?

13 A. There might have been. Not to my
14 recollection, nothing that comes to my mind, other
15 than we would wait to make the announcement the
16 morning of the preliminary hearing rather than
17 release information that night. So we came into
18 court that next morning and at that time, everybody
19 was still on board, Jerry was on board, and we
20 waived the preliminary hearing.

21 Q. Did you have any objection to this meeting or
22 having the judges there during this meeting?

23 A. No. I actually thought it was beneficial to
24 have the judges be involved so that there were no
25 glitches.

1 Q. Was this -- so there'd be no what?

2 A. Glitches. In other words, no problems with
3 what we were doing down the road.

4 Q. Was this meeting before or after you had this
5 telephone conversation with Jerry Sandusky
6 concerning waiving the preliminary hearing?

7 A. It was after. I never would have gone to the
8 meeting with that proposal if Jerry hadn't been on
9 board with it.

10 Q. Was there any record made of this meeting?

11 A. I don't know. For some reason, I vaguely
12 recall that there might have been a stenographer,
13 but I don't know, I can't say that that's correct.

14 Q. At the time of the preliminary hearing, was
15 it your understanding that this was a case that
16 would likely go to trial?

17 A. Absolutely. There was never a doubt.

18 Q. Were you aware, sir, at the time of the
19 preliminary hearing that the credibility of these
20 witnesses that would testify at the preliminary
21 hearing would be a profound significance at a trial?

22 A. But we were going to get the information
23 about these witnesses and their statements from
24 discovery materials from the Commonwealth. And I
25 had no reason to think, with almost all of them

1 having private civil attorneys and the Commonwealth
2 attorneys who I'm sure had prepped them very, very
3 efficiently, that they were going to say anything
4 that was going to be materially different than any
5 statements they had previously given, which we knew
6 we'd get access to.

7 Q. Mr. Amendola, once again, you're an
8 experienced defense attorney; correct?

9 A. Pardon me?

10 Q. You're an experienced defense attorney;
11 correct?

12 A. I'm told that.

13 Q. Can we --

14 A. Although it's come into question obviously.

15 Q. Not your experience, sir. Can we agree that
16 the substance of a statement made by a witness will
17 be much different when it's under police questioning
18 as opposed to an advocate who's defending someone
19 questioning them on cross-examination?

20 A. Of course.

21 Q. And regardless of whether credibility is an
22 issue at a preliminary hearing, as a defense
23 attorney, you have the opportunity to question all
24 of the details of their direct testimony; correct?

25 A. I agree.

1 Q. And can we agree, sir, that in your
2 experience as a criminal defense attorney, the more
3 prior statements you have of a witness, particularly
4 one who may not be telling the truth, the more you
5 have, the better prepared you are for
6 cross-examination?

7 A. Well, certainly -- certainly you're going to
8 be better able to direct cross-examination.

9 Q. Because you have what we call inconsistent
10 prior statements; correct?

11 A. Correct. And we had plenty of them in this
12 case.

13 Q. Well, if you had a preliminary hearing where
14 you were doing the questioning, you would have
15 certainly had one more with each one of these
16 witnesses?

17 A. That's true.

18 MS. PETERSON: Objection. Speculation.

19 THE COURT: A lot of this is speculation
20 because there is a provision that a case could be
21 bound over on hearsay without witnesses testifying.

22 MR. LINDSAY: But that's not in this case.

23 THE COURT: Well, we don't know.

24 MR. LINDSAY: I understand. But as far as we
25 know of this case, he would have been given that

1 opportunity. And we don't know because he didn't
2 have the preliminary hearing.

3 THE COURT: Right. So it's not necessarily
4 true that you always get a witness statement;
5 correct?

6 MR. LINDSAY: I don't think it's necessarily
7 true. But we have no information that it would not
8 be true in this case.

9 THE COURT: I'm just saying that am I correct
10 that a case could be bound over without a witness
11 actually testifying?

12 MR. LINDSAY: I know of that occurring.

13 THE COURT: Okay. That's all I want to know.
14 I just want to make sure I understand where you're
15 going with this, that there is no absolute assurance
16 that if a preliminary hearing had been held, a
17 witness would have testified. Am I correct or am I
18 misunderstanding?

19 MR. LINDSAY: No. I think you're correct
20 that as a matter of law, as a matter of law, there's
21 no assurance that the witnesses will actually be
22 testifying.

23 THE COURT: Okay.

24 MR. LINDSAY: But as far as what we're doing
25 with waiving the preliminary hearing, I think a

1 defense attorney's obligation is to find out whether
2 the Commonwealth would proceed that way or not.

3 THE COURT: Could be. I just want to make
4 sure I understood that we don't have a disagreement
5 about what the law is, that a case can get bound
6 over without a witness's testimony.

7 MR. LINDSAY: There is that theory, yes.

8 THE COURT: Okay. All right, thank you.

9 BY MR. LINDSAY:

10 Q. Let me just ask you this question, Mr.
11 Amendola. At any time prior to the preliminary
12 hearing, were you given any indication by Mr.
13 McGettigan, Mr. Fina, or anyone else that the
14 Commonwealth intended to proceed by hearsay
15 testimony at the preliminary hearing?

16 A. No. I wasn't given any information about how
17 they were going to proceed.

18 Q. Did you ask? Did you ask?

19 A. Yes.

20 Q. And what did they tell you?

21 A. Joe McGettigan said you'll see when we have
22 the hearing. That was Joe McGettigan's attitude.
23 And if we have the hearing, then we're going to
24 proceed to ask for an increase of bail and we're not
25 promising there won't be additional charges. And at

1 that point, we already had additional charges that
2 they put Jerry in jail because they were ticked off
3 that he wasn't in jail the first time.

4 Q. Mr. Amendola, we talked about the advantage
5 of having that extra prior statement for your
6 cross-examining witnesses at a preliminary hearing;
7 correct? You recall us discussing that right now?

8 A. Well, of course.

9 Q. All right. Did you discuss that with Mr.
10 Sandusky before you told him about this deal you had
11 with regard to waiving the preliminary hearing?

12 A. Not in the terms in the legal sense of
13 inconsistent statements. But we discussed the fact
14 that if we had a preliminary hearing, every witness
15 would be subjected to our cross-examination, we
16 would be able to ask them questions, and there would
17 be a record made that if it later was determined
18 that it was different than testimony that came out
19 in a grand jury proceeding or in statements to the
20 police, that we could use that at trial.

21 Our goal was to keep him out of jail. And
22 Jerry very much wanted to be out of jail because it
23 was critical that Jerry participate in adequate
24 preparation for his trial and defense. And so this
25 was a balancing test. If you're asking me under

1 ordinary circumstances would I have just out of blue
2 said let's waive the hearing? No. We got something
3 that was tangible and important to Jerry and me and
4 the case, and that was an assurance that he was not
5 going to be incarcerated even if they brought 32
6 more charges against him.

7 Q. Mr. Amendola, the assurance -- first of all,
8 I guess we agree, do we not, that the right to a
9 preliminary hearing is, under other circumstances, a
10 vital right --

11 A. Wouldn't say vital. I would say significant,
12 because there are many times when a preliminary
13 hearing isn't held, then the case proceeds quite
14 satisfactorily. So vital I think is the wrong
15 choice of words. Significant I think is more
16 appropriate.

17 Q. All right. And you say --

18 A. And we got something for it, and that was an
19 assurance that he wasn't going to go back to jail.

20 Q. Well, the assurance you got was from the
21 prosecutor in the case; correct?

22 A. Well, he was the one who was bringing
23 charges, yes.

24 Q. I understand. But can we agree, Mr.
25 Amendola, that the prosecutor of the case does not

1 set bail?

2 A. But he has to ask that bail be set. And the
3 Judge will generally go along with the prosecutor's
4 recommendation. Fortunately in this case they
5 didn't because the prosecutor wanted \$5 million
6 worth of bail. And the Judge, even the second time,
7 only ordered two hundred fifty thousand, which the
8 family was barely able to make to get Jerry out of
9 jail.

10 Q. Mr. Amendola, there's a rule of criminal
11 procedure, I believe it's rule 523, that deals with
12 criteria for setting bail. Are you familiar with
13 that rule?

14 A. Oh, yes.

15 Q. Can we agree that in the substance of the
16 rule, there's nothing that would indicate under
17 these circumstances that there be a logical reason
18 to raise the bail by an issuing authority such as a
19 judge, district magistrate judge?

20 A. On new charges?

21 Q. Yes.

22 A. With new victims?

23 Q. Yes.

24 A. That's not my understanding.

25 MR. LINDSAY: Excuse me just a moment, Your

1 Honor.

2 BY MR. LINDSAY:

3 Q. Mr. Amendola, I'd like to show you a copy of
4 rule 523.

5 MR. LINDSAY: Your Honor, I would --

6 THE COURT: That's all right, I got a copy.

7 MR. LINDSAY: All right.

8 BY MR. LINDSAY:

9 Q. Mr. Amendola, you have before you I guess a
10 copy of rule 523 of the Rules of Criminal Procedure;
11 correct?

12 A. Correct.

13 Q. And can we agree that rule 523 sets forth the
14 release criteria?

15 A. It has criteria, sure.

16 Q. And in the substance of the rules, rather
17 than go through them all, under subsection A they
18 have 10 factors which are to be considered; correct?

19 A. Correct.

20 Q. Okay. Now, none of those factors include the
21 type of thing that you've talked about, charging
22 additional defendants for additional matters;
23 correct?

24 A. Yes. But I'm confused as to what that has to
25 do with what we were trying to accomplish.

1 Q. I understand. I'm just saying the rule
2 doesn't provide anything in it; correct? We can
3 agree that there's nothing in the substance of the
4 rule?

5 A. But any time new charges are filed, bail --
6 new bail can be set.

7 Q. I understand. There's a comment, sir, if
8 you'll let me go on. If you look at -- turn the
9 page.

10 A. (The witness complied.)

11 Q. It says when a defendant who has been
12 released on bail and is awaiting trial is arrested
13 on a second or subsequent charge, the bail authority
14 may consider that factor in conjunction with other
15 release criteria in setting bail for the new charge.
16 That's in the comment of the rule; correct?

17 A. I'm looking at the comment to see where
18 you're reading from.

19 Q. If you look at the top of the page, if you go
20 down, the third paragraph.

21 A. The last paragraph?

22 Q. Yes, sir.

23 A. And it's a may, not a shall.

24 Q. Right.

25 A. It's a may.

1 Q. It's a may. And the person who decides
2 whether to jack the bail up is the issuing
3 authority, the magistrate; correct?

4 A. And in 99.9 percent of cases, the magistrate
5 will look at the prosecutor and say, what is your
6 recommendation? And the prosecutor in this case
7 assured me if that were to happen, he would say we
8 have an arrangement that there shall be no
9 additional bail because the defendant has turned
10 himself in on the new charges. That's the whole
11 point.

12 Q. Sir, are you suggesting that the magistrate
13 judges in this Commonwealth, and indeed this county,
14 don't pay attention to this rule?

15 MS. PETERSON: Objection. Argumentative.

16 THE COURT: Yeah, I think it's argumentative
17 now. I think the answer's pretty obvious about what
18 the realities are.

19 MR. LINDSAY: Well then let me ask this
20 question.

21 BY MR. LINDSAY:

22 Q. If you had -- did you tell Mr. Sandusky,
23 look, if we have the preliminary hearing and they
24 move to raise the bail, that we can appeal to the
25 district magistrate judge to set the bail at

1 whatever he thinks is fit?

2 A. Yes. That was not a major issue. I thought
3 I explained that earlier. My position was there be
4 no basis to raise the bail if there were a
5 preliminary hearing on the charges that had been
6 filed on November 5th. I agree.

7 Q. Was there any basis to raise the bail if they
8 added these additional charges, based on the
9 criteria of the rule?

10 A. There would, in my opinion, absolutely. And
11 if the Commonwealth asked for it, I can guarantee
12 you that the Commonwealth would have gotten
13 additional bail.

14 Q. But you could appeal that, couldn't you?

15 A. I'm sorry, what?

16 Q. If the district magistrate judge set the bail
17 pursuant to whatever the prosecutor wanted, you
18 could appeal that, could you not?

19 A. While Jerry sits in jail. Yes. It could
20 take several months with no guarantee that bail
21 would be lowered.

22 Q. Where would you appeal it?

23 A. Court of Common Pleas.

24 Q. In this case, Judge Cleland?

25 A. Pardon me?

1 Q. It would be Judge Cleland; correct?

2 A. Well at that time, I wasn't sure. But that's
3 who it would have been.

4 Q. But in this particular case, when we go back
5 to that meeting at the Holiday -- or the Hilton
6 Garden Inn, they were involved when you made this
7 deal?

8 A. But that was the positive part of it, there
9 wasn't going to be an issue. That's the whole
10 point. It was critical that Jerry stay out of jail.
11 And that was the balancing test that we used and
12 only preliminary hearing with all the media from all
13 over the country here that would have heard only the
14 one side of the case, all the gruesome details of
15 the accusers.

16 Q. Well, can we agree, Mr. Amendola, that there
17 were many things you learned at the trial that were
18 new to you that you had never heard of before with
19 regard to these various victims?

20 A. When you say many things that I heard, there
21 were details in the statements, there were many
22 statements that were inconsistent and certainly we
23 were aware of the ones we received. So when you say
24 were details we never heard about, I don't know that
25 that's accurate.

1 Q. Well, let me ask you this question. You
2 received, in the course of discovery, statements
3 from these various witnesses; correct?

4 A. Yes.

5 Q. And that was the prior statements that you
6 had when you went into trial; correct?

7 A. Correct.

8 Q. Now, when these witnesses actually testified
9 in court, were there statements from the witness
10 stand, where you're sitting, different from what the
11 statements you had been provided in the course of
12 discovery?

13 A. Well, in a sense that they made inconsistent
14 statements among the statements they made in writing
15 to police investigators, there were all kinds of
16 different statements. So, they were inconsistent
17 with a couple of the statements that the people had
18 made earlier.

19 Q. All right. So what you're saying, just so
20 we're clear, is that various prior statements you
21 had from these witnesses, there were, when it came
22 time for them to actually testify in court, there
23 were all kinds of things that were different from
24 their testimony in court that existed in their
25 statements made at discovery that was given to you?

1 A. To the extent that many of the witnesses
2 originally said that Jerry had done nothing wrong
3 with them but later changed their stories and said
4 that he had, in that sense they were different. But
5 they were different between themselves and among
6 themselves. Their statements were inconsistent that
7 they gave to the police.

8 Q. Were the statements that they gave -- the
9 testimony that they gave at trial with these
10 witnesses, was that testimony inconsistent with any
11 of the statements that they had given to the police?
12 Consistent or inconsistent?

13 A. In some cases, but --

14 MS. PETERSON: Objection. Asked and
15 answered.

16 THE COURT: I'll let him answer it once more.

17 THE WITNESS: In some cases there was, yes.

18 BY MR. LINDSAY:

19 Q. Mr. Amendola, I believe -- will you agree
20 that with almost, I think with all of these
21 witnesses, Mr. McGettigan, as part of his direct
22 examination, said he had discussed their testimony
23 with them before they came into trial?

24 A. I'm sorry?

25 Q. Did you hear -- when you were in trial, did

1 Mr. McGettigan, with I believe every witness, ask
2 them whether he had interviewed them before he
3 brought them in here to trial?

4 A. I can't say without looking at the thousand
5 page transcript if that was the case in every case.
6 But I do recall Mr. McGettigan saying, did I
7 interview you previously or prior to trial?

8 Q. Did Mr. McGettigan ever tell you prior to a
9 witness taking the stand, you know, Mr. Amendola,
10 this witness has now given a different statement
11 than he ever gave us before?

12 A. No. But that was apparent from the police
13 reports and the interviews that we had where that
14 was the case.

15 Q. Well, can we agree that if Mr. McGettigan had
16 told you they're giving inconsistent statements
17 again, that would be impeachment material for you?

18 A. If he told us that, but we had the materials.
19 And we cross-examined -- my recollection is we
20 cross-examined a number of witnesses on their
21 inconsistent prior statements.

22 Q. Prior to their testimony -- I beat this to
23 death. Mr. Amendola, are you familiar with a
24 gentleman by the name of Allan Myers?

25 A. I'm sorry, what?

1 Q. Are you familiar with an individual by the
2 name of Allan Myers?

3 A. Yes.

4 Q. Who -- can you -- first of all I guess, how
5 did you become acquainted with Allan Myers?

6 A. After Jerry was charged, Jerry told me the
7 day we got his presentment, after we got released
8 from the Judge's office and bail was set at
9 unsecured bail, Jerry, when he read the presentment
10 and he came to the accusations for Number 2, which
11 was the accusations that purportedly might have
12 involved Allan Myers, Jerry said I know who that is.
13 And he said, and I can tell you exactly what
14 happened. And Jerry proceeded to tell me.

15 Within two or three days, I got back to my
16 office from court and my secretary said somebody
17 called, his name is Allan Myers, and he's coming in
18 to talk to you about Jerry's case. He came in with
19 his mother and his brother, his brother was a few
20 years, either older or younger, and they proceeded
21 to tell me what a wonderful man Jerry was, he had
22 been like a father to Allan, that nothing ever
23 happened inappropriate between Allan and Jerry, and
24 that he was the young boy in the shower, and that he
25 knew he was the young boy in the shower in terms of

1 the accusations related to Number 2. Because he
2 said shortly after that event occurred back in, and
3 Jerry made it clear it was 2001, the Commonwealth
4 had it listed as 2002, he said that Jerry had told
5 him somebody from Penn State may call you because
6 apparently somebody came in, saw us horseplaying or
7 horsing around, felt uncomfortable and notified Penn
8 State officials. And he said it was -- I told him
9 it was okay, Jerry told me it was okay to talk to
10 that person. So I thought this was fantastic, you
11 know, something dropped out of the skies for us,
12 because what a way to blow up the case with
13 McQueary.

14 But within a week or two, I got a fax or an
15 email, I forget which, or maybe even a letter in the
16 mail from Attorney Andy Shubin who said he now
17 represented Allan Myers, and that Allan was not
18 going to have contact with anyone without his okay.
19 I thought it was to protect Allan Myers from the
20 Commonwealth, never dreaming it was to say that
21 Allan Myers had now become a victim. And so from
22 that point on, I had no conversation or no contact
23 with Allan Myers.

24 Q. Did you find out that it was something
25 different than what you thought?

1 A. Oh my goodness, I was right here in this
2 courtroom, I'll never forget it. After I got the
3 letter, and I'm assuming this is just to protect
4 Allan from the Commonwealth attorneys because Mr.
5 McGettigan could be quite aggressive. I was in the
6 back of this courtroom right here, and I ran into
7 Andy Shubin. I said, "Hey Andy, it's great that
8 you're representing Allan, I would like to get
9 together with him because we had typed this
10 statement, we were going to have it notarized." And
11 he said, "Oh, no, you're missing the point." He
12 said Allan's a -- "He's a victim. He's probably the
13 worst victim. He's been victimized by Jerry for
14 years." I about fell over.

15 Q. All right. Was the Commonwealth aware of Mr.
16 Myers?

17 A. Yes. Because Andy Shubin brought him into
18 the Commonwealth's office and gave them a statement
19 saying this is the real story about what Jerry did
20 with Allan. And the Commonwealth lawyers didn't
21 believe him, and I don't blame them. How could you
22 believe him at that point?

23 Q. Believe him about whether or not he was a
24 victim?

25 A. About he was now a victim.

1 Q. Okay. As opposed to?

2 A. As opposed to someone --

3 Q. Being Victim Number 2?

4 A. Exactly.

5 Q. So in other words, you believe he was Victim
6 Number 2?

7 A. Pardon me?

8 Q. You believe he was Witness Number 2?

9 A. Oh, I always believed that.

10 Q. And but -- you did not believe that he was a
11 victim?

12 A. Did not.

13 Q. All right.

14 THE COURT: I'm sorry. You did or did not
15 believe that he was Victim 2?

16 THE WITNESS: I did not believe he was a
17 victim, Your Honor.

18 BY MR. LINDSAY:

19 Q. But you did believe he was the individual,
20 Witness Number 2?

21 A. Based on what he told me, yes.

22 Q. All right.

23 THE COURT: I'm sorry. I'm confused by that
24 answer. The information, alleged Victim 2, in your
25 understanding did you believe that Victim 2 was

1 Allan Myers.

2 THE WITNESS: I believed that at the time
3 when he was in my office.

4 THE COURT: Okay. But subsequently?

5 THE WITNESS: Subsequently, when he changed
6 his story, it raised a lot of questions in my mind,
7 Your Honor, to the point where he was useless to us.

8 THE COURT: Okay.

9 BY MR. LINDSAY:

10 Q. Well, let me ask you this question. There's
11 two issues. One is whether he is the individual
12 that was in the trial -- in the shower that Mr.
13 McQueary thought. Did you believe him when he said,
14 "I was that individual"?

15 A. I did.

16 THE COURT: I think the question is, at what
17 point did he believe that? Is this before or after
18 the letter from Mr. Shubin?

19 THE WITNESS: During the initial conference
20 in my office after he told me that first meeting
21 that what happened and he was the boy in the shower
22 with Jerry, I believed him.

23 BY MR. LINDSAY:

24 Q. Do you believe -- did you continue to believe
25 he was the boy -- I'm not asking whether he was a

1 victim. Do you continue -- did you continue to
2 believe he was the boy in the shower with Jerry
3 Sandusky?

4 A. I believe that. Although obviously it raised
5 a lot of questions after he flipped.

6 Q. Okay.

7 A. And changed his story.

8 Q. When he testified that he was a victim, did
9 you believe that?

10 MS. PETERSON: Objection, Your Honor.
11 There's nothing in the record that Mr. Myers
12 testified.

13 THE COURT: Sustained.

14 BY MR. LINDSAY:

15 Q. Well, when you heard this information that he
16 was saying he was a victim. Did you believe that he
17 was a victim of Jerry Sandusky ever?

18 A. No. No. I always believed in Jerry's
19 innocence.

20 Q. Mr. Amendola, was the plan to call Jerry
21 Sandusky as a witness in his own case?

22 A. Absolutely.

23 Q. Was it your understanding he was willing to
24 testify in his own defense?

25 A. Jerry was looking forward to testifying.

1 Q. Did you actually prepare him to testify?

2 A. Yes. Jerry and I had many many meetings
3 about these -- about the charges and the witnesses
4 and the discovery materials. I would go over to his
5 house -- he was on in-house detention at the time, I
6 would go over to his house, we'd talk on the phone,
7 I'd say, and Dottie probably and Jerry have a better
8 recollection, but I think it was at least once or
9 twice a week I would visit. And the visits usually
10 lasted between one, one and a half to two hours.

11 Q. Is there anything that changed your opinion
12 of -- well, did you have the opinion he should
13 testify?

14 A. Matt Sandusky.

15 Q. All right. And how did that impact on the
16 decision for Jerry to testify?

17 A. It was, as Mr. Fina eluded to it, it was a
18 nuclear bomb set off in the middle of the trial.

19 Q. Mr. Fina said that?

20 A. Mr. Fina said that.

21 Q. Said that to who?

22 A. Said that to me when he gave me the
23 information about Matt Sandusky.

24 Q. How did you find that out?

25 A. I got a call. Well actually, let me back up.

1 At the close of their case, and I believe it was
2 Wednesday of the first week, I could be wrong, but I
3 think it was Wednesday, which I guess would have
4 been the 7th of June? No, actually that was jury
5 selection. Would have been the next week, so it
6 would have been maybe the 13th of June. Mr. Fina
7 and Mr. McGettigan asked me to approach Judge
8 Cleland. And at that point they said we'd like to
9 keep our case open. They were ready to close, but
10 we'd like to keep our case open because we have some
11 information we're investigating, we're checking out
12 and we can't disclose it right now, but I'll be
13 touch. Mr. Fina said I'll be in touch with Joe,
14 meaning me, later today or tomorrow. And that was
15 the first inkling I knew something was up.

16 Then I believe, if not that night the next
17 night, whether it was a Wednesday or Thursday, I got
18 a call from Frank Fina, and that's when he said that
19 Matt had approached them after sitting with his mom
20 and the rest of his family right where Dottie
21 Sandusky is sitting today supporting his dad. And
22 Mr. Fina said he is now saying he was a victim. And
23 we're going to call him as a witness if the
24 appropriate option comes up. And they gave me a
25 copy of his statement.

1 Q. That was on Thursday?

2 A. A disk, I think it was a disk because they
3 didn't have to have it typed.

4 Q. It was on Thursday?

5 A. I believe it was -- I believe it was a
6 Thursday. But again, Wednesday, Thursday, in that
7 timeframe.

8 Q. All right.

9 A. But I'm not entirely certain it was Thursday.

10 Q. On that Thursday, did you have a conversation
11 with Jerry Sandusky?

12 A. Of course.

13 Q. What did you tell him?

14 A. Well, I told him that out of the blue, Matt
15 had come out apparently and met with the prosecutors
16 and said that he was victimized when he was a child.

17 Q. And how did that impact the statement or the
18 intention to testify?

19 A. I'm sorry, how did --

20 Q. How did that impact your decision to have
21 Jerry testify?

22 A. Well, first we wanted to see exactly what the
23 statement said. And then we had to analyze what the
24 pros and cons were of going forward with Jerry's
25 testimony and the possible impact that if Jerry

1 testified or anyone else testified, that would
2 enable the Commonwealth to call Matt Sandusky, the
3 impact that would have on the trial.

4 Q. All right. Did you discuss with Mr. Sandusky
5 how the Commonwealth could possibly introduce that
6 testimony of Matt Sandusky in his trial?

7 A. Well, when you said did I discuss how they
8 would introduce it, it could be used as impeachment
9 evidence, and I explained that, that they could
10 bring it in in rebuttal because obviously, they were
11 going to cross-examine him concerning his contact
12 with various people. Not only the witnesses who had
13 testified, but in light of the new information, they
14 were going to cross-examine him about the
15 possibility he had abused other kids.

16 Q. All right. Did you advise Mr. Sandusky that
17 he should not testify?

18 A. I gave him the pros and cons. Here's the
19 pros, here's the cons, we're at risk. And the way
20 that evolved was, we had just come off -- when that
21 decision was made, we'd come off probably what was
22 the best day of the trial for us. And I believe
23 that was the day that the officers, after saying
24 that they never coached anybody, and we produced the
25 tape from the meeting with Number 4, the private

1 attorney from Harrisburg, Mr. Andriosi, and it was
2 clear on the tape that they were coaching people,
3 that we felt that that was a good day and it might
4 become very muddled if you threw Matt Sandusky into
5 the mix.

6 Q. Mr. Amendola, you talked about the pros and
7 cons of Mr. Sandusky testifying. And obviously, in
8 a criminal case, there's a lot of pros in the
9 defendant testifying in his own behalf in front of
10 the jury?

11 A. Also a lot of negatives.

12 Q. Well, the negative -- the only negative that
13 we've heard is that it might induce the Commonwealth
14 to introduce the testimony of Matt Sandusky;
15 correct? That was the con?

16 A. Not really. It would have been exposing
17 Jerry to cross-examination by Mr. McGettigan who was
18 quite good, as even himself said many times, quite
19 good on cross-examination, almost as good as Bob
20 Costas. But the point is, the point is he would
21 have been subjected to cross-examination generally.
22 And in the course of that cross-examination
23 generally, I was concerned, and I expressed my
24 concern to Jerry, that he could open the door quite
25 easily to them getting Matt's testimony in. And if

1 Matt's testimony came in, in my opinion, and I
2 explained this to Jerry and he agreed with me, it
3 would be absolutely catastrophic to his case. And
4 this was after we had established that the police
5 had not been truthful about coaching these
6 witnesses.

7 Q. Regardless of Mr. McGettigan's
8 cross-examination, the con that you were dealing
9 with, do you think against him testifying, was Matt
10 Sandusky, in one form or another; is that correct?

11 A. Well, that was the issue in terms of why
12 Jerry didn't testify.

13 Q. That's what I'm asking.

14 A. Yes.

15 Q. All right. And your theory was that if he
16 testified, he would somehow be subject to
17 cross-examination from Mr. McGettigan about Matt
18 Sandusky?

19 A. I think so. Have you ever abused other kids,
20 Mr. Sandusky? No. And that's what he would have
21 said. Bingo. What happens at that point?

22 Q. All right. There was a colloquy in front of
23 Judge Cleland. You're aware of that; correct?

24 A. I'm sorry? There was?

25 Q. There was a colloquy in front of Judge

1 Cleland?

2 A. Yes, in chambers.

3 Q. Concerning that; correct?

4 A. Yes.

5 Q. And you raised that issue, did you not?

6 A. I did.

7 Q. And Mr. McGettigan said he wasn't going to do
8 that, did he not?

9 A. He wouldn't agree not to do it on
10 cross-examination, that's what made the whole deal
11 fall apart. On cross-examination, he walked out of
12 the room, as I recall, because he got very
13 irritated. And I said, you're also going to include
14 not asking any questions on cross-examination. And
15 at that point he said no. He said this deal is not
16 going to work. That was not -- that was the
17 problem.

18 Q. Did you seek some type of motion in limine
19 with Judge Cleland to prevent him from doing what
20 you feared happening?

21 A. I did not. And even if I had, it still would
22 have been subject to trial circumstances because the
23 Judge nor I could predict what was going to be said
24 if Jerry testified. And once Jerry testified, that
25 could change whatever ruling the Judge had made

1 preliminarily. Why put Jerry at risk at that point,
2 when we had hit a homerun with establishing that the
3 police were lying about not coaching these kids?

4 Q. Well, the question was, why put Jerry at
5 risk? This was a criminal defendant who wanted to
6 testify on his own behalf.

7 A. And after we talked about the pros and cons
8 that we're now discussing, Jerry said, you know,
9 it's probably better I don't testify.

10 Q. All right.

11 A. And he was colloquied. And we went through
12 this extensive questioning about this.

13 Q. But it did not occur to you to get any kind
14 of ruling from the Court concerning your misgivings
15 about Mr. McGettigan's cross-examination?

16 A. It didn't. Because I felt, ultimately, it
17 would come down to what was said if Jerry Sandusky
18 testified and what his answers were that opened up a
19 door to something. The Judge could give a carte
20 blanche ahead of time not knowing what was going to
21 be said.

22 Q. Mr. Amendola, did you consider the
23 possibility that Matt Sandusky could testify and you
24 could impeach him significantly on
25 cross-examination?

1 A. I did.

2 Q. There was ample evidence to impeach him, was
3 there not, as a witness?

4 A. Absolutely.

5 Q. And I mean, he was sitting in the trial with
6 the family of Mr. Sandusky throughout the trial;
7 correct?

8 A. That's correct.

9 Q. He had testified under oath in a grand jury
10 that he was not -- or that he said nothing but good
11 things about Mr. Sandusky; correct?

12 A. That's true.

13 Q. Had you reviewed that grand jury testimony?

14 A. Yes.

15 Q. Was there ample impeachment evidence in that
16 testimony under oath in front of a grand jury?

17 A. Absolutely. And we weighed that against the
18 fact that here's a stepson of Jerry Sandusky now
19 saying in court he was abused and the jury would be
20 left to decide credibility. And in conjunction with
21 the other cases for which there had already been
22 testimony, we thought that that would be very very
23 dangerous.

24 Q. You thought or Jerry thought?

25 A. I'm sorry, what?

1 Q. Was it you thought that or did Jerry think
2 that?

3 A. Jerry and I agreed. You know, Jerry was a
4 football coach at Penn State. He's not a wimp.
5 Jerry would make his own decisions. Now, I gave him
6 my opinions, absolutely. But ultimately, it was
7 always up to Jerry. If Jerry had said to me, Joe,
8 darn it I want to testify, I would have blessed
9 myself and put him on the stand and hope for the
10 best.

11 Q. But it certainly would have been against your
12 advice?

13 A. Yes.

14 Q. Did you recall that there was a second
15 discussion with Mr. Sandusky about whether or not he
16 should testify?

17 A. Now, when you say a second discussion.

18 Q. All right. You testified that there was a
19 discussion, I think, on Thursday evening.

20 A. Oh, you mean beforehand?

21 Q. Yes.

22 A. There were several discussions, I believe,
23 before we made that decision.

24 Q. Do you recall talking to Jerry and his sons
25 in your automobile on the way to the court here in

1 Bellefonte?

2 A. Oh, I'm sure we did. We talked about things
3 all the time.

4 Q. Did you discuss at that point your opinion
5 that he should not testify?

6 A. Well, I don't have a specific recollection
7 whether I did or not. But certainly my opinion was
8 there was a lot of danger in Jerry testifying with
9 Matt coming forward and making what we believe were
10 outrageous accusations. But nonetheless, this jury
11 who didn't know that, was going to hear them if he
12 testified.

13 MR. LINDSAY: Excuse me just a minute, Your
14 Honor.

15 BY MR. LINDSAY:

16 Q. Mr. Amendola, I'd like to go into another
17 area. Are you familiar with Dr. Elliot Atkins?

18 A. I am.

19 Q. How did it come that Dr. Atkins became
20 involved in your case?

21 A. We initially had contacted Dr. Fred Berlin,
22 B-E-R-L-I-N, who was a renowned national prominent
23 psychiatrist dealing with child abuse cases. And we
24 wanted to get him involved to help us, to assist us.
25 The problem was, we ran into time problems. And

1 when Dr. Berlin found out that this trial was going
2 to take place in June, he said he couldn't possibly
3 evaluate the thousands of pages of material in that
4 time and give us an opinion that would be helpful.

5 We then went to a second doctor in an effort
6 to get somebody else involved, a Dr. Voskanian,
7 V-O-S-K-A-N-I-A-N, out of Philadelphia. He said he
8 would take a look at the material. We sent him the
9 box of material, he sent it back, he never even
10 opened it, he said there's no way I could do this.
11 He said just looking at this, there's no way I can
12 do this in the time allotted.

13 We then contacted Dr. Atkins. Dr. Atkins
14 agreed to meet with me and Jerry. And I don't know
15 whether Karl Rominger was there or not at the first
16 meeting, but it was certainly Jerry and me at
17 Jerry's home. And Dr. Atkins, in evaluating Jerry,
18 said, you know, I've come up with this diagnosis of
19 histrionics. And we were looking for someone who
20 could explain that Jerry's behavior with kids, which
21 was considered by many people to be different than
22 ordinary people, that his behavior wasn't involving
23 pedophilia. And so, Dr. Atkins said he thought he
24 could help us.

25 Now, Jerry wasn't thrilled with that. I mean,

1 Jerry didn't like the idea at all about somebody
2 saying that he had some sort of psychiatric or
3 psychological problem, but we discussed this and we
4 discussed the pros and cons. And people who thought
5 Jerry was guilty simply because he was getting
6 showers with kids for crying out loud, we had to get
7 somebody who was going to explain, you know, it
8 might be different than what we do, but it's not
9 indicative of pedophilia. So that's how Dr. Atkins
10 got involved. But Jerry was involved with that.

11 Q. Apparently --

12 A. He wasn't happy, but he was involved with it.
13 Had he said cut Dr. Atkins out, that would have been
14 it for Dr. Atkins, would not have been called. At
15 any point, Jerry could have said that.

16 Q. The purpose of Dr. Atkins' testimony was to
17 testify that Jerry was not a pedophile?

18 A. Testify to his behavior had an explanation.
19 As the way it came down at trial, it was, as I
20 recall -- haven't read the transcript recently, but
21 the way it came down at trial, as I recall, was it
22 had to do with the letters that the Commonwealth was
23 referring to as love letters, the type of letters
24 that a boy might write to a girl when they're
25 teenagers. And so, as I recall, Dr. Atkins'

1 testimony was restricted to explaining those
2 letters. But the bottom punch line was that Jerry's
3 behavior, although different, could be explained
4 through histrionics, but it wasn't indicative of
5 someone who was a pedophile.

6 Q. Mr. Amendola, can we agree that the mere
7 calling Dr. Atkins as a witness was subject to
8 profound dangers in this case?

9 A. To be honest with you, we thought not calling
10 anyone to explain Jerry's behavior was just, if not,
11 more dangerous because the average person thought
12 that what Jerry did with kids was off the wall. And
13 we understood Jerry being Jerry, that was normal for
14 Jerry. He was just an overgrown kid himself.

15 Q. The -- isn't it true, sir, that the defense
16 in the case was that Jerry Sandusky did not do these
17 crimes?

18 A. Yes.

19 Q. All right. Weren't you concerned that by
20 putting psychological testimony in, you would
21 confuse the jury that the defense was not that I
22 didn't do it but that I had a mental infirmity?

23 A. I didn't see that as being any more of a risk
24 than not putting anything in and having the jury
25 thinking any guy who gets showers with kids at nine

1 o'clock at night when no one else is around in a gym
2 on campus is doing something wrong. That was
3 troublesome. We had to overcome that. There were
4 people who thought Jerry was guilty just because he
5 got showers with kids.

6 Q. Can we agree to this, sir, that by
7 introducing Dr. Elliot Atkins into the mix, you
8 opened the door to having Jerry interviewed by a
9 psychologist for the Commonwealth?

10 A. Well, we certainly opened the door. That's
11 true.

12 Q. And as a matter of fact, the Commonwealth did
13 indeed interview Jerry; correct?

14 A. Yes.

15 Q. And the Commonwealth indeed produced an
16 expert witness saying he was guilty or he had a
17 psychosexual disorder?

18 A. Well, I believe, and I could be wrong, but
19 again, the transcript is the transcript. I believe
20 the transcript testimony was it was consistent, not
21 that he was, it was consistent just as it was
22 consistent with histrionics. And if you're asking
23 me had I to do over again as a Monday morning
24 quarterback, I would say of course not, obviously
25 not. But we used it to the best that we could

1 because we were faced with the issue that Jerry's
2 behaviors over the years with multiple kids was
3 different than the average person.

4 Q. Mr. Amendola, do you recall -- well, first of
5 all, there was a meeting, I guess, on that Saturday.
6 Once again, that weekend, that long weekend between
7 Thursday and Monday, there was a conference call
8 with Judge Cleland. Do you recall that?

9 A. I mean, I really don't have a specific
10 recollection of it. But I'm sure if that's what it
11 is, I'm sure that took place.

12 Q. And at that point -- well, let me show you a
13 memorandum we received this morning.

14 MR. LINDSAY: May I approach the witness,
15 Your Honor?

16 MS. PETERSON: Your Honor, I have a
17 preliminary objection. This memorandum was not
18 authored by this witness, there's no way he could
19 authenticate it, so therefore we would object to
20 this.

21 THE COURT: It's being used to refresh his
22 recollection.

23 MR. LINDSAY: Right. I'm not offering it
24 into evidence.

25 THE COURT: For that purpose.

1 BY MR. LINDSAY:

2 Q. I'd like you to --

3 THE COURT: If it doesn't refresh his
4 recollection, then obviously it can't be used as a
5 substantive exhibit.

6 MR. LINDSAY: I don't want to use it as a
7 substantive exhibit.

8 THE COURT: Okay.

9 THE WITNESS: I'm sure this is it. As I
10 recall --

11 THE COURT: Wait a second. You got to lay
12 the foundation of questions here.

13 BY MR. LINDSAY:

14 Q. Does by reviewing this document refresh your
15 recollection?

16 A. That a conversation took place, not as to the
17 exact time or the exact day. But I recall that we
18 had a conversation, phone conversation.

19 Q. Do you recall that you discussed with --
20 first of all, was the conference call between you,
21 Frank Fina, and Judge Cleland? Do you recall that?

22 A. Well, I know that when we had conference
23 calls, Frank was almost always involved with the
24 Judge and me, sometimes Joe McGettigan.

25 Q. All right. And do you recall that you

1 discussed with Mr. Fina and Judge Cleland that Mr.
2 Sandusky would be available for examination?

3 A. Is this in regard to the doctor or is this in
4 regard to Matt Sandusky?

5 THE COURT: Okay. Now we're getting far
6 field. I think the procedure is to take that
7 exhibit back. And now he has to testify from his
8 refreshed recollection or you don't go on.

9 BY MR. LINDSAY:

10 Q. Mr. Amendola, do you recall during this
11 telephone conference that Judge Cleland mentioned
12 the possibility that calling this witness, this
13 psychological witness that you had, would open the
14 door to testimony regarding pedophilia?

15 A. I don't specifically recall that. But
16 certainly, the Judge -- it's something that Judge
17 Cleland, in being very cautious, might have said.

18 Q. Were you being very cautious that it
19 concerned you that by calling this witness, you were
20 opening the door to testimony that Jerry might be a
21 pedophile?

22 A. No, because we had talked to Dr. Atkins about
23 that. He assured us that would not be a problem.

24 Q. But it was a problem?

25 MS. PETERSON: Objection. It's

1 argumentative.

2 BY MR. LINDSAY:

3 Q. Well, wasn't it a problem?

4 A. I don't think it was a problem. I think the
5 testimony was neutralized, but I don't know that it
6 was necessarily something upon which the jury hung
7 its hat in terms of its ultimate determination. I
8 just think, ultimately, the testimony just was
9 awash.

10 Q. Mr. Amendola, did you become aware of
11 allegations about the leaks from the grand jury
12 investigation?

13 A. Well, particularly since the trial, yes.

14 Q. You weren't aware of it before the trial?

15 A. We suspected. Obviously, the reporter from
16 the Harrisburg Patriot News ran a front page article
17 in that paper as well as the local paper here I
18 believe on March -- I believe it was March 11th, in
19 that area, of 2012 -- 2011 rather. But in March of
20 -- maybe March 31st of 2011. So obviously she got
21 her information from somewhere.

22 Q. Well, there was -- well, first, you're
23 talking about Sara Ganim; correct?

24 A. Yes.

25 Q. And there was an article that appeared in

1 March of 2011 which detailed the grand jury
2 investigation; correct?

3 A. Correct.

4 Q. There was also a presentment of the grand
5 jury that was leaked prior to its official release;
6 is that not correct?

7 A. And I think that was a glitch at the district
8 court level where the clerk put it on the computer
9 and it went out before it was official. I think
10 that was the day before.

11 Q. But it was on the computer very briefly;
12 correct?

13 A. Yes.

14 Q. And in that very brief period of time, Sara
15 Ganim was the person who got a hold of it; correct?

16 A. Apparently.

17 Q. Did you file any type of motion or anything
18 dealing with the potential for government
19 misconduct?

20 A. We didn't have a basis to file anything. We
21 asked for discovery materials and specifically asked
22 for information regarding any leaking of any
23 information related to the grand jury by any
24 government official employee. We asked for that.
25 And we were told by Mr. McGettigan and Mr. Fina

1 there had been no such leaks. Based upon that, we
2 didn't have any evidence to file a motion because we
3 had no one to put on the stand to say this is what
4 happened. It would have been a blind motion without
5 any substance to it. But we tried to get that
6 information. It's in one of my discovery requests,
7 one of the early ones.

8 Q. Did you attempt to introduce the grand jury
9 testimony of Mr. Curley, Mr. Schultz, and Mr.
10 Spanier?

11 A. We talked about it. But ultimately it was
12 not introduced because, again, of the threats of the
13 Commonwealth then saying that maybe they had a right
14 to establish that those people had been charged with
15 perjury and related charges, which would negate the
16 statements that they had supposedly made to the
17 grand jury. So we talked about it. And I don't
18 believe there was ever any court order decision on
19 that issue. But we certainly talked about it and
20 figured, again, at best it'd be awash if the
21 Commonwealth was able to bring in the substance that
22 charges had been filed against them for their very
23 testimony at the grand jury.

24 Q. You were aware that their testimony at the
25 grand jury --

1 A. Oh, yes.

2 Q. And that was that Mr. McQueary had been
3 inaccurate in his testimony; correct?

4 A. Yes.

5 Q. And these witnesses were unavailable;
6 correct?

7 A. We tried. We tried our very best to get them
8 into court, but they were unavailable.

9 Q. And the testimony that they had under oath
10 that Mr. McQueary had been less than truthful would
11 have been useful, would it have not?

12 A. Would have been very helpful.

13 MR. LINDSAY: Excuse me a moment, Your Honor.
14 That's all.

15 THE COURT: Redirect?

16 CROSS EXAMINATION

17 BY MS. PETERSON:

18 Q. Mr. Amendola, after Jerry Sandusky was
19 arrested in November of 2011, that became your sole
20 focus, was his case; correct?

21 A. It was virtually the only thing I
22 concentrated on, other than emergency things or
23 administrative things. I mean, I still had other
24 cases but I was almost exclusively working on
25 Jerry's case.

1 Q. You spoke with him almost daily?

2 A. Virtually, yes.

3 Q. Sometimes more than once a day?

4 A. Pardon me?

5 Q. Sometimes more than once a day?

6 A. Oh, yes.

7 Q. You also visited with him at his house?

8 A. I did.

9 Q. And he was free to ask you any questions that
10 he had; correct?

11 A. And he usually did.

12 Q. And he wasn't shy to share his opinion?

13 A. Jerry was never shy with me.

14 Q. When the preliminary hearing was scheduled
15 for December 13, 2011, you did, in fact, review the
16 pros and cons of waiving that hearing with Mr.
17 Sandusky?

18 A. Yes.

19 Q. It wasn't something that happened the day
20 before?

21 A. No.

22 Q. And Mr. Rominger never weighed in on whether
23 or not Mr. Sandusky should waive his preliminary
24 hearing?

25 A. Actually, Mr. Rominger never expressed an

1 opinion about any of the issues that came up prior
2 to trial. And at trial, he had some comments about
3 certain objectionable things. But no, he didn't.

4 Q. Sir, on the morning of December 13, 2011, Mr.
5 Rominger never told you that waiving the preliminary
6 hearing was a mistake?

7 A. Never told me that. Not that morning or any
8 other morning or day.

9 Q. How often would you have contact with Mr.
10 Rominger between the time of Mr. Sandusky's arrest
11 but prior to trial?

12 A. Very very rarely. Typically, Mr. Rominger
13 would come up to Centre County when there was a
14 hearing. And as soon as the hearing was over, he
15 would leave town. Now, during the trial, he stayed
16 in town. But prior to the trial, very seldom.

17 Q. He would only call you maybe once or twice a
18 month?

19 A. No.

20 Q. Not that?

21 A. No. It's -- he just was not here.

22 Q. On the morning of the preliminary hearing,
23 did Mr. Sandusky appear to be confused about what he
24 was doing by waiving the preliminary hearing?

25 A. No. As a matter of fact, ironically, after

1 that waiver, all the media was here, I had about a
2 two-hour press conference out front of the
3 courthouse. And Jerry was home at that time with
4 his family. And Jerry called me that night to say
5 what a great job, it was fantastic to finally see
6 our side getting out. Jerry was very pleased with
7 the way that day went.

8 Q. And one of the bonuses, so to speak, of
9 waiving the preliminary hearing, in addition to
10 keeping Mr. Sandusky out of jail, was the fact that
11 the Commonwealth agreed to give you discovery;
12 correct?

13 A. Correct.

14 Q. And what was that particular agreement?

15 A. The agreement was that they would get
16 discovery materials to me as soon as possible.

17 Q. Why was that important?

18 A. Well, that was important so we could start
19 our own investigation because obviously we needed to
20 get our people looking into the allegations once we
21 knew specifically what they were.

22 Q. You were asked whether the testimony of Mr.
23 Curley, Mr. Schultz, and Mr. Spanier indicated that
24 Mr. McQueary had been untruthful; correct?

25 A. Yes.

1 Q. You were asked that question on direct?

2 A. (The witness indicated affirmatively.)

3 Q. The issue with Mr. McQueary's testimony,
4 however, was what he had actually seen and what he
5 had told people he had seen; correct?

6 A. That's correct.

7 Q. And that issue was explored with Mr. McQueary
8 through cross-examination at trial; correct?

9 A. Correct.

10 Q. And it was also brought out through the
11 cross-examination of Mr. McQueary's father?

12 A. That's true.

13 Q. And Dr. Dranov?

14 A. That's correct.

15 Q. Now -- and Mr. McGettigan never had an
16 agreement or a pact that neither one of you would
17 call Allan Myers; correct?

18 A. Not at all. There was never any discussion
19 about us agreeing to not call Allan Myers or anybody
20 else.

21 Q. You had many discussion with Mr. Sandusky
22 about his testimony for trial; correct?

23 A. Yes. Tons.

24 Q. And that was before the issue of Matt
25 Sandusky came up; correct?

1 A. Yes.

2 Q. In fact, you had been preparing him to
3 testify at trial; correct?

4 A. Yes.

5 Q. After the issue of Matt Sandusky had risen,
6 you had several conversations with Mr. Sandusky
7 about the pros and cons of moving forward with Mr.
8 Sandusky's plan to testify; correct?

9 A. That's correct.

10 Q. It simply wasn't just a single conversation
11 in a car ride on the way to the courthouse; correct?

12 A. Not at all.

13 MS. PETERSON: That's all the questions I
14 have, Your Honor.

15 THE COURT: I identified that as redirect.
16 Obviously that was incorrect, it was cross.
17 Redirect?

18 REDIRECT EXAMINATION

19 BY MR. LINDSAY:

20 Q. Mr. Amendola, do you recall a hearing that
21 you testified at subsequent to the trial, a
22 post-sentence hearing?

23 A. I do recall testifying. I believe it was
24 October 9th perhaps. No, no, January. I'm sorry.
25 It was in January.

1 Q. Do you recall being asked by Mr. McGettigan
2 whether you would have done anything differently?

3 A. Yes.

4 MS. PETERSON: Your Honor, I would object.
5 This is beyond the scope of cross.

6 THE COURT: I'll let it go. It's not exactly
7 a surprise.

8 BY MR. LINDSAY:

9 Q. Do you recall whether you were asked, and I
10 don't have the transcript in front of me, whether
11 you would have done anything differently if you had
12 more time?

13 A. Yes. But I understood the question from Mr.
14 McGettigan to be, based upon the discovery materials
15 I got from the Commonwealth, would any of those
16 materials have changed my strategy in terms of what
17 I did at trial. I said no. But I tried to
18 interject and add, but that wasn't the issue. The
19 issue was we were conducting our own investigations.
20 We had our own experts lined up and we were cut off
21 and precluded because of time constraints from
22 continuing to do those things. For example, the
23 doctors, our choice would have been Dr. Berlin. He
24 could have handled the case, could have been an
25 expert had the case been continued even just for two

1 months.

2 Dr. Voskania could have done it had the case
3 been continued for two months. We had phone records
4 we were finally able to get after subpoenaing
5 records. We sent out 43 subpoena duces tecum and
6 this material was coming in following the court
7 order basically saying people have to start
8 producing at least some of these records. We had a
9 hearing, I believe on May 9th, a month before jury
10 selection, less than a month, and the people had,
11 the firms had two weeks to get it to us. We were
12 trying to process this. And one example was the
13 phone records. We always believed that these
14 accusers had had basically communicated with each
15 other. And so, we were trying --

16 THE COURT: Wait just a second. Why don't
17 you ask a specific question. I'm not sure where
18 this is all going.

19 BY MR. LINDSAY:

20 Q. Well, you testified you wouldn't have done
21 anything different. Would you have done something
22 different?

23 A. Of course.

24 Q. What?

25 MS. PETERSON: And I'm going to object, Your

1 Honor. This is --

2 THE WITNESS: What I just explained.

3 THE COURT: And the basis of your objection?

4 MS. PETERSON: Your Honor, it's beyond the
5 scope of the issues that were identified for the
6 purposes of this hearing. Certainly in hindsight
7 people would have done things differently. But with
8 respect to what exactly happened during the time
9 period that he had and why he did the things that he
10 did, that's the only issue that's relevant.

11 THE COURT: Sustained.

12 BY MR. LINDSAY:

13 Q. Mr. Amendola, you recall that you filed a
14 motion to withdraw from this case?

15 A. I do.

16 MS. PETERSON: Your Honor, I'm going to
17 object to this.

18 THE COURT: Sustained.

19 BY MR. LINDSAY:

20 Q. Mr. Amendola, have you been interviewed by
21 the Commonwealth prior to this hearing?

22 A. I'm sorry?

23 Q. Have you been interviewed by the Commonwealth
24 prior to this hearing?

25 A. Yes. And as well as you folks.

1 Q. I interviewed -- I had a phone conversation
2 with you yesterday?

3 A. But we had previous interviews at my office
4 two years ago when you first got involved.

5 Q. Two years ago we had an in-person interview;
6 correct? And up until yesterday afternoon, since we
7 filed our petition, you declined to be interviewed;
8 is that correct?

9 A. I didn't decline. We just hadn't worked out
10 a time.

11 Q. Okay.

12 A. And in fact, I called, as you recall, and
13 left a message saying I'd be happy to talk with you
14 on the phone. And we talked.

15 Q. Yesterday?

16 A. Yes. And I communicated with you as recently
17 as late as last night at eleven o'clock.

18 Q. Right. In the -- recently, have you been
19 interviewed by the Commonwealth?

20 MS. PETERSON: Objection. It's been asked
21 and answered.

22 MR. LINDSAY: No, I don't think it has been
23 answered.

24 THE COURT: I'll let him answer again.

25 THE WITNESS: Yesterday.

1 BY MR. LINDSAY:

2 Q. All right. Concerning your testimony here
3 today?

4 A. Concerning issues apparently that you folks
5 have raised in a PCRA. But my answer to them, by
6 the way, was the same as my information to you.

7 MR. LINDSAY: That's all.

8 MS. PETERSON: No recross.

9 THE COURT: Okay. Thank you. You may step
10 down.

11 THE WITNESS: Your Honor, may I be excused or
12 should I hang around?

13 MR. LINDSAY: We have no objection.

14 MS. PETERSON: No objection.

15 THE COURT: You're excused. Thank you.
16 We'll take a 15-minute recess. Reconvene at 20
17 minutes to three. And counsel, will you approach
18 the bench?

19 (Whereupon, the following discussion was held
20 at sidebar:)

21 THE COURT: Where are you?

22 MR. LINDSAY: I'm done with Mr. Amendola.

23 THE COURT: So far so good.

24 MR. LINDSAY: I thought that was the news you
25 wanted. We have Lindsay Kowalski.

1 THE COURT: Okay.

2 MR. LINDSAY: I do not anticipate she's going
3 to be long.

4 THE COURT: All right.

5 MR. LINDSAY: And that's all I have for
6 today.

7 THE COURT: That's it. Okay. Let's -- we'll
8 reconvene, we'll take care of her and then we'll
9 meet afterwards and see where we're going, what I
10 have to do for the next couple weeks.

11 (Whereupon, a recess was taken.)

12 THE COURT: We'll be in session. You may be
13 seated. Mr. Lindsay.

14 MR. LINDSAY: May it please the Court. At
15 this time, the petitioner calls Lindsay Kowalski to
16 the stand.

17 LINDSAY KOWALSKI

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

20 THE COURT: Please be seated.

21 DIRECT EXAMINATION

22 BY MR. LINDSAY:

23 Q. Would you state your name, please?

24 A. Lindsay Kowalski. L-I-N-D-S-A-Y,
25 K-O-W-A-L-S-K-I.

1 Q. I'd like to take you back to the year 2012.
2 Did you have an occupation at that time?

3 A. Yes.

4 Q. What was your occupation?

5 A. Numerous. One of which was to be a case
6 consultant, a criminal case consultant. Do you want
7 me to tell you what I did with that role?

8 Q. Yes.

9 A. I would review source material to look at
10 investigative short comings, discrepancy in the case
11 material, information gaps, any areas with further
12 legal pursuit.

13 Q. And in the course of that occupation, did you
14 have occasion to become involved with the Jerry
15 Sandusky case?

16 A. I did.

17 Q. How did that occur?

18 A. If I remember correctly, it was in April of
19 -- I'm sorry, I don't recall. It was early of 2012.
20 I received a call from a mutual contact of mine and
21 Mr. Amendola's. I had not worked with Mr. Amendola
22 previously. But my contact, Lance Morey, said he
23 had, and he had referred me to Mr. Amendola for work
24 on the Jerry Sandusky case.

25 Q. And did you come to work on the Jerry

1 Sandusky case?

2 A. I did.

3 Q. When did you start working on the Jerry
4 Sandusky case?

5 A. When?

6 Q. Yes.

7 A. It would have been late May of 2012, within
8 maybe three weeks of the start of the trial.

9 Q. What did you do?

10 A. First, I had reviewed the case file,
11 discovery materials, all of the police statements,
12 any source material that had been received. I would
13 look at the paperwork, I would try to find anywhere
14 that a possible witness appeared, made copies of
15 that paperwork to be put in various respective files
16 for those potential witnesses. At the same time
17 while administratively attending to that, I would
18 review the materials to do exactly what I had said
19 before about looking for any discrepancies, any
20 perhaps missing material, for example, if a police
21 report was in and we had page three and not page
22 four, et cetera, any sort of information gaps,
23 anything that sort of stood out, any red flags.

24 Q. Ms. Kowalski, did you have the occasion to
25 become involved with an individual by the name of

1 Dr. Elliot Atkins?

2 A. Yes.

3 Q. And how did you first become involved with
4 Dr. Elliot Atkins?

5 A. I believe it was the week prior to the start
6 of the trial. We had met at Mr. Sandusky's house,
7 and Elliot was there -- Mr. Atkins was there along
8 with the rest of the team.

9 Q. Which would have been who?

10 A. I recall Joe Amendola was there, Karl
11 Rominger was there, Jerry was there, Elliot was
12 there with a female assistant, I don't recall her
13 name. I believe there were two other attorneys
14 there as well.

15 Q. Okay. What happened at that meeting at Jerry
16 Sandusky's house?

17 A. Generally, discussion about what was going to
18 happen during the trial. I don't recall any
19 specifics.

20 Q. Was there a discussion about Mr. Atkins'
21 testimony?

22 A. Right. Yes, there was. Elliot was going to
23 present what he was going to talk about. I know
24 that Jerry was very much against hearing what Elliot
25 wanted to say, he didn't think it was relevant, he

1 didn't want it to be talked about at all. And the
2 consensus, kind of, of the room was that, you know,
3 let's at least hear what Elliot has to say, but, you
4 know, we hear that you're not happy with it.

5 Q. Did Mr. Sandusky, in your presence, ever
6 indicate he was happy with what Mr. Atkins was going
7 to say?

8 A. No. He was never happy. Every single time
9 there was any discussion of it, any time Elliot was
10 going to talk about what he would present, Jerry was
11 very voiceful in his opposition.

12 Q. All right. Was -- well, did Mr. Atkins
13 eventually testify?

14 A. Yes.

15 Q. And while Mr. Atkins was testifying, what was
16 the reaction of Mr. Sandusky?

17 MS. PETERSON: I'm going to object on the
18 grounds of relevance.

19 MR. LINDSAY: I think it goes to whether he
20 proved the testimony or not.

21 THE COURT: Go ahead.

22 THE WITNESS: He was just really angry. I
23 sat next to him during the trial. And throughout
24 most of the trial he was pretty calm and just
25 receptive to what was happening, but this stands out

1 in my mind as he was almost shaking with anger. He
2 muttered under his breath a lot, just his
3 displeasure. I don't recall verbatim what he said.
4 But he was very not happy about the fact that Elliot
5 was testifying and what he -- specifically what he
6 was saying.

7 BY MR. LINDSAY:

8 Q. In your presence, was Jerry Sandusky ever
9 apprised of the dangers of having Dr. Atkins
10 testify?

11 A. I never heard that, no.

12 Q. I mean, was it ever informed that this would
13 open the door to testimony on the part of the
14 Commonwealth?

15 A. That was never said in my presence, no.

16 Q. Okay. Was it ever discussed in your presence
17 what the impact of psychological testimony would be
18 in light of -- well, let me ask you this question
19 and I'll come back. What was Jerry's defense in
20 this case?

21 A. My understanding was that he didn't do it,
22 that he was factually innocent, and that he wanted
23 to show that this did not happen.

24 Q. All right. Did the -- was it ever discussed
25 what the impact was of the psychological testimony

1 on that particular defense that I didn't do it?

2 A. Not in my presence, no.

3 Q. All right. Ms. Kowalski, was it ever made
4 clear to you by this defense team as to why they
5 were calling Mr. Atkins in the first place?

6 MS. PETERSON: Objection. It's irrelevant.

7 THE COURT: Sustained.

8 MR. LINDSAY: That's all.

9 CROSS EXAMINATION

10 BY MS. PETERSON:

11 Q. You weren't privy to every single
12 conversation that Mr. Amendola had with Jerry
13 Sandusky about Dr. Elliot; correct?

14 A. I was not.

15 MS. PETERSON: No further questions.

16 MR. LINDSAY: No redirect.

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

18 Is Ms. Kowalski free to be excused?

19 MR. LINDSAY: Yes, sir.

20 THE COURT: Okay. Thank you. Anything
21 further for today, Mr. Lindsay?

22 MR. LINDSAY: I have nothing further for
23 today.

24 THE COURT: Anything from the Commonwealth
25 for today?

1 MS. PETERSON: No, Your Honor.

2 THE COURT: Counsel, I'd like to see you in
3 chambers. And court is adjourned until a week from
4 Monday. Thank you. We'll be adjourned.

5 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.

11/4/16

Date

Jennifer E. Amentler

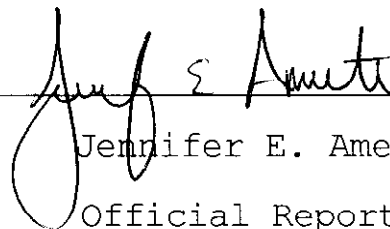
Official Reporter

C E R T I F I C A T E

I hereby certify that a copy of this transcript was furnished and made available to counsel of record for the parties, advising they had until August 25, 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.

11/4/16

Date



Jennifer E. Amentler

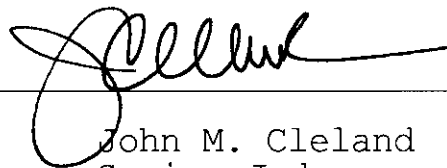
Official Reporter

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.

Date

11/4/16



John M. Cleland
Senior Judge
Specially Presiding

THE CENTRE COUNTY COURT OF COMMON PLEAS, PENNSYLVANIA

COMMONWEALTH : Criminal Division
v :
: CP-14-CR-2421-2011 &
: CP-14-CR-2422-2011
GERALD A. SANDUSKY :

DEBRA C. JIMEL
PROTHONOTARY
CENTRE COUNTY, PA

2012 JUN 11 A 8:28

FILED FOR RECORD

MOTION IN LIMINE TO ADMIT THE OUT OF COURT STATEMENTS
OF UNAVAILABLE WITNESSES SPANIER, CURLEY, & SHULTZ

Defendant seeks to admit statements of Curley, Shultz, and Spanier, players in this case known to the Court from previous filings and materials. Curley and Shultz are known, and Spanier is believed to be likely to, invoke their right against self incrimination and be unavailable.

This Court's discretion with respect to evidentiary rulings is well-settled and illustrated by the applicable standard of review: "[q]uestions concerning the admissibility of evidence lie within the sound discretion of the trial court, and a reviewing court will not reverse the trial court's decision absent a clear abuse of discretion." Commonwealth v. Bishop, 936 A.2d 1136, 1143 (Pa.Super. 2007) (citation omitted). Thus this Court has broad discretion in this matter, but nonetheless is bound to honor precedent.

Pennsylvania Rule of Evidence 804(b)(3) states:

A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. In a criminal case, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Further there is a "due process exception" to the hearsay rule found in Commonwealth v. Hackett, 307 A.2d 334 (Pa.Super. 1973). It is mandatory for courts to admit exculpatory hearsay statements in order to observe the basic tenets of fairness and due process. *Id.*

Public policy, the fundamental principles of fairness and due process of law require the admission of declarations against penal interest where it can be determined that those statements: (1) exculpate the defendant from the crime for which he is charged; (2) are inherently trustworthy in that they are written or orally made to reliable persons of authority or those having adverse interests to the declarant; and [3] that they are made


DEFENDANT'S
EXHIBIT

Commonwealth, aided by the Commonwealth's previous investigation. Thus this court should admit them. To restate the holding in Hackett:

Public policy, the fundamental principles of fairness and due process of law require the admission of declarations against penal interest where it can be determined that those statements: (1) exculpate the defendant from the crime for which he is charged; (2) are inherently trustworthy in that they are written or orally made to reliable persons of authority or those having adverse interests to the declarant; and, that they are made pre-trial or during the trial itself. Under these circumstances, an exception to the hearsay rule, in our view, is mandatory. The protection of innocent defendants must override any technical adherence to a policy that excludes evidence on the grounds of hearsay. Commonwealth v. Hackett, 225 Pa. Super. 22, 29-30 (Pa. Super. Ct. 1973)

Respectfully submitted,
Rominger & Associates

Date: June 11, 2012



Karl E. Rominger, Esquire
155 South Hanover Street
Carlisle, Pennsylvania 17013
(717) 241-6070
Supreme Court ID #81924

TX Result Report

P 1

01/24/2012 16:16

Serial No. A10ED11010570

TC: 27358

SANDUSKY

Addressee	Start Time	Time	Prints	Result	Note
18142346013	01-24 16:11	00:04:46	007/007	OK	

Note TMR:Timer TX, PDL:Polling, ORG:Original Size Setting, FME:Frame Erase TX,
 DPE:Page Separation TX, RIX:Mixed Original TX, CALL:Manual TX, CSAC:CSAC,
 FWD:Forward, BPC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original,
 FCODE:IF-code, RIX:Re-TX, RLV:Relay, MBX:Confidential, BUL:Bulletin, SIP:SIP Fax,
 IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
 TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer,
 Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full,
 LOVR:Receiving length Over, POVR:Receiving page Over, FIL:File Error,
 DC:Decode Error, MDN:MDN Response Error, DSN:DSN Response Error.

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TEL: 717-241-6070
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FROM: Karl Rominger

TO: Attorney Amendola

Attention: _____

Company: _____

Address: _____

City, State, Zip: _____

Phone Number: _____

Fax: (814) 234-6013

Message: Draft of Special Motion

Date: January 24, 2012

No. of Sheets to Follow: Six (6)

Pages including cover sheet: Seven (7)

If you do not receive the amount of pages stated above, please contact us immediately.

All information contained in this fax is confidential and privileged.

If you receive this fax in error please call 717-241-6070

ADVOCACY - ADVICE - ANSWERS

**DEFENDANT'S
EXHIBIT**

2

ROMINGER & ASSOCIATES

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ADVOCACY - ADVICE - ANSWERS

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: M.D. MISC. DKT. 2011
THE THIRTY-THIRD STATEWIDE :
:
INVESTIGATING GRAND JURY :
: CENTRE COUNTY COMMON PLEAS
: CP-__ -CR-__ -2011
:
: NOTICE NO. __

SPECIAL MOTIONS

FOR

I. EARLY RELEASE OF GRAND JURY TESTIMONY
PURSUANT TO PA.R.CRIM.P. 230

AND

II. TO DISQUALIFY THE STATE ATTORNEY GENERAL'S OFFICE
AND / OR DISMISS THE CHARGES

And Now, this 24th day of January, 2012 come the Defendant and files this special request for relief, reserving the right to file additional motions as contained in the Court's scheduling Order, and asks for special and immediate relief as follows:

1. Following an investigation beginning on or about June 2007, the Thirty-Third Statewide Investigating Grand Jury issued a Presentment on March 25, 2009, setting forth allegations against various individuals including the above-named Defendants joined in this motion.
2. The Office of Pennsylvania Attorney General filed criminal complaints against the above-named Defendant.
3. Trial is presently scheduled in the Centre County Courthouse.
4. This motion is brought specially, and not to preclude the filing of a traditional omnibus motion or other requests of this Court.

I. MOTION FOR EARLY RELEASE OF GRAND JURY TESTIMONY

PURSUANT TO PA.R.CRIM.P. 230

5. Paragraphs 1 through 4 are incorporated by reference.
6. Pa.R.Crim.P. 230 provides that a copy of the transcript of the testimony of a witness in a criminal case who has previously testified before an investigating grand jury "may be made available (to the defendant) only after the direct testimony of that witness at trial."
7. As of the date of this motion the investigation of this case has been ongoing for many years, during which time perhaps 100 or more witnesses have testified before the grand jury, in certain instances on multiple occasions. Many of these witnesses are expected to be called at trial.
8. Trial in this case will be repeatedly interrupted for extended periods if lengthy and multiple transcripts of the grand jury testimony of each witness are only provided to the defense at the conclusion of the testimony of each witness.
9. Early disclosure of so-called Jencks Act material is strongly encouraged by the Third Circuit Court of Appeals, under the standard of 18 U.S.C. §3500(b), setting forth the same rule in the same terms as Pa.R.Crim.P. 230. See e.g. United States v. Cyril H. Wecht, 2007 U.S. Dist. Lexis 59870 (W.D.Pa. Crim. No. 06-26, decided August 15, 2007).

WHEREFORE, the Defendant requests that the Office of Attorney General be directed to provide to the defense, no later than 180 days prior to trial, copies of the transcripts of the testimony of all witnesses to be called by the Commonwealth at trial.

**II. MOTION TO DISQUALIFY THE STAE ATTORNEY GENERAL'S
OFFICE AND / OR DISMISS THE CHARGES**

10. Paragraphs I through 9 are incorporated by reference.

11. It appears that the Presentment contains the a clear allegation that that witness McQueary described seeing an anal rape to the Grand Jury

12. In his public testimony at the preliminary hearing of defendants Curly and Schultz, McQueary did not indicate that he saw an anal rape.

13. Upon information and belief the State Attorney General prosecuting those cases would not have allowed McQueary to perjure himself, and therefore he could not have testified differently at the preliminary hearing than he did in front of the Grand Jury.

14. Therefore, assuming the Attorney General deputies conducting that preliminary hearing were following their obligation and did not allow McQueary perjure himself, by default the Presentment must not be an accurate encapsulation of McQueary's testimony in front of the Grand Jury.

15. It is important that this Court provide McQueary's Grand Jury transcript or transcripts for immediate review by the defense.

16. If McQueary did not testify to seeing an anal rape to the Grand Jury, then this Court should entertain its motion to disqualify the State Attorney General from further prosecution in this matter for prosecutorial misconduct designed to excessively inflame the public.

17. By way of example the Presentment and the allegation of anal rape in a shower were integral in fermenting public opinion against Jerry Sandusky, where it is claimed an eyewitness (McQueary) saw the same¹.

18. If the prosecutors intentionally embellished the Presentment, then the public has a right to know, and the defendant has a right to make fair response by making the public aware of this embellishment.²

¹ It should be noted that these strong claims may have also caused a rush to judgment by the Penn State Trustees as to the firing of Joe Paterno had the specific reference to anal rape not been included. Thus there is a compelling public interest in knowing what McQueary told the grand Jury so the veracity of the Presentment can be known.

² Should McQueary have said he saw anal rape to the Grand Jury, then further investigation of why he did not say the same when sworn in by the Magistrate at a public hearing would be in order to determine if either inconsistent statement was perjury, and to what extent the prosecution is aware of these inconsistencies.

19. Additionally defendant has the right to be prosecuted by a prosecutorial agent who is not biased.

20. Further defendant has a fundamental right to a fair trial, and given the pollution of the jury base, and the broadcasting of the salacious allegations in the Presentment to the entire State of Pennsylvania and the world beyond, it may be impossible to find a fair jury because of the taint this possible misconduct created.

21. This form of prosecutorial misconduct should be treated like a Brady violation, and the prosecutor should be barred from bringing charges against Mr. Sandusky if in fact the Presentment does not accurately reflect Grand Jury testimony.

22. This misconduct also amounts to a Due Process violation and denies Sandusky his right to a fair and impartial trial under the Sixth Amendment.

23. It is a common misunderstanding amongst the public that the Grand Jury writes the Presentment, but upon information and belief it is believed that the State Attorney General's office wrote the Presentment and provided the same for signature by the Grand Jury

24. **WHEREFORE**, the Defendant requests that the Office of Attorney General be directed to provide to the defense immediately the transcript's of McQueary's testimony, and that a supplemental motion to dismiss / disqualify be allowed to be filed should the testimony of McQueary be the same or similar to his public testimony at the Curly - Schultz preliminary hearing.

Respectfully submitted,

Date:

Karl Rominger, Esq.
Rominger & Associates
155 South Hanover St.
Carlisle, PA 17013
Telephone: 717 241-6070

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: _____ M.D. MISC. DKT. 2011
THE THIRTY-THIRD STATEWIDE :
:
:
INVESTIGATING GRAND JURY :
: CENTRE COUNTY COMMON PLEAS
: CP-__ -CR-_____-2011
:
: NOTICE NO. ____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on the person listed below by first class mail.

Office of Attorney General
Strawberry Square, 16th floor
Harrisburg, PA17120

Respectfully submitted,

Date: _____

_____, Esq.
Rominger & Associates
155 South Hanover St.
Carlisle, PA 17013
Telephone: 717 241-6070

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
THE THIRTY-THIRD STATEWIDE : ____ M.D. MISC. DKT. 2011
INVESTIGATING GRAND JURY :
: CENTRE COUNTY COMMON PLEAS
: CP-__ -CR-____ -2011
: NOTICE NO. ____

ORDER

AND NOW, this ____ day of _____, 2010, it is hereby Ordered as follows:

1. The Motion for immediate release of all transcripts of witness McQueary are before the Grand Jury(s) is granted. Defendant is given 30 days from the receipt of the same to renew is motion to dismiss and / or disqualify.
2. The Motion for Early Release of Grand Jury Testimony Pursuant to Pa.R.Crim.P.230 is GRANTED. The Office of the Attorney General is directed to provide the Defendant with copies of transcripts of the grand jury testimony of all witnesses to be called at trial. Service of such transcripts shall be sufficient to assure that counsel for all Defendants receive the same no later than ninety (180) days prior to trial.

By the Court:

Barry F. Feudale,
Supervising Judge