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

**ORIGINAL**

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 H. FORADORA, PRESIDENT JUDGE
SPECIALLY PRESIDING

DATE: MARCH 24, 2017

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

APPEARANCES:

FOR THE COMMONWEALTH:
JENNIFER PETERSON, ESQUIRE
JAMES BARKER, ESQUIRE

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

**ORIGINAL**

NOTES BY: JENNIFER MAGAZU
OFFICIAL COURT REPORTER
ROOM 101, CENTRE COUNTY COURTHOUSE
BELLEFONTE, PA 16823
814 355-6734 OR FAX 814 548-1158

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For Commonwealth:

(None)

For Defendant:

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P R O C E E D I N G S

1
2 THE COURT: Let me just start with a few
3 comments. Nice to be here this morning in Centre
4 County. And I want to introduce some people to
5 you. The young lady that just introduced me is
6 Deb Immel. She's your prothonotary clerk of
7 courts here in Centre County. And there is not a
8 finer woman keeping track of records anywhere in
9 this state. I mean, she makes sure she knows
10 where every one of her records are at all times.
11 You might get to see her in a passport
12 application or other things, but let me tell you,
13 she does a great job.

14 Bryan Sampsel over here, the sheriff.
15 Wasn't that nice how everything was set up? I
16 really didn't need the entire parking lot to park
17 in but, you know, you get some of these things as
18 judge. I appreciate the security and I feel safe
19 here as I would any place on the earth.

20 And of course, we have our court
21 administrator, Kendra Miknis, Centre County. She
22 has been like a sister to me since I was
23 appointed to this case. We talk regularly and
24 all of you are here because of that. And things
25 are flowing smooth as far as getting in and

1 getting out. So you have certainly a lot of
2 great people working here in Centre County.

3 To my right in the jury box is my law
4 clerk, Amanda. I have the distinction of having
5 the best law clerk in the United States. Neither
6 John Roberts or Tom Saylor have a better law
7 clerk than I do. So that's why she helps me do
8 the research. And I have to give a shout out
9 back home to my court administrator, Chad; his
10 assistant, Kathy; and my administrative
11 assistant, Karen, who are keeping things going in
12 Jefferson County.

13 Who am I? My name's John Foradora. I'm
14 the president judge of Jefferson County. And I
15 feel like I should make a few comments. You
16 know, today in the state of Pennsylvania, taking
17 it from Waynesburg to Honesdale and Erie to
18 Philly, from magisterial district judge to the
19 chief justice of our Supreme Court, there will be
20 1,261 judges working hard trying to do their
21 best.

22 One of my favorite quotes from westerns,
23 and this was kept in both westerns, if you watch
24 True Grit, you remember Mattie Ross asked Lucky
25 Ned Pepper, "Do you need a good attorney? I have

1 one." And J. Noble Daggett, he looks at the
2 ground and says, "I need a good judge." And I
3 want to tell you, you know, the judiciaries had
4 some -- you know, we're all human under this
5 robe. We wear this robe, but blood pumps. So we
6 make human mistakes, but increasingly coming
7 under criticism.

8 But I want to tell you, part of my duties,
9 I'm president of State Conference of Trial
10 Judges. In Pennsylvania, if you become a judge,
11 it means you got more votes than the other guy or
12 lady. But that doesn't mean you're not the best
13 person. And certainly, across this Commonwealth
14 we have a lot of judges doing very good and noble
15 work and giving their best, giving their all. So
16 remember that, we're all trying to do that and
17 everybody's working hard. But we are human.

18 So here I am, I was assigned this case.
19 Now, let's talk about this. I want to start, you
20 know, sort of a little joke. When I became an
21 attorney, I don't like attorney jokes, but, you
22 know, I'm going to tell this one because we've
23 heard a lot about Russia in the news lately. So
24 I'm going to try and make sense of it at the end,
25 you know.

1 So there's four people in a train going
2 across the steps of Russia. A Russian
3 businessman, he has a bottle of vodka; Cuban
4 businessman who has a box of cigars; an American
5 businessman and his attorney. The Russian opens
6 up the bottle of vodka and gives each of them a
7 shot. They toast and throw their glasses out the
8 window, and the Russian throws the bottle of
9 vodka out the window. And the American
10 businessman tries to catch it, "That's the best
11 vodka I ever tasted in my life, I can't believe
12 you just threw that out the window." "In Russia,
13 we have lots of good vodka, I'll just get another
14 bottle."

15 So they light up a Cuban cigar. And they
16 smoke a little while and the Cuban throws his
17 cigars out the window. Again, the businessman
18 tries to catch it. And he says, "You just threw
19 a box of great Cuban cigars out the window." "In
20 Cuba, we have lots of cigars, I'll get another."

21 So the American businessman looks around
22 and grabs his attorney and throws him out the
23 window.

24 Now, the reason I say that, the legal
25 profession's come under some terrible attacks.

1 And, you know, the greatest thing we export as
2 Americans is law. Why is that? Because American
3 law has a certainty. Ninety some percent of all
4 contracts worldwide are to be decided under the
5 law of America. Why? Because you can guess and
6 count on the law as going to have a body of case
7 law and judges who will follow it nationwide.

8 We have a long line of men and women who
9 sat in the same positions as these four attorneys
10 today, going all the way back to Andrew Hamilton,
11 the original Philadelphia attorney who went to
12 New York to defend John Peter Zenger for freedom
13 of the press.

14 How about our greatest president ever,
15 Abraham Lincoln? He was a great president, but
16 his greatest challenge may have been as a trial
17 attorney. I mean, he was a well known trial
18 attorney who represented small people in
19 corporations throughout Illinois making a name
20 for himself trying cases, protecting the public.

21 Moving a little forward, we have our first
22 Jewish American justice, Louis Brandeis. He made
23 a name for himself by trying cases for smaller
24 people and bringing over all statistics into the
25 court system to allow a face to be put on cases.

1 In 1931, Supreme Court in Powell versus
2 Alabama issued an opinion that said people on
3 trial for the death penalty should have an
4 attorney and reversed Powell's conviction. Why
5 didn't Powell have an attorney? He was one of
6 the Scottsboro boys. There was no attorney in
7 the state of Alabama who would represent any of
8 those boys, nor in any of the surrounding states,
9 which is why they didn't have an attorney but
10 someone who should be. And here of all
11 attorneys, Samuel Leibowitz, volunteered for free
12 to defend those boys. And for four years, he had
13 five Alabama National Guardsmen who accompanied
14 him everywhere and 150 in the area where he was
15 to dispel any lynch mobs while he continued that
16 defense.

17 But how about coming back to
18 Pennsylvania's own Robert Jackson from Warren
19 County originally, just north of you. He and
20 Michelangelo Musmanno of Pittsburgh went and gave
21 up their careers to go prosecute the Nuremburg
22 Trials and bring our form of justice to the
23 world. And Jackson missed out on his opportunity
24 to be chief justice of the United States Supreme
25 Court. And let me tell you how dedicated Jackson

1 was to the law, he checked himself out of the
2 hospital against medical advice so when the
3 Supreme Court delivered Brown versus The Board of
4 Education, it was done by a full court.

5 You know, in recent years, we have Vincent
6 Bugliosi, Rudy Giuliani who changed the way we
7 prosecute cases and how we do. And today, who do
8 we have? We have Al Lindsay, famous trial
9 attorney coming out of Freeport area. Washington
10 Jefferson BA, Pitt Law School where he's an
11 adjunct professor. As a matter of fact, he
12 taught my law clerk and probably Attorney
13 Peterson.

14 J. Andrew Salemmme. He came out of Fox
15 Chapel, Susquehanna, Duquesne Law School. He
16 wrote the book on the type of case we're about to
17 hear.

18 On the Commonwealth, Jennifer Peterson.
19 Undergrad and law school at Pitt. Teaches at
20 Elizabethtown and the Widener School of Law in
21 Harrisburg.

22 And James Barker, he's from Ridley
23 Township in Delaware County. Swathmore College,
24 Widener University School of Law and most
25 importantly, succeeded me as the law clerk of Elk

1 and Cameron Counties, but went onto bigger and
2 better things in the federal court. And here's a
3 man, if you don't know it, who stood up for what
4 was right at the cost of his job with his last
5 boss, testifying truthfully in grand jury and
6 trial. And we're happy to have him back serving
7 the Commonwealth of Pennsylvania.

8 Pope Paul VI in 1975 said, "If you want
9 peace, search for justice." So I want to tell
10 those members of the press what we're not here
11 today for. This is not an appeal. And people
12 say that. I'm not criticizing you if any of you
13 have written that, because that's what people
14 will say, oh, this is the Sandusky appeal. No,
15 this is the Sandusky Post-Conviction Relief Act
16 petition. If it happened prior to 1990, it would
17 be Post-Conviction Hearing Act petition.

18 But this is part of a lynch pin of the
19 American system of criminal justice, is that our
20 cases are reviewed. And let me tell you, as a
21 person who decides cases every day, it's
22 comforting to know that you have other courts
23 reviewing and that you get to re-review things.

24 This is a hearing. So it's a trial. It's
25 a trial in front of me. And the defense, through

1 Mr. Lindsay, has to prove certain things. If
2 they do, there will be a new trial granted. If
3 they don't, there won't. Both parties have a
4 right to appeal from here to the Pennsylvania
5 Superior Court, depending on how I rule, and then
6 ultimately to the Supreme Court of Pennsylvania
7 and to the United States Supreme Court. And if
8 there are any other issues, it can be brought up
9 in the federal courts under what's known as a
10 writ of habeas corpus.

11 Don't think these are bad things. You
12 hear about the innocent project. You hear about
13 people who have been completely exonerated. That
14 would not happen if we didn't have this process.
15 So just, if you're looking at this, and I
16 understand that the press, if you're on TV or
17 video, you have to say things quick. And if you
18 can't take the whole newspaper, when you look at
19 some of these legal filings, they're three and
20 four inches thick, so I'm just going to review
21 the things we're here for in a broad brush way
22 under the Post-Conviction Relief Act petition and
23 try and interpret those into some language that
24 you may be able to use.

25 To be eligible for relief, there are three

1 sections. Essentially that means you have to be
2 on death row serving a sentence of confinement or
3 probation to be eligible. Certainly we're in
4 that position. Mr. Sandusky is serving a
5 sentence. And for those of you who were here for
6 his sentencing, using the football analogy, he
7 talked about being in the fourth quarter. This
8 is essentially like using that analogy, being at
9 the Big 10 offices and reviewing the game film
10 and deciding, was that game appropriate? Should
11 we change things?

12 So the first section's a violation of the
13 Constitution of this Commonwealth or the
14 Constitution or laws of the United States which
15 in circumstances of a particular case so
16 undermine the truth-determining process that no
17 reliable adjudication of guilt or innocence could
18 have taken place. To put that in layman's terms,
19 things are just so bad, American justice
20 shouldn't do this.

21 Now, you know, back when I was growing up,
22 a lot of corporal punishment. If you did
23 something wrong, people, your neighbor, your
24 father might give you a belt, so you didn't have
25 much time to have a hearing. But nowadays, we do

1 time outs and things, so I'm going to put this in
2 a five-year-old. When my son James was
3 five-years-old, if I was giving him punishment,
4 this would be saying, daddy, this is wrong.

5 The second prong that we're looking at is
6 ineffective assistance of counsel, which in the
7 circumstances of a particular case so undermine
8 the truth-determining process that no reliable
9 adjudication of guilt or innocence could have
10 taken place. That, in layman terms, is the
11 attorney just did a terrible job, we can't let
12 this stand. My five-year-old son when he was
13 that age, daddy, I should not have let my friend
14 talk for me.

15 The unavailability at the time of trial of
16 the exculpatory evidence that had subsequently
17 become available and would have changed the
18 outcome of the trial if it had been introduced.
19 In layman's terms, there's new evidence that
20 exonerates or appears to exonerate the defendant
21 and that would result in a different verdict.
22 For a five-year-old, daddy, my friend saw it all
23 and if you talk to him, you'll know.

24 Finally, the last of the four that were
25 raised here, proceeding in a tribunal without

1 jurisdiction. That means, essentially, it
2 revolves around the grand jury process being in
3 Harrisburg, hey, it didn't happen here -- or it
4 didn't happen there, you shouldn't have been
5 there. And five-year-old would say, daddy, you
6 shouldn't have done that, you didn't have the
7 authority.

8 Now, also to be considered over top of
9 this, there's three things on each of those four
10 things that I mentioned that have to be proven.
11 First, that the underlying claim is of arguable
12 merit. Can you say it with a straight face?

13 Second, that counsel, meaning trial
14 counsel's action or inaction was not grounded in
15 any reasonable basis designed to effectuate his,
16 the defendant's, interest. So there wasn't a
17 reason or a strategy that it was done.

18 And the third thing that has to be proven
19 is but for that error, after admission, the
20 outcome of the trial would be different.

21 So, just wanted to sort of set that up for
22 those of you in the public and the press to try
23 and make an understanding of the thousands of
24 pages of legal documents which were filed in this
25 case.

1 Now my job will be just to sit here and
2 listen, hopefully, and not have any objections
3 and then ultimately rule when we're finished
4 based on filings. We expect to take all day
5 today into the afternoon. We're going to hear
6 from five or so witnesses. We have May 11th set
7 up and May 26th if we need, and we'll get the
8 case done by then.

9 So after citing all these legal
10 authorities, you know, growing up in the 70s, I'm
11 going to try and paraphrase. I used to watch
12 Evil Kenevil and the Wide World of Sports and
13 he'd come out in his cape and his cane and he'd
14 always start with a speech that said something
15 like, oh, this is really, you know, difficult but
16 I'm going to do it. You know, so if you guys
17 cheer for me and pray for me and if God's with
18 me, we're both going to get through this all
19 right.

20 So everybody just be patient, listen to
21 the testimony, and we'll get through this all
22 right. So I'd turn now to Attorney Lindsay to
23 call his first witness or any statement you wish
24 to make.

25 MR. LINDSAY: I don't think I need to

1 make any statement, I would like to proceed with
2 the testimony. At this time I'd like to -- may
3 it please the Court, I would like to call
4 Attorney Joseph Amendola to the stand, who's
5 testified previously, but want to get into areas
6 we did not get into before.

7 THE COURT: All right. And I should
8 say, you know, along with the different judges,
9 we see things different. And so, there were 34
10 issues, limited to 11 by Judge Cleland, he tried
11 the case. So I decided I want to hear testimony
12 if it's available on those issues. So that's the
13 only thing I've changed because it's an interim
14 order. And Mr. Amendola, you're still under oath
15 in this proceeding. Would you like Mr. Sandusky
16 uncuffed?

17 MR. LINDSAY: Yes, I would.

18 THE COURT: Go ahead. You're still
19 under oath in this proceeding.

20 THE WITNESS: Good morning, Your Honor.
21 Thank you.

22 THE COURT: Good morning.

23 THE WITNESS: May I sit down?

24 THE COURT: Yes. Please have a seat.

25 MR. LINDSAY: May I inquire?

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. LINDSAY:

4 Q. Would you state your name, please, for
5 the record, sir?

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

7 Q. Mr. Amendola, do you recall that in the
8 previous proceedings in this particular case, you
9 were questioned concerning an interview you did
10 by Bob Costas? Do you recall that?

11 A. Yes, I do.

12 Q. And do you recall your testimony?

13 A. I do.

14 Q. All right. The questions I'm going to
15 ask are going to go into a little more about that
16 interview. I guess I will start by saying, what
17 precisely was the arrangement for you to go and
18 be interviewed by Mr. Costas? How did it come
19 about?

20 A. After charges were filed against Jerry,
21 Jerry and I spoke about how important it was to
22 get his side of the case out. We talked about
23 options. Within days, we were being deluged,
24 literally deluged, with requests for interviews.
25 And we looked at those possibilities. I recall

1 one being ABC, might have been Barbara Walters,
2 one being from CBS, another from CNN, and of
3 course NBC.

4 When the opportunity to have an
5 interview with Bob Costas came up, Jerry and I
6 discussed that possibility and we both liked it.
7 We liked it for a couple of reasons. One, Costas
8 was a sports casting icon. Two, Jerry was a
9 football -- college football icon. There could
10 be some sort of connection there where the
11 interview might go much more favorably than it
12 would with a strange person.

13 Then we discussed, would Jerry give an
14 interview? And we kicked that around. Jerry had
15 some apprehensions. But he never adamantly said
16 no, he never said I won't do it. He just was
17 reserved about it. Within that week following
18 his arrest, we decided we'd do the Costas
19 interview. And late in the week, as I recall, we
20 decided that I would go to New York, Jerry would
21 stay behind. And at that point we were still
22 thinking I would do the interview, Jerry would
23 not, but we still had left that door open, and we
24 still had discussed it.

25 I recall the Monday that I went to go to

1 New York was a crazy Monday, I was in court, I
2 didn't get out of court until mid-afternoon. I
3 asked the NBC people, could we postpone this?
4 Because I said I was rushing around all day, I
5 didn't have time to properly pack and get ready
6 to go to New York to do an interview. They said
7 no, all the arrangements have been made. I
8 decided to go through with the interview because
9 I felt if I didn't, that would be a bigger story
10 than going. And I felt that if I didn't go,
11 people might interpret that as maybe something
12 negative in regard to Jerry's defense, because we
13 had been promoting his defense and we had been
14 soliciting help in getting his defense out.

15 So we got on a plane and went to New
16 York, and the interview took place later that
17 evening on Monday, I believe November 14th.

18 Q. All right. Going back to this, you
19 indicated that you had been deluged with offers
20 of interviews from various, I guess, media
21 outlets; correct?

22 A. That's correct.

23 Q. And you chose NBC; is that correct?

24 A. Chose Bob Costas.

25 Q. Okay. In order -- you've talked about

1 the NBC people. You're talking to specific
2 producers; is that not correct?

3 A. Kim Kaplan I believe, K-A-P-L-A-N, was
4 the chief person I was involved with.

5 Q. All right. And so, when you say you're
6 talking to NBC people, you're talking to Kim
7 Kaplan?

8 A. Yes.

9 Q. All right. Now, was there an
10 understanding -- what conditions were given to
11 you by Kim Kaplan concerning your being
12 interviewed by Bob Costas?

13 A. Well, I wouldn't say there were
14 conditions. I would say what Kim wanted was that
15 interview to be the first interview. But there
16 was no condition, it wasn't contingent upon that
17 happening.

18 Q. All right. So these are telephone
19 conversations you're having with Kim Kaplan?

20 A. Geeze, you know, there probably were
21 both. I mean, she was in State College. At
22 times I thought people were living with me
23 between the office and home. I couldn't walk out
24 the door of my house without there being media
25 people out there. And the office was ridiculous,

1 CNN was in my office almost every day.

2 Q. Mr. Amendola, you wanted the Costas
3 interview; correct?

4 A. We wanted to get Jerry's message out,
5 yes.

6 Q. But you wanted it to be Bob Costas from
7 NBC; correct?

8 A. We wanted it to be Bob Costas. If he
9 worked for ESPN, it didn't matter. We would not
10 have done the interview had it not been Bob
11 Costas.

12 Q. But he happened to work for NBC?

13 A. He happened to work for NBC.

14 Q. And the person you were dealing with
15 from NBC was Kim Kaplan?

16 A. That's correct.

17 Q. And from your testimony, Kim Kaplan
18 indicated to you that she wanted your interview
19 to be the first interview; is that correct?

20 A. That's what she said.

21 Q. And as a matter of fact however, it was
22 not the first interview, was it?

23 A. As it turned out, it was supposed to be.
24 It was not, but it was supposed to be.

25 Q. All right. And the first interview was

1 with CNN; is that not correct?

2 A. That interview took place, I believe,
3 earlier during the day on Monday at one point.
4 And the understanding was, it was a very specific
5 understanding, that I told the CNN person, Jason
6 Carroll, C-A-R-R-O-L-L, I told him I had made an
7 agreement, a verbal agreement, nothing legally
8 binding, nothing that would result in a lawsuit,
9 but I'd given NBC my word that they would do the
10 first interview on TV. Not the first interview
11 -- because I had interviewed with lots of people
12 in terms of giving them some bits and pieces of
13 information between the time of Jerry's arrest on
14 the 5th and November 14th. And so -- and so, I
15 said to -- I said to Jason Carroll, we can do the
16 interview now because he wanted to run it, I
17 believe I didn't even know who the person was at
18 the time, Anderson Cooper, on CNN, and he said
19 they would run it on the late show. And under
20 those conditions, I gave them an interview.

21 Now, what I didn't know was that unlike
22 me giving you my word to show up here at nine
23 o'clock without you personally serving me with a
24 subpoena and I show up, unfortunately the
25 national media didn't turn out to be as upright.

1 And unfortunately what he did and his bosses did
2 is they ran that interview first. Not because I
3 reneged on any agreement, not because I said that
4 was okay and didn't give a darn about what I had
5 told NBC. That's what they did, I learned a big
6 lesson that night.

7 Q. All right. Just so that we can
8 recapitulate. Concerning what happened, all of
9 this occurred on a Monday; correct?

10 A. I believe. I believe -- well, certainly
11 the interview did. And I believe that the CNN
12 thing, he was in my office like he was almost
13 every day, and I finally said okay, under these
14 conditions I'll give you an interview provided
15 you do not play it until after the NBC show.

16 Q. All right. Just so -- to recapitulate,
17 your preferred interview was with Bob Costas who
18 happened to work for NBC; correct?

19 A. Yes.

20 Q. And then what happened was is that you
21 gave -- and the understanding is Kim Kaplan had
22 indicated to you that she wanted it to be the
23 first interview, your first interview?

24 A. To -- no. To air, the first interview
25 to air on TV. Important difference.

1 Q. All right. But it was very clear that
2 you were the person who was going to be
3 interviewed?

4 A. Well, at that point. But she was still
5 attempting to get either Jerry or another member
6 of his family, and I seem to recall it might have
7 been Matt or Dottie, to also be interviewed.

8 Q. All right. So you've given the CNN
9 interview, you get on the plane for New York;
10 correct?

11 A. Yes.

12 Q. You arrive at NBC; correct?

13 A. Correct.

14 Q. And there you actually speak to Kim
15 Kaplan; is that not correct?

16 A. I believe -- no. Kim was in State
17 College. We were on the plane together.

18 Q. Well, did it become apparent that NBC
19 was wise to the fact that you had given a prior
20 interview to CNN?

21 A. It wasn't something to be wise about,
22 CNN played the interview. And the word got out.

23 Q. Okay. Were you confronted with the fact
24 that this was not the understanding that you had
25 with NBC?

1 A. I was -- Kim explained to me that she
2 was disappointed. I explained to her I had made
3 that -- I had made that arrangement with CNN with
4 the understanding they would not play that
5 interview after the Costas interview was aired.

6 Q. All right. Kim was disappointed?

7 A. She was.

8 Q. Was there anybody else at NBC who
9 indicated that they were disappointed that this
10 other interview had aired on CNN?

11 A. I don't -- I don't recollect. I mean,
12 I'm sure they were generally. But I don't
13 recollect anyone personally telling me they were
14 disappointed.

15 Q. All right. Were they going to continue
16 with the interview with Bob Costas under those
17 circumstances?

18 A. Yes.

19 Q. All right.

20 A. I mean, at least from my end. They
21 never told me they weren't.

22 Q. All right.

23 A. Although I would have gladly gone home.

24 Q. All right. But instead, you served up
25 Jerry Sandusky; correct?

1 A. I didn't serve up Jerry Sandusky.
2 That's ridiculous to say that.

3 Q. Well --

4 A. If you're asking me --

5 Q. Did you make --

6 A. If you're asking me did I talk to Jerry
7 about doing the interview, the answer's yes. To
8 say that I served him up is outrageous.

9 Q. Well, you made him available certainly,
10 did you not?

11 A. I didn't serve him up, I made him
12 available after speaking with him.

13 Q. Well, excuse me for my turn of phrase,
14 sir. Excuse me for my turn of phrase. But what
15 I'm suggesting is that at that point you made
16 Jerry Sandusky available for Mr. Costas to
17 interview?

18 A. We had talked about -- Jerry and I had
19 talked about him interviewing with Bob Costas
20 that entire week when we decided to do that
21 interview.

22 Q. But it was decided not to; is that
23 correct?

24 A. We left it at probably not. Not a
25 definite not, a probably not. But as I explained

1 in my previous testimony, I believe it was August
2 12th, as I explained in my previous testimony,
3 that everywhere I went that day including the
4 trip from State College to New York, including
5 the time -- the brief time I was in New York,
6 everyone was already convinced Jerry was guilty
7 as heck, that Jerry was some sort of monster
8 child molester and he -- the people who were his
9 accusers were labeled as victims. And I kept --
10 I kept thinking this is a perfect opportunity for
11 Jerry, with Bob Costas, in a phone interview to
12 say I'm innocent and we intend to prove my
13 innocence at trial. It was the absolute perfect
14 opportunity for him to do that.

15 And this isn't something, by the way,
16 Mr. Lindsay, this isn't something that we just
17 decided that night. I had represented Jerry
18 since January of 2009 in a child molestation case
19 out of Clinton County. We had gone over his
20 position about he's not a monster, he's not a
21 pedophile, he's not somebody who hurts kids, he
22 loves kids. We had gone over that ad infinitum.
23 This wasn't something where I walked in a week
24 earlier and then go to New York to take some sort
25 of junket and to get Jerry on the phone and say

1 hey, you know, I just burned up NBC people so now
2 why don't you talk to Bob Costas so I can make up
3 with it. That's ridiculous.

4 We were trying to find friends in the
5 media. We were trying to show the media he had
6 his side to this. He was -- we were being
7 overwhelmed with people already convinced beyond
8 any doubt that he was guilty. And Jerry and I
9 talked about getting his side of this out to the
10 media. We talked about it almost every time we
11 talked. And this was an opportunity to do that,
12 a perfect opportunity.

13 Q. Mr. Amendola --

14 A. But for -- but for the magic -- but for
15 the magic pause and the repeating of the question
16 that has become famous, the interview went well.
17 I mean, the rest of the interview wasn't bad.
18 And no one -- I can't explain why --

19 Q. Well --

20 A. -- that happened. Because we had talked
21 about him absolutely being adamant he was
22 innocent.

23 Q. Well, I think we've covered a lot of
24 this in the previous hearing. But you're
25 suggesting that the decision for Mr. Sandusky to

1 give this interview with Bob Costas was a
2 decision that had been made months and years
3 before? Are you serious?

4 A. No, that's not what I'm saying. I'm
5 saying we had talked about him in his initial
6 case with the young man from Clinton County,
7 Jerry was insisting from day one in that case he
8 wanted to have a hearing. Against my advice by
9 the way, because I understand that certain people
10 think that Jerry just listened to everything I
11 said. That's not true. Jerry was a very
12 independent thinker who has his own mind, had his
13 own ways of doing things. And in that first case
14 in January of 2009, Accuser Number 1, Clinton
15 County, against my advice, Jerry said no, we want
16 to go to CYS, I want to tell them my side to
17 this. And I said Jerry, not a good idea.

18 And then after that, after that, when
19 they said it was indicated that he abused this
20 kid, then we appealed that and we were going to a
21 hearing and he insisted that we give them
22 evidence that I didn't want to give them because
23 I said there might be something bigger coming.
24 And he again insisted and overruled me.

25 And then finally, Mr. Lindsay, finally,

1 after the charges were filed, after they were
2 filed and I said to him don't have any
3 conversations with anybody about this case, let
4 alone some of these kids, he's on the phone with
5 these kids. And I said they're probably part of
6 the accusations being made. And guess what?
7 They were. And guess what the AG did when they
8 arrested him for the second set of charges? They
9 used that and they said we want \$5 million bail,
10 as I recall, because Jerry was tampering with
11 witnesses.

12 So he had --

13 Q. May I --

14 A. -- his own mind. What I'm getting at
15 is, Jerry had his own mind. He made his own
16 decisions. I told him this was a great
17 opportunity, a friendly face I thought, Bob
18 Costas, and they could connect on the sports
19 level.

20 Q. I'd like to -- I appreciate your answer.
21 But I'd like to go back and, to a certain extent,
22 draw on the last hearing, the testimony. When
23 you flew to New York and met with NBC on that
24 day, you were the person to be interviewed; is
25 that correct?

1 A. That was the understanding at that time.

2 Q. All right. And while you were at NBC,
3 there was some decision made by somebody that
4 Jerry was going to be interviewed; is that not
5 correct, sir?

6 A. As I recall -- and again, this goes
7 back, and it was a hectic time. As I recall, the
8 way this came up is, and I believe it was Kim
9 Kaplan, although I can't swear to it. But as I
10 recall, Kim said, well, could you -- could you
11 get Jerry or perhaps Matt or perhaps Dottie to do
12 a phone interview? My wheels were already
13 turning about Jerry. I already wanted Jerry to
14 give a phone interview with Bob Costas. So yes,
15 she brought it up.

16 And, you know, one of the things that
17 you mentioned in your petition about currying
18 favoritism or good will with the media, I wanted
19 friends in the media to get our story out to
20 represent Jerry Sandusky. And so, if they
21 thought that I was throwing them something,
22 giving them something that they wanted, even
23 though it's what I wanted, what I thought was
24 best for Jerry, why not do it?

25 Q. All right. Going back to that faithful

1 Monday. You arrive at NBC. You were dealing
2 with a producer by the name of Kimberly Kaplan;
3 correct?

4 A. Kim was the main one, yes. I mean, I
5 met other people that evening.

6 Q. All right.

7 A. But other than maybe one or two names, I
8 don't recall who they were.

9 Q. You had a conversation with Kim Kaplan,
10 I take it, over the telephone?

11 A. I -- see, I don't know if it was over
12 the telephone or in person.

13 Q. Was she there or not?

14 A. Yes.

15 Q. She was at NBC?

16 A. Yeah. She flew -- again, I could be
17 wrong. But my recollection is Kim was on the
18 plane with me from State College to New York.
19 And then she accompanied me to the studio. Now,
20 I could be wrong, but that's my recollection.

21 Q. Did you see -- did you sit with her on
22 the plane?

23 A. Yes.

24 Q. All right. Now, prior to you arriving
25 at NBC, you said -- let me go back here, we'll

1 start this question again. You indicated earlier
2 in your testimony that Kim Kaplan was
3 disappointed that you had given the CNN
4 interview; correct?

5 A. Well, sure. Sure.

6 Q. All right. Prior to arriving at NBC
7 with Kim Kaplan, did you -- did she bring it up
8 before you got to NBC?

9 A. I believe the wheels started turning on
10 the flight. That's my recollection.

11 Q. That's when she learned that CNN had
12 aired the prior --

13 A. That's my recollection. Again, I could
14 be wrong, we're going back five and a half years.
15 I could be wrong, but my recollection is the
16 issue with CNN came up during the flight.

17 Q. That's when she told you she was
18 disappointed?

19 A. I believe. But again, I can't be a
20 hundred percent certain. Certainly at some point
21 she did.

22 Q. And also some point, I take it from your
23 testimony, she indicated to you, or she asked you
24 about someone doing a live interview, and that
25 would be either Jerry, Dottie, or one of their

1 children; is that your testimony?

2 A. I believe that was the case.

3 Q. Was that on the plane?

4 A. I believe that was on the plane. I
5 believe that was on the plane. But again, I'm
6 not a hundred percent certain, that was just such
7 a crazy day and evening.

8 Q. All right. You get to NBC. At some
9 point when you're at NBC, you make a telephone
10 call to Jerry Sandusky; correct?

11 A. Actually, I made several.

12 Q. To Jerry?

13 A. Yeah.

14 Q. All right. And --

15 A. Yes, I guess, for the court
16 stenographer.

17 Q. And when you made this -- or made these
18 telephone calls, at some point you suggested to
19 Jerry that he should do this interview; correct?

20 A. What I told Jerry, and as I recall,
21 there was a phone conversation shortly before
22 6:00 p.m., there was another one about nine or
23 ten minutes before seven. And there might have
24 been another one in between, a shorter one. But
25 I recall telling Jerry, "Jerry, the whole world

1 thinks you're guilty. Everyone is referring to
2 these accusers as victims. Even in metropolitan
3 New York, I mean, people have written you off as
4 being just a monster child molester." I said,
5 "Let's do the interview. And what you're going
6 to have to do is explain to Bob Costas in a brief
7 phone conversation that you're innocent, we
8 expect to prove your innocence at trial." And
9 Jerry, although he had some apprehensions, agreed
10 to do that.

11 Q. I understand. And I think we've
12 established from the last hearing that you
13 indicated all he would have to do is to profess
14 his innocence; correct? Is that what you told
15 him?

16 A. Well, I don't know that I said it that
17 way. I said but the key is going to be telling
18 the public, telling the media that you're
19 innocent. I mean, obviously there are going to
20 be other subsidiary questions or ancillary
21 questions. But the bottom line is, there was
22 nothing that was going to be asked, in my
23 opinion, that was going to cause him to have a
24 problem giving an answer. Are you guilty? Are
25 you a pedophile? Obviously not. I mean, that's

1 a no-brainer.

2 Q. But can we agree, sir, that the
3 questioning went in a direction that you had not
4 anticipated?

5 A. Well, let me put it this way, the
6 questioning I didn't have a problem with. And
7 had I been answering the questions for Jerry
8 would have had no problem giving appropriate
9 answers. So in that sense, no, the questions
10 didn't surprise me. Jerry's pause and repeating
11 the one question shocked me.

12 Q. Well, it was a question that couldn't --
13 it couldn't have possibly been answered by saying
14 I'm innocent and I'm not a pedophile. It was a
15 question that said, are you attracted to young
16 boys?

17 A. Do you know how many times over the
18 course of my experience with Jerry from January
19 20, 2009? Jerry and I spoke about that exact
20 issue and Jerry each time said, "I am not a child
21 molester. I have never molested children. I
22 love children. I've devoted half of my adulthood
23 to helping kids." Why in the world would I think
24 that was such a tough question after scores of
25 times over almost three years?

1 Q. The point is, Mr. Amendola, is in your
2 telephone conversation, however long it was,
3 prepping Mr. Sandusky, you did not prep him that
4 he might be asked that type of question. Can we
5 agree on that?

6 A. I did not -- I did not prep him for that
7 specific question. Certainly I had prepped him
8 many times, many times about not being a child
9 molester and I'm innocent and we're going to
10 prove that at trial.

11 Q. Mr. Amendola, did you happen to tell
12 Jerry Sandusky that by doing this interview, you
13 would make Kim Kaplan happy?

14 A. I'm sorry. I would make?

15 Q. Did you happen to tell Mr. Sandusky --
16 in any of these telephone conversations from NBC
17 to State College, did you happen to tell Mr.
18 Sandusky this would make Kim Kaplan and NBC happy
19 if you did this interview?

20 A. Why would I tell him that when it didn't
21 matter? That was -- that had no bearing on my
22 decision. But what I did tell Jerry and what
23 Jerry and I had talked about that entire week
24 before was that finding media friends who were
25 going to be media friendly to us so we can get

1 our defense out, get it accurately and fairly
2 important was critical. Jerry agreed with that.
3 We even talked about Dottie and Jerry and the
4 kids doing interviews for crying out loud to show
5 that Jerry was a human being, a father, a husband
6 who loved children, had devoted his whole life,
7 even adopting six kids. For crying out loud, we
8 discussed that ad infinitum, Mr. Lindsay.

9 Q. I take it --

10 A. Why would I tell -- why would I tell him
11 you're going to make Kim Kaplan happy? I
12 couldn't give a damn about Kim Kaplan. I didn't
13 know that woman a week before.

14 Q. Mr. Amendola. Mr. Amendola, I think
15 you've testified here in the last five minutes
16 about how important it was to curry friends in
17 the media?

18 A. For Jerry. Not for me.

19 Q. Well, it was your strategy to curry
20 friends in the media?

21 A. With Jerry's agreement.

22 Q. I take it, did you counsel with him
23 about the profound dangers of doing this strategy
24 where you were being interviewed and he was being
25 interviewed and his family was being interviewed

1 by the media, how it could be used in court
2 against him?

3 A. Just as I did -- just as I did when he
4 wanted to go to CYS and wanted to have a hearing
5 and appeal the CYS decision. Just as I did
6 before he started calling these kids looking for
7 help, when these kids were the very people who
8 were accusing him, and he still went out and did
9 those things. So yes, I had counseled him many
10 times about anything he said to anybody other
11 than Dottie could be used against him.

12 Absolutely.

13 Q. My question is, did you counsel him that
14 this media friendly campaign that you've
15 discussed here in court could be profoundly
16 dangerous to him because all of these statements
17 and your statements could be used against him in
18 court? Did you tell him, Jerry, this is
19 dangerous stuff?

20 A. I don't know that I said it that way.
21 But what I said was, obviously, anything you say
22 in any interview can be used against you.

23 Q. And as it turned out, it wasn't even so
24 much of what he said but it was how he said it;
25 correct?

1 A. Well, in the pause.

2 Q. Well, that's -- in other words, the
3 answer to the infamous question that was played
4 for the jury and, in fact, rerun for the jury,
5 the statement of are you attracted to young men
6 and he repeated the question. All right.
7 Eventually, he didn't admit that he was attracted
8 to young men; correct?

9 A. That's correct.

10 Q. It was the pause and the repeat that
11 killed him; correct?

12 A. That was the -- that was the troublesome
13 area.

14 Q. The manner in which he answered the
15 question; correct?

16 A. And the delay.

17 Q. Well, he wasn't -- can we agree, Mr.
18 Amendola, that he wasn't in any way prepared for
19 the fact that a delay in how he answered a
20 question could be as significant as it was?

21 A. How much preparation does it take to
22 answer, are you sexually attracted to young boys,
23 when you've expressed over 30 some months that
24 you're not?

25 Q. How much preparation does it take, sir,

1 to have him understand that to pause, to wait,
2 the look on his face, all of those things that --
3 well, how much time would it take to advise him
4 of those things?

5 A. To discuss?

6 Q. Mr. Amendola, you're an experienced
7 criminal defense attorney; correct?

8 A. I'm told that.

9 Q. All right. And you have your clients
10 interviewed by the police; correct?

11 A. Yes.

12 Q. And when they're interviewed by the
13 police, do you impose on them, particularly when
14 they're being videotaped, how important is the
15 manner that you answer questions?

16 A. Yes.

17 Q. And when a witness takes the stand in a
18 jury trial, do you tell your witnesses how
19 important it is how they look, how they talk,
20 where they look, all of these things that are
21 important in a jury's perception of whether
22 they're telling the truth or not?

23 A. Yes.

24 Q. Okay.

25 A. This was a phone interview.

1 Q. I understand it was a phone interview.
2 But did you tell him how these things would be
3 important?

4 A. Yes. And I told him --

5 Q. You told him that night?

6 A. I told him to be adamant in his answers
7 when it came to his innocence and the fact that
8 he had explanations and defenses in all these
9 cases.

10 Q. You indicated, I believe, that you had
11 engaged in a media campaign to curry favor with
12 the media; is that correct?

13 A. I'm sorry?

14 Q. I think you've testified this morning
15 that you would engage, with Mr. Sandusky's
16 consent you say, to engage in a media-friendly
17 campaign?

18 A. We were -- we were trying to get our
19 side of the case out, which was very difficult to
20 do, because the media had already taken a slant
21 on this case and made it very difficult. We were
22 desperately looking for people who would be
23 willing in the media to get our side of the case
24 out.

25 Q. There were other interviews of Mr.

1 Sandusky; correct? Do you remember the New York
2 Times interview, sir?

3 A. Yes.

4 Q. Is part of your media -- currying favor
5 with the media, did you have a party for the
6 media at your house two days before the
7 preliminary hearing in this case?

8 A. I believe it was on a Sunday, and the
9 preliminary hearing was scheduled on a Wednesday.

10 Q. How many people attended that party?

11 A. I'm going to guess around 10, maybe 10
12 to 15.

13 Q. Who were there? Who were they?

14 A. Representatives of all the media
15 outlets, as far as I know. FOX, CNN, NBC, ABC,
16 CBS.

17 Q. And your point in having the media
18 people to your home was to do what, sir?

19 A. To get our side of the case out, to get
20 our side, our explanation. I was trying to give
21 them information so that they would understand
22 that Jerry was innocent and they would start
23 reporting his side of the case. It was very
24 simple. If you think I wanted to have a party on
25 a Sunday night, during football season no less,

1 when I was glued to the tube usually, except when
2 I was working on Jerry's case, that's craziness.
3 I did it to help him to curry, as you refer to
4 it, curry favor with the damn media so that they
5 would report his side to this when we explained
6 it. I didn't get anything out of it, I spent my
7 own money to do that.

8 Q. Do you recall, sir, when the jury was
9 deliberating in this case, you gave an interview
10 during deliberations that if your client was
11 found not guilty, you'd have a heart attack?

12 MS. PETERSON: Objection. Relevance.

13 THE COURT: Mr. Lindsay.

14 MR. LINDSAY: I'm just trying to
15 establish this media campaign was not what he's
16 suggesting here, sir.

17 THE COURT: Overruled. Go ahead and
18 answer.

19 THE WITNESS: The jury was out. I mean,
20 whatever I said, and I said it very cynically,
21 but I'll be happy to give you the background
22 behind that statement. As I recall that
23 situation, the jury was out deliberating and came
24 back with a question and the question was not a
25 good one for us, in my opinion. The question, as

1 I recall, was even if we can't find beyond a
2 reasonable doubt that Jerry Sandusky sexually
3 abused one of the kids, if we think that he was
4 promoting, I guess you call it grooming, a kid,
5 can we find him guilty of some of the other
6 charges such as unlawful contact with a minor?

7 When the jury posed that question, I said,
8 "This is not good." Because what that told me
9 was they were finding him guilty of all the
10 direct allegations. And in regard to Number 6,
11 and I still refer to them as numbers, that's the
12 way I learned them, Number 6 was the 1998 case.
13 That was directed, in my opinion, to him and his
14 case because he said on the stand, Jerry never
15 physically abused me. But they wanted to find,
16 apparently, in my opinion, Jerry guilty of
17 everything at that point. So that kind of led to
18 that very cynical comment. And that was made
19 tongue in cheek. You're from Pittsburgh, I'm
20 from Philadelphia, we have a different sense of
21 humor in Philadelphia. And that was just kind of
22 to lighten things up. That was just to kind of
23 take edge off because at that point, I'm saying
24 to myself this is a done deal, they're going to
25 convict him.

1 Q. And you thought somehow that was to Mr.
2 Sandusky's benefit to make that statement?

3 A. But the media people weren't in the jury
4 room, it didn't matter. It didn't matter at that
5 point.

6 Q. Was it part of your campaign to curry
7 relationships with the media, to make a statement
8 like that, that you'd have a heart attack if your
9 client was acquitted?

10 A. In my opinion, at that point it didn't
11 matter anymore. The jury was not in the room.
12 The jury was not going to pick up the paper and
13 read anything I said at that point. The jury was
14 deliberating. And in a bad way, as it turned
15 out, which is what I determined from the question
16 they asked.

17 MR. LINDSAY: Excuse me a moment.

18 BY MR. LINDSAY:

19 Q. Mr. Amendola, I'd like to discuss with
20 you jury selection in this particular case. Can
21 we agree -- well, in your opinion, sir, was there
22 more media saturation with the Sandusky case than
23 probably any other case in the history of Centre
24 County?

25 A. Well, I don't know -- I don't know in

1 terms of the history of Centre County in the
2 sense that we've had some pretty prominent
3 media-covered cases over the years, homicide
4 cases, that got plastered with media coverage.
5 Certainly it was right up there, no question
6 about it. And in all those cases, by the way, I
7 can't remember one, I could be wrong, but I can't
8 remember one where an out-of-county jury was
9 brought in.

10 Q. Did it enter your head that Mr. Sandusky
11 might have difficulty getting a fair trial
12 because of jury bias in this particular county?

13 A. In Centre County?

14 Q. Yes, sir.

15 A. I don't think it made a difference if we
16 tried him in Timbuktu, Mr. Lindsay. His case was
17 so well know, not only nationally, but across the
18 entire continent where people speak English. I
19 was getting calls from London, England, from
20 Toronto, Ontario about Jerry's case. My
21 philosophy was, and Jerry and I discussed this,
22 we discussed the jury issue, whether we should
23 agree that there should be an out-of-county jury.
24 And Jerry and I discussed the issues. And we
25 came to the conclusion jointly, after discussing

1 those issues many times if not here, where? In
2 other words, where in the world were we going to
3 go to get a jury that hasn't heard about his
4 case? And if not our citizens in Centre County,
5 who? What other citizens are going to give him a
6 fair trial?

7 We thought he had the best chance here
8 because people here knew him. They knew all the
9 wonderful things he had done. They knew all the
10 work he had done, not only with the football team
11 but with The Second Mile. So we thought,
12 collectively, Jerry and I, we thought his best
13 chance was to get people from Centre County who
14 knew about Jerry personally as opposed to
15 somebody from Pittsburgh or Philadelphia, which
16 is not where they would have come from by the
17 way. More likely it would have been from Carbon
18 County or Cameron County, some place in the rural
19 area of central Pennsylvania. So, we decided on
20 those issues that his best bet was here.

21 Q. Mr. Amendola, did you do any research,
22 jury research, jury analysis, any type of
23 research to determine what the jury bias was in
24 Centre County before you and Mr. Sandusky, as you
25 put it, made this joint decision?

1 A. Well, one of the issues, you may recall,
2 Mr. Lindsay, one of the issues that I raised as
3 part of our request for continuance all the way
4 up to the Pennsylvania Supreme Court was that we
5 had a jury consultant who was critical to our
6 case who was tied up in a homicide case
7 unexpectedly much longer than she had
8 anticipated, but who would be back in late June.
9 And we asked for a continuance, that was just one
10 of the many reasons. And part of the reason that
11 we asked for that was, we needed that kind of
12 expertise. And it was denied. That request,
13 along with other requests for continuances, went
14 all the way up to the Pennsylvania Supreme Court
15 and was denied without a hearing. So to answer
16 your question, yes, we wanted an expert.

17 Q. Well, I think you went further. You
18 said you needed an expert; correct?

19 A. Yes. And we put that in our motion.

20 Q. And that was one of the many avenues for
21 continuance that you say that was denied by Judge
22 Cleland?

23 A. And in addition to, of course, a number
24 of other things, including the unavailability of
25 witnesses such as Dr. Spanier and Mr. Schultz and

1 Mr. Curley.

2 Q. While you didn't have this particular
3 expert, did you seek any other expert to do an
4 analysis of the jury bias in Centre County?

5 A. We didn't have time. We ran out of
6 time, Mr. Lindsay. That was the key issue in our
7 case. We ran out of time. Four and a half
8 months from the time we got our first discovery
9 to trial, four and a half months. As you know
10 and I know, the other three administrators from
11 Penn State had just finally resolved their cases,
12 and Dr. Spanier's case I guess is still in the
13 jury's hands. Five and a half years later, one
14 set of charges involving Mike McQueary. We had
15 ten separate sets of charges and no time, no time
16 to sift through all the thousand pages of
17 material and develop our defense. No time. Four
18 and a half months. And we kept asking for a
19 continuance after continuance and we never got
20 one continuance. When, in your experience as an
21 experienced trial attorney, has a court not given
22 you one continuance in a case of any magnitude?
23 We didn't get one continuance.

24 Q. I can't say. But the answer of course
25 would be never.

1 A. That's right. And that's my point. So
2 to answer your question, they're all the reasons
3 why we weren't able to do lots of the things that
4 we would have done and wanted to do.

5 Q. Mr. Amendola, I believe that in May or
6 early June, you moved to withdraw from the case?

7 A. I'm sorry?

8 Q. You moved -- I'm sorry, I understand you
9 have -- I should talk louder. You moved to
10 withdraw from the case?

11 A. Yes.

12 Q. And that motion was denied; correct?

13 A. That's correct.

14 Q. And I think, am I correct, that you
15 moved primarily for -- to withdraw from the case
16 because pursuant to the Rules of Professional
17 Conduct, you could not ethically proceed with the
18 defense of Mr. Sandusky?

19 A. Actually, it was much more practical
20 than that. I was trying to get the Judge's
21 attention and say to the Judge, Judge, look, this
22 is serious stuff. We can't prepare. I don't
23 know if I used a phrase then but I certainly used
24 it to other people, I felt like Custer at Little
25 Bighorn for God's sake. I mean, we had boxes of

1 materials that had just come in that we couldn't
2 even look at because we had to get ready for
3 trial. And it was an absolutely hopeless
4 situation to try to do it properly. And we
5 explained that. So to answer your question, I
6 don't know that I said, well, I know -- I think
7 we categorized maybe, the rules say you're
8 supposed to withdraw, but had I withdrawn. Let's
9 say I refused, I had a sit-in in the assembly
10 room and I said hell no, I won't go, Judge, what
11 would that have proven? What would that have
12 proven? I thought we had great issues on appeal.
13 I thought for sure some court somewhere was going
14 to say, you know what, this looked like it was a
15 lynching waiting to happen and this guy didn't
16 get a fair shake and we think he deserves a fair
17 shake. And to my surprise, it's never happened
18 yet.

19 Q. Mr. Amendola, my question goes to this,
20 you've talked about a number of different things
21 that you could not do because of this trial being
22 -- the trial preparation time being compressed
23 into four and a half months; correct?

24 A. Correct.

25 Q. And you listed some of those off. Can

1 you just go through all of the problems you had
2 because of the inability to prepare?

3 MS. PETERSON objection, Your Honor, on
4 two grounds. Number one, relevance. Number two,
5 Your Honor's order specifically directed that the
6 hearing was limited to the 22 claims that were
7 identified in the petitioner's brief that was
8 filed in July. This was not one of the issues,
9 this open-ended why were you not able to go to
10 trial. I mean, we have specific issues that
11 we're here to address.

12 THE COURT: Mr. Lindsay.

13 MR. LINDSAY: This -- we're trying to go
14 through with the various issues that have
15 happened. One of the issues that we are raising
16 is the issue about the failure to withdraw, the
17 motion to withdraw, and the failure to take an
18 appeal, a collateral appeal of that denial. And
19 so, what I want to establish is whether or not he
20 would have had adequate grounds for that
21 collateral appeal. I can do it -- this was out
22 of order but he raised the issue, so I thought
23 I'd follow up on it.

24 THE COURT: Okay. And I was going to
25 say, so I can clarify my prior order, when I got

1 the case, as you all know I issued the first
2 order saying today would be hearing, we get until
3 we complete it. And then it was only after I
4 started reviewing the file that I realized that
5 it had been limited to 11 out of 34 issues. And
6 my next order was just to say I'm not going to
7 limit any of the issues, I'll hear it on all. So
8 I don't intend to preclude the other 10, although
9 I do think some of this was discussed prior. But
10 in the interest of not calling and recalling and,
11 you know, let's go ahead with the question, I'll
12 overrule the objection because it's certainly
13 relevant. I know you raised an issue the
14 continuance should have been granted, and of
15 course that was also a direct appeal issue in
16 other things. So --

17 MR. LINDSAY: Let me -- let me --

18 THE COURT: But I'll let you -- we're
19 here, he's here, go ahead and ask the question.

20 MR. LINDSAY: Let me ask --

21 THE WITNESS: Thank you, Your Honor,
22 because I'd rather have him ask the questions,
23 too, and just get this -- get this over with.

24 BY MR. LINDSAY:

25 Q. All right. Mr. Amendola, you've had an

1 opportunity to review our various petitions
2 because there's been more than one. There was an
3 original one, an amended one, and the several --

4 A. Not lately. Because to be honest with
5 you, Mr. Lindsay, it took me about an hour and a
6 half to two hours to review them the first time.
7 So I have not reviewed them lately. The only
8 petition I reviewed was the one about me and Bob
9 Costas.

10 Q. All right.

11 A. For today.

12 Q. All right. Let's then -- I guess we'll
13 slay that issue. One of the issues, I guess that
14 we can say was part of this whole problem related
15 to the compression of time to prepare, the whole
16 jury selection issue, the jury expert, your
17 ability to do studies, things of that nature was
18 limited because of the time factor; correct?

19 A. It was more than limited, it was
20 essentially cut off.

21 Q. And can we agree, in a case like this
22 with this type of media coverage, this type of
23 widespread interest in a case, that any effective
24 lawyer would want to have that information before
25 jury selection took place?

1 MS. PETERSON: Objection to the
2 character of the question, Your Honor.

3 THE COURT: I'm going to sustain the
4 objection. It is direct testimony, so rephrase
5 your question.

6 THE WITNESS: If you're asking me would
7 it be reasonable for an attorney to want that
8 information --

9 MR. LINDSAY: Yes.

10 THE WITNESS: -- prior to selecting a
11 jury, the answer is yes. And we sought it. And
12 we then appealed the issue. And the Pennsylvania
13 Supreme Court then wouldn't even give us a
14 hearing. Where were we going to go with the
15 collateral appeal? Federal Court?

16 BY MR. LINDSAY:

17 Q. Well, just -- the appeal that you're
18 talking about was a post-trial appeal; correct?

19 A. No. I'm talking about when we filed
20 motions for continuance and we filed appeals with
21 the Superior Court and the Supreme Court. And in
22 both instances, they denied our request for
23 continuance without a hearing.

24 THE COURT: There was an appeal filed
25 before jury selection.

1 THE WITNESS: Yes. Thank you, Your
2 Honor.

3 THE COURT: There were several appeals.
4 Because then we have the Rominger issue and --

5 THE WITNESS: Right up to Pennsylvania
6 -- right up to the -- I know she can't take us
7 both talking. Right up to the Pennsylvania
8 Supreme Court we went after the Superior Court
9 pretrial.

10 THE COURT: And then post trial you
11 raised it again?

12 THE WITNESS: And in post trial, yes,
13 Judge.

14 THE COURT: All right.

15 BY MR. LINDSAY:

16 Q. Mr. Amendola, did you consider what is
17 commonly referred to as a cooling-off period
18 before the trial took place because of the
19 intense animosity to Mr. Sandusky? Prior to
20 trial.

21 A. Mr. Lindsay, as I look back five and a
22 half years later, I still don't know if five and
23 a half years is enough time to cool off. I will
24 say we asked for continuances. We had all kinds
25 of legitimate reasons for continuances and we

1 didn't get the continuances. So I went into
2 battle, prepared well for what we had and what we
3 were able to do. But unfortunately, there were a
4 lot of things that we couldn't do.

5 Q. Are you familiar with the concept of a
6 cooling-off period in a case like this?

7 A. I mean, I understand the issue.

8 Q. Did you ask for a continuance based on
9 the need for a cooling-off period?

10 A. I did not. And the reason I didn't,
11 quite frankly, was because if we weren't getting
12 continuances on all the other legitimate reasons
13 that we had, we certainly weren't going to get it
14 on that basis. Because you know what the Judge
15 would have said? I'll tell you exactly what the
16 Judge would have said: Mr. Amendola, when we go
17 through jury selection, we're going to ask these
18 jurors if they are prejudiced or in any way feel
19 they can't be impartial, decide this case on the
20 facts I will give them. And you know what?
21 Every time that has happened in my experience,
22 the people said sure, we can decide -- we can
23 decide this case fairly. And a few who say they
24 can't are excused. And you select your jury.
25 That's what happens. You know that. I know

1 that. I'm sure the Judge knows that.

2 Q. You're suggesting what the Court would
3 have done and what these people would have said.
4 But the point of it is, you didn't ask for a
5 cooling-off period?

6 A. Based on all the other continuance
7 requests which were denied, we saw no reason in
8 it.

9 Q. Based on the other continuance requests
10 that were denied, you assumed that such a request
11 would have been denied; correct?

12 A. I -- what I anticipated was the Judge
13 was going to say, we'll proceed with jury
14 selection and see how the potential jurors
15 respond to questioning.

16 Q. You assumed that?

17 A. And that's what we did. And we asked
18 them questions during jury selection.

19 Q. Let's talk about those questions. The
20 prior -- well, I guess the first big news blast
21 in the Sandusky case was the publication of a
22 grand jury presentment; correct?

23 A. Correct.

24 Q. And as a matter of fact, I think part of
25 it was published before it was actually published

1 by the attorney general's office or the grand
2 jury itself?

3 MS. PETERSON: Objection. Leading.

4 MR. LINDSAY: Your Honor, this is --

5 THE COURT: I'll overrule it. I
6 understand.

7 THE WITNESS: My understanding was that
8 the district court, out of which the presentment
9 the charges were filed, inadvertently put them on
10 its computer system prematurely on November 4th.
11 And that -- during that brief period, apparently
12 they were taken down although I never saw it,
13 apparently one of the news people got a hold of
14 it and so the word got out. I believe that was a
15 Friday if I'm not mistaken. And then Jerry was
16 arrested.

17 The AG's office, it was kind of a funny
18 situation, they had refused to let us know when
19 they were going to file. Because I had said we
20 will present ourselves, you don't have to come
21 and lock Jerry up. But they wanted a big splash.
22 No offense, Ms. Peterson, but they wanted a big
23 splash, so they wouldn't tell us. Well, when
24 they decided to go get Jerry, guess what? Jerry
25 wasn't around, he had gone to Cleveland to see

1 his son and daughter-in-law and grandchild with
2 his wife. So they called me hurriedly on Friday
3 night saying can you bring Jerry back? And I
4 said, well, gee, I thought you guys were just
5 going to go out and surprise him. And they said,
6 well, we tried and we can't find him. So yes,
7 that all happened on November 4th, which was a
8 Friday I believe, and November 5th, which is when
9 we turned him in.

10 BY MR. LINDSAY:

11 Q. Mr. Amendola, I guess my question is,
12 with regard to this grand jury presentment, it
13 was, I guess, the foundation that all the
14 subsequent news stories were based? Can we agree
15 on that?

16 A. Well, it certainly listed the charges,
17 yes, the allegations.

18 Q. It more than listed the charges, it was
19 a summary --

20 A. A summary.

21 Q. -- of the evidence?

22 A. Well, much like an affidavit of probable
23 cause, only extended of course.

24 Q. It was quite a lengthy document?

25 A. It was.

1 Q. Can you explain that when you did the
2 voir dire of the potential jurors, you never
3 asked them whether they read the presentment?
4 Why would you not ask them?

5 A. I can't give you an answer to that. I
6 mean, it just -- because I think we would have
7 covered it in other questions. And the key
8 question was, have you read anything or heard
9 anything about this case and if you have, what
10 have you read or heard and would that make it
11 impossible for you to be a fair juror?

12 Q. Well, the question is, if you review
13 that voir dire, you didn't ask them specifically
14 what they heard and read, did you?

15 A. I don't have a copy of the voir dire
16 colloquy. But if you say that's the case, I'm
17 sure it is. I take your word for it.

18 Q. Well, certainly that would be important,
19 would it not, when you evaluate a potential juror
20 to determine what they had read or not read?

21 A. In evaluating jurors, Mr. Lindsay, my
22 experience is to determine who might be
23 prejudiced, even if they don't admit it, to
24 determine who's going to be fair and you elicit
25 those types of questions. Here in Centre County,

1 for example, our jury voir dire takes all about
2 five or ten minutes at most on both sides because
3 our judges limit what attorneys can ask.

4 Q. Was that the case in this particular
5 case, you were limited to five or ten --

6 A. No. We had individual voir dire in this
7 case.

8 MR. LINDSAY: May I have a moment to
9 consult with my other counsel?

10 THE COURT: Sure.

11 BY MR. LINDSAY:

12 Q. Mr. Amendola, going back to this issue
13 of you moving to withdraw from the case.

14 A. I'm sorry?

15 Q. I'm sorry, I do that, I let my voice
16 tail off. I want to revisit the issue of your
17 motion to withdraw from the case. You moved to
18 withdraw, and I believe either you or Mr.
19 Rominger did express, did it not, your ethical
20 concerns?

21 A. I believe Mr. Rominger did on our
22 behalf, both behalves.

23 Q. And that was, is it pursuant to, I think
24 it's the first rule of professional
25 responsibility, is that you can't -- you should

1 withdraw from any matter in the law where you're
2 not effective?

3 A. And we attempted to.

4 Q. I understand. Now when that occurs,
5 when that denial occurred, it didn't -- the Judge
6 denied your motion to withdraw?

7 A. Yes. It was, I believe -- and again, I
8 wasn't -- I was not aware until late last night
9 that this was going to involve anything more than
10 the Bob Costas issue. But my recollection, and
11 it's only a recollection because I can't swear to
12 it, is it was either before jury selection, which
13 is when I think it was but I'm not sure, or right
14 before trial started. And the reason for that,
15 the reason for that is because we didn't get an
16 answer from the Pennsylvania Supreme Court
17 denying our request for them to consider our
18 motion for continuance until literally a few days
19 before the trial started. When I say the trial,
20 with jury selection I believe. If I'm not
21 mistaken, I think that the Supreme Court's
22 decision saying we're not even going to give you
23 a hearing, you know, we're not even going to
24 consider this, was around May 30th, May 31st, I
25 could be wrong, but that's my recollection from

1 five and a half years ago. And jury selection
2 was scheduled to start on Tuesday, June 5th. So
3 literally, we had the weekend and a day after
4 that. So that's when we filed the motion to
5 withdraw.

6 Q. Mr. Amendola, the appeal that you're
7 talking about, the motion to continue you
8 appealed to the Supreme Court, that's what is
9 referred to as an interlocutory appeal; correct?

10 A. Well, it's pretrial, so in a sense that
11 we called it the king's bench appeal to the
12 Supreme Court. But yes, I mean, it's
13 interlocutory.

14 Q. Now with regard to the Court's denial of
15 your motion to withdraw, that could be the
16 subject of what we call a collateral appeal; is
17 that not correct?

18 A. Well, I don't do appeal work, generally
19 some, but relatively little, but that's my
20 understanding.

21 Q. And a collateral appeal, unlike the
22 king's bench or interlocutory appeal, is an
23 appeal that you can take as a matter of right; is
24 that not correct?

25 A. I'll take your word for that because

1 I've never filed one.

2 Q. But had you filed that appeal, you
3 certainly would have delayed the trial; correct?

4 MS. PETERSON: Objection.
5 Argumentative.

6 MR. LINDSAY: Well, I'm not arguing.

7 THE COURT: Overruled.

8 THE WITNESS: I don't know. I mean, if
9 that's what you're saying is the case. But I
10 mean, I was not aware that that could delay the
11 trial.

12 BY MR. LINDSAY:

13 Q. Well, there's a -- are you aware of
14 what's called the Collateral Order Doctrine? Do
15 you know about that?

16 A. Well, I mean, I've heard about it. But
17 again, I've never used it, but I've heard about
18 it.

19 Q. And your motion to withdraw because of
20 your ethical concerns would have been subject to
21 the Collateral Order Doctrine? If you know.

22 A. I'm sorry, what was that?

23 Q. Your motion to withdraw because of your
24 ethical concerns would have -- and the denial of
25 that would have been subject to the Collateral

1 Order Doctrine?

2 MS. PETERSON: Objection, Your Honor.
3 Calls for a legal conclusion. And argumentative.

4 MR. LINDSAY: If he knows.

5 THE WITNESS: Well, I don't know that.

6 THE COURT: Overruled. I knew what you
7 were going to answer since you already said
8 you --

9 THE WITNESS: I don't know that that's
10 the case.

11 BY MR. LINDSAY:

12 Q. Did you have adequate time to review
13 discovery in this case, sir?

14 A. No. And we made that clear.

15 Q. I'd like to refer you to the James
16 Calhoun matter. You know about James Calhoun?

17 A. The -- you're talking about the janitor?

18 Q. Well, one of the janitors.

19 A. Yeah. The janitor, yes. The janitor.

20 Q. There was a janitor by the name of Ron
21 Petrosky who testified that he heard Mr. Calhoun
22 say something; correct?

23 A. That's correct.

24 Q. And Mr. Calhoun did not testify at the
25 trial; is that correct?

1 A. That's correct.

2 Q. And he -- Mr. Calhoun did not testify at
3 the trial because there was an allegation made
4 that he was suffering from dementia; is that not
5 correct?

6 A. There actually was a letter from the
7 doctor who was treating him saying he was
8 suffering from dementia and was incompetent to do
9 anything at that point.

10 Q. All right.

11 A. The Commonwealth gave us a copy of that
12 letter.

13 Q. All right.

14 A. And so, we thought it would be
15 ridiculous to subpoena a guy who a doctor was
16 telling us up front was aging and was suffering
17 from dementia and couldn't remember his own name.

18 Q. Can we agree that the testimony of Mr.
19 Petrosky concerning what Mr. Calhoun had said
20 several years before had great significance in
21 the trial?

22 A. Well, I don't know that it had great
23 significance. It certainly had significance in
24 regard to Number 8's set of charges. But
25 regarding the other nine sets of charge, I don't

1 think it had much significance at all. There was
2 much more direct evidence in most of the other
3 cases.

4 Q. Well, was -- it was highlighted by the
5 prosecutor along with the testimony relevant to
6 Victim Number 2 in the summary or summation of
7 the prosecutor. You do recall that, don't you?

8 A. And he summarized, I think, almost all
9 of the cases in his summation.

10 Q. But the significance was that this was
11 someone other than one of the young men who
12 alleged that they were --

13 A. Yes. And we had filed pretrial motions
14 to exclude that and Judge Cleland ruled against
15 us. But obviously, I think he felt a little
16 shaky about it because he made sure at sentencing
17 to point out in his sentencing order that the
18 sentence he imposed for Number 8 was to run
19 concurrent as opposed to consecutive to the other
20 sentences imposed. So even he was aware that
21 that was on shaky ground, but we raised those
22 issues.

23 MR. LINDSAY: May I have just a moment,
24 Your Honor?

25 THE COURT: Sure.

1 BY MR. LINDSAY:

2 Q. As it turns out, Mr. Amendola, there was
3 a tape recording of an interview with Mr. Calhoun
4 in May of 2011 concerning the subject matter of
5 Mr. Petrosky's testimony; is that not correct?

6 A. Yes, we were aware of it. We had a
7 transcript of it and I believe we even played it.

8 Q. All right. You're suggesting you played
9 that tape for the jury?

10 A. I'm -- don't quote me on that. I assume
11 --

12 Q. We are quoting you on that.

13 A. No. But I'm saying I want to back up
14 and clarify. And what I want to clarify is, I
15 can't say definitively if we played the tape, we
16 saw the transcript, and we were aware that
17 apparently at that interview that he was saying
18 that the person he saw wasn't Jerry Sandusky.
19 But this was made by a man whose doctor was
20 saying that he was incompetent and he would slide
21 in and out of consciousness and ability to know
22 which end was up at any given time. Whereas, the
23 evidence presented by the other janitor the night
24 that this incident allegedly occurred was very
25 definitive. But we were aware of that interview,

1 yes.

2 Q. Well, let me just refer you to a part of
3 that transcript and see if you recall. First of
4 all, just so we're clear, you said that this man
5 was suffering from dementia. The interview on
6 May, I believe it's 11th -- May 15th, May 15,
7 2011, was over a year before the trial; correct?

8 A. Well, if that's what it is. Again, I
9 was not prepared. I would have reviewed all this
10 had I known that this was going to be general
11 questioning. I only reviewed the one part. If
12 you say so, I certainly agree with you.

13 Q. Well, would it help you if you looked at
14 a transcript?

15 A. Well, I don't need to look at it. If
16 you tell me what's in there, that's fine.

17 Q. All right. Well, can we agree that if
18 the interview of Mr. Calhoun, which was tape
19 recorded, was on May 15, 2011, it was over a year
20 before the trial that the statement was taken;
21 correct?

22 A. It would have been, yes.

23 Q. And do you recall, and I'm referring to
24 page 15 for the record of this interview --
25 actually, I'll start with page 14, do you recall,

1 and I'll just do the question and answer here and
2 you tell me if you recall whether you remember
3 seeing this as part of the transcript of the
4 interview of May 15, 2011.

5 The police officer whose name is
6 Trooper, I guess it's Yakisich, of the
7 Pennsylvania State Police asked him, "Do you
8 remember the kid that you saw in the shower room?
9 He was with a man; is that right?" Mr. Calhoun
10 answers, "Yes." Officer Yakisich says, "Would
11 you say -- how old do you think that kid was,
12 that boy? Was he --" Mr. Calhoun says, "Oh,
13 God, the kid must have been, I mean, more than
14 just a kid." Police officer says, "Was he 10,
15 12-years-old?" Mr. Calhoun says, "Oh, he was
16 over 10. He was over 10-years-old." Police
17 officer says, "Okay." And Mr. Calhoun says, "Way
18 over 10 and I observed that and I never in my
19 life ever a just --" Police officer, "Was the
20 man older?" Mr. Calhoun, "Huh?" The police
21 officer, "Was that man that was doing this
22 older?" Mr. Calhoun, "Oh, much older." Police
23 officer, "Much older. Had you seen that man
24 before that you saw doing that?" Mr. Calhoun,
25 "Once or twice." Police officer, "You knew him

1 from being in the locker room. Was it the
2 coach's locker room?" Calhoun, "Yes." Police
3 officer, "Okay. All right. I appreciate that.
4 Mr. Calhoun, do you remember Coach Sandusky?"
5 Mr. Calhoun says, "Sandusky? Yeah." Police
6 officer, "Do you remember if that was Coach
7 Sandusky you saw?" Mr. Calhoun, "No, I don't
8 believe it was." Police officer, "You don't?"
9 Mr. Calhoun, "I don't believe it was. I don't
10 think Sandusky was the person. It wasn't him.
11 There's no way. Sandusky never did anything at
12 all that I can see that he was, but, uh, it was
13 --" Police officer, "But you remember seeing
14 this guy and this boy, huh?" Mr. Calhoun,
15 "Yeah."

16 Do you recall seeing that before the
17 trial?

18 A. Yes.

19 Q. And you didn't think that the jury would
20 have any significance of the -- well, first of
21 all I guess I would ask you, did that not
22 directly contradict the statement that supposedly
23 was made to Mr. Petrosky?

24 A. It did except it was based, in that
25 interview, on a person who was suffering from

1 dementia and was incapable of testifying.

2 Q. Well, you're saying he wasn't capable of
3 testifying in June or July of 2012. And you're
4 ruling out a statement that he made that what he
5 saw had no pertinence for the jury?

6 A. And again, had I known that these issues
7 were going to be raised, I would have tried to
8 review these issues. But of course, you have my
9 files. I believe, and I could be mistaken,
10 because I'm doing this from five and a half years
11 ago in terms of memory. But my recollection is
12 is that the incompetency had existed for a
13 significant period of time and that he was
14 incompetent even during that period. I could be
15 wrong.

16 Q. As Mr. Sandusky's trial lawyer, did you
17 not think, regardless of whatever they were
18 telling you, a doctor was telling you in a letter
19 about his dementia, that this statement should be
20 used to weigh the statement allegedly made by Mr.
21 Petrosky? Don't you think it was significant
22 that this guy is adamantly denying that it was
23 Sandusky?

24 A. I'm sure there was some reason why it
25 was not brought out. At this juncture, five and

1 a half years later, without having an opportunity
2 to review my notes, I can't give you an
3 alternative reason other than to say we
4 determined and we believed, based upon the
5 doctor's report, that this gentleman was
6 basically incompetent. And based upon that, the
7 Commonwealth was going to get the hearsay
8 evidence in from the other janitor. Now, we
9 didn't believe it was a strong case.

10 Q. What?

11 A. We didn't believe that was a strong case
12 with the other janitor's testimony among the ten
13 different separate sets of charges. And in fact
14 we had anticipated right up until trial that
15 Judge Cleland might toss that set of charges.

16 MR. LINDSAY: All right. Excuse me a
17 minute, Your Honor.

18 THE COURT: Sure.

19 BY MR. LINDSAY:

20 Q. Mr. Amendola, I take it that you put
21 some stock into this letter from this doctor you
22 receive about Mr. Calhoun's dementia; is that
23 correct?

24 A. I recall that being the case. Although
25 again, it's purely five and a half years later.

1 Q. Do you recall that that evaluation by
2 the physician was made substantially after the
3 May 15, 2011 interview?

4 MS. PETERSON: Objection. It's assuming
5 facts not in evidence.

6 MR. LINDSAY: I'm asking.

7 THE WITNESS: Well, the -- and I could
8 answer, Judge.

9 THE COURT: Okay.

10 THE WITNESS: The answer is, I'd have no
11 idea because I don't have a copy of the report.
12 At this point.

13 BY MR. LINDSAY:

14 Q. You're certain you did review this
15 transcript and the tape before the trial? You're
16 certain of that, I take it?

17 A. Pretty sure. When I say pretty sure,
18 I'm thinking back five and a half years. It
19 would depend on when we got this material. We
20 were getting material right up until trial,
21 discovery material, and we were trying to sift
22 through that. So can I say today that I
23 definitely got that before trial and reviewed it?
24 I can't tell you that today. I would have to go
25 back in all the boxes of information which I gave

1 to you, dig out Number 8's file, and see when
2 this information was given to us.

3 Q. You don't recall?

4 A. I don't recall.

5 Q. You don't recall whether you reviewed
6 this tape before the trial or not?

7 A. I don't recall at this point, no.

8 THE COURT: I'm going to ask a question
9 on that. Well, how do you know what you just
10 testified to before that? You talked about his
11 state and the doctor's report, you surely must
12 have reviewed it some time for your testimony.

13 THE WITNESS: Well, certainly the
14 doctor's report, yes, I did. The doctor's report
15 we had. But he's asking me about a statement
16 that a state trooper took from the gentleman, and
17 that's what I'm saying, Your Honor -- if you can
18 picture, people who saw my office, it had 30 some
19 boxes of materials, much of which was coming in
20 right up until trial. Right up until trial we
21 were getting boxes of material. So today, five
22 and a half years later, Your Honor, I can't tell
23 you when I got that interview note. And even
24 though I think we reviewed it before, you know,
25 five and a half years later, Mr. Lindsay, things

1 kind of get meshed together. Whether I reviewed
2 that after the trial, I don't know. But
3 certainly had I, and thought it was an issue, I
4 think certainly we would have raised it at some
5 point.

6 BY MR. LINDSAY:

7 Q. Well, I take it from your testimony
8 there was a substantial amount of discovery that
9 you received prior to the trial that you never
10 really had an opportunity to review?

11 A. It was coming in boxes. You may recall
12 that we filed subpoenas duces tecum with about 40
13 some -- I think it might have been 43 different
14 agencies. Every one of the darn agencies fought
15 us and filed motions to quash. The Judge, Judge
16 Cleland, as I recall, had a hearing, I believe --
17 again, this is purely five and a half years later
18 -- but I believe that hearing was May 9, 2011.
19 And at that hearing, Judge Cleland, after hearing
20 the motions to quash, pretty much not all of the
21 things that we asked for but said you're going to
22 get a lot of it, and gave all of these various
23 agencies two weeks to get it to us. So we were
24 getting boxes of stuff in late May while we were
25 trying to get ready for a trial two weeks later

1 and filing ancillary motions for continuances
2 with the Superior Court and later the Supreme
3 Court. So yes, we had all kinds of stuff coming
4 in that we literally didn't have time to review.

5 Q. And today as you sit there, is it
6 possible, even likely, this recording of the
7 Calhoun interview or the transcript of it was in
8 one of those boxes that you did not have an
9 opportunity to review before the trial?

10 A. I can't tell you one way or another in
11 fairness. I don't know.

12 Q. Okay.

13 A. Is it possible? It's possible. But I
14 don't know.

15 Q. Mr. Amendola, from your testimony, I
16 take it that there was boxes of discovery that
17 you received at the last minute that you did not
18 have the opportunity to review before the trial.
19 Please let me finish the questions because she
20 can't take us both down. Is that true?

21 A. I wouldn't say -- I wouldn't say not
22 reviewed at all. I would say very cursorily
23 reviewed, looking for major issues. But again,
24 literally, stuff was coming in, materials were
25 coming in within days of the trial. And we were

1 under the gun to get ready for trial, to get
2 ready with what we had versus looking carefully
3 like we were able to do four months earlier at
4 the information as it came in.

5 Q. Mr. Amendola, do you recall there was a
6 post-conviction -- a post-trial hearing before
7 Judge Cleland after the whole case was over, so
8 to speak?

9 A. Yes.

10 Q. And do you recall you testified at that
11 hearing?

12 A. Oh, yes.

13 Q. And I think, and I'm paraphrasing here,
14 if I get it wrong, you tell me. You were asked a
15 question as to whether or not you would have done
16 anything different based upon this discovery that
17 you did not get. Do you recall that line of
18 questioning?

19 A. I do. And I said no. But my no was
20 based upon the question as I understood it to be
21 Commonwealth materials that they provided to us.
22 Not all the other materials and the other sources
23 from which we had subpoenaed other materials so
24 that we could properly prepare our case. I was
25 only referring at that time to Commonwealth

1 materials.

2 Q. All right. Well, let me ask you
3 something. You've testified that there were
4 boxes of material that you were getting at the
5 last minute; correct, that you only had a
6 cursory opportunity to review?

7 A. Well, and again, my memory might be a
8 little bit flawed at this point, five and a half
9 years later, but I believe in one of our motions
10 I even set forth we had received just, I think in
11 May alone, shortly before the trial commenced in
12 early June, we had received -- and again, I could
13 be wrong -- but I believe we received over 8,000
14 pages of discovery materials. And some of the
15 materials were small print. Some I believe were
16 on both sides of the page. And that's what we
17 were confronted with.

18 Q. Mr. Amendola, subsequent to the trial,
19 before that hearing on your post-sentence
20 motions, did you review any of those boxes after
21 the trial?

22 A. I did. But not the same way I reviewed
23 them before. I mean, I went through them again
24 to see if anything -- see if anything jumped out.

25 Q. When you say not the same with the way

1 you did before, what do you mean?

2 A. Well, not line by line and taking notes
3 to follow up on further discovery, for example,
4 which is what would happen. We would get
5 materials, that would lead to questions about
6 other materials. We would file, as you recall, I
7 think we filed something like 60 some pretrial
8 discovery requests, maybe more, maybe less. But
9 we filed a number of pretrial discovery requests.
10 Many of those were based upon the discovery we
11 were receiving leading to other questions.

12 Q. Just so we're clear, once again, I hate
13 to keep asking this question, you're an
14 experienced criminal defense attorney; correct?

15 A. That's what you say.

16 Q. Well, you are.

17 A. I'm not going to disagree with you.

18 Q. I said you were experienced.

19 A. I'm flattered. Yes.

20 Q. And you know that what we do as criminal
21 defense attorneys is we pour over discovery
22 documents looking for any nugget we can find that
23 may be useful in cross-examination; is that not
24 correct?

25 A. Well, the key is, to use discovery

1 materials to prepare your case and obviously, to
2 prepare for cross-examination.

3 Q. All right. And that requires you to, I
4 think, maybe I'm misstating something, but as you
5 say, it's line by line you go over this?

6 A. Well, that's generally how I review it.

7 Q. All right. Now, I take it from what
8 you're saying that you were not able to indulge
9 in that practice prior to the trial in this case?

10 MS. PETERSON: Objection.

11 THE WITNESS: I was not. And that was
12 part of the problem.

13 BY MR. LINDSAY:

14 Q. And I take it that after the trial, you
15 did not go line by line through the discovery?

16 A. I did not. I certainly didn't take the
17 same approach I would have taken had we had time
18 to properly prepare the case before trial.

19 Q. It's a different exercise?

20 A. Exactly.

21 Q. Matt Sandusky became an issue in the
22 trial; is that correct?

23 A. A major issue during the second week of
24 the trial.

25 Q. All right. And Matt Sandusky, if I can

1 summarize to get us to where we need to get, was
2 a witness that you perceived was going to be a
3 favorable witness for Mr. Sandusky; correct?

4 A. He was scheduled to be our witness,
5 that's correct.

6 Q. And at one point in the trial, he
7 flipped and decided he was going to be a
8 Commonwealth witness; correct?

9 A. That's correct.

10 Q. Now, Matt Sandusky had testified in
11 front of the grand jury; is that correct?

12 A. That's correct.

13 Q. Mr. Amendola, had you reviewed the grand
14 jury testimony of Matt Sandusky?

15 A. I believe I did. I can't swear to that
16 because he was never called as a witness. But I
17 knew the substance of it. I certainly knew that
18 he had defended his father at that proceeding.

19 Q. Well, do you recall stating to Judge
20 Feudale that you had never reviewed Matt
21 Sandusky's grand jury testimony?

22 A. I'm sorry, what was that?

23 Q. Do you recall telling Judge Feudale in
24 the course of this matter that you had never
25 reviewed Matt Sandusky's grand jury testimony?

1 A. And that could be. If I said that to
2 Judge Feudale around the time of the trial or
3 shortly afterwards or before, then I certainly
4 would say that that's more accurate than my
5 recollection five and a half years later.

6 Q. We talked about Mr. Calhoun and the
7 letter from the doctor, prior statements. Sir,
8 did you ever take it upon yourself to try to
9 interview Mr. Calhoun?

10 A. Mr.?

11 Q. Calhoun. James Calhoun.

12 A. I believe our investigator did. But
13 again, I can't swear to that without looking at
14 my files, which you have. So if there's an
15 interview note in there from somebody, then he
16 was interviewed.

17 Q. You have no recollection whether he was
18 interviewed or not?

19 A. Not today. I can't tell you today one
20 way or the other.

21 Q. Did you interview or have interviewed
22 Ronald Petrosky?

23 A. Again, as of this date, I can't say one
24 way or the other. I'm going to assume that our
25 investigators interviewed these people, but I

1 can't tell you one way or the other if they did
2 or didn't today.

3 Q. Let me ask you this, you knew before the
4 trial who all of these accusers were; correct?

5 A. Yes. And we had their reports from the
6 attorney general, their police report statements.

7 Q. Did you make any effort to interview any
8 of these accusers before the trial?

9 A. I can't tell you if I did or if an
10 investigator did. I can't tell you that today, I
11 don't know. I don't recall.

12 Q. Well, Mr. Amendola, surely you would
13 remember whether or not you interviewed any of
14 these accusers that were the whole case?

15 A. I can't tell you today one way or the
16 other, Mr. Lindsay. I can tell you that we
17 certainly had copies of their statements, we
18 certainly had copies of the reports.

19 Q. Well, were you aware with Mr. Petrosky
20 that he changed the location of the shower
21 episode for the grand jury testimony to the trial
22 testimony, were you aware of that prior to trial?

23 A. I would have to say yes, but that's only
24 a guess because again, I haven't reviewed this
25 material in over five years. So to answer your

1 question, if that material was in the materials I
2 gave to you, I'm sure I reviewed it.

3 Q. Well, let me ask you this, do you recall
4 that prior to Mr. Petrosky testifying that Mr.
5 McGettigan made an offer of proof concerning his
6 testimony?

7 A. I don't recall that. But if it's in the
8 trial transcript, I'm sure he did.

9 Q. Well, isn't it true -- well, wasn't that
10 the first time that you heard about this change
11 in the location of the shower incident in his
12 offer of proof?

13 MS. PETERSON: Objection. This is
14 leading.

15 THE WITNESS: I can't answer that
16 definitively today because you're asking me to
17 remember something that occurred five years ago.
18 And I wasn't prepared, I had no idea that we were
19 going to get into general subjects today. I
20 reviewed the material I thought we were going to
21 cover and so this was kind of a surprise.

22 THE COURT: And I'll overrule the
23 objection so the record's clear.

24 MR. LINDSAY: Okay.

25 BY MR. LINDSAY:

1 Q. Well, sir, here's the question. Did you
2 recall Mr. McGettigan telling you, as a
3 prosecutor, prior to the trial -- prior to him
4 testifying, Joe, I think you should know this
5 guy's changed his story. Did Mr. McGettigan tell
6 you that?

7 A. I don't have any recollection of that
8 one way or the other. I can't say he did or he
9 didn't, Mr. Lindsay.

10 MR. LINDSAY: Could we approach sidebar
11 for just a moment?

12 THE COURT: Sure. Everyone, let's take
13 a 15-minute break and we'll reconvene at eleven
14 o'clock.

15 MR. LINDSAY: Thank you.

16 (Whereupon, a recess was taken.)

17 THE COURT: Mr. Lindsay, still
18 questioning.

19 BY MR. LINDSAY:

20 Q. Mr. Amendola, can we agree that at the
21 time of trial, many of the stories told by these
22 accusers was radically different from what they
23 had originally told the police?

24 A. Yes.

25 Q. And can we agree that it was -- it

1 changed gradually, many of these, as time went
2 on?

3 A. From nothing happened to all of a
4 sudden, everything in the world happened, yes.

5 Q. All right. And can we agree, you recall
6 from the trial, that in many of these cases, they
7 indicated that the first person they told about
8 changing their story was the prosecutor, Mr.
9 McGettigan?

10 A. I have some recollection of that.
11 Whatever's in the transcript, Mr. Lindsay, again,
12 I'll take your word for it. The transcript
13 speaks for itself. If that's what they said,
14 that's what they said.

15 Q. Well, let me --

16 MR. LINDSAY: Do you have access to the
17 trial transcript, Jennifer?

18 MS. PETERSON: Yes.

19 MR. LINDSAY: This is page 119 of Jason
20 Simcisko. I can -- maybe I can help you. Would
21 you like a copy?

22 THE COURT: No.

23 THE WITNESS: If it's in the transcript,
24 I'll take your word for it, Mr. Lindsay.

25 BY MR. LINDSAY:

1 Q. What I'm referring to in the transcript,
2 and let me just read this to you and if this
3 sounds familiar. Page 119, Jason Simcisko's
4 testimony:

5 "Question. Now today you indicated in
6 your testimony on direct examination by Mr.
7 McGettigan that Mr. Sandusky, at times, kissed
8 your shoulder?"

9 "Answer. Yes."

10 "Question. Do you recall prior to today
11 ever telling anybody that information before?"

12 "Answer. No."

13 "Question. That was new today?"

14 "Answer. It was just today -- well, I
15 mean -- I told -- okay, I told my lawyers and I
16 told Joe but no one else."

17 "Question. When did you tell your
18 lawyers and --"

19 "Answer. Friends and family."

20 "Question. Joe, meaning Mr. McGettigan
21 that --"

22 "Answer. What's that?"

23 "Question. How long ago did you tell
24 Mr. McGettigan and your lawyers that?"

25 "Answer. Like, the first time we met."

1 "Question. And when was that?"

2 "Answer. Back in January."

3 "Question. I'm sorry, when?"

4 "Answer. Back in January I think."

5 "Question. Of this year?"

6 "Answer. February, maybe."

7 "Question. Of this year?"

8 "Answer. Yes."

9 "Question. And today you indicated --
10 and again, I had some difficulty hearing you but
11 something about washing his butt in the shower?"

12 "Answer. Washing my butt."

13 "Question. Mr. Sandusky washed your
14 butt in the shower?"

15 "Answer. Yes."

16 "Question. Prior to today, did you tell
17 anybody that information?"

18 "Answer. No."

19 "Question. No?"

20 "Answer. Well -- um, yes, Joe. I told
21 Joe. I told my attorneys but I had not told
22 family or friends. I told -- everything that
23 I've said today I told him before."

24 "Question. Back in January?"

25 "Answer. Yes."

1 "Question. But before January, had you
2 told anybody?"

3 "Answer. No, I had not told anybody."

4 "Question. And in January, you had
5 these attorneys?"

6 "Well, I mean, I told them at grand
7 jury."

8 "You told them at grand jury?"

9 So Mr. Amendola, I believe this was your
10 questioning. Did you learn in that questioning
11 for the first time that this guy had made these
12 new allegations back in January when he told them
13 to Mr. McGettigan?

14 A. Well, again, without looking at my notes
15 I can't say definitively. But based upon that
16 transcript, it certainly appears that that was
17 the case. And that's why I cross-examined him
18 the way I cross-examined him.

19 Q. Did it occur to you, sir, that Mr.
20 McGettigan had withheld from you impeachment
21 evidence that you could have used to
22 cross-examine Mr. Simcisko?

23 A. Well, I didn't certainly raise it. So
24 to be honest with you, with the craziness of the
25 trial, I'm sure it wasn't an issue in my mind at

1 that point. I was concentrating on
2 cross-examining these people.

3 Q. You're familiar with the case of Brady V
4 Maryland?

5 A. Yes.

6 Q. And that's the requirement of, I guess,
7 Federal Constitution of Law that favorable
8 evidence must be disclosed prior to trial to the
9 defendant?

10 A. Yes.

11 Q. And this certainly was impeachment
12 evidence, was it not?

13 A. The new information, yes.

14 Q. And can we agree you have no
15 recollection of Mr. McGettigan ever providing you
16 a hint that this witness had radically changed
17 his story?

18 A. Not to my recollection.

19 Q. But you didn't move for a mistrial or
20 make any motions pursuant to Brady?

21 A. I did not.

22 Q. Is there any reason you can think of
23 that you would not have raised the Brady issue?

24 A. The most likely reason is because we
25 were flying by the seat of our pants trying to

1 get ready for the trial and the next witness.
2 And we were -- I was already concentrating on who
3 I thought was coming up next. But I did not
4 raise it, you're absolutely right.

5 Q. Do you recall asking a witness by the
6 name of Dustin Struble, Accuser Number 7, about
7 the radical changes in his testimony between his
8 grand jury testimony and trial testimony?

9 A. I believe I asked all the witnesses the
10 differences in their statements before the grand
11 jury and statements to police. And in many
12 cases, there were more than one or two.

13 MR. LINDSAY: Here's this part if it
14 will help you.

15 MS. PETERSON: Thank you.

16 BY MR. LINDSAY:

17 Q. Once again -- is it all right if I read
18 it to you, the part of the transcript?

19 A. You can. But again, the transcript
20 speaks for itself. And that's up to you if you
21 want to read it.

22 Q. I do. I do want to read it.

23 A. I certainly accept it.

24 Q. Okay. All right. And I'm referring to
25 page 139. And this is your questioning of Mr.

1 Struble:

2 "Question. You said a lot of things
3 today, Mr. Struble, and I just caught a few of
4 them. But you mentioned in your testimony, I
5 believe, and correct me if I'm wrong, that Mr.
6 Sandusky would give you bear hugs and wash your
7 hair in the shower?"

8 "Answer. Yes."

9 "Question. Prior to today, did you tell
10 any of the investigators, any of the
11 representatives from the attorney general that
12 Mr. Sandusky had done that?"

13 "Answer. My lawyers, yes."

14 "Question. No, not your lawyers. I'm
15 saying did you tell members of the attorney
16 general's office or any of the investigators
17 prior to today that in the shower, Mr. Sandusky
18 would give you bear hugs and wash your hair?"

19 "Answer. Yes. One person."

20 "Question. Do you recall who you told?"

21 "Answer. Joe McGettigan."

22 "Question. And when was that?"

23 "Answer. I'm not sure of the exact
24 date. Probably just a few months ago."

25 "Question. Was that after you hired

1 this attorney?"

2 "Answer. Yes."

3 "Question. You mentioned today, I
4 believe, that Mr. Sandusky would dry you off
5 after you got a shower?"

6 "Answer. Yes."

7 "Question. Did you tell any of the
8 investigators or the attorney general staff that
9 Mr. Sandusky would dry you off after you got a
10 shower prior to today?"

11 "I'm not sure. I think I might have but
12 I don't know for sure."

13 "Question. You mentioned today that Mr.
14 Sandusky, when he was in the vehicle with you,
15 would put his hand down your pants and touch your
16 penis?"

17 "Answer. Yes."

18 "Question. Prior to today, did you ever
19 tell members of the attorney general's office or
20 any of the investigators in this case that Mr.
21 Sandusky, when he drove around with you, would
22 put his hand down your pants and touch your
23 penis?"

24 "Answer. Yes. One."

25 "Question. Who did you tell?"

1 "Answer. Joe McGettigan."

2 "Question. When did you tell him that?"

3 "Answer. Whenever I had that meeting
4 with him, which was --"

5 "Question. A couple of months ago?"

6 "Answer. Yeah."

7 "Question. After you retained this
8 private attorney?"

9 "Answer. Yes."

10 "Question. With whom you signed an
11 agreement?"

12 "Yeah, I guess so. Yeah."

13 "Question. But you don't know what that
14 agreement is. Do you recall testifying in front
15 of the grand jury in this matter?"

16 "Answer. Vaguely, yes."

17 "Question. The record shows that it was
18 April 11, 2011?"

19 "Answer. Correct."

20 "Question. I don't expect you to
21 remember the date, but you recall testifying;
22 correct?"

23 "Answer. Yes."

24 "Question. You only testified once?"

25 "Yes."

1 "Question. I'm going to read this and
2 ask you if you remember the question and answer
3 from the grand jury transcript. Mr. McGettigan I
4 assume, whoever was asking the questions that day
5 had just gotten done asking you about Mr.
6 Sandusky putting his hand on your knee and
7 squeezing. And then the follow-up question was,
8 this is on page -- bottom of page 15, Mr.
9 McGettigan, of the grand jury transcript at the
10 top of page 16, the question from the
11 Commonwealth attorney: 'Did he ever touch any
12 other part of you and any other part of that?'
13 And the answer that's reflected in this record,
14 Mr. Struble, is, 'Another thing he did, there was
15 a few times I can remember that he stuck his hand
16 inside my pants right inside my waist, like right
17 inside the zipper and my button. I can say he
18 never went the whole way down and grabbed
19 anything.' Do you remember that question and
20 answer?"

21 Mr. Struble replies to you: "Answer. I
22 can recall saying that at the time, yes."

23 "Question. Did you recall saying that
24 at that time?"

25 "Answer. Yes."

1 "Question. But today, now you recall
2 that he put his hand down your pants, Mr.
3 Sandusky, and grabbed your penis?"

4 "Answer. Yes. The doorway that I had
5 closed has since been reopening more. More
6 things have been coming back and things have
7 changed since that grand jury testimony. Through
8 counseling and different things, I can remember a
9 lot more detail that I had pushed aside than I
10 did at the point."

11 "Question. Since April 11, 2011?"

12 "Answer. Yes. Because up until that
13 time, I had not talked about this with anybody.
14 So those police investigations that I had, that
15 was the first time I had even brought it back
16 into my mind."

17 "Again, at the grand jury hearing where
18 you testified on page 18, I'm going to read the
19 following question from the Commonwealth
20 attorney: 'Did he ever kiss you? Your answer was
21 no, he did not.'

22 'Question. You're saying he never
23 touched your privates, skin over skin?' Your
24 answer, 'No, he did not. Or no, he didn't?'

25 'Question. Did he ever fondle you at

1 all over your clothes?' Your answer, 'No, he did
2 not.'

3 "Do you recall those questions and
4 answers?"

5 "Answer. Yes. And again, at that time,
6 it was a little different mindset."

7 "Question. You testified that Mr.
8 Sandusky, in the shower, grabbed you from behind
9 and put the front of his body up against the back
10 of your body. Do you recall that?"

11 "Answer. Yes."

12 "Prior to today, did you tell any of the
13 members of the attorney general's office or any
14 of the investigators in this case that Mr.
15 Sandusky had done that?"

16 "Answer. Yes."

17 "Who was that?"

18 "Answer. Joe McGettigan."

19 "Question. Is this going back a couple
20 months again?"

21 "Answer. Yeah."

22 "Question. After you had retained
23 private counsel --"

24 "Yes."

25 "-- do you recall testifying again at

1 the grand jury during this matter on April 11th,
2 being asked by the attorney general's staff:

3 'Question. Did he ever have any
4 physical contact with you at all, any kind of
5 contact while you were in the shower? Your
6 answer, while we were shower, I don't think so.

7 Question. Are you sure?

8 Answer. I'm not sure. That's
9 something, I guess, in a blurry memory. I don't
10 think so.'

11 "Do you remember that question? Those
12 questions?"

13 "Answer. I think so, yes."

14 "Question. But today you're telling us
15 no blurry memory anymore; correct?"

16 "Answer. Through counseling and through
17 talking about different events, through talking
18 about things in my past, different things vary,
19 trigger different memories, and have had more
20 things come back and has changed a lot about what
21 I can remember today. And I couldn't remember
22 before because I had everything negative blocked
23 out. Now, the grand jury testimony was when I
24 was speaking to open that door so to speak."

25 "Question. Do you recall when you

1 started counseling?"

2 "Answer. It was a little over a year
3 ago."

4 Sir, once again, you brought out on
5 cross-examination there was a radical change
6 between -- in his testimony between the grand
7 jury and his testimony at trial. Do you agree
8 with that?

9 A. Yes.

10 Q. And do you agree that Mr. McGettigan had
11 been informed of this radical shift months before
12 the trial; is that correct?

13 A. Well, based upon what those two young
14 men said, yes.

15 Q. And sir, can we agree that Mr.
16 McGettigan never told you this?

17 A. Never received any reports or updates,
18 no.

19 Q. So, you were doing this cold as we say?

20 MS. PETERSON: Objection.

21 THE WITNESS: I'm sorry?

22 BY MR. LINDSAY:

23 Q. You were doing this cross-examination
24 cold as we say?

25 MS. PETERSON: Objection. It's

1 argumentative.

2 THE COURT: Sustained.

3 THE WITNESS: Quite frankly, listening
4 to your answers, Mr. Lindsay, and the questions,
5 I think we effectively showed that these people
6 had changed their stories, which was a major part
7 of our case, to show that they changed
8 drastically and dramatically and kept adding
9 things coincidentally after they spoke with
10 attorneys, after they hired attorneys. So quite
11 honestly, I thought we did an effective job of
12 what we had.

13 BY MR. LINDSAY:

14 Q. My question -- yes. But the point is
15 what you had. You were not given this
16 information prior to trial by the prosecution,
17 were you?

18 A. Not to my recollection, no.

19 Q. And once again, did you believe at trial
20 that this was a Brady issue?

21 A. I don't know so much I thought of it in
22 those terms as much as I thought it was great --
23 it was great impeachment testimony, which showed
24 the jury the dramatic changes in these kids' --
25 these young people's stories coincidentally

1 associated with hiring private counsels and
2 looking for big dollars from agencies and
3 institutions like Penn State. But I certainly
4 didn't raise a Brady issue and ask for a
5 mistrial. I thought, quite honestly, the fact
6 that we elicited that information on the stand
7 was very good for Jerry.

8 Q. Mr. Amendola, there was another issue
9 raised in the testimony of Struble. And that is
10 that he was remembering things as a result of
11 counseling. Do you recall that?

12 A. I do.

13 Q. All right. Had you been informed of
14 that prior to trial, that these witnesses were
15 undergoing therapy and suddenly remembering
16 things that they didn't know?

17 A. I know in a number of our requests for
18 pretrial discovery, we asked for any information
19 dealing with memory and memory recollection and
20 counseling. However, in terms of the counseling,
21 I think, and I could be wrong, but I think we
22 even addressed the counseling issue with Judge
23 Cleland through a motion and requested copies of
24 any counseling notes. And again, I could be
25 wrong, because we filed a lot of motions and

1 Judge Cleland had a number of hearings. But I
2 believe that Judge Cleland might have ruled that
3 they were protected under the Privilege Doctrine.
4 I believe. Now, again, you're catching me not
5 being prepared to go back five and a half years
6 today, I thought I was just dealing with the
7 other motion that you filed recently. So that's
8 just my vague recollection that that's how that
9 came up. We requested, specifically I believe,
10 in several instances through pretrial discovery
11 the recollection, the memory recall and so on.
12 And we were told none existed, by the way.

13 Q. That there were no records?

14 A. Yeah. That the Commonwealth had no
15 information about that.

16 Q. You were informed by the Commonwealth
17 they had no information that these men were in
18 therapy?

19 A. When you say therapy, counseling, they
20 might have said counseling, which led to us
21 filing motions trying to get that information.
22 But the specific issue that I think that you're
23 getting at is what we call memory --

24 Q. Repressed memory?

25 A. Yes. And we specifically requested that

1 sort of information, too, and were told none
2 existed. They knew they did not have anything in
3 their possession.

4 Q. Well, can we agree, sir, looking at all
5 this testimony, there were -- there were many of
6 these accusers -- and without going through this
7 thing and reading transcripts and so forth --
8 that a substantial number of these accusers saw a
9 therapist, counselor, or someone between the time
10 they were initially reviewed -- or interviewed by
11 the police, and then after the therapy, their
12 stories were very different?

13 A. There were at least several. And again,
14 my recollection, and I'd have to look through the
15 many motions we filed, but my recollection today
16 is that we requested that information. And we
17 were told by the Court, I believe, I could be
18 wrong, but I believe in at least a key incident,
19 a key time in the case, pretrial, that we were
20 told that that was privileged. I mean, we tried
21 to get psychiatric history, too, at one point.

22 Q. All right. You said that there was --
23 the Court felt that it was privileged. But you
24 also said that you were never told -- or you were
25 told flat out by the prosecution that there was

1 no therapy?

2 A. That they had no information on it.
3 They had nothing to verify that there was some
4 sort of repressed memory-type thing.

5 Q. Certainly the repressed memory issue was
6 an issue with Aaron Fisher; correct?

7 A. Certainly. He was the key one.

8 Q. And that's where you're aware, or you at
9 least believe prior to the trial that he had
10 undergone repressed memory therapy by -- go
11 ahead.

12 A. I don't think I knew that. I think we
13 found that out afterwards. If I'm not mistaken,
14 the book with the doctor came out following
15 Jerry's trial. That was the first time we had
16 any confirmation that Number 1 had gone through
17 that sort of counseling.

18 Q. Mr. Amendola, you're familiar with
19 pretrial motions that challenge the competency of
20 witnesses; correct?

21 A. That challenges?

22 Q. The competence of witnesses, their
23 ability to remember things.

24 A. Yes. Oh, yes. Yes.

25 Q. And can we agree that you did not file

1 any pretrial motions challenging the memory of
2 these various witnesses?

3 A. I don't believe we did, no.

4 Q. Had you known -- had you been informed
5 by the prosecution that they had undergone
6 repressed memory therapy and remembering things
7 they never remembered before, would you have
8 filed such a petition?

9 A. Yes.

10 MR. LINDSAY: All right. Excuse me just
11 a moment, Your Honor.

12 THE COURT: Sure.

13 BY MR. LINDSAY:

14 Q. And I take it from your testimony, you
15 did not engage any expert witness dealing with
16 this subject of repressed memory?

17 A. We did not. We would have, had it been
18 -- had we thought it was relevant. But I'm
19 sure -- I hate to say it, I'm sure we would have
20 run into the same problem that we ran into with
21 the other experts who said they didn't have
22 enough time to properly review the materials and
23 to form any sort of opinions, which is what we
24 ran into with the specialists, doctors who dealt
25 with pedophilia.

1 Q. All right. But the real reason that you
2 didn't hire a repressed memory expert, is it your
3 testimony you didn't know that there was an issue
4 about repressed memory?

5 A. We were being told there was no
6 information concerning that issue. Several
7 times, by the way.

8 Q. Let me ask you this, sir. One thing you
9 were aware of, at least at the time of trial, was
10 suggestive police interrogation tactics; is that
11 correct?

12 A. That's correct. And I think we proved
13 that at trial very effectively.

14 Q. Okay. And you proved that by a
15 recording -- a tape-recorded interview of an
16 individual by the name of Brett Houtz; is that
17 not correct?

18 A. Yes. A gift from heaven, yes.

19 Q. And you knew about that prior to the
20 trial; is that not correct?

21 A. Yes. Oh, yes.

22 Q. Because you had to use it?

23 A. Right.

24 Q. And what was -- why don't you tell us in
25 your own words why you found that that was gold?

1 What was there about the Brett Houtz interview?

2 A. The police and the Commonwealth had
3 maintained throughout pretrial that these young
4 men who were being interviewed were not coached,
5 they simply were asked about Jerry and any
6 situations that they may have had over the years
7 with Jerry, had they known, what they did, or
8 contact, or so on, but they were never coached.
9 We didn't coach people. This tape that was
10 amongst a myriad of other things, when we played
11 it, contained an interview with one of the
12 troopers who was one of the chief investigators,
13 and actually there were two there who I also
14 believe are in the courthouse today, and
15 interestingly enough a civil attorney who was
16 representing that young man at that point. And
17 in the course of the interview, when it started
18 they mentioned their name and -- they mentioned
19 their name and -- I talk with my hands because
20 I'm from Philly.

21 Q. That's all right. I thought I did it.

22 A. But when they started they gave the
23 time, the names, who was there. And low and
24 behold, here's a civil attorney representing this
25 young man, Number 4, in the civil case to get

1 money out of whoever he can get money, Penn
2 State, Second Mile, whatever. And after about
3 maybe 45 minutes, however long it might have
4 been, the tape speaks for itself, this young man
5 was not saying anything bad happened with Jerry.
6 He was saying, much like the other people,
7 nothing ever happened, Jerry was like a father to
8 me, Jerry was great, he would take me on trips,
9 we'd go to football camps and so on. And they
10 took a break. And I think the young man, I think
11 in his late 20s at that point, then left to take
12 a smoke break. He goes out with the one trooper
13 and the other trooper then talks to the civil
14 attorney.

15 Now, what was interesting about the tape
16 was the trooper says, we're going to now turn off
17 the tape at such and such a time. He thought he
18 turned it off. But he didn't, the tape kept
19 playing. And as the tape kept playing, even
20 though they thought it was off, the civil
21 attorney said to the trooper who was still in the
22 room, how do we get this guy to say something
23 happened? How do we get him to admit something
24 happened? And the trooper in the room said at
25 that point, I'll tell him what I told all the

1 other people that we've interviewed, that Jerry's
2 done this to other people, that it's okay for
3 them to admit that Jerry did it, he did X, Y, and
4 Z to these other people. And as soon as we tell
5 them that, basically -- and again, the tape, the
6 transcript speaks for itself, we played it at
7 trial as you know. And then after he says that,
8 the young man comes back with the other trooper.
9 And the trooper in the room, with the lawyer,
10 says we're now going to turn the tape back on.
11 And he thinks he turned the tape back on, while
12 it played that whole time. And he proceeds to
13 tell Number 4 exactly what he said he was going
14 to tell him, there are other people, don't be
15 ashamed, and so on and so forth. Clearly,
16 clearly, clearly contrary to what we had been
17 told throughout pretrial, no coaching, we just
18 asked these people what happened.

19 And the tape was the tape. The
20 Commonwealth gave it to us. I don't know if it
21 was unintentional, accidental, but I've never had
22 a case, Mr. Lindsay, where we proved that the
23 police officers lied, chief police investigators
24 lied about a case and the person wasn't
25 acquitted. I thought that was a home run at the

1 time. We played the tape. And I called the
2 civil attorney who was in court monitoring his
3 client and he testified. And he hemmed and hawed
4 but eventually yeah, that was my voice, had to
5 admit it of course it was, and admitted that
6 there was a fee agreement, which we also showed
7 as a motive that it was very important for Jerry
8 to be convicted. Because if he was convicted, it
9 would be a lot easier for these people to get
10 money from places like Penn State and The Second
11 Mile. So all that came out at trial. But yes,
12 it was very important.

13 MR. LINDSAY: Excuse me just a minute.

14 BY MR. LINDSAY:

15 Q. Sir, from your testimony I guess it
16 appears that the information that Number 4, Mr.
17 Houtz, eventually testified at trial was spoon
18 fed him by the police officers; is that your
19 testimony?

20 A. Would you repeat that, please?

21 Q. I can't. I can't remember it. I think
22 -- I take it from your testimony that the
23 testimony of Mr. Houtz, Victim Number 4, was as
24 it were spoon fed him by the police at that
25 interview you're talking about?

1 A. It was? And I didn't hear the last part
2 of that. It was?

3 Q. Spoon fed.

4 A. Oh, yes. Yes.

5 Q. All right. And that's what he
6 eventually testified at trial; correct?

7 A. Yes.

8 Q. Mr. Amendola, are you familiar with what
9 we call protocols for interviewing victims of
10 sexual assault?

11 A. Well, I understand -- I understand that
12 there is a proper procedure particularly among
13 kids that interviewers should use, yes.

14 Q. Well, is it limited to kids or is it
15 just when you're dealing with sexual offenses?

16 A. Typically it is.

17 Q. All right. And --

18 A. But this person was in his late 20s, I
19 believe.

20 Q. Well, any protocol that you're aware of
21 would have been violated by what occurred that
22 day; is that not correct?

23 A. I agree, yes.

24 Q. And sir, you knew about this prior to
25 the trial; correct?

1 A. I did.

2 Q. Did you engage an expert dealing with
3 questioning of people on these offenses and
4 protocols?

5 A. I did not.

6 Q. Did you attempt to find a witness?

7 A. No. Because I thought it was dynamite
8 evidence that I wanted to use at trial and
9 certainly didn't want to tip off the prosecution.

10 Q. Well, let me ask you this. Can we agree
11 that there would have been -- there was a
12 substantial issue in your mind that the
13 credibility of these witnesses or the
14 recollection of these witnesses -- let me try
15 this question again. Would you agree that from
16 what you heard, the recollection that these
17 witnesses have, the memories of these supposed
18 assaults by Mr. Sandusky, was actually a product
19 of suggestive questioning?

20 A. It certainly was. But we also had
21 information that was totally inconsistent at
22 points with virtually all of these young people
23 who were appearing as accusers. So our theory
24 was to cross-examine them, point out the
25 inconsistencies that developed through the course

1 of several interviews and their grand jury
2 testimony, for example, and cross-examine them on
3 that.

4 Q. Did it occur to you you might file a
5 motion to disqualify them as witnesses on the
6 issues of their memory?

7 A. I did not do that.

8 Q. Is there any reason you did not do it?

9 A. Because I didn't think it would succeed.

10 Q. All right. You mean you would take the
11 -- you would have a hearing on their competency
12 and the Judge would deny it?

13 A. I don't think -- I think ultimately, in
14 terms of what we were trying to do, that that
15 wouldn't have had the likelihood of success. But
16 I didn't do it. The bottom line is, I didn't
17 engage an expert, or we didn't engage an expert
18 on that issue. And we certainly didn't file any
19 motions.

20 Q. All right. Well, once again, we all
21 know when it comes to these competency questions,
22 whether it succeeded or not, you would have had
23 access to substantial information in the hearing
24 which could have been useful in cross-examining
25 them later even if your motion was unsuccessful?

1 A. If it was unsuccessful or successful?

2 Q. Either way. You're having a hearing
3 where you're going to challenge the memory of
4 these witnesses, you're going to get a lot of
5 information that you can eventually use to show
6 that their memory was, in effect, fed to them by
7 the police?

8 A. That's accurate.

9 Q. I think we established in the last
10 hearing, I'm only going to bring this back,
11 Victim Number 2, in your mind, was Alan Myers; is
12 that not correct?

13 A. Alan Myers was the person in the second
14 case. I never referred to him as a victim
15 because we never believed anything happened. But
16 he was the person, I believe, who was identified
17 by Mike McQueary as Number 2.

18 Q. All right. For the sake of the Judge
19 who is new, a recapitulation, there is -- Mike
20 McQueary testified about observing an incident in
21 a shower at Lasch Hall; correct?

22 A. Correct.

23 THE COURT: I'm aware. I've read the
24 transcripts.

25 MR. LINDSAY: Oh, all right. Okay. All

1 right. Well, then let's bring this up, the --
2 I'm sorry, I didn't mean to be --

3 THE COURT: No, it's okay. I spent the
4 last two months reading every night. I was
5 watching basketball out of one eye, too.

6 THE WITNESS: That helps a lot, Your
7 Honor.

8 THE COURT: It relaxes me.
9 BY MR. LINDSAY:

10 Q. Well, the point is is that Alan Myers
11 who was the, in your mind, the person at Lasch
12 Hall was clearly that person that McQueary had
13 said that he had seen; correct?

14 A. I believe so.

15 Q. And Alan Myers had given you very
16 definitive statements about the fact that nothing
17 happened that was of a sexual nature with Mr.
18 Sandusky that night at Lasch Hall?

19 A. He had.

20 Q. And you knew, did you not, that Mr.
21 Myers, soon before the trial, flipped as they say
22 and suddenly said that he was -- or you were
23 getting information, I guess, from his attorney
24 that he had changed his story?

25 A. Within two weeks after he was in my

1 office giving a tremendously positive statement
2 to help Jerry. He flipped within two weeks. So
3 we're talking, this occurred in November of 2011.

4 Q. And when you say he flipped, something
5 happened during that two-week period; correct?

6 A. He transitioned into a victim.

7 Q. Well, he transitioned after he had
8 talked to Attorney Andrew Shubin; correct?

9 A. Well, I can't say whether the horse came
10 before the cart because I wasn't privy to how
11 that all derived. But I can say that the first
12 time I heard about him flipping and changing his
13 story was in the back of this courtroom where
14 that officer is standing right now. And it was
15 on a day when we had had what they call Central
16 Court, preliminary hearing. And Andy Shubin was
17 here. And Andy had previously, about a week
18 earlier, sent me a text, I believe, or it could
19 have been an email, but I think a text, or maybe
20 a fax, a letter saying he now represented Alan
21 Myers. I thought he was representing Alan Myers
22 to protect him from Joe McGettigan and the
23 attorney general's people. Instead, when I said
24 that to him, he said no, you don't understand,
25 he's a victim, he's probably the worst victim of

1 all of them. And I about fell over.

2 Q. But you had the opportunity to call him
3 as a witness at trial; correct?

4 A. I did.

5 Q. And you did not?

6 A. For a very good reason.

7 Q. Well --

8 A. Had I called him as a witness at the
9 trial, the attorney general -- well, number one,
10 he would have said he was a victim. That's
11 number one. Number two, if he stuck to the story
12 he gave us, then the Commonwealth would have then
13 introduced the statement he gave to them, in
14 writing apparently, with his attorney saying that
15 he was a victim. So I considered it at that
16 point for him to be useless.

17 Q. Well, his initial statements would have
18 been very favorable if you cross-examined him or
19 treated him as a hostile witness, which you would
20 have had.

21 A. Well, except I think it would have been
22 -- and it would have, I think, cast more concern
23 and confusion on the whole issue than it did with
24 him not even being in court.

25 Q. All right. Mr. Amendola, I'd like to

1 refer you to your opening statement. I think you
2 began your opening statement by saying that the
3 evidence against Mr. Sandusky was overwhelming.
4 Is that what you said?

5 A. That was satirical. That's called
6 satire. And again, I'm surprised you've never
7 used it. Because at that point, the whole world
8 except for his close circle of friends thought
9 that he was guilty. And I was saying to the
10 jury, look, he's guilty, why have a trial? Read
11 the rest of my opening and you'll realize that
12 what I said is there were a lot of questions, a
13 lot of questions about the authenticity of the
14 statements and the allegations being made against
15 Jerry Sandusky. That was a satirical comment
16 that I made to get the jury's attention. It was
17 not intended, not intended to be serious.

18 Q. You did it to get the jury's attention?

19 A. Pardon me?

20 Q. You did it to get the jury's attention,
21 by saying the evidence against your client was
22 overwhelming?

23 A. Everybody thinks he's guilty.

24 Q. Well, that's not what --

25 A. That's what people were saying. That's

1 what people were saying throughout not only this
2 community, any other community.

3 Q. But you didn't say everybody thinks he's
4 guilty. You said the evidence against my client
5 is overwhelming.

6 A. For the purpose of pointing out that
7 there are two sides to the story. Totally
8 satirical. And I think we proved that through
9 cross-examination, in terms of all the questions
10 that arose with the consistency or inconsistency
11 of the statements all these various witnesses
12 made.

13 Q. The statement became very significant in
14 Mr. McGettigan's closing, did it not? Do you
15 recall that there was, I guess, a slide where
16 they showed this --

17 A. I think it was over on that side of the
18 courtroom.

19 Q. -- where they pulled that statement out
20 and showed it to the jury?

21 A. I don't recall that specifically. But
22 if it's in the transcript, I don't disagree with
23 you.

24 Q. Okay. Did you still consider it satire,
25 sir?

1 A. Yes, I did. And we argued in my closing
2 all the inconsistencies we had shown and the
3 police coaching of at least one witness and by
4 implication based upon what was said with all the
5 other witnesses.

6 Q. Do you remember an individual by the
7 name of Jessica Dershem testifying?

8 A. Well, again, there were a lot of
9 witnesses. Was she the one from CYS in Clinton
10 County?

11 Q. She was indeed, sir. She was.

12 A. Yes. Okay. I remember.

13 Q. Do you recall her testimony --

14 MR. LINDSAY: And what I'd like to do, I
15 don't have an extra copy, I'll tell you where
16 this is if you want to look at it. It's
17 testimony on June 12, 2012 beginning on page 178.
18 I don't want to move forward unless you have a
19 chance to look at that.

20 BY MR. LINDSAY:

21 Q. All right. Again, it's the redirect
22 examination of Mr. McGettigan, I'll read it to
23 you and see if you can recall this. And you
24 recall that she testified primarily about an
25 interview that she had had with --

1 A. With Number 1, yes.

2 Q. With Aaron Fisher and with Mr. Sandusky;
3 is that correct?

4 A. Yes.

5 Q. She had done an interview and I think
6 you were present at that interview, were you not?

7 A. I was with Mr. Sandusky.

8 Q. And were these the questions and answers
9 that were given at trial:

10 Question by Mr. McGettigan, "Ms.
11 Dershem, you've just read an extensive statement
12 of your notes of what the defendant said to you?"

13 "Answer. Yes."

14 "Question. Okay. When the defendant
15 came to speak with you, he was aware that there
16 were allegations of inappropriate contact, to say
17 the least, child abuse, child sexual abuse that
18 had been made against him, right?"

19 "Answer. Yes."

20 "Question. So your purpose was
21 attempting to find out what had, in fact,
22 occurred beyond what Aaron had said?"

23 "Answer. Yes."

24 "Question. And the defendant's purpose
25 was in serving himself and justifying what he had

1 done?"

2 "Answer. Correct."

3 "Question. That's fair to say? In
4 fact, it's fair to say that the entirety -- most
5 of the entirety of that statement was him saying,
6 quote, well, I didn't do anything wrong, there
7 was no sexual contact, those kinds of statements.
8 Quote, I wanted to make him part of my extended
9 family, end of quote. Is it fair to say about
10 three or four, five, six pages of that were just
11 self-serving statements on the part of the
12 defendant defending himself or justifying his
13 behavior?"

14 "Answer. Correct."

15 "Question. Okay. Now, you did,
16 however, read a few things and I'd like to go
17 through them and extract them and condense them
18 down and we'll see if these are very accurate
19 statements taken within the greater context of
20 the self-serving statement. Did he say he had a
21 three-year relationship in which he was wrapped
22 up in Aaron?"

23 "Answer. Yes."

24 "Question. Did he admit to blowing on
25 his stomach?"

1 "Answer. Yes."

2 " Did he admit to lying on top of Aaron
3 and having Aaron lying on top of him?"

4 "Answer. Yes."

5 "Question. Did he say he can't honestly
6 answer if my hands were below his pants, in fact,
7 was that in quotes, was that a specific quote
8 from that person?"

9 "Answer. Yes."

10 "Okay. And did he then go on to say,
11 now would that, to you as a trained professional,
12 indicate right there there was an inappropriate
13 relationship between a middle-aged adult and a
14 small child?"

15 "Answer. Yes."

16 "Okay. At that point, you began to
17 question more and you said these other things
18 here. He said that he told a little boy that he
19 -- that is felt used."

20 "Answer. Yes."

21 "Question. Okay. And then he admitted
22 to following Aaron's bus. Well, he said that he
23 didn't follow it, he just happened to be in the
24 area, something like that, and then he followed
25 it?"

1 "Answer. Correct."

2 "Question. And he also said that at one
3 point he was arguing with Aaron about spending
4 time with him, that is he, the middle-aged man
5 was arguing with this little boy that the boy
6 wasn't spending enough time with him. Would that
7 be correct as well?"

8 "Answer. Correct."

9 "Question. Okay. And then he talked
10 about a homemade birthday card?"

11 "Yes."

12 "Question. Okay. Then he talked about
13 the gifts he had given to Aaron?"

14 "Question. Okay. He really didn't make
15 too many of these admissions until he was
16 somewhat confronted, although he did admit to
17 following Aaron to sporting events; is that
18 correct as well?"

19 "Answer. Yes, he went to Aaron's
20 sporting events."

21 "Question. Now, I'm going to ask you,
22 in your both professional opinion and personal
23 opinion, does the first portion of these things
24 that I have read to you, wrapped up in Aaron for
25 three years, blowing on his stomach, laying on

1 top of him, cannot honestly answer if my hands
2 were below his pants, does that sound like
3 someone who has an inappropriate relationship?"

4 Do you recall that?

5 A. I do.

6 Q. Do you recall that this particular -- do
7 you recall that Jessica Dershem is what we
8 commonly call a fact witness?

9 A. Yes.

10 Q. She was called to testify about what was
11 stated in this interview with Mr. Sandusky; is
12 that correct?

13 A. That's correct.

14 Q. But do you agree that this testimony,
15 she is being qualified as some kind of an expert
16 and that her testimony is that this was an
17 inappropriate relationship? When she says, for
18 example, and I'll point to just -- if we start at
19 line one on page 181, this particular Q and A, as
20 we say question and answer:

21 "Question. Okay. And he -- did he then
22 go on to say now would that to you, as a trained
23 professional, indicate right there an
24 inappropriate relationship between a middle-aged
25 adult and a small child?"

1 She answers yes.

2 Can we agree that he's more or less
3 saying she's a trained professional as an expert
4 in the field?

5 A. Well, that's what he was implying.

6 Q. Certainly.

7 A. And of course, this is the interview
8 that I advised Jerry not to attend.

9 Q. I understand. My question is, though
10 she is rendering opinion evidence, that there's
11 an inappropriate relationship between a
12 middle-aged adult and a small child?

13 A. That's what it sounds like.

14 Q. Well, that's what she said?

15 A. Well, I'm saying that that's what it
16 sounds like.

17 Q. And she later did it again. Did they
18 ever -- first of all, can we agree that the issue
19 at the trial of Mr. Sandusky was not whether he
20 was in an inappropriate relationship, the issue
21 was whether he committed these particular sexual
22 acts on these victims?

23 A. Of course.

24 Q. And can we agree -- I believe, do you
25 recall, in the Judge's charge he said, it's not

1 about what's inappropriate, it's what's violative
2 of the law; correct?

3 A. Correct.

4 Q. And can we agree that he more or less
5 said she's an expert and he gets an opinion that
6 this was an inappropriate relationship? He gets
7 it on the record; correct?

8 A. Based upon the transcript, yes.

9 Q. You didn't object?

10 A. I did not object.

11 Q. Was there any expert report or any basis
12 for him to do this?

13 A. And I can't -- thinking back five and a
14 half years, I don't know if there was a reason.
15 But no, apparently there's no objection.

16 Q. Can you see how having this witness
17 testify as an expert about inappropriate
18 relations could confuse the jury what the issues
19 were in the trial?

20 A. Well, it could, but she was giving her
21 opinion. I don't think she was being addressed
22 as an expert. Or certainly, I don't recall there
23 being an expert -- an expert instruction for her.

24 Q. No. No. But she --

25 A. So my thinking was, she's giving an

1 opinion, we all have opinions. And she obviously
2 is biased.

3 Q. I understand. But can we agree, sir,
4 that the law does not permit a lay witness to
5 render an opinion unless they've been qualified
6 as an expert, unless you had an expert report
7 ahead of time?

8 A. I understand what you're saying.

9 Q. Yeah.

10 A. And I didn't object, so that's the
11 answer.

12 Q. All right. And today, do you have any
13 tactical reason for not objecting to that
14 testimony?

15 A. I can't think of any right now. But I
16 can't go back to that place and time and think
17 what might have been going on at that point. For
18 some reason, it's possible I wanted her to give
19 an opinion to show her bias, as an example.

20 MR. LINDSAY: Excuse me just a minute,
21 Your Honor.

22 THE COURT: Sure.

23 MR. LINDSAY: That's all the questions I
24 have on direct examination for this witness, Your
25 Honor.

1 THE COURT: Let's go ahead and do a
2 little cross and we'll see where it goes.
3 Attorney Peterson.

4 CROSS-EXAMINATION

5 BY MS. PETERSON:

6 Q. You began representing Mr. Sandusky in
7 January of 2009; correct?

8 A. I did.

9 Q. And that was in connection with the
10 Children and Youth incident; correct?

11 A. Correct.

12 Q. It's fair to say, sir, that you got to
13 know Jerry Sandusky very well?

14 A. Very well over that almost three-year
15 period prior to charges being filed, yes.

16 Q. You spent a lot of time with him?

17 A. Yes.

18 Q. You had a number of phone conversations
19 with him?

20 A. Yes.

21 Q. Sometimes multiple times a day?

22 A. Yes.

23 Q. You would agree that Mr. Sandusky is not
24 a shy individual?

25 A. He's very outgoing and very opinionated

1 about what he wants done. And that's natural
2 having been a defensive coordinator at Penn State
3 for years.

4 Q. You stated earlier you said he's an
5 independent thinker; correct?

6 A. Yes.

7 Q. And he disagreed with you sometimes
8 during the course of your representation?

9 A. Important times, such as what you just
10 heard about, CYS and the interview that I
11 strongly recommended he not participate in.

12 Q. He wasn't afraid to speak his mind with
13 you?

14 A. He was not.

15 Q. He's not the type of individual that can
16 be pushed around; correct?

17 A. He was bigger than me at the time.

18 Q. With respect to Victim Number 8, do you
19 recall that Ronald Petrosky, the janitor,
20 testified that he was working on that particular
21 evening?

22 A. Yes.

23 Q. And that he had seen Mr. Sandusky come
24 out of the locker room with the young boy?

25 A. Yes.

1 Q. That he saw Mr. Sandusky and the young
2 boy walk down the hallway?

3 A. Yes.

4 Q. Mr. Sandusky grabbed the young boy's
5 hand?

6 A. Yes.

7 Q. Shortly after that, he encountered Mr.
8 Calhoun; correct?

9 A. Correct.

10 Q. And Mr. Calhoun, according to Mr.
11 Petrosky, was white as a ghost?

12 A. Yes.

13 Q. Prior to trial, you tried to preclude
14 the testimony of Mr. Petrosky as to what Mr.
15 Calhoun stated; correct?

16 A. Correct.

17 Q. You argued that it was inadmissible
18 hearsay?

19 A. Yes, we did.

20 Q. And that argument -- and that was
21 rejected by the trial court?

22 A. Correct.

23 Q. It was the Commonwealth who moved to
24 change the venire in this case; correct?

25 A. The Commonwealth did.

1 Q. There was a hearing scheduled before
2 Judge Cleland in connection with that motion?

3 A. There was.

4 Q. And your client was there?

5 A. Yes.

6 Q. And your client testified under oath
7 that he wanted a Centre County jury to decide his
8 case?

9 A. Yes. For the reasons that I discussed
10 earlier with Mr. Lindsay.

11 Q. Your strategy at trial was to show that
12 these young men who the Commonwealth was calling
13 as witnesses were accusers and not victims;
14 correct?

15 A. Correct.

16 Q. You wanted to establish they had been
17 coached?

18 A. Correct.

19 Q. That they had financial motivations?

20 A. Correct.

21 Q. And in order to carry out your strategy,
22 you impeached them?

23 A. Correct.

24 Q. You did that with their grand jury
25 testimony?

1 A. Correct.

2 Q. Their various interviews with police?

3 A. Correct.

4 Q. Their statements to police?

5 A. Correct.

6 Q. And you also brought out during your
7 cross-examination that they had made different
8 statements to Joe McGettigan who was the
9 prosecutor?

10 A. Correct.

11 Q. You were asked by defense counsel, when
12 you were going through discovery, you were
13 looking for quote, any nugget, that you could
14 find?

15 A. Correct.

16 Q. You would agree that that tape recording
17 during that interview of Brett Swisher Houtz was
18 a nugget?

19 A. Very much so.

20 Q. And that was played for the jury?

21 A. Played for the jury and it called to
22 people who were participants.

23 Q. You were asked about voir dire and not
24 specifically inquiring of each juror what they
25 had read and what they had heard; correct?

1 A. Correct.

2 Q. You would agree with me that there were
3 thousands of articles and radio accounts of Mr.
4 Sandusky's case?

5 A. Thousands.

6 Q. With respect to Jessica Dershem, the
7 last area of inquiry that counsel asked you
8 about, she was not qualified as an expert;
9 correct?

10 A. No, she was not. No.

11 Q. The Commonwealth never argued to the
12 jury that she had an expert opinion that they
13 should take into consideration; correct?

14 A. The Commonwealth, to my recollection,
15 did not do so.

16 Q. And certainly Judge Cleland did not
17 instruct the jurors that she had given an expert
18 opinion; correct?

19 A. That's my recollection.

20 MS. PETERSON: That's all the questions
21 I have, Your Honor.

22 THE COURT: Any redirect, Attorney
23 Lindsay?

24 MR. LINDSAY: Excuse me just one moment.

25 THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. LINDSAY:

Q. Just one point, Mr. Amendola. With regard to the playing of the conversation involving the witness that we're talking about, the witness --

A. Number 4.

Q. Yes. Mr. Houtz. You said, I think, on cross-examination that that tape was played. Are you sure that it was played or did you just read it?

A. I -- again, I'm thinking about five and a half years. I believe the way the scenario evolved was that we played the tape -- well, first what we did is we -- the two troopers testified. And they were sequestered. And each of them said we didn't coach anybody, we never coached anybody. And I asked if there were ever maybe other counsel involved in the meetings for the person being interviewed, I think, that may or may not have been there. But after they testified with the plaintiff's lawyer who represented Number 4 in the courtroom, we then, I believe, my recollection's we played the tape. And after we played the tape, I called the civil

1 attorney and asked him to authenticate it, which
2 he reluctantly did. But then I called -- again,
3 my recollection. I called each of the troopers
4 back individually and asked them about the tape
5 and then played the tape for them. Now I could
6 be wrong, but that's my recollection.

7 Q. Okay. I guess the transcript would --

8 A. Yeah. The transcript speaks for itself.

9 MR. LINDSAY: Very good. That's all.

10 THE COURT: Ms. Peterson.

11 MS. PETERSON: No questions Your Honor.

12 THE COURT: That was almost perfect, you
13 know. It's two minutes after 12. I was going to
14 say when I introduced myself a lot of people say
15 I smile too much. So don't mean to think that
16 any of these issues are happy or indifferent.
17 But it takes less muscles to smile and it's a
18 beautiful sunny day here in Centre County. So
19 you're all going to go out and enjoy the day for
20 the next hour and three minutes. We'll come back
21 at 1:05 and take up with Mr. Lindsay's next
22 witness. Mr. Amendola, you may step down.
23 You're excused.

24 THE WITNESS: Am I excused?

25 THE COURT: And we'll see you all at

1 1:05. Thank you all. Court's in recess.

2 (Whereupon, a luncheon recess was
3 taken.)

4 THE COURT: The court's in session.
5 Please be seated. Mr. Lindsay, your next
6 witness.

7 MR. LINDSAY: At this time, the
8 defendant calls Michael Gillum to the stand.

9 MICHAEL GILLUM
10 Was called as a witness and having been duly
11 sworn, was examined and testified as follows:

12 THE COURT: Please be seated. Both the
13 chair and the microphone move, so speak directly
14 into the microphone when you're asked a question.
15 Go ahead, Mr. Lindsay.

16 DIRECT EXAMINATION
17 BY MR. LINDSAY:

18 Q. Would you state your name, please, sir?

19 A. Michael Gillum. I'm a licensed
20 psychologist.

21 Q. And are you familiar with an individual
22 by the name of Aaron Fisher?

23 A. Yes, I am.

24 Q. And did you treat him?

25 A. Yes, I did treat him.

1 Q. And when I say treat him, would you call
2 that therapy, counseling what?

3 A. Psychotherapy services, as I'm a
4 professional licensed psychologist. So it would
5 be termed psychotherapy services.

6 Q. Okay. What is psychotherapy services?

7 A. Well, it's providing psychological
8 treatment to individuals suffering from
9 psychological disorders, adjustment disorders,
10 typically issues that are more significant than
11 simple life adjustment problems which might be
12 handled by a counselor. In the state of
13 Pennsylvania, you need no credentials to refer to
14 yourself as a counselor to be a psychotherapist.
15 You should be a licensed professional, such as a
16 licensed psychologist, licensed clinical social
17 worker, or a license professional counselor.

18 Q. How did you come in contact with Aaron
19 Fisher?

20 A. I came in contact with Aaron Fisher
21 because I contracted for many years with the
22 Clinton County Children and Youth Services,
23 Department of Juvenile Probation, adult
24 probation, also did work for the courts there.
25 And so, essentially, for many years I was their

1 psychologist, although I was only there
2 part-time.

3 Q. That's how you became acquainted with
4 Mr. Fisher?

5 A. Yes. Further, I can explain that Mr.
6 Fisher and his mother arrived at the Children and
7 Youth office in downtown Lock Haven and they
8 spoke to an intake worker about some sexual abuse
9 that had occurred. Aaron was extremely upset.
10 He was shaking, he was crying. And what happened
11 was, the staff discussed it and decided, along
12 with the director of Children and Youth, to
13 interrupt me and ask me if I would be willing to
14 meet with this individual because they were
15 having difficulty trying to get him to
16 communicate, as he was very upset. So I then met
17 with him.

18 Q. You indicated that you were seeing him
19 on a matter of sexual abuse; is that correct?

20 A. Right. Initially when I saw him, yes.
21 My understanding was that he had conveyed
22 something about having been sexually abused in
23 some way, however, was not elaborating about it.

24 Q. Well, can we agree that when you first
25 talked to him, or prior to you speaking to him,

1 there was no specific sexual allegations?

2 A. No. I don't think we can agree on that.

3 Q. What were the specific allegations that
4 he reported to you?

5 A. Well --

6 Q. I mean, not reported, but reported to
7 prior to your interview?

8 A. Well, he and his mother had been at the
9 high school in the principal's office. And at
10 that point, mother had noticed he was upset. And
11 she initially -- she told me she thought perhaps
12 it was because he was having some grade problems
13 in history and she was a little concerned about
14 Mr. Sandusky pulling him out of class at times.
15 And then Aaron became very upset, so the guidance
16 counselor, the principal, and his mother asked
17 him, you know, what was going on. And I
18 understand at that point he indicated that Mr.
19 Sandusky had done some sexual things to him but
20 he would not elaborate a great deal. However,
21 they weren't -- mother and son, when they talked
22 to me, they told me they felt that the school was
23 trying to dissuade them from making a report
24 about Mr. Sandusky, as they refused to do that at
25 that point in time. And therefore, they decided

1 to travel to the Children and Youth Services
2 building in order to make a report about sexual
3 allegations. So he was talking about something
4 sexual happening with Mr. Sandusky, but he was
5 not elaborating a great deal about the specifics
6 at that point, which would be normal for that
7 stage.

8 Q. Mr. Gillum, once again, was there any
9 specific sexual allegations made prior to your
10 therapy of Mr. Fisher?

11 A. I believe he indicated that he had been
12 touched or fondled. I believe that is what --

13 Q. Fondled where?

14 A. In the genital region.

15 Q. You're saying that this was reported
16 prior to him visiting you?

17 A. Right. I believe at the school he made
18 a statement, and that was reported to me, that he
19 made a statement along those lines. And then
20 when he talked to the social worker at Children
21 and Youth, that he had also indicated that
22 something sexual had happened with Mr. Sandusky,
23 however, he wouldn't talk. He was rocking,
24 crying, and he would not elaborate further than
25 that. So they asked me to speak to him.

1 Q. How long did you treat Mr. Fisher?

2 A. I met Mr. Fisher in November of 2008
3 when they came to my office. And I continued to
4 treat him through the trial of Mr. Sandusky
5 through 2012. And then we essentially did some
6 follow-up visits from 2012 to about 2015 as
7 needed.

8 Q. Did you view yourself as his advocate?

9 MS. PETERSON: Objection. Relevance.

10 THE COURT: Mr. Lindsay.

11 MR. LINDSAY: Well, I think we're trying
12 to determine, for the purposes -- we've already
13 brought up the issue that there -- we want to get
14 into repressed memory. And the issue is is I
15 want to see what this gentleman did. I can maybe
16 go back to this question.

17 THE COURT: Yeah, I think you need to
18 lay some foundation.

19 MR. LINDSAY: What's that?

20 THE COURT: I think you need to lay more
21 foundation.

22 BY MR. LINDSAY:

23 Q. Let me ask you this -- should I call you
24 Doctor? Are you Dr. Gillum or just Mr. Gillum?

25 A. Just Mr. Gillum is fine.

1 Q. All right. Well, Mr. Gillum, did Mr.
2 Fisher's explanation of what occurred change over
3 this four-year period of your therapy?

4 A. Not necessarily over the four years.
5 When you initially meet with a male who's been
6 sexually traumatized, including rape and so
7 forth, by an older male, their typical response
8 is not to self-reveal that it happened at all.
9 And if you get them into therapy, if you're
10 fortunate enough to get them into therapy, the
11 protocol, or what typically occurs, is they will
12 tend to tell you -- again, they're very
13 humiliated, they're very embarrassed, so they
14 will tell you things like, well, the least
15 deviant things that might have happened to them.
16 So they'll say, well, he hugged me, he kissed me,
17 he touched me. But typically, you have to meet
18 with someone like that and gain some trust with
19 them before they're willing to divulge the rest
20 of what happened to them because of the stigma,
21 because it's horrendously humiliating. And
22 again, we're talking about boys that have been
23 made to perform oral sex on men, have been
24 chronically raped orally, anally, whatever over a
25 long period of time. So they are very

1 traumatized, very traumatized, so you have to let
2 them tell their story. In other words, you
3 establish a therapeutic relationship with them,
4 you let them know that you're going to help them
5 in any way you can, and you let them tell their
6 story in the time frame that they want to do it.
7 You do not pressure them in any way, shape, or
8 form, you do not lead them, you simply allow them
9 -- you tell them, it's completely up to you what
10 you want to tell me about what happened to you.
11 Hopefully you'll feel better when you do that,
12 but you have to do that at your own pace.

13 Q. I think my question was very simple.
14 And I said, did his testimony -- or did his
15 information change over this four-year period?
16 And you, I think, implied maybe not over the
17 four-year period but -- what is your answer? Did
18 it change or not, sir?

19 A. It changed over the initial few months
20 that I saw him. Perhaps the initial four months
21 or so that I saw him, it didn't change. What
22 happened was is he told me from the beginning
23 that sexual things that had happened including
24 being touched, like, fondled. And he did tell me
25 in my first meeting with him that there was oral

1 sex. But he made it clear to me that he was very
2 uncomfortable describing the sexual acts that had
3 occurred. And he was not comfortable describing
4 those. And I told him there was no need for him
5 to describe any other sexual acts to me, that I
6 just wanted to confirm and make sure that I
7 understood what he was basically saying. And
8 then over the next three or four months of
9 therapy, as per the normal procedure for any
10 therapist like myself working with any victim
11 like Aaron, you give them time to gradually, it's
12 kind of like peeling an onion, they usually will
13 eventually give you more deviant or more
14 significant sex acts that occurred, but only
15 after they're feeling a greater degree of comfort
16 trust in you. And usually at the same time, as
17 is in this case, you're doing therapy with that
18 victim to help them cope with anxiety, to help
19 them cope with doubts they have about their
20 identity, to help them cope with fears they have
21 that other people will find out about this and
22 will consider them gay or will consider them as
23 some kind of strange anomaly. And that stigma is
24 something they fear very much. So they tend to
25 give it to you in layers if they trust you, and

1 that's standard procedure.

2 Q. Mr. Gillum, my question, again, was, did
3 it change? Yes or no. Did his explanations
4 change over your period of treatment? Did it?

5 A. He added information. He included he
6 was willing to reveal greater amounts of what had
7 occurred.

8 Q. Does that mean yes, it changed?

9 A. Well, I guess it depends on your
10 definition of change.

11 Q. Different -- was it what he eventually
12 told you different than what he had first told
13 you?

14 A. Well, it was consistent in that when he
15 initially told me, he said that there were things
16 like oral sex that occurred but he was not
17 comfortable talking about those things at our
18 first meeting. And then as time went on, he did
19 tell me and give me more information about things
20 like oral sex. So in the overall context, it was
21 consistent with what he told me the first time I
22 met with him, however, he gave me much more
23 detail about it as time went on.

24 Q. Mr. Gillum, you mentioned that there are
25 protocols for doing this; is that correct?

1 A. Right.

2 Q. What protocol did you use, sir?

3 A. Well, essentially, an interview where
4 you're allowing the patient to offer up their own
5 narrative for them to describe or tell their own
6 story about what occurred as opposed to a
7 structured interview where you're asking them
8 specific questions about did this happen to you,
9 did that happen to you. In fact, whenever you
10 interview a child or an adolescent who may have
11 been sexually abused, you have to be careful
12 because you don't want to lead them, you don't
13 want to -- like, especially with younger
14 children, you don't want to lead them by saying
15 oh, so maybe this happened to you. You want them
16 to tell you themselves in their own words what
17 exactly happened. And that's why you have to be
18 patient, and it takes some time to do that. So
19 rather than a structured interview where I'm
20 asking them very specific questions and putting
21 them on the spot, it's -- when you're doing this
22 type of thing, whether you're at a children's
23 adolescent center, whether you're a police
24 officer or whether you're with Children and
25 Youth, you're going to let the child tell you the

1 story as opposed to you giving the child any
2 information or any suggestions about what might
3 have happened to them.

4 Q. And are you suggesting that you followed
5 that protocol?

6 A. Yes.

7 Q. Do you recall telling him early in the
8 process that Aaron wasn't talking but you kept
9 your body language open and said, quote, look, I
10 know that something terrible happened to you. I
11 understand that you want it to stop and you want
12 to get away from him and you're not sure if you
13 want to take it any further than that. Did you
14 tell him, I know that something happened to you?

15 A. That was right -- part of a bigger
16 conversation where --

17 Q. Did you tell him or not?

18 A. I reiterated to him what he had already
19 told me.

20 Q. Is that -- I'm sorry. Did you tell him,
21 look, I know something terrible happened to you,
22 I understand you want it to stop and you want to
23 get away from him and that you're not sure if you
24 want to take it any further than that? Did you
25 tell him that or not?

1 A. Yes. That was -- that was regurgitating
2 what we had talked about, summarizing what we had
3 talked about.

4 Q. Can we agree that that's very leading?

5 A. No. It was me feeding back to him what
6 he had told me, which was he was very afraid of
7 Mr. Sandusky. He feared for his life, he wanted
8 to get as far away from him as he possibly could.
9 And he talked about many safety issues along
10 those lines. And he had already told me that the
11 sexual things had happened to him, so we were, I
12 think at that point, summarizing, okay, this is
13 what you're saying at this point.

14 Q. Did you explain to him the process of
15 grooming many times over his three years in
16 therapy sessions? Did you explain the process of
17 grooming to him?

18 MS. PETERSON: Objection relevance.

19 MR. LINDSAY: I'm asking him questions
20 about his therapy.

21 MS. PETERSON: Your Honor, I believe
22 that the issue that counsel identified is
23 repressed memory. And there has not been any
24 questions about that at all.

25 MR. LINDSAY: Well, no, the question is

1 is this, he said he used protocols, he said he
2 wasn't leading these people, and I want to ask
3 him about whether he did these things, which are
4 obviously very highly leading. I think I have a
5 right to ask those questions based on --

6 THE COURT: Yeah. Overruled.

7 BY MR. LINDSAY:

8 Q. Did you do that?

9 A. What you're talking about is later in
10 the process. Because Aaron was blaming himself.
11 Aaron, like many victims, was saying oh, when I
12 younger I should have done more to get away from
13 Mr. Sandusky, how could I allow him to do all
14 these terrible things to me? So Aaron, like many
15 victims, was blaming himself. So under those
16 circumstances, what the therapist typically does
17 is say to them, wait a minute, you're looking at
18 it from your 15-year-old mind right now and
19 you're looking back on things. When you were
20 11-years-old and he was giving you money and
21 buying you things and taking you places and
22 impressing you all the time and you saw what a
23 powerful man he was and how everybody respected
24 him, you know, my point to him was, you were in
25 no position to be able to fight off or stop the

1 sexual abuse that was occurring to you as a
2 child. So the point of explaining grooming is so
3 that the children do not blame themselves so they
4 get the concept of oh, yeah, I was manipulated, I
5 was manipulated into feeling like I owed Jerry
6 Sandusky something. And that's very typical for
7 someone like Sandusky, to make people feel that
8 they're indebted to him and therefore, much less
9 likely to ever report him for the kinds of things
10 he was doing. So that's what pedophiles do, they
11 groom children so that the children end up
12 feeling psychologically indebted to that person
13 and likely to do anything, including sexual
14 things, even though they know this isn't right,
15 but he is an adult and he is doing all this nice
16 things for me and my family so I'm going to go
17 along with this. And again, you explain that to
18 victims because they tend to look back on things
19 when they're a little older and hold themselves
20 partially responsible like, I should have been
21 able to get away from him. People are going to
22 think that I'm gay. People are going to think
23 that, you know, was a party to this voluntarily.
24 And I explain to them, no, this was the grooming
25 that occurred. You know, this is what happened,

1 you were set up to feel indebted to Jerry
2 Sandusky. That's what happens. That's what
3 happens in serial pedophile cases.

4 Q. Mr. Gillum, are you the one who told him
5 what you believed Jerry Sandusky's MO? Were you
6 or not the person who told him what Sandusky's
7 MO, motus operandi, was? Are you the guy?

8 A. Yes. We talked about it.

9 Q. Does that mean yes?

10 A. Yes. We talked about it.

11 Q. Did you become Aaron's advocate? Yes or
12 no.

13 A. Yes.

14 MS. PETERSON: Objection.

15 THE COURT: Overruled.

16 BY MR. LINDSAY:

17 Q. All right. Do you think with the
18 protocols, it's appropriate to be his therapist
19 and his advocate?

20 A. Yes.

21 Q. And what protocol is that, sir?

22 A. Well, in this particular case, I was
23 advocating for Aaron to feel safe and to have
24 justice, which is what he was pursuing and to be
25 safe. So I did advocate in terms of making sure

1 that I felt law enforcement was doing what they
2 needed to do to work on the case.

3 Q. Mr. Gillum you strongly, I guess the
4 word would be petitioned or urged the attorney
5 general's office to charge Mr. Sandusky?

6 MS. PETERSON: Objection. This is
7 irrelevant Your Honor.

8 MR. LINDSAY: I'm just saying, asking
9 whether he was an advocate and whether he did
10 that. This is I think --

11 THE COURT: I'm going to overrule the
12 objection. You can answer.

13 BY MR. LINDSAY:

14 Q. Did you strongly advocate to the
15 attorney general's office that they should charge
16 Mr. Sandusky?

17 A. Yes. I advocated they needed to
18 investigate the case because they
19 weren't investigating the case.

20 Q. To your satisfaction?

21 A. To the satisfaction of agents that
22 worked for the attorney general's office, to the
23 satisfaction of senior deputy attorney generals,
24 to the satisfaction of the Pennsylvania State
25 Police who told me that the highest level at the

1 attorney general's office was tying their hands
2 and would not allow them to do certain things,
3 like execute warrants. So that troubled me and
4 concerned me very much.

5 Q. Did you appear in the grand jury room
6 with Aaron Fisher?

7 A. Yes, I did.

8 Q. How many times?

9 A. Twice.

10 Q. And you were there in the grand jury
11 room throughout his testimony?

12 A. Yes.

13 Q. Was there any special court order that
14 permitted you to do that, sir?

15 MS. PETERSON: Objection. Relevance.

16 MR. LINDSAY: I'm just asking him -- I
17 think it's part of our general petition.

18 THE COURT: What's the relevance to the
19 PCRA?

20 MR. LINDSAY: First of all, this guy
21 goes to the grand jury room, he's an advocate.
22 We're going to introduce testimony, hopefully at
23 the next hearing, how far off this is from the
24 standard protocols what this gentleman did. And
25 so consequently, I want to at least get that

1 testimony out so that I could present it to an
2 expert witness to have her testify about it.

3 THE COURT: I understand you have the
4 psychological part, yes, the grand jury part.

5 MR. LINDSAY: It just -- this guy is-
6 excuse me, this gentleman, this what, a
7 therapist, is a --

8 THE WITNESS: Psychologist. Get it
9 right.

10 MR. LINDSAY: Oh, I will. I'll do my
11 best, sir. A psychologist, he's an advocate and
12 we believe that that violates the protocol. So
13 the fact that he would appear in a grand jury
14 room is highly irregular. I don't know if
15 there's any provision to permit it. And --

16 THE COURT: You have in the evidence
17 that he's in there twice. That's relevant to the
18 PCRA. Whether or not it's some violation of
19 grand jury rules is not relevant under anything
20 you've raised that I can see, unless you can
21 point me to something. So I'm going to sustain
22 the objection.

23 BY MR. LINDSAY:

24 Q. Do you believe, sir, that individuals
25 can repress memories of sexual abuse?

1 A. It's possible.

2 Q. Are you familiar with the protocols with
3 regard to dealing with repressed memory?

4 A. No. I don't deal with repressed memory.

5 Q. People have false memories?

6 A. Yeah. And that's not my area of
7 expertise.

8 Q. So, you don't know?

9 A. No. I don't work with anyone who claims
10 to have repressed memories or anything along
11 those lines.

12 Q. You -- I think you said that as a
13 therapist, with regard to questioning a minor
14 under these circumstances, that the best practice
15 is to ask open-ended questions; correct?

16 A. Right. To allow them to tell their
17 story.

18 Q. Do you recall repeatedly telling Mr.
19 Fisher that Mr. Sandusky was the exact profile of
20 a predator? Did you tell him that?

21 A. Yes. When we were talking about his
22 feeling guilty or feeling responsible for the
23 abuse that he had endured, he was blaming
24 himself. And again, I explained to him the
25 grooming that had undergone -- had undergone in

1 his case and how that manipulated him into the
2 position that he was in.

3 Q. Were you present for a number of the
4 interviews with law enforcement of Mr. Fisher?

5 A. Some of the interviews, yes.

6 Q. With regard to the allegation about oral
7 sex, can we agree, sir, that Mr. Fisher only
8 acknowledged oral sex to you after you asked him
9 specifically if he performed oral sex?

10 A. I believe that he indicated the thing
11 about oral sex, and I believe I clarified that
12 with him.

13 Q. Well, he didn't say anything about oral
14 sex to the school officials, did he?

15 A. I'm not sure.

16 Q. And he didn't make any allegations about
17 oral sex when he was originally interviewed with
18 Jessica Dershem, did he?

19 A. I don't think so.

20 Q. And he made no mention of oral sex when
21 he was first interviewed by the Pennsylvania
22 State Police, did he?

23 MS. PETERSON: Your Honor, I'm going to
24 object. This is irrelevant. This is an attack
25 on the character and credibility of Aaron Fisher.

1 It's not a relevant issue for the purpose of
2 these proceedings.

3 MR. LINDSAY: This is an attack on his
4 procedure, not Aaron Fisher.

5 THE COURT: Overruled.

6 BY MR. LINDSAY:

7 Q. And did you -- can we agree that when he
8 originally testified before the grand jury, that
9 there was no mention of oral sex before he
10 changed his testimony? You were there?

11 A. Yeah, I don't have my notes. I know
12 that he was having panic attacks and fainted at
13 one point when he had to talk about the grievous
14 sexual acts that had been done to him. So I know
15 that he had difficulty talking about those
16 issues, but I can't remember, without looking at
17 notes, exactly what he said. He testified twice
18 and I believe that he started to talk about it
19 the first time and began to cry, began to sob.
20 And I don't think he ever --

21 Q. So he did change his testimony at grand
22 jury? That's my question.

23 MS. PETERSON: Objection. It's
24 argumentative.

25 MR. LINDSAY: No. I'm asking a

1 question. He didn't answer the question. He
2 doesn't answer questions.

3 THE COURT: Overruled.

4 BY MR. LINDSAY:

5 Q. Did he change his testimony or not at
6 grand jury?

7 A. You're talking about during one hearing?

8 Q. I'm talking whether it changed in your
9 presence? You're there.

10 A. He was being asked questions and he was
11 becoming very emotional about those things. And
12 I told you, I can't remember exactly what he
13 said.

14 Q. You can't remember or not?

15 A. I can't remember exactly what he said,
16 he was very emotional and he was trying to talk
17 about some of the things that happened to him.
18 But he was falling apart. And I don't know
19 during the first grand jury hearing if that's on
20 the record or not. I don't know if he managed to
21 get the words out or didn't get the words out.

22 Q. Mr. Gillum, I have here a book entitled
23 Silent No More that you wrote with Aaron Fisher;
24 is that correct?

25 A. Yes. It is correct.

1 Q. Is everything in this book true?

2 A. Yes.

3 Q. Is the book a proper narrative of your
4 treatment of Aaron Fisher and your interaction
5 with law enforcement?

6 A. It should be. I mean, there might be
7 minor points that --

8 Q. Did you treat any of the other accusers
9 in the Sandusky case?

10 A. Yes. After the trial.

11 Q. None before the trial?

12 A. I don't think so.

13 Q. Mr. Houtz?

14 A. Again, I'd have to check. I'd have to
15 check the record to double check that.

16 Q. Are you familiar with the concept known
17 as confirmatory bias, sir? Do you know what the
18 concept of confirmatory bias is?

19 A. I think I know what you're talking
20 about, yes.

21 Q. What is it?

22 A. It's leading someone to believe perhaps
23 something happened because it might have happened
24 to somebody else or there might be other evidence
25 that it happened to someone else or other people.

1 Q. Did you indulge in that, sir?

2 A. No.

3 MR. LINDSAY: Excuse me a minute, Your
4 Honor.

5 THE COURT: Sure.

6 MR. LINDSAY: That's all.

7 THE COURT: Ms. Peterson.

8 CROSS-EXAMINATION

9 BY MS. PETERSON:

10 Q. Aaron Fisher did not undergo repressed
11 memory with you; correct?

12 A. That's correct.

13 Q. You don't perform that type of therapy?

14 A. No, I don't.

15 Q. Why not?

16 A. Because that is not a solid field where
17 there's been enough research and scientific data
18 to prove validity and reliability in either the
19 analysis, the assessment, the diagnosis, or the
20 treatment. It's been more like a fad or area of
21 interest in the mental health field where a small
22 subset of therapists started to investigate that
23 in repressed memories. However, in my training,
24 I know that it's a very dangerous game to use
25 certain methods like hypnosis because sometimes

1 memory can get very confused. And if one talks
2 about something that might have happened to
3 somebody, they could develop what's called an
4 artificial memory, or a false memory, you know,
5 their unconscious mind or subconscious mind can
6 actually pull together some memories or bits and
7 pieces of real memories and sometimes come up
8 with a memory that, in fact, is false. So it's
9 simply not safe or prudent to do that type of
10 treatment or analysis.

11 Q. You never employed any of those
12 techniques with Aaron Fisher?

13 A. No. I don't employ those techniques
14 with anyone I work with.

15 Q. And a psychologist who performs the
16 repressed memory types of therapy has to undergo
17 specialized training; correct?

18 A. Yes.

19 Q. And you have not undergone that
20 training?

21 A. No, I have not.

22 MS. PETERSON: No further questions.

23 THE COURT: Mr. Lindsay.

24 MR. LINDSAY: Nothing further.

25 THE COURT: You may step down. You're

1 excused.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Your next witness.

4 MR. LINDSAY: Mr. Leiter.

5 JOSEPH LEITER

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

8 THE COURT: Please have a seat. Both
9 the chair and the microphone move, so speak
10 directly into the microphone.

11 MR. LINDSAY: May I inquire?

12 THE COURT: Sure.

13 DIRECT EXAMINATION

14 BY MR. LINDSAY:

15 Q. Would you state your name, please?

16 A. Joseph Leiter.

17 Q. And what is your current occupation?

18 A. I'm retired.

19 Q. And retired from what, sir?

20 A. Retired from the Pennsylvania State
21 Police.

22 Q. And how long were you involved as a
23 state police officer?

24 A. Twenty-six years and nine months.

25 Q. And as far as the state police goes,

1 what was your job with the state police, say, the
2 last ten years?

3 A. Last ten years, I was a patrol
4 supervisor. And in about the last five years, I
5 was the crime unit supervisor.

6 Q. As a crime unit supervisor of the
7 Pennsylvania State Police, you're supervising
8 other troopers; correct?

9 A. That's correct.

10 Q. And that would be in all criminal areas;
11 is that correct?

12 A. Correct.

13 Q. Did you become involved in the Sandusky
14 investigation?

15 A. Yes.

16 Q. How did you become involved?

17 A. There was a time when the investigation
18 started to get quite -- became quite involved.
19 And we joined with the attorney general's office
20 and I was assigned to assist with that
21 investigation.

22 Q. How long were you assigned to assist in
23 that investigation?

24 A. I'm thinking year, year and a half.

25 Q. In the course of that investigation, did

1 you have occasion to interview a number of the
2 accusers against Mr. Sandusky?

3 A. Yes.

4 Q. Did you interview Brett Houtz?

5 A. Yes.

6 Q. Aaron Fisher?

7 A. No. I -- no. Along with a supplemental
8 interview, but I never really spent much time
9 with him.

10 Q. Michal Kajak?

11 A. Well, just once when he called on the
12 phone. But again, that was handled by their
13 investigators.

14 Q. Zach Konstas?

15 A. Yes.

16 Q. Dustin Struble?

17 A. Yes.

18 Q. Sebastian Payton?

19 A. To an extent, yes.

20 Q. Ryan Rittenmeier?

21 A. No. Don't know that name.

22 Q. Now sir, what type of investigation
23 would you call the Sandusky investigation? I
24 mean, was it like a homicide investigation,
25 robbery? What kind of investigation would you

1 call it?

2 A. It would have been a sexual assault.

3 Q. And it involved, did it not, sexual
4 assault of minors; is that correct?

5 A. Correct.

6 Q. Sir, did you have any specific training
7 as to how to conduct these investigations?

8 A. No.

9 Q. Were you aware of any protocols that
10 would be used when conducting these
11 investigations?

12 A. Not specifically, no.

13 Q. Do you recall interviewing Mr. Houtz
14 with his attorney present?

15 A. Yes.

16 Q. And you recall that the interview was
17 taped, was it not?

18 A. That's correct.

19 Q. And that some of the interview was
20 presented to the jury one way or another at the
21 trial of Mr. Sandusky; is that correct?

22 A. Yes.

23 Q. Did you record any other interviews?

24 A. No.

25 Q. Why not?

1 A. Because this individual was the only one
2 who appeared with an attorney. And it sort of
3 made us a little uneasy, why was there an
4 attorney with this one?

5 Q. All right. Do you recall the substance
6 -- well, do you recall that there was a period of
7 time where you had a conversation with the
8 attorney about how you were conducting this
9 investigation?

10 A. Yes.

11 Q. And was that recorded?

12 A. Yes.

13 MR. LINDSAY: Your Honor, at this time,
14 I'd like to play that conversation.

15 MS. PETERSON: Objection, Your Honor.
16 It's not relevant. He's acknowledged that it
17 exists. The transcript speaks for itself.
18 There's no need to replay it again.

19 MR. LINDSAY: What harm?

20 THE COURT: How long is it? I don't
21 recall.

22 MR. LINDSAY: The part that we're going
23 to play is not long.

24 THE COURT: I'll overrule it just
25 because it's a bench trial, there's no harm.

1 MR. LINDSAY: What we propose to do is
2 to bring it up and put it in front of your
3 microphone; is that all right?

4 THE COURT: Yours would probably be
5 better.

6 MR. LINDSAY: I want you to listen to
7 this and see if you recall this.

8 (Whereupon, an audio recording was
9 played.)

10 BY MR. LINDSAY:

11 Q. You actually, did you not, sir, give a
12 speech to Mr. Houtz about what he should say?

13 MS. PETERSON: Objection.

14 MR. LINDSAY: Well, I'm asking, do you
15 recall --

16 THE WITNESS: I don't remember, sir.

17 MR. LINDSAY: All right. Maybe we can
18 play that.

19 THE WITNESS: I'm having a very
20 difficult time hearing that. I could very --
21 could not really make out.

22 MR. LINDSAY: I'll read the transcript
23 because I'm having trouble hearing it.

24 THE WITNESS: Yeah, I'm having a very
25 difficult time hearing that.

1 BY MR. LINDSAY:

2 Q. Do you recall saying the following to
3 Mr. Houtz: "Trooper Leiter --" your name is
4 Leiter?

5 A. Correct.

6 Q. Just for the record, I'm reading from
7 page nine of a transcript that was made of this.
8 "You would have been repeating word for word
9 pretty much what a lot of people have already
10 told us. It's very similar. There's differences
11 about a lot of the things you have told us are
12 very similar to what we have heard from the
13 others. And we know from instances these other
14 young adults talked to us and tell us what had
15 taken place and there's a pretty well-defined
16 progression in the way that he operated and still
17 operates I guess to some degree. And that
18 oftentimes this progression, especially when it
19 goes on for an extended period of time, lead into
20 more than just the touching and the feeling that
21 there has been actual oral sex that has taken
22 place by both parties. And we unfortunately have
23 found that there's been what we classify as rape
24 has occurred. And I don't want you to feel that.
25 Again, as Trooper Rossman said, I don't want you

1 to feel ashamed because you're a victim in this
2 whole thing, what happened happened. He took
3 advantage of you. But when we first started, we
4 talked that we needed to get details of what took
5 place. So if these type of things happened, we
6 need you to tell us that this is what happened.
7 Again, we're not going to look at you any
8 differently other than the fact that you're a
9 victim of this crime and is going to be taken
10 care of accordingly, but we need you to tell us
11 graphically as you can what took place as we go
12 through this whole procedure. We just want you
13 to understand that you're not alone."

14 Mr. Houtz says, "Yeah, I know."

15 "Trooper Leiter: By no means are you
16 alone in this."

17 Mr. Houtz says, "I understand."

18 And then you say, "Okay. We're going to
19 restart the recording."

20 It was -- do you recall that? Do you
21 remember that, sir?

22 A. I don't remember that word for word.
23 But if that's the transcript, then that's
24 accurate.

25 Q. You're not denying that that's what you

1 said?

2 A. No.

3 Q. And at the time, did you think that the
4 tape recorder was off?

5 A. Yes.

6 Q. Okay. Can we agree, sir, that you're
7 suggesting to him what you needed him to say?

8 A. I needed him to tell us what happened.
9 Whatever happened.

10 Q. But you pretty much told him what
11 everybody else was saying; correct?

12 A. I don't know that I told him what
13 everyone else was saying. But as I had told him,
14 we needed him to tell us what happened to him.

15 Q. Would you agree that you were trying, in
16 these interviews, to have these individuals,
17 these young men, let you know of any wrongdoing
18 by Mr. Sandusky?

19 A. Yes.

20 Q. You were trying to make a case?

21 A. We were trying to find the truth.

22 Q. Are you aware of a process when
23 investigating this type of crime of asking
24 open-ended questions?

25 A. I don't follow your question, sir.

1 Q. Do you know what an open-ended question
2 is?

3 A. Would be one that I would ask, what'd
4 you have for lunch today?

5 Q. Okay. And do you agree that when you
6 gave that speech to Mr. Houtz, you were not
7 asking him open-ended questions?

8 A. I don't know that I was asking him any
9 questions during that time.

10 Q. You were telling him what he needed to
11 say?

12 A. I told him that he needed to tell us
13 what happened to him.

14 Q. Well, did you tell him that other
15 witnesses had made similar accusations?

16 A. Yes.

17 Q. Would you agree that a number of these
18 accusers changed their story from the time that
19 you interviewed them and they testified at trial?

20 MS. PETERSON: Objection. Relevance.
21 This questioning is about his techniques.
22 Whether the witness testified to something
23 differently at trial is not within the purview of
24 this particular witness.

25 MR. LINDSAY: Unless he suggested it.

1 THE COURT: Overruled. Go ahead.

2 THE WITNESS: I don't know because I
3 wasn't present for the trial for their testimony.

4 BY MR. LINDSAY:

5 Q. Did you interview Dustin Struble?

6 A. Yes. Yes.

7 Q. Do you recall telling Mr. Struble in
8 this interview that if he begins to have
9 difficulties with his memory to contact you so
10 that assistance can be found?

11 A. Yes.

12 Q. What did you mean?

13 A. I was very concerned with all these
14 young men that we probably should have had some
15 mental health assistants available for them for
16 quite some time. And thankfully, I can see here
17 in Centre County that they have taken those steps
18 since this has happened to have that available
19 and that type of procedure for them. I was very
20 concerned about their mental well being.

21 Q. Do you know what repressed memories are,
22 sir?

23 A. No, I do not.

24 Q. You couldn't hear what we played here?

25 A. Not very well, no, sir.

1 Q. Well, let me read a transcript of it and
2 see if you confirm that this is what happened.
3 This is a conversation between Mr. Houtz, Mr.
4 Rossman and you I guess. There's some
5 conversation that occurred, it was on the tape
6 between the four of you. And then I believe that
7 Mr. Houtz left to get a soft drink. All right.

8 We have Mr. Houtz saying, "Give me a
9 Pepsi Max."

10 Trooper Rossman says, "Okay."

11 Mr. Androsi says, "I'm going to wait
12 here."

13 Mr. Houtz says, "Okay, bud."

14 And then Mr. Androsi says, "Pretty
15 consistent with other."

16 "Trooper Leiter. Oh my god."

17 "Mr. Androsi. Yeah."

18 "Trooper Leiter. Everything is the
19 same."

20 "Mr. Androsi. Yeah, the prosecutor, I
21 spoke to the prosecutor and basically told her
22 she said it sounds textbook."

23 "Trooper Leiter. I thought about," and
24 there's an unintelligible matter.

25 "Mr. Androsi. I'll tell you what."

1 "Trooper Leiter. It's the same thing
2 over and over and over and over and over."

3 "Mr. Androsi. I'll tell you what. I
4 thought, um, he got, um, Scott got further with
5 him than I did."

6 "Trooper Leiter. Uh-huh."

7 "Mr. Androsi. When he started talking
8 about testicles and stuff, he hadn't gotten it.
9 I wonder if there wasn't oral sex."

10 "Trooper Leiter, "Well, there is. I
11 think we'll get to that. I think there is and
12 I'm hoping we can --"

13 Mr. Androsi. Yeah."

14 "Trooper Leiter. "-- get his
15 confidence. And you know, because we have the
16 other kids."

17 "Mr. Androsi. Yeah."

18 "Trooper Leiter. And the thing we found
19 with Gary is the first time they shower, they get
20 the feel the second time."

21 "Mr. Androsi. Uh-huh."

22 "Trooper Leiter. It's a little bit
23 closer. This thing's here with the shower
24 heads."

25 "Mr. Androsi. Yeah."

1 "Mr. Leiter. The same thing. All the
2 kids tell us the same thing."

3 "Mr. Androsi. Yeah."

4 "Trooper Leiter. When the shower head's
5 --"

6 "Mr. Androsi. Yeah. This --"

7 "Trooper Leiter. This one or they don't
8 work and you have to shower with him."

9 "Mr. Androsi. Yeah."

10 "Trooper Leiter. It's the same thing."

11 "Mr. Androsi. You think -- do you think
12 he -- do you think there was oral sex with him?"

13 "Trooper Leiter. I believe so."

14 "Mr. Androsi. Yeah."

15 "Trooper Leiter. I can't believe
16 especially when he says that they're positioned
17 in the way that they are, Gary is erect, I --"

18 "Mr. Androsi. Yeah, he's on top of him.
19 On the oral sex, was he performing on the
20 children or --"

21 "Trooper Leiter. Both."

22 "Mr. Androsi. Were the children okay?"

23 "Trooper Leiter. Both."

24 "Mr. Androsi. All right. Yeah, I have
25 got to get him. I've only had a chance to talk

1 to him really one time. And when I interviewed
2 him, it seems like we were getting a little bit
3 more. And I was in a hurry, I only had an hour."

4 "Trooper Leiter. This is the way --"

5 "Mr. Androsi. And now that we have more
6 time."

7 "Trooper Leiter. This is the way it was
8 with the first one. It took months to get this
9 first kid that we have that brought this to our
10 attention. It took months to get him because it
11 was well, yeah, he would rub my shoulders.

12 "Androsi. Yeah."

13 "Trooper Leiter. And then he would do
14 this and it just took a repetition and repetition
15 and finally we got to the point where he would
16 tell us what happened."

17 "Mr. Androsi. Yeah."

18 "Trooper Leiter. And what he's talking
19 about and telling you, this is a rubber stamp."

20 "Mr. Androsi. Yeah. Yeah."

21 "Trooper Leiter. The same thing. Same,
22 same, same process, same everything."

23 "Mr. Androsi. Yeah."

24 "Trooper Leiter. If he had been with
25 him this long for three years, I know that there

1 has been a rape committed something along the
2 line here."

3 "Mr. Androsi. Actual? Like an
4 intercourse? Do you have a witness that's going
5 to --"

6 "Trooper Leiter. We have two that have
7 seen it."

8 "Mr. Androsi. Oh, really?"

9 "Trooper Leiter. We can't -- we can't
10 find the victim but he may be in there."

11 "Mr. Androsi. Are you kidding?"

12 "Trooper Leiter. Yeah."

13 "Mr. Androsi. The time -- the time
14 frame matches up."

15 "Trooper Leiter. Uh-huh."

16 "Mr. Androsi. Can we at some point in
17 time say to him listen, we have interviewed other
18 kids? Other kids --"

19 "Trooper Leiter. Oh, yeah."

20 "Mr. Androsi. Have told us."

21 "Trooper Leiter. Yeah."

22 "Mr. Androsi. That there was inter
23 course and they have admitted this. You know,
24 um, as it, you know, is there anything else that
25 you want to tell us?"

1 "Trooper Leiter. Yep. And we do that
2 with all the other kids. Say, you know, listen,
3 this is what we have found so far. You fit the
4 same pattern as all the other ones. That's the
5 way he operates."

6 "Mr. Androsi. Yeah."

7 "Trooper Leiter. And we know with the
8 progression of the way he operates and the other
9 kids we have dealt with have told us that this
10 has happened after this has happened."

11 "Mr. Androsi. Uh-huh."

12 "Trooper Leiter. And did that happen
13 with you?"

14 "Mr. Androsi. Uh-huh. And I need to
15 tell him, too, you know, okay, it just doesn't
16 seem --"

17 "Trooper Leiter. Yeah."

18 "Mr. Androsi. It doesn't seem to fit
19 somebody's MO, you know, from all the cases I've
20 done before that you take it to that level and
21 then you stop."

22 "Trooper Leiter. Oh, no."

23 "Mr. Androsi. You know, especially if
24 it's something that happened over a course of
25 time repeated that they had gained trust."

1 "Trooper Leiter. The only reason it
2 stopped is --" and then we go to the other
3 statement I read.

4 Now, that's what you couldn't hear on
5 that tape, and I apologize for that. But is that
6 what you said?

7 A. If that's what's on your transcript from
8 the tape, yes.

9 Q. Is what you were saying to Mr. Androsi
10 the truth?

11 A. Yes.

12 Q. First of all, who's Gary?

13 A. I have no idea who Gary is.

14 Q. And you state here, and I'm reading from
15 page seven, "Yep. And we do that with all the
16 other kids, say, you know, listen, this is what
17 we found so far. You fit the same pattern of all
18 the other ones. That's the way he operates."
19 Did you do it with all the other kids, sir?

20 A. Probably.

21 Q. In other words, you would inform them
22 what each other was saying?

23 A. Not what each other was saying, no. We
24 would -- we would inform them that they were not
25 alone, that there were other victims involved in

1 this.

2 Q. Well, did you tell them that there's a
3 pattern? When you interviewed these young men,
4 did you tell them that there was a certain
5 pattern that you anticipated that Mr. Sandusky --

6 A. I don't -- I can't say yes or no to
7 that. I don't know.

8 Q. You say here, "You fit the same pattern
9 of all the other ones"?

10 A. Correct.

11 Q. Is that what you would have told these
12 young men?

13 MS. PETERSON: Objection. It's been
14 asked and answered.

15 THE COURT: Overruled.

16 THE WITNESS: I don't know.

17 MR. LINDSAY: That's all.

18 THE COURT: Attorney Peterson.

19 MS. PETERSON: Thank you.

20 CROSS-EXAMINATION

21 BY MS. PETERSON:

22 Q. The reason that you made that statement
23 to Brett Houtz was so he would open up to you?

24 A. That's correct.

25 Q. So he would feel more comfortable?

1 A. That's correct.

2 Q. Because sexual abuse is a humiliating
3 topic?

4 A. Correct.

5 Q. By making that statement to Mr. Houtz,
6 you weren't telling him to lie; correct?

7 A. Oh, definitely not.

8 Q. You weren't telling him to fabricate any
9 stories?

10 A. No.

11 Q. Not telling him to embellish something?

12 A. No.

13 Q. You weren't tell him to mention certain
14 times or places?

15 A. No.

16 Q. And you weren't threatening him?

17 A. No.

18 Q. You simply wanted the truth?

19 A. To find out what happened to him.

20 Q. Counsel asked you about your interviews
21 with Brett, with Michal Kajak, with Zack Konstas,
22 with Dustin Struble, and Sebastian Paden. But
23 there were other young men that you interviewed
24 as well; correct?

25 A. Oh, yes.

1 Q. Can you estimate the number of other
2 young men that you interviewed that did not
3 reveal anything of a sexual nature?

4 A. There were dozens.

5 MS. PETERSON: I have nothing further.

6 THE COURT: Mr. Lindsay.

7 REDIRECT EXAMINATION

8 BY MR. LINDSAY:

9 Q. When you say dozens, how many do you
10 think you interviewed?

11 A. Well, I've been trying to figure out --
12 I remember there we had a list of either three or
13 600 young men that were divided among the
14 investigators. And we went out in teams and
15 interviewed -- we found them and interviewed
16 them. And I would say somewhere around 60 that I
17 participated, maybe not as the main interviewer,
18 but I participated as one of the persons who was
19 there to interview these young men. And if you
20 remember, one of them was an individual that I
21 came and testified before that stated that
22 nothing happened to him.

23 MR. LINDSAY: That's all.

24 THE COURT: Attorney Peterson.

25 MS. PETERSON: No further questions.

1 THE COURT: You may step down. You're
2 excused.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you. Your next
5 witness.

6 MR. LINDSAY: Just a moment, sir.

7 THE COURT: Both the chair and the micro
8 phone.

9 SCOTT ROSSMAN

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

12 THE COURT: Both the chair and the
13 microphone move. And as soon as Mr. Lindsay's
14 ready, he'll ask you some questions and tell us
15 what you are I guess. Who's your next witness?

16 MR. LINDSAY: Trooper Rossman.

17 THE COURT: He's here. He's sworn
18 already. I didn't know who he was.

19 DIRECT EXAMINATION

20 BY MR. LINDSAY:

21 Q. Can you state your name for the record?

22 A. Corporal Scott Rossman. Employed by the
23 Pennsylvania State Police. Assigned as a patrol
24 supervisor for Troop G at the Rockview barracks.

25 Q. How long have you been a patrol

1 supervisor?

2 A. Five years.

3 Q. And when we talk about a patrol
4 supervisor, we're talking about, basically,
5 traffic control; is that not correct?

6 A. In the state of Pennsylvania, the state
7 police, when there's area where there's not a
8 municipal coverage, the patrol members do
9 criminal and traffic work.

10 Q. And did you become involved in the
11 Sandusky case?

12 A. Yes, I did.

13 Q. When did you become involved in the
14 Sandusky case?

15 A. I don't know the exact date, I'd have to
16 refer to the report. I'm guessing it was in
17 2009, 2008. 2009, I believe.

18 Q. Would you classify yourself as what is
19 commonly called the lead investigator?

20 A. I was an investigator in the case. At
21 one point, I was the only person working on the
22 case, yes.

23 Q. Did you have occasion to interview Aaron
24 Fisher?

25 A. Yes, I did.

1 Q. Jason Simcisko?

2 A. Yes, I did.

3 Q. Brett Houtz?

4 A. Yes, I did.

5 Q. Michal Kajak?

6 A. Yes.

7 Q. Zach Konstas?

8 A. Yes, I did.

9 Q. Dustin Struble?

10 A. Yes, I did.

11 Q. Sebastian Paden?

12 A. I don't believe I interviewed Sebastian.

13 Q. Ryan Rittenmeier?

14 A. I didn't interview Ryan Rittenmeier.

15 Q. And can we agree that you -- the ones
16 I've just mentioned, that you conducted multiple
17 interviews of these individuals?

18 A. I did interview some of these
19 individuals several times, yes.

20 Q. And at least one of these interviews was
21 recorded; correct?

22 A. Yes.

23 Q. The one about Brett Houtz?

24 A. Yes.

25 Q. His attorney was present; is that

1 correct?

2 A. Yes, he was.

3 Q. Were there any other taped interviews of
4 any of these individuals?

5 A. Not that I know of.

6 Q. What type of investigation would you
7 call this? I mean, homicide, robbery? What
8 would you call this type of investigation?

9 A. A sex case.

10 Q. A sex case. Did you have any
11 specialized training as to how to investigate
12 these cases?

13 A. Specifically a child sex case?

14 Q. Yes.

15 A. No.

16 Q. Did you receive any special training as
17 to how you should do interrogations in these
18 cases?

19 A. Interrogations?

20 Q. Interviews.

21 A. Or interviews?

22 Q. Whatever. Questions.

23 A. Well, which is the question?

24 Q. Questioning. You're saying
25 interrogation and interviews are not the same

1 thing?

2 A. No, they're not.

3 Q. How about questioning? Do you know what
4 I mean when I say questioning?

5 A. When I question someone?

6 Q. Yeah.

7 A. Yes.

8 Q. And have you received specialized
9 training for that?

10 A. I did go to additional training for
11 that, yes.

12 Q. Involving child sex cases?

13 A. Involving cases, criminal cases.

14 Q. Generally?

15 A. Criminal.

16 Q. Just general criminal cases; correct?

17 A. Yes.

18 Q. Have you ever heard of the term of
19 suggestive questioning?

20 A. I have.

21 Q. Did you engage in suggestive questioning
22 with these individuals?

23 A. No.

24 Q. Do you recall, were you present when
25 Corporal Leiter had a conversation with Attorney

1 Androsi?

2 A. I don't believe. I believe I went
3 outside with Mr. Swisher.

4 Q. Are you familiar with the transcript of
5 that particular interview?

6 A. I have not heard that video or
7 audiotape. And I have not seen the transcript
8 for that.

9 Q. All right. Well, I don't want to read
10 it all again. Were you aware that Corporal
11 Leiter indicated to Mr. Androsi, and I hope I'm
12 not mischaracterizing it, that they would -- he
13 told these persons he was interrogating what
14 other people had said?

15 MS. PETERSON: Objection. Your Honor,
16 he said that he was not present. He does not
17 know about the tape nor has he seen a transcript.
18 So he's asking him to speculate on something that
19 he's not familiar with.

20 MR. LINDSAY: Well, let me follow up.

21 THE COURT: Why don't you just read it
22 again? That might be the easiest way to go about
23 it.

24 MR. LINDSAY: All right. Will do.

25 BY MR. LINDSAY:

1 Q. I want to read to you something that
2 Trooper Leiter is purported to have said, and
3 he's indicated that he felt he did said this:

4 "You would have been repeating word for
5 word pretty much what a lot of people have
6 already told us. It's very similar. There's
7 differences about a lot of the things you have
8 told us are very similar to what we have heard
9 from the others. And we know from instances
10 these other young adults talked to us and tell us
11 what had taken place, that there's a pretty
12 well-defined progression in the way that he
13 operated and still operates I guess to some
14 degree. And that oftentimes this progression,
15 especially when it goes on for an extended period
16 of time, lead into more than just the touching
17 and the feeling, that there has been actual oral
18 sex that has taken place by both parties. And we
19 unfortunately have found that there's been what
20 we classify as rape has occurred. And I don't
21 want you to feel that. Again, as Trooper Rossman
22 said, I don't want you to feel ashamed because
23 you're a victim in this whole thing, what
24 happened happened. He took advantage of you.
25 But when we first started, we talked that we had

1 needed to get details out of what took place. So
2 if these type of things happened, we need you to
3 tell us this is what happened. And again, we're
4 not going to look at you any different other than
5 the fact that you're a victim of this crime and
6 is going to be taken care of accordingly. But we
7 need you to tell us as graphically as you can
8 what took place as we go through this whole
9 procedure. We just want you to understand that
10 you're not alone in this."

11 "Houtz: Yeah, I know."

12 "Trooper Leiter. By no means are you
13 alone."

14 "Mr. Houtz. I understand."

15 "Trooper Rossman. Okay. We're going to start
16 the recording."

17 Were you present when that was said by Mr.
18 Leiter?

19 A. If -- I don't know if I was there or
20 not. I must have come back in at some point and
21 said that I'm going to start the recording. I
22 absolutely know for a fact that I took Mr.
23 Swisher outside and he had a cigarette and then
24 we came in. I don't know if I was there, if I
25 got a drink, or I don't -- I wasn't in there the

1 entire time, I can absolutely tell you that. So
2 I could have been there.

3 Q. Does that describe the technique you
4 were using when you were interviewing these
5 people?

6 A. The technique?

7 Q. Yes.

8 A. Mr. Leiter simply gave him a choice and
9 said hey, this is what we have, this is what
10 we've had in the past. If you are a victim and
11 this has happened to you, then you need to tell
12 us that. It's that simple.

13 Q. So that's what your position is that Mr.
14 Leiter was doing?

15 A. What I just said?

16 Q. Yes.

17 A. Yes.

18 Q. And that was the technique you used when
19 interviewing suspects with Mr. Sandusky's case?

20 A. Suspects?

21 Q. I'm sorry, let me try again. That was
22 the technique you were using when you interviewed
23 various young men about the allegations involving
24 Mr. Sandusky?

25 A. Yes. You have to develop some type of

1 repoire with an individual who is thinking about
2 telling you of something that is so heinous it's
3 unimaginable that has happened to you. So
4 normally people don't tell you that on the first
5 time you talk to them. There's lots of other
6 kids that I interviewed that I use -- we use the
7 same techniques on, the same protocol and they
8 never came forward and said that anything
9 happened to them.

10 Q. You say the same protocol. Is this a
11 protocol you were using?

12 A. Same method.

13 Q. All right. Sometimes it worked?

14 A. Interview method.

15 Q. Were you, during 2009 and 2010,
16 attempting to locate -- well, let me ask you
17 this. You started with an investigation
18 involving the allegations of Aaron Fisher;
19 correct?

20 A. I did not start the investigation.

21 Q. Well, were you aware that that's how the
22 investigation started?

23 A. Yes.

24 Q. And is it true, sir, that you were
25 trying to obtain other victims in this matter

1 before you charged Mr. Sandusky on the Aaron
2 Fisher allegations?

3 A. Absolutely. My job as an investigator
4 is to investigate. And if I believe there's
5 additional victims, whether it's a child sex case
6 or it's an aggravated assault case, it's my job
7 to go out and try to seek and find if there's
8 additional victims. I need to find out the
9 truth.

10 Q. But you were finding additional victims
11 prior to charging Mr. Sandusky on the Aaron
12 Fisher matter; is that correct?

13 A. I was investigating, yes, absolutely.

14 Q. And the purpose of finding these other
15 victims was to bolster your case involving Aaron
16 Fisher, was it not?

17 A. No. I wouldn't say that. It was to get
18 to the truth. And if there were additional
19 victims, find the additional victims. If there
20 weren't, which I've interviewed many kids who
21 were not victims --

22 Q. Did -- would these -- first of all, did
23 you interview these victims multiple times?

24 A. Some of them. I've answered that.

25 Q. Did the stories change?

1 A. The stories got larger, if that makes
2 sense. More detailed.

3 Q. Well, they became progressively more
4 severe; is that not correct?

5 A. In some cases. In some cases, no.
6 People who had been interviewed a second time
7 never admitted more the second time than they did
8 the first time.

9 Q. With regard to Aaron Fisher, did he
10 indicate to you that he was undergoing some form
11 of therapy with Michael Gillum?

12 A. Yes.

13 Q. Was Mr. Gillum present for any of your
14 interviews with --

15 A. Yes.

16 Q. You have to wait until I'm done. She
17 can't take us both.

18 A. Sorry.

19 Q. We all do it. Mr. Fisher told you of
20 oral sex on June 8, 2009 in an interview;
21 correct?

22 MS. PETERSON: Objection. This is not
23 relevant.

24 THE COURT: Mr. Lindsay.

25 MR. LINDSAY: Never mind.

1 THE COURT: Mark that as withdrawn.

2 BY MR. LINDSAY:

3 Q. Do you know what confirmatory bias is?

4 A. I do not.

5 Q. I take it, and maybe I've already asked
6 you this question, but I'll try again, did you
7 use any specific protocols when interviewing
8 these witnesses, other than just doing what you
9 were doing?

10 A. You mean, did I do the exact same thing
11 every single time?

12 Q. No. When I say protocol, I'm talking
13 about a protocol that's been developed as to how
14 you would interview a victim of childhood sexual
15 abuse.

16 A. I explained to you I didn't receive any
17 specific training in that, so the answer would be
18 no.

19 Q. Do you recall telling any of these
20 accusers that if they had difficulties with their
21 memories to contact the state police and you
22 could provide assistance?

23 A. I'm sure I did at some point, yeah. We
24 gave them victim witness notices.

25 MR. LINDSAY: That's all.

1 THE COURT: Attorney Peterson.

2 CROSS-EXAMINATION

3 BY MS. PETERSON:

4 Q. In your experience, it's not uncommon
5 for a victim of sexual abuse not to disclose
6 everything the first time that they speak to law
7 enforcement?

8 A. That's correct.

9 Q. That's because they're embarrassed?

10 A. Yes.

11 Q. Ashamed?

12 A. Yes.

13 Q. It's difficult to talk to a stranger
14 about something sexual; correct?

15 A. Absolutely.

16 Q. That's why you indicated it was
17 important to have a rapport with the particular
18 person you're interviewing with?

19 A. Yes. You have to build up some type of
20 a trust. And again, for them to tell you that
21 and if a horrific act actually happened to them,
22 and then get them to tell you in detail about
23 that act. So yeah, you have to develop a rapport
24 and they have to gain some type of trust in you,
25 that they can confide in you and tell you this.

1 Q. And you indicated that you interviewed a
2 number of young men in connection with this
3 investigation; correct?

4 A. Yes.

5 Q. Not all of them said they were victims
6 of abuse; correct?

7 A. No, they did not.

8 MS. PETERSON: That's all I have, Your
9 Honor.

10 THE COURT: Mr. Lindsay.

11 MR. LINDSAY: I have no further
12 questions.

13 THE COURT: You may step down. You're
14 excused. And it's 2:36, so we'll come back at
15 2:52.

16 MR. LINDSAY: We need to meet with the
17 Court. Can we do it at sidebar?

18 THE COURT: Sure.

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

21 MR. LINDSAY: We intended to fill this
22 day up. We had a witness by the name of Dustin
23 Struble, he's one of the victims and we wanted
24 to bring up the repressed memory issue. We
25 subpoenaed Mr. Struble. And we understood that

1 he would be here today to testify. Last night at
2 about five in the afternoon, I received a call
3 from -- it was more like about four. I received
4 a call from Attorney Andrew Shubin. And Mr.
5 Shubin indicated that he would prefer that his
6 client not appear today because -- well, that's
7 all he said at that time. And I said I don't
8 think I can back off because I've got to fill
9 this day. And then what he said -- he called and
10 left a message and he said I really -- I think
11 what I said was I would try to get him on, he
12 wanted to leave early, get him on earlier. And
13 then he sent me a text message that indicated, I
14 really don't want him to come tomorrow. So I
15 called Mr. Shubin. And he indicated the problem
16 was is that today was Mr. Struble's first
17 birthday -- excuse me, his son's first birthday,
18 Mr. Struble's son's birthday, it's his first
19 birthday, they were going to New Jersey. I said,
20 well, let's put him on first so we can get him
21 done because I need to fill this day and we have
22 so much time to do this. And then I said so I
23 can't back off. And I said, look, come in
24 tomorrow and our position was, if you can
25 convince the Judge about your situation, I got no

1 problem. But you got to do that because I can't
2 back away from this. He came this morning and I
3 take it that you declined to see him, which is --

4 THE COURT: He said he wanted to make an
5 objection on the record and I wanted to get
6 started, so I assumed it was some, you know,
7 incompetency or something. And I said, you know,
8 file whatever, it doesn't have to be, you know,
9 anything long, just file it so I can consider it.
10 I was thinking it was the psychologist, when you
11 called him I thought well, he must have got
12 consent and now everybody's happy.

13 MR. LINDSAY: So now the problem is Mr.
14 Struble's in New Jersey. He left. And I think
15 -- and I don't want to characterize Mr. Shubin
16 but he decided he was out of here, which is --
17 I'm not upset about anything other than I fear
18 the wrath of the Court because -- she'll tell
19 you, I'm always afraid of judges.

20 THE COURT: Well, is that your last
21 witness?

22 MR. LINDSAY: That has to be. Because
23 this other witness we anticipated we'd spend a
24 lot of time with this afternoon. Yes, that's all
25 I have today.

1 THE COURT: So how many more do you
2 have?

3 MR. LINDSAY: We have two experts.
4 We'll get you reports ahead of time.

5 THE COURT: And Struble.

6 MR. LINDSAY: And Struble.

7 THE COURT: Oh, the appellate attorney.

8 MR. SALEMME: Perhaps Attorney Androsi.
9 They would have been called today but they had
10 prior obligations.

11 THE COURT: Are you calling any
12 witnesses? I mean, I know you can't make up your
13 mind until the end.

14 MS. PETERSON: Right.

15 THE COURT: If it ended right now, would
16 you call any?

17 MS. PETERSON: I don't think so.

18 THE COURT: Anyone going to call Judge
19 Cleland? From reading his order, I think he
20 wants called.

21 MR. BARKER: Is it a finding of fact?

22 THE COURT: I don't understand why he
23 wrote what he did. I mean, I guess I'm saying
24 that for the record. I'll leave it on there.

25 MR. LINDSAY: We're just lawyers.

1 THE COURT: I know. I may -- I may,
2 because I've been thinking about it as I read the
3 order, if neither of you are going to call him.
4 And I knew from -- because I did have the court
5 administrator contact him and he's in Florida
6 right now. And I said well, make sure he clears
7 May 11th, assuming maybe he'd get subpoenaed.
8 But I also -- I mean, there's part of me that
9 doesn't want his order hanging out there. His
10 order sounds more ominous than what it is, and I
11 understand why you didn't withdraw your
12 objection. But the order sounds like it's
13 something -- I'm not asking you to comment
14 because I know you're afraid of judges and I
15 mean, Judge Cleland --

16 MR. LINDSAY: Terrified.

17 THE COURT: I tried my first summary
18 appeal in front of Judge Cleland in 1992. So --
19 but I may call him as a witness myself just to
20 say okay. It's a nonjury trial.

21 MR. LINDSAY: The question is -- the
22 question is, if you call him, what's -- are we
23 limited in scope? Because if you call a judge
24 and there are things that happened at this trial
25 that are very weird.

1 THE COURT: I would limit it to what's
2 in his order.

3 MR. SALEMME: I don't think you can ask
4 him what happened in trial.

5 THE COURT: No, I understand that. I
6 wouldn't even question him about -- I wouldn't
7 even -- I wouldn't even normally -- I would say
8 you normally can't question him about anything.
9 But the way his order's written, it sounds like
10 there's something.

11 MR. SALEMME: Just so that I'm clear,
12 what I'm saying is, deliver the process privilege
13 which would bar any testimony on anything he did,
14 apart from his participation in this off the
15 record conference, that makes him a fact witness.
16 But any rulings or anything of that sort, he
17 can't be asked about that. That's confidential.

18 MR. LINDSAY: And we're making a record
19 here.

20 THE COURT: That's why I wanted to say
21 it while we're here on the record.

22 MR. LINDSAY: I think there's some
23 confusion. Our position was not that we were
24 going to call him as a witness to testify, we
25 don't think we could. We thought the rule forbid

1 it. But we were saying that he was, in fact, a
2 witness. See, when you're trying to get in front
3 of a judge and the judge makes a decision, does
4 he make a decision based on the testimony or his
5 own recollection? Which we can't -- see what I
6 mean? That was our concern.

7 THE COURT: Of course, now he's not
8 making the decision. But if I am to call him,
9 and I'm going to read it through another time or
10 two, if I do call him it will be limited to that
11 conference about the preliminary hearing and its
12 waiver because that is an issue that you raised.
13 And I don't want to say he's not a witness. I
14 don't know. You object to the Judge calling a
15 witness, Mr. Barker?

16 MR. BARKER: No. I'm just curious about
17 the questioning order and scope of questioning.

18 MR. LINDSAY: It's the Court's witness.

19 THE COURT: I would ask him, here's your
20 -- that's why I want to read it again, I would
21 say in this paragraph, this is what you said.
22 I'll stay away from --

23 MR. LINDSAY: It seems to me that the
24 Court can call its own witnesses and you do the
25 questions and then we have an opportunity to

1 question on those questions.

2 THE COURT: Yeah. And your cross would
3 be limited to what I raise, which I'm not going
4 to raise any more than what he said.

5 MR. BARKER: The only thing I would
6 suggest is taking to counsel from AOPC first.
7 They tend to be aware if judges can or cannot --

8 THE COURT: That's true.

9 MR. BARKER: -- as far as quashing a
10 subpoena.

11 THE COURT: I'll do that. I mean, we
12 have couple months before. So let's see, two
13 experts, Struble, two attorneys, right?

14 MR. SALEMME: Possibly Kimberly Kaplan.

15 MR. LINDSAY: Yes.

16 THE COURT: So, we can finish on the
17 11th. Are they going to do reports, your
18 experts?

19 MR. LINDSAY: They're entitled to
20 reports, a summary anyway, because it's a
21 criminal case.

22 THE COURT: When are you going to give
23 those? In reasonable time?

24 MR. LINDSAY: I understand. I'll do the
25 best I can.

1 MR. BARKER: We'll also possibly need to
2 consult an expert after we receive their reports.

3 THE COURT: I assume most of the stuff's
4 already done. I mean, you may want to have some
5 of this testimony.

6 MR. LINDSAY: Of course this testimony
7 today is very important.

8 THE COURT: So the transcript will be
9 done by April 7th. Then the defense will have a
10 report on each of their experts on or before
11 April 21st.

12 THE COURT: And then at the very least,
13 I'll still leave the 26th open, because that was
14 open anyhow, it's the day before my birthday.
15 But you'll let us know before the hearing if
16 you're going to call a rebuttal expert. Let's
17 say this, if you're going to have them here for
18 the testimony, they need to prepare a report that
19 you give back because you probably could do it
20 off their report and maybe we can get it done.
21 We'll stay till midnight on the 11th.

22 MR. BARKER: And I think a response from
23 our expert is going to be a lot shorter.

24 THE COURT: Yeah. Yeah. Because it's
25 mostly a critique of what the other expert did or

1 did not do.

2 MR. LINDSAY: Can I bring something up?

3 THE COURT: Yes, sir.

4 MR. LINDSAY: I don't know that it needs
5 to be on the record -- might as well be on the
6 record. One of the things Mr. Salemmme and I had
7 talked about, a way to sort this out, because
8 there's so many issues, there's so much
9 testimony, is if each side prepared at the end of
10 this what we call proposed findings of fact and
11 conclusions of law. What I propose would be here
12 are the facts, here's where they're supported in
13 the record, this fact is disputed or undisputed
14 and a series of the facts. So it guides you to
15 where in the record the part of this is. Then
16 conclusions of law based on those facts. It's
17 seems to me it's an orderly way to do it, it's
18 simplified for us and for you for that process,
19 opposed to just briefing you on it.

20 THE COURT: That's fine.

21 MR. LINDSAY: I think Ms. Peterson
22 agreed that would be a way to deal with this.

23 THE COURT: Do you want to do it ahead
24 of the last day? Everybody wants a transcript if
25 you're going to point me to the record. I

1 assumed at some point you'd be asking for
2 briefing.

3 MR. LINDSAY: I guess what I am
4 suggesting is, proposed findings of fact, cite
5 from the record, and state whether their disputed
6 or undisputed. There's a lot of facts. And then
7 proposed conclusions of law based on those facts.
8 But the idea is, I suppose those things focus us
9 and help you help you focus.

10 THE COURT: So we'll do it. Assuming we
11 finish on the 11th, I'll give you each 30 days to
12 do your proposed findings of fact and conclusion
13 of law. And with that, at the same time, any
14 brief that you want to. And then you'll each
15 have 30 days to rebut the others after you get
16 it. When I say th 11th, 30 days, I know -- if
17 you're going to want to refer to the record,
18 we'll see then how long it will take her to get
19 the transcript and we'll do 30 days from that
20 date.

21 MR. BARKER: So that we're clear, when
22 we're doing our findings of fact, we're using the
23 whole record? The trial testimony?

24 MR. LINDSAY: Yes. Absolutely.

25 THE COURT: I wasn't just pulling out

1 points. I did read the entire record including
2 all this stuff with the grand jury and press and
3 all the other things.

4 MR. BARKER: 31B is what allows a
5 witness to someone come back.

6 THE COURT: Oh, you mean in the grand
7 jury?

8 MR. BARKER: Yeah. Any person necessary
9 to assist in a person's conviction.

10 THE COURT: I assume there might be some
11 records from other counties you may want to
12 introduce by the time of our next date. We'll
13 leave it at that.

14 MR. BARKER: We're still waiting to
15 hear.

16 MR. LINDSAY: So are we able to adjourn
17 for the day?

18 THE COURT: Yeah. I'll make an
19 announcement to that effect. So --

20 MR. LINDSAY: There's one other thing,
21 and I don't need to put this on the record.

22 (End of sidebar discussion.)

23 THE COURT: Okay. For those of you
24 who've been waiting, I just want to -- we're
25 going to break for the day. But I'm going to

1 give you a little road map for lack of a better
2 word that we just discussed. Because my initial
3 order was, you know, we'll stay here until it's
4 done, which I would have. And the latest I've
5 ever taken testimony was at 1:45 a.m. I did not
6 intend on staying here that late. But in any
7 event because of travel issues and other things,
8 there were witnesses who wouldn't be here today
9 and I set aside May 11th and May 26th to come
10 back. And so, because of family birthdays and
11 other things for the witnesses, there were three
12 who couldn't be here today, and they'll be the
13 first ones up for Mr. Lindsay on the 11th. And
14 we may see one or two experts. You might guess
15 the area they're going to testify in from the
16 questions that I've set up. And then the
17 Commonwealth will have to see, because there are
18 potential expert witnesses. If Mr. Lindsay, on
19 behalf of Mr. Sandusky, calls an expert by the
20 18th of April, that expert's going to have to do
21 a written report to say what he or she would
22 testify to as far as the expert testimony. And
23 then the Commonwealth can get that reviewed by
24 their own expert. And they may or may not finish
25 that case depending on how the testimony comes on

1 the 11th. But we will finish with Mr. Sandusky's
2 side of the case on the 11th. And then whenever
3 we finish, like today I asked my court reporter
4 and she's going to have the transcript of
5 proceedings done in two weeks, so we'll see how
6 long the 11th is if we finish there or the 26th.
7 When the transcript's done, each side is going to
8 get 30 days to propose to me findings of fact and
9 conclusions of law. Some of those may be
10 undisputed. You know, trial was tried in Centre
11 County in June of 2012. Some will be facts that
12 each side wants me to find. Because ultimately,
13 when a judge sits as a trial judge without a
14 jury, I sit in the role of the jury, as I find
15 what the facts are. So after they give that
16 report, we'll call it a report, those findings of
17 fact and a legal memorandum, they'll have 30 days
18 after that date to rebut the others if they think
19 there was something inappropriate or that brought
20 up something. They'll each have that time period
21 to respond to each other. And then from the time
22 those pleadings are closed and all the legal
23 briefs are in, I should have the decision -- the
24 file's six banker boxes. So I've reviewed all of
25 that. But we have transcripts from the other

1 days that some of you might have been here. I
2 generally say in any case 30 to 60 days, I'm
3 going to say three to six months. But if
4 everything goes accordingly, we should be done
5 within that time period and hopefully that should
6 bring us in by the end of the year, even if I'm
7 on the longer end. I'm a hunter, so I want to
8 decide it before hunting season. That's the last
9 little secret.

10 So for all of you, I want to thank you for
11 your patience, your time, you've all been nice
12 and quiet and been able to come and go. It's
13 been a pleasure to be here today. The Court will
14 recess until May 11th at 9:00 a.m. Thank you.

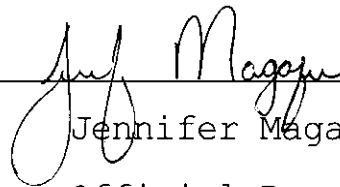
15 E N D O F P R O C E E D I N G S
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C E R T I F I C A T E

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.

5/11/17

Date



Jennifer Magazu

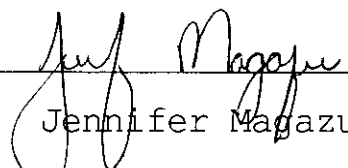
Official Reporter

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 April 5, 2017, 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.

5/11/17

Date



Jennifer Magazu

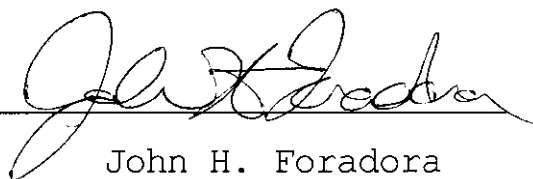
Official Reporter

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.

5/14/17

Date



John H. Foradora

President Judge

Specially Presiding

REQUEST FOR TRANSCRIPT

INSTRUCTIONS:

1. This form should be used when requesting ALL transcripts.
2. Form must be fully completed before request will be processed.
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TODAY'S DATE: 3. 23. 2017

CASE NAME and NO.: CP-14-CR-0002421/2422

PRESIDING JUDGE/COURT REPORTER: JOHN FORADORA

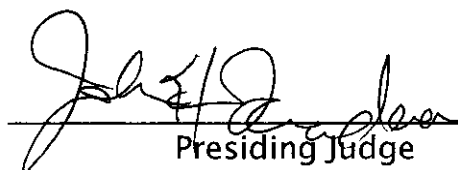
SPECIFIC HEARING DATE(S) REQUESTED: MARCH 23 2017
(If no testimony is needed for appeal, please indicate NONE.)

ATTORNEY/PARTY REQUESTING TRANSCRIPT: ALEXANDER H. LINDSAY
Court appointed: (circle one) Yes No Phone No. 724. 282. 6600

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