



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

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



ORIGINAL

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

BEFORE: JOHN M. CLELAND, SENIOR JUDGE
SPECIALLY PRESIDING

DATE: AUGUST 23, 2016

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

APPEARANCES:

FOR THE COMMONWEALTH:
JENNIFER PETERSON, ESQUIRE

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

PROthonary
CENTRE COUNTY, PA

2016

10:05



ORIGINAL

NOTES BY: JENNIFER AMENTLER
OFFICIAL COURT REPORTER
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	Direct	Cross	Redirect	Recross
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For Commonwealth:

(None)

For Defendant:

Jonelle Eshbach	3	24
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Frank Fina	27
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Joseph McGettigan	47
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Admitted:

Commonwealth:

(None)

Defendant:

(None)

P R O C E E D I N G S

THE COURT: Good morning. Please be seated.
Mr. Lindsay, are you ready to proceed?

MR. LINDSAY: May it please the Court. At
this time, the petitioner calls Jonelle Eshbach to
the stand.

JONELLE ESHBACH

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

DIRECT EXAMINATION

BY MR. LINDSAY:

Q. Would you kindly state your name for the
record?

A. Jonelle Harter Eshbach.

Q. And what is your current occupation?

A. I am an attorney in private practice.

Q. All right. In the years 2008 and 2009, 2011,
and 2012, what was your occupation?

A. I was a deputy attorney general, senior
deputy attorney general at the Pennsylvania Office
of Attorney General.

Q. Did you have any participation in the grand
jury investigation concerning allegations against
Jerry Sandusky?

A. I did.

1 Q. What role did you have in drafting the grand
2 jury presentment?

3 A. I drafted the grand jury presentment.

4 Q. I'm going to read a -- I'm reading from the
5 presentment, and I want to ask you if this is what
6 you recall writing. "As a graduate assistant,
7 Michael McQueary put the sneakers in his locker, he
8 looked into the shower. He saw a naked boy, Victim
9 2, whose age he estimated to be 10-years-old with
10 his hands up against the wall being subjected to
11 anal intercourse by a naked Sandusky. The graduate
12 assistant was shocked but noticed that both Victim 2
13 and Sandusky saw him. The graduate assistant left
14 immediately, distraught." Do you recall writing
15 that, ma'am?

16 A. I wrote that. It was also edited by persons
17 in the Attorney General's office before it was
18 published.

19 Q. Did you have a chance to review it before it
20 was published?

21 A. Yes.

22 Q. Ma'am, is that, in fact, what Mr. McQueary
23 testified to in the grand jury?

24 A. Verbatim?

25 Q. Yes.

1 A. No.

2 Q. Did Mr. McQueary testify that he actually saw
3 what he -- what is reported that he saw in this
4 grand jury presentment?

5 A. Repeat the question, please.

6 Q. All right. Did Mr. McQueary testify that he
7 actually saw what is purported that he said in this
8 grand jury presentment?

9 A. Yes.

10 Q. In other words, you're saying his grand jury
11 testimony was that he saw a naked boy whose age he
12 estimated to be 10-years-old with his hands up
13 against the wall being objected to anal intercourse
14 by a naked Sandusky. He actually witnessed that?
15 That's his testimony?

16 A. His testimony was that he witnessed those
17 acts.

18 Q. Well, did he see them?

19 A. Yes.

20 Q. All right. I'd like to call your attention
21 to late 2011. Did you participate in preparing for
22 the preliminary hearing of Mr. Sandusky?

23 A. Yes.

24 Q. Do you recall that there was a meeting at the
25 Hilton Garden Inn prior to the scheduled preliminary

1 hearing?

2 A. I don't independently remember that right
3 now.

4 Q. You have no recollection of that meeting?

5 A. Was it -- depends on, can you tell me who was
6 present?

7 Q. I'll do the best I can. I was going to ask
8 you that question. And I think present -- from
9 prior testimony, present would have been the
10 district magistrate judge, Judge Cleland, Mr. Fina,
11 Mr. McGettigan, Mr. Amendola, and yourself?

12 A. Yes.

13 Q. You recall that meeting?

14 A. I do.

15 Q. And what was -- what do you recall about the
16 meeting? What happened?

17 A. Not a whole lot to tell you the truth.

18 Q. Who called the meeting?

19 A. I believe that the Court did.

20 Q. Judge Cleland?

21 A. Or the magistrate district judge. It was to
22 discuss how things were going to proceed at the
23 prelim, to the best of my recollection.

24 Q. And what do you recall was discussed?

25 A. I don't have an independent recollection of

1 various things that were discussed.

2 Q. Well, do you recall that there was a waiver
3 of the preliminary hearing discussed?

4 A. I do remember that being -- that taking
5 place, ultimately, that there was a waiver. I don't
6 recall the discussions at that time.

7 Q. Do you recall there was discussion of whether
8 or not additional charges would be filed against Mr.
9 Sandusky?

10 A. I believe that was discussed.

11 Q. And what do you recall about that discussion?

12 A. That we anticipated additional charges
13 because the investigation was ongoing.

14 Q. Was there any discussion of bail discussed at
15 that meeting?

16 A. There may have been. I am sorry, I don't
17 independently recall.

18 Q. Was there any discussion of the timing for a
19 potential trial in the case?

20 A. At that meeting?

21 Q. Yes, ma'am.

22 A. I believe there was a discussion of when it
23 might take place.

24 Q. And what was discussed?

25 A. I think that the Court may have said a

1 potential, a possible time when the case would go to
2 trial, when it was anticipated it would go. I don't
3 independently remember which month the Court may
4 have said. I do remember it was initially scheduled
5 and then moved.

6 Q. Was there a record made of this meeting, if
7 you can recall?

8 A. I can't recall.

9 Q. With regard to the Sandusky grand jury
10 investigation, did you have any role in supervising
11 the grand jury investigation?

12 A. Yes.

13 Q. And what was that role?

14 A. The case was assigned to me.

15 Q. All right. And what did that mean, with
16 regard to the day-to-day operations of this grand
17 jury investigation?

18 A. I worked with the agents and troopers on the
19 case to investigate the potential charges.

20 Q. And you were aware of all aspects of the
21 grand jury investigation?

22 A. I believe so.

23 Q. Were you sworn to secrecy, ma'am?

24 A. I was.

25 Q. Did you have an opportunity to review what

1 was called The Moulton Report?

2 A. I read The Moulton Report when it came out.

3 Q. But you haven't looked at it since?

4 A. I have not.

5 Q. Did you become aware of a news article that
6 appeared in the Harrisburg, I think the name of the
7 paper's The Patriot, on March 30th written by Sara
8 Ganim concerning your grand jury investigation?

9 A. I am aware of that article.

10 Q. And are you aware that -- well, did you
11 review it at the time?

12 A. Yes.

13 Q. Did it appear that Ms. Ganim had a source of
14 information concerning your grand jury
15 investigation?

16 A. Yes.

17 Q. Do you know who the source of that
18 information was?

19 A. No.

20 Q. To your knowledge, was there any
21 investigation concerning what the source or who the
22 source of that information was?

23 A. Yes.

24 Q. And what was the nature of that
25 investigation?

1 A. Within --

2 THE WITNESS: I assume this is covered by my
3 disclosure order, Your Honor?

4 THE COURT: I have just received the
5 disclosure order this morning. I read them quickly.
6 Let me refer to the specific one.

7 MS. PETERSON: Your Honor, may we have a
8 sidebar?

9 THE COURT: Yes.

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

12 THE COURT: I just got these orders so I'm
13 not thoroughly familiar with them. Is this included
14 within the scope of the order? Have you seen the
15 orders?

16 MR. LINDSAY: I have not.

17 MS. PETERSON: There's two parts to the grand
18 jury leak allegation. One is the premature
19 presentment that was posted online. The other one
20 is, who was the source of the information of Sara
21 Ganim? And as I indicated to the Court yesterday,
22 there was a request made for a special prosecutor to
23 investigate that leak. That was denied. However,
24 it's indicated in Mr. Moulton's report there was an
25 internal investigation by the Attorney General's

1 office. As I indicated yesterday, I don't know
2 whether that falls within the grand jury secrecy. I
3 kind of think it does not. It was just the internal
4 office, you know, trying to find out who it was.
5 But it wasn't an official special prosecutor
6 investigation, which is normally how you would
7 investigate.

8 THE COURT: I'll let you ask it.

9 MR. LINDSAY: Fair enough.

10 (End of sidebar.)

11 THE COURT: Would you repeat your question,
12 Mr. Lindsay?

13 BY MR. LINDSAY:

14 Q. Was there an investigation that you're aware
15 of concerning the source of the information that
16 provided the background for Sara Ganim's article?

17 A. Yes.

18 Q. And can you tell us about that investigation?

19 A. At some point, I approached Attorney Fina,
20 who was my supervisor, with the concern about
21 information that appeared to have -- that was made
22 public by The Patriot that I thought should not be.
23 And we agreed to set a trap internally in the
24 Attorney General's office to see if anyone from
25 within our office would disclose the information.

1 No one took the bait from within our office. The
2 only persons that I know that knew about that were
3 Mr. Fina and myself.

4 Q. Okay. You indicated, if I could go back and
5 recapitulate, at some point you spoke to Mr. Fina
6 about your concerns, right?

7 A. Yes.

8 Q. And at some point, can you give us a
9 timeframe of that conversation?

10 A. I can tell you that it was after Graham
11 Spanier, Tim Curley, and Gary Schultz were
12 subpoenaed in the grand jury.

13 Q. And why is that particular, or are those
14 subpoenas significant in you placing this?

15 A. We made the decision to subpoena those
16 persons, and very quickly it became public that they
17 had been subpoenaed.

18 Q. So, you spoke to Mr. Fina and the two of you
19 decided to, as you put it, create a trap?

20 A. To see if there was a person within our
21 office who had access to those subpoenas, who might
22 reveal a subpoena. And thus, we would know it was
23 coming from within our agency.

24 Q. Were the subpoenas part of the trap?

25 A. Yes.

1 Q. Okay. And how did the trap work?

2 A. We chose someone to subpoena who we thought
3 might grab the attention of someone who wanted to
4 reveal information and would then cause that name to
5 go out there, when we didn't, in fact, issue a
6 subpoena for that person. We just let the office
7 records appear to issue a subpoena for that person.

8 Q. All right. And was there any public
9 disclosure of these faux subpoenas?

10 A. No.

11 Q. Okay. Was there any further investigation
12 done after that?

13 A. Not to my knowledge.

14 Q. When Mr. Spanier, Mr. Schultz, and Mr. Curley
15 were subpoenaed, did that become a public record?
16 Or did that become public, I guess I should say?

17 A. Well, it had already been published that they
18 would appear. I don't remember whether or not the
19 newspaper then published articles about them
20 testifying. I honestly don't recall. There were so
21 many articles.

22 Q. Have you been made aware, Ms. Eshbaugh(sic)
23 that the -- Eshbaugh, is that how you pronounce it?

24 A. Eshbach.

25 Q. Eshbach, excuse me.

1 A. It's all right.

2 Q. Are you aware that the Commonwealth's
3 position in their PCRA response is that Sara Ganim
4 could have learned this information from witnesses
5 who testified before the grand jury? Have you been
6 so informed?

7 A. No. I haven't had a discussion with the
8 Commonwealth's attorney about that.

9 Q. Would that actually be possible?

10 A. Yes. It certainly could be.

11 Q. Are you familiar with the timeline of the
12 witnesses that you had in front of the grand jury,
13 if I asked you?

14 A. I don't have it committed to memory, but I
15 have a pretty good recollection of what order we did
16 things in.

17 Q. The story appeared March 30, 2011; correct?

18 A. It sounds correct.

19 Q. And of the accusers of Mr. Sandusky, only
20 Aaron Fisher had testified at the grand jury. Do
21 you recall that?

22 A. Yes. He would not have been the only
23 witness, but of the accusers at that time, I think
24 that's probably correct.

25 Q. And in fact, Zach Konstas hadn't testified

1 until June 19, 2011. Do you recall that?

2 A. I would agree with that.

3 Q. And can we agree that Zach Kon -- first of
4 all, the article, the information that we're
5 concerned about concerned a report of a 1998
6 investigation done. Do you recall that?

7 A. I recall the report.

8 Q. All right. You recall the report, but that
9 was part of the article; correct, the 1998
10 investigation?

11 A. If you say -- if you say it was, I'm not
12 going to disagree with you. It was a very long
13 article.

14 Q. Would you like to look? Would that make it
15 better? Whatever you want to do.

16 A. If the Commonwealth agrees that it's there,
17 then it's there.

18 Q. Okay. And there was also information
19 concerning an investigation involving, I think it's
20 Central Mountain High School, or something, in 2009;
21 correct?

22 A. Yes.

23 Q. And the 1998 investigation was Zach Konstas;
24 correct?

25 THE COURT: You could answer that.

1 THE WITNESS: Yes.

2 BY MR. LINDSAY:

3 Q. And the 2009 investigation, involved was
4 Aaron Fisher; correct?

5 A. Yes.

6 Q. As of March 30th -- well, first of all, Zach
7 Konstas's mother is Debra McCord. Do you know that?

8 A. Yes.

9 Q. And she hadn't testified as March 30, 2011;
10 is that your understanding?

11 A. It seems likely. I don't have the timeline
12 committed to memory.

13 Q. All right. And are you familiar with an
14 individual by the name of Ralph Ralston?

15 A. Yes.

16 Q. And do you recall that Ralph Ralston was
17 involved in the 1998 investigation?

18 A. I do.

19 Q. And can we agree that as of March 30, 2011,
20 he had not testified before the grand jury?

21 A. I think the record would speak for itself.

22 THE COURT: I'm sorry?

23 THE WITNESS: The record would speak for
24 itself.

25 THE COURT: Okay.

1 BY MR. LINDSAY:

2 Q. John Sisock was involved in the 1998
3 investigation; is that correct?

4 A. Yes.

5 Q. And can we agree that he had not testified as
6 of March 30, 2011?

7 A. Yes.

8 Q. And can we agree that Aaron Fisher, who had
9 testified as of March 3, 2011, would have no
10 knowledge about the 1998 investigation?

11 A. Presumably.

12 Q. As of March 30, 2011, there were certain
13 people who had testified before the grand jury, law
14 enforcement officials; correct?

15 A. Some law enforcement and some non-law
16 enforcement.

17 Q. Trooper Rossman testified?

18 A. Yes.

19 Q. Agent Sassano testified?

20 A. Yes.

21 Q. Did you directly or indirectly provide any
22 information concerning the grand jury investigation
23 to Sara Ganim prior to December, 2011?

24 A. No.

25 Q. Are you aware that Debra McCord claimed to

1 have been approached by Sara Ganim about the grand
2 jury investigation?

3 A. If -- this information rings a bell.

4 Q. It rings a bell?

5 A. But I'm not sure when.

6 MR. LINDSAY: Excuse me. May I approach the
7 witness, Your Honor?

8 THE COURT: Yes.

9 BY MR. LINDSAY:

10 Q. I'm going to show you what's been introduced
11 in evidence as Defendant's Exhibit 9. Does that
12 ring any bells for you?

13 A. Yes.

14 Q. All right.

15 A. It refreshes my recollection.

16 Q. What's that?

17 A. It refreshes my recollection.

18 Q. All right. I just want to read this one
19 part, and I'll ask you a question concerning it. It
20 states here, "On Monday, March 28, 2011, I received
21 a telephone call from Deb McCord," this is a report
22 of Corporal Leiter, "who related that she had
23 received a text message from Sara Ganim on this date
24 at 930 hours. Ganim said in the text, quote,
25 'Debra, it's Sara, from The Patriot. I just want to

1 pass along this agent's name and number. The
2 Attorney General has expressed interest in helping
3 you.' McCord did not respond." Are you aware of
4 this particular text? Were you aware of it at the
5 time that it was made?

6 A. I'm aware of the report.

7 Q. Did you see the report at the time?

8 A. I would have seen the report at the time.

9 Q. The agent's name and number apparently was in
10 the text; correct?

11 A. Apparently.

12 Q. Who was it?

13 A. I'd have to look at it again.

14 Q. Sure.

15 A. There is no name and number.

16 Q. Right.

17 A. I don't know who it was.

18 Q. Okay. Apparently, the date of this report is
19 March 30, 2011; is that correct?

20 A. That's the date that appears on the report.

21 Q. And that would have been at the time when the
22 issue of the March 30th or 31st article of Sara
23 Ganim would have been a hot issue; is that correct?

24 A. It appeared. Would have been at the same
25 time.

1 Q. Did anybody ask Deb McCord who that agent
2 was?

3 A. I did not.

4 Q. Did you ask anybody to ask her who that was
5 in the text?

6 A. I don't recall.

7 MR. LINDSAY: Excuse me while I put this
8 back, Your Honor. I have a tendency to take
9 exhibits and not return them.

10 BY MR. LINDSAY:

11 Q. Did you become aware of an individual by the
12 name of Allan Myers?

13 A. During the investigation, yes.

14 Q. And who was Mr. Myers during the course of
15 the investigation, if you can say?

16 A. He was a young man that we identified as a
17 possible victim, was acquainted with Mr. Sandusky.
18 And the agents approached him to interview him about
19 whether or not he was a victim.

20 Q. Did you have the results of that interview?

21 A. Yes.

22 Q. And what do you recall about the results?

23 A. Initially, he denied any victimization by
24 Jerry Sandusky.

25 Q. Was there any indication as to whether or not

1 this individual was the boy that was witnessed by
2 Mr. McQueary in the shower?

3 A. Not initially.

4 Q. At some point, was that?

5 A. I believe at some point Mr. Myers said he was
6 the boy in the shower that was witnessed by Mike
7 McQueary.

8 Q. And what was his allegation in the subsequent
9 report?

10 A. Do you mean --

11 Q. If you can recall.

12 A. -- when he came forward with counsel
13 assisting him?

14 Q. Yes. Yes.

15 A. That he -- his story wavered, but he
16 indicated that he was a victim. And that he was the
17 boy in the shower who would be considered Victim 2
18 in the presentment.

19 Q. What's that?

20 A. Victim 2 in the presentment, he
21 self-identified.

22 Q. And you accepted that?

23 A. No.

24 Q. You identified him as Victim 2?

25 A. No. He identified himself as Victim 2. I

1 didn't.

2 Q. He was one of the number of people
3 represented by Mr. Shubin; is that correct? If you
4 know.

5 A. I believe he was the first one. I don't
6 know. I can't recall how many others might have
7 been represented by Mr. Shubin subsequently.

8 Q. Did you participate in the trial of this case
9 in June of 2012?

10 A. Yes.

11 Q. Okay. Were you made aware of any allegation
12 that Mr. Myers was being secreted or hidden by Mr.
13 Shubin?

14 A. I have a vague recollection of that, nothing
15 very concrete.

16 Q. Was there any conflict between the
17 prosecutors in the case, Mr. Fina and Mr.
18 McGettigan, with Mr. Shubin concerning this witness?

19 A. Could you be more specific?

20 Q. Well, there's been some testimony from, I
21 believe it's Agent Sassano that there was a
22 significant conflict between Mr. Shubin and at least
23 the prosecution team concerning this witness. If
24 you know -- don't worry about it. Do you know?

25 A. I remember that there was conflict. But

1 there was a lot of conflict with a lot of people.

2 Q. Mr. Shubin?

3 A. Mr. Shubin was one of counsel with whom there
4 was a conflict.

5 Q. You're talking about plaintiffs' counsels?

6 A. Plaintiffs' counsel, defense counsel.

7 Q. Who are some of these lawyers that you think
8 there was conflict with?

9 MS. PETERSON: Objection. Relevance.

10 THE COURT: Sustained.

11 BY MR. LINDSAY:

12 Q. Did you enter into communications with Mr.
13 Gillum, Mike Gillum, and Dawn Daniels in the grand
14 jury investigation?

15 A. Yes.

16 Q. How often?

17 MS. PETERSON: Objection. Relevance.

18 THE COURT: I'll let you start down this road
19 and then we'll see where it goes.

20 MR. LINDSAY: Fair enough.

21 BY MR. LINDSAY:

22 Q. How often?

23 A. From the beginning of the investigation?

24 Q. Yes, ma'am.

25 A. We probably had contact, it could have been

1 on a monthly or a weekly basis depending upon where
2 we were in the investigation.

3 MR. LINDSAY: Excuse me just a moment, Your
4 Honor. That's all the questions I have of this
5 witness, Your Honor.

6 THE COURT: Cross.

7 CROSS EXAMINATION

8 BY MS. PETERSON:

9 Q. A grand jury leak means that someone who was
10 sworn to secrecy breached that oath and provided
11 secret information; correct?

12 A. Yes.

13 Q. You began presenting witnesses to the
14 statewide investigating grand jury in June of 2009?

15 A. Sounds correct.

16 Q. And from June of 2009 through the time that
17 Sara Ganim's story was published on March 30, 2011,
18 none of the witnesses who appeared before the
19 statewide investigating grand jury were sworn to
20 secrecy?

21 A. That's correct.

22 Q. They were specifically instructed that they
23 could discuss their testimony with whomever they
24 chose if they chose to do so?

25 A. Yes.

1 Q. They could choose to share that information
2 with family and friends?

3 A. Yes.

4 Q. When Aaron Fisher made his report, his school
5 was aware of that information; correct?

6 A. They were.

7 Q. The school district was aware of that
8 information?

9 A. Absolutely.

10 Q. Children and Youth were aware of that
11 information?

12 A. They were.

13 Q. Department of Health and Welfare were aware
14 of that information?

15 THE COURT: Which information are we talking
16 about?

17 MS. PETERSON: His allegation against Mr.
18 Sandusky.

19 THE COURT: The Aaron Fisher report?

20 MS. PETERSON: Yes.

21 THE COURT: Okay.

22 BY MS. PETERSON:

23 Q. The Department of Health and Welfare was
24 aware?

25 A. They were.

1 Q. Your investigation led to Mike McQueary in
2 the fall of 2010; correct? Late fall, early winter?

3 A. That's correct.

4 Q. And after Mr. McQueary testified, the
5 administrators, Mr. Curley and Mr. Schultz, also
6 testified in early 2011?

7 A. That's correct.

8 Q. And it was around that same time that during
9 the course of your investigation, you received
10 information about the 1998 report by Zach Konstas?

11 A. That's correct.

12 Q. And once Zach Konstas was identified, he lead
13 to the other victims; correct?

14 A. Yes.

15 Q. That included Dustin Struble?

16 A. Yes.

17 Q. Michal Kajak?

18 A. Yes.

19 Q. And Brett Swisher Houtz?

20 A. Correct.

21 Q. So even though Zach Konstas didn't testify
22 before the grand jury until June of 2011, you were
23 aware of his information in late 2010, early 2011?

24 A. That's absolutely correct.

25 Q. So would it be inaccurate to say that but for

1 Sara Ganim's article on March 30, 2011, the Office
2 of Attorney General would never have found any
3 additional victims besides Aaron Fisher?

4 A. That's correct.

5 MS. PETERSON: That's all I have, Your Honor.

6 MR. LINDSAY: I have nothing further.

7 THE COURT: Thank you. You could step down.

8 MR. LINDSAY: This witness can be excused.

9 Unless you want to keep her. She can be excused.

10 THE COURT: Yes. You're excused.

11 MR. LINDSAY: At this time, we call Frank
12 Fina to the stand.

13 FRANK FINA

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

16 DIRECT EXAMINATION

17 BY MR. LINDSAY:

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

19 A. Frank Fina.

20 Q. And by whom are you employed? Or what's your
21 occupation, I guess?

22 A. I'm an attorney in private practice.

23 Q. Have you ever -- or did you ever work for the
24 Attorney General's office of the Commonwealth of
25 Pennsylvania?

1 A. I did. From 2002, March of 2002, until I
2 resigned in December of 2012.

3 Q. Did you participate in the grand jury
4 investigation of Mr. Sandusky?

5 A. I did.

6 Q. In the course of doing that investigation,
7 did you become aware of an individual by the name of
8 Allan Myers?

9 A. Yes.

10 Q. And did you understand that he was
11 represented by Attorney Andrew Shubin?

12 A. At some -- at a certain point, yes.

13 Q. Well, had you had contact with Mr. Myers
14 prior to Mr. Shubin's representation?

15 A. I did not. But the state police -- my
16 recollection is, and it's been probably four years
17 since I've seen this case file. But my recollection
18 is that the state police had interviewed Mr. Myers
19 at some point, and I do not believe at that time
20 that Mr. Shubin was present or involved. But, you
21 know, I haven't seen the file in some time.

22 Q. Do you recall from your own memory what Mr.
23 Myers said, if anything, in that first interview?

24 A. Yes. That he had known Mr. Sandusky for some
25 time; that there had been -- that there had never

1 been anything untoward between him and Mr. Sandusky;
2 Mr. Sandusky had never been inappropriate with him.
3 Again, I haven't seen this in a long time, but
4 that's my recollection, is that he told the troopers
5 that nothing had ever happened between him and
6 Sandusky.

7 Q. At some point, did you engage in discussions
8 with Attorney Andrew Shubin concerning this
9 individual, Allan Myers?

10 A. Yes.

11 Q. And could you give us the substance of those
12 discussions?

13 A. Well, there was a long history that went on
14 before those discussions and surrounding those
15 discussions. So, I don't know if you want me to go
16 through the history.

17 Q. I do.

18 A. Okay. And again, it's been a long time since
19 I've seen this file, so just bear with me a little
20 bit here. Despite the fact that Mr. Myers had told
21 state police that nothing had occurred between he
22 and Mr. Sandusky, we, in the course of the
23 investigation, sought to talk to him again. Again,
24 I can't remember exact dates here, I'm going to say
25 probably 2010, some time in 2010, it might have been

1 earlier than that, but I think it was around 2010 or
2 maybe 2011. And we weren't able to find him. I
3 think we may have even issued a grand jury subpoena
4 and tried to serve him with a grand jury subpoena to
5 have him appear in front of the grand jury. And we
6 couldn't find him. In the course of looking for
7 him, I believe the agents became aware of Mr.
8 Shubin, Attorney Shubin, and contacted him, and
9 those communications did not result in us finding
10 Mr. Myers.

11 And there came a point that we had testimony,
12 I think it was a preliminary hearing, in the cases
13 of Spanier, Schultz, and Curley, or maybe it was the
14 preliminary hearing just for Schultz and Curley,
15 because they were charged separately than Spanier,
16 that Mike McQueary testified in that preliminary
17 hearing. It was after that testimony that suddenly
18 Attorney Shubin wanted -- was going to make Mr.
19 Myers available to us. And that was a factor in our
20 evaluation of Mr. Myers.

21 Q. You say Mr. Shubin was going to make Mr.
22 Myers available to you. Did he, in fact, make Mr.
23 Myers available to you?

24 A. At some point, Mr. Myers was interviewed,
25 yes.

1 Q. What do you recall about that interview, if
2 anything?

3 A. I think he was interviewed more than once.
4 Again, the dates of those interviews, I can't
5 remember, some time in 2011 I'm going to suspect.
6 The interviews were significantly different than Mr.
7 Myers' prior interview. He now said that he had
8 been sexually assaulted by Mr. Sandusky. He
9 described various ways he had been sexually
10 assaulted. Now, I'm giving you a cumulative answer.
11 I don't recollect exactly what he said in the
12 different interviews. I think there were various,
13 you know, degrees that he described, perhaps on the
14 first interview, it was not as severe as what he
15 described in the second interview. He essentially
16 mirrored what Mike McQueary had testified to
17 publicly in quite a few details, which we thought --
18 which caused us some concern.

19 He specifically -- I recollect that he had the
20 year wrong, he said that he had been assaulted in
21 the shower at Penn State by Jerry Sandusky in 2002,
22 he might have even given a month, I can't remember,
23 and that was not accurate. What had happened was
24 Mike McQueary had testified that he couldn't
25 remember the year that he observed it, it was either

1 2001 or 2002. And I think that -- I think that
2 there was the possibility that Mr. Myers had
3 conformed his testimony to Mr. McQueary's
4 misrecollection of the date. He was also, I think,
5 asked to draw a diagram of the Lasch Building or the
6 locker room or the shower or something, and what he
7 drew was not accurate.

8 Q. I'd like to fast forward to the trial of this
9 case. Did you become aware of any effort, or in
10 your opinion, the prosecution's opinion of Mr.
11 Shubin secreting or hiding this witness?

12 A. During the trial?

13 Q. At any time, sir.

14 A. During the investigation, it was my opinion,
15 I think shared by the investigative team -- I mean,
16 I can't know what was in everybody's mind, but we
17 frequently met, we frequently discussed the progress
18 of the investigation, ideas how to advance the
19 investigation. I think there was certainly a
20 consensus that Mr. Myers was not being made
21 available to us at the direction of Mr. Shubin. It
22 was a suspicion we all had.

23 Q. Was that ever investigated?

24 A. I mean, it was investigated in the sense that
25 we kept looking for the guy. And we certainly

1 wanted to ask him why it was that we were having
2 trouble -- if we found him, we were going to ask
3 him, you know, what was going on and why it was that
4 he seemed to be avoiding us.

5 Q. Did you --

6 A. I mean, the ability to investigate, we were
7 somewhat limited based upon attorney/client
8 privilege and a lot of other factors to, you know,
9 actively investigate an attorney.

10 Q. Did you -- did you ever speak with Mr. Myers?

11 A. I did not. I do not believe that I
12 personally ever spoke to Mr. Myers. But I mean, I
13 do want to say that I spoke to -- I mean, I can't
14 tell you how many people that I spoke to who were
15 victims or potential victims in this case. So, I
16 don't recollect all of them, I spoke to, you know,
17 dozens and dozens of people. But I don't believe I
18 ever spoke to Mr. Myers.

19 Q. You do -- you are aware that he claimed to be
20 Victim Number 2?

21 A. There was a point in the case, I believe it
22 was very close to trial, that yes, he did make that
23 assertion.

24 Q. Can we agree, sir, that when it comes to Mr.
25 Myers' allegations, there's, in effect, two parts.

1 The first part that he was the boy in the shower.
2 And the second part is that he was sexually
3 assaulted; correct?

4 A. I'll accept your phrasing, but I think
5 there's probably more parts to it than that. But
6 yes, okay.

7 Q. Was he -- I take it you're saying you didn't
8 believe him?

9 A. I did not -- look, I had to make an
10 evaluation in this case as I did with great many
11 young men as to whether or not they could be used as
12 witnesses and could be -- could withstand the
13 scrutiny and the cross-examination and the due
14 process that occurs in these cases. Many of these
15 young men had profound issues in their lives. Many
16 of them had been severely damaged by abuse and by
17 their lives. Some had mental health issues. And
18 some had given dramatically inconsistent statements
19 and conducted themselves in ways that made them, I
20 believe, unusable as witnesses in this case. Mr.
21 Myers would have fallen in that category. I made
22 that decision. And absolutely.

23 Q. And your decision was based on the fact that
24 you felt that he would be a vulnerable witness; is
25 that correct?

1 A. It was based on the fact that he would be a
2 vulnerable witness. It was based on the fact that
3 things he had said during the interviews were
4 frankly not accurate. And it was, in part, based
5 on, you know, his representation. That was
6 certainly a factor in our decision in using him as a
7 witness.

8 Q. With regard to these witnesses, there were
9 inconsistencies in Mr. Myers' testimony; correct?
10 Or his statements; correct?

11 A. Yes.

12 Q. Can we agree, Mr. Fina, there was
13 inconsistencies with with all witnesses'
14 testimonies?

15 A. I would agree with that.

16 Q. And can we agree that virtually all of these
17 witnesses changed their testimony or their stories,
18 if you will, as the investigation went on?

19 A. No. I mean, you know, again, it's a matter
20 of degree, sir. It is -- you can parse through any
21 witness's testimony who has given more than one
22 statement and you can make -- you can discern
23 differences in that testimony. Some are material
24 and some are totally immaterial. So, you know, I
25 don't think you can draw any -- in my opinion, I

1 don't think you can draw any comparison between the
2 inconsistencies in Allan Myers' statements and
3 those, perhaps, in Aaron Fisher's statements. I
4 don't see any parallel.

5 Q. With regard to the rest of them, though, can
6 we agree that there are dramatic differences between
7 the initial interview with the police and/or your
8 agents and their eventual testimony?

9 A. With every one of our victims?

10 Q. Yes, sir.

11 A. I'm not going to agree with that.

12 Q. Sir, do you recall prior to the preliminary
13 hearing, there was a meeting at the Hilton Garden
14 Inn? The preliminary hearing for Mr. Sandusky.

15 A. I'm trying -- I know there was a meeting at
16 the Hilton Garden Inn. I'm trying to recollect if I
17 was present at that meeting or if I was there by
18 telephone or I was involved before and after by
19 telephone. I don't have a specific recollection of
20 being present at that meeting. I'm aware there was
21 a meeting.

22 Q. Do you recall who was at the meeting?

23 A. I know Mr. McGettigan was there. I'm not
24 sure if Ms. Eshbach was there, she may have been.
25 I'm not sure if Agent Sassano was there. I believe

1 Judge Cleland was involved, and I believe Joe
2 Amendola was involved. But again, I can't -- I
3 don't think I was physically there, but I just may
4 not remember.

5 Q. Do you know who called the meeting?

6 A. My recollection would -- I would thought -- I
7 don't know, I think it was -- I think it was Joe
8 Amendola.

9 Q. What was the purpose of the meeting?

10 A. I think it was to discuss waiver of the
11 preliminary hearing.

12 Q. Was there anything else discussed at that
13 meeting, if you know?

14 A. I think there was a discussion about -- it
15 was related to the waiver, there was a discussion
16 about bail conditions of release if it was waived.
17 Things like that.

18 Q. What were they? Was there a connection
19 between the waiver and the bail?

20 A. I think there was. I mean, I think that it
21 was -- again, I don't want to guess, I really don't
22 think I was there, but I know there was an
23 arrangement made. We, being the Commonwealth, we
24 were interested in getting a waiver of the
25 preliminary hearing, if possible. We were prepared

1 to go forward certainly. But anything that avoided
2 the public disclosure of these victims' identities
3 or avoided cross-examination of -- potential
4 cross-examination of these victims, we were
5 interested if we could reasonably avoid. And in
6 exchange for that, we were willing to make some
7 concessions, I think on bail and on conditions of
8 release and on new charges. I recollect we had some
9 new charges we were going to file and I think we
10 agreed at that time that with the new charges, we
11 wouldn't, you know, demand incarceration pending
12 trial on the new charges. Or something, I mean, I
13 don't remember all the details.

14 Q. And that was contingent on the waiver then?

15 A. I believe so. But again, I don't remember
16 all the details. There was some exchange. There
17 was some, you know, agreement.

18 Q. Was there a deal struck at that meeting, if
19 you know?

20 A. I think there was -- I think there was a
21 consensus. I think there was an agreement between
22 us and everyone involved, that that was -- you know,
23 it was a good outcome.

24 Q. Why were you interested in the waiver? I
25 guess you've already said why you were interested in

1 the waiver, right?

2 A. Yeah.

3 Q. Were you made aware of an article written by
4 Sara Ganim in late March, 2011, concerning the grand
5 jury investigation?

6 A. I don't have a specific recollection of -- if
7 you could show me the article. I mean, there were a
8 great many articles about this case.

9 Q. Here's a copy of the article.

10 A. Okay. I've read it.

11 Q. Have you ever seen that, Mr. Fina?

12 A. I must have. I would have read that article,
13 yes.

14 Q. Was it brought to your attention by Ms.
15 Eshbach that there was a concern about grand jury
16 leaks in that article?

17 A. I don't remember. I don't remember Jonelle
18 -- I don't remember Ms. Eshbach specifically coming
19 to me about that. But if I -- when I read that, and
20 I'm sure I did, I would have had that same concern.

21 Q. Why?

22 A. Any time there is an article that provides
23 any level of detail or discussion of a grand jury
24 case, we would have that concern. This was -- I
25 mean, I will tell you that this was not the only

1 article that caused us concern.

2 Q. What are some of the other articles that
3 caused you concern?

4 A. The one that I remember was an article
5 involving Dr. Dranov and providing some information
6 about his testimony before the grand jury. That's
7 the one I recollect reading, and that caused me some
8 concern.

9 Q. Dr. Dranov was a witness before the grand
10 jury?

11 A. He was a witness before the grand jury.

12 Q. And was he subject to grand jury secrecy?

13 A. No. I mean, one of the -- you know, one of
14 the great misrepresentations about grand jury
15 that's, I think, become frequently discussed over
16 the last year in Pennsylvania in a lot of the
17 notoriety I'll call it that grand jury leaks have
18 received is this idea that grand jury leaks happen
19 all the time and that they're all illegal leaks.
20 The Investigating Grand Jury Act of Pennsylvania is
21 very specific in that witnesses who appear before an
22 investigating grand jury which is different than,
23 say, a federal indicting grand jury have an
24 absolutely right to discuss their testimony in
25 public. And they're actually advised of that at the

1 time that they come in and appear and take the oath
2 before the supervising judge of the grand jury.

3 It's a very specific part of the Investigating Grand
4 Jury Act. And the Commonwealth can only overcome
5 that right by having a hearing and demonstrating
6 that by good cause, that's the verbiage in the
7 statute, that the Court should order the witness not
8 to tell anybody about their testimony.

9 My recollection in the Sandusky grand jury
10 investigation was that not all witnesses -- I don't
11 remember if any witnesses, but certainly not all of
12 the witnesses were given nondisclosure orders,
13 that's what they're called, by the grand jury judge.
14 So a lot of these times where things get in the
15 newspapers, it always alarms us with the
16 Commonwealth, but our ability to control, stop, and
17 investigate it is somewhat limited because
18 oftentimes these are not illegal leaks of
19 information.

20 If, for example, Dr. Dranov -- and I'm not
21 saying this happened, I don't know. If Dr. Dranov
22 had gone and talked to a reporter and the reporter
23 then wrote the story about what Dr. Dranov told him
24 he had testified about, that is not an illegal grand
25 jury leak. So, I mean that's I think, from where I

1 sit, a fundamental truth that has resulted in a
2 great deal of unwarranted concern and hysteria,
3 perhaps not in this case but in other cases.

4 Q. Well Mr. Fina, you said that for some reason
5 the Dr. Dranov story caused you concern?

6 A. Yes.

7 Q. Was it an illegal leak or not?

8 A. Well, that was something that we tried to
9 determine.

10 Q. Did you determine that?

11 A. I was never able to finally determine whether
12 or not that leak was proper or not.

13 Q. All right.

14 A. I reported it, as I did many times in my
15 career, to the supervising judge of the grand jury.
16 In this case, I can tell you I went to Judge Feudale
17 at least two occasions, maybe more, and told him
18 that I believed it was possible that there was a
19 leak and that we should conduct an investigation to
20 determine whether or not there was a leak.

21 Q. Was there such an investigation conducted?

22 A. The Judge attempted to conduct that
23 investigation. He appointed two special counsel, an
24 individual named James Reeder and another individual
25 named Ken Brown to conduct that investigation. But

1 that investigation was stopped some time after that.

2 Q. Do you have any idea as to the source of the
3 information in Sara Ganim's article?

4 A. Absolutely none.

5 Q. Were you aware of the grand jury presentment
6 being improperly placed online in this case?

7 A. I was very aware of that, yes.

8 Q. And how did you become aware of that?

9 A. It was improperly placed online.

10 Q. Right. Well, you saw it?

11 A. Yeah. I mean, we all did. It was -- we
12 were -- you know, we were outraged and upset and we
13 took some action because of it.

14 Q. How did that occur? I mean, how did this
15 presentment get improperly online?

16 A. Well, you know, I wasn't there, I don't know.
17 I mean, what I can tell you is that the agents for
18 the Office of Attorney General properly filed it
19 with the district magisterial office. They signed a
20 sealing -- the documentation to seal it. They were
21 very specific as to the date -- this is my
22 recollection about this. They were specific as to
23 the date it was supposed to be released. It had
24 been filed earlier than the date it was going to be
25 released at the request of the district magisterial

1 office.

2 So in other words, when you file a criminal
3 complaint, you know, oftentimes, you know, state
4 troopers or law enforcement officers would just walk
5 into a district magisterial office and file it and
6 get the arrest warrant and go. Because this was
7 such a significant case and a high profile case, we
8 had, as a matter of consideration as we would often
9 do in large filings -- this was a very big
10 affidavit, it was very lengthy. As a courtesy, we
11 gave the district magisterial court a heads up. Not
12 a lot of details, just a heads up that we were going
13 to be filing this and we wanted to proceed with the
14 arrest warrant on -- my recollection is we were
15 going to do it on Monday. I think -- if I had a
16 calendar, I could remember. It was a date in
17 November. And the DJ requested, well, make sure you
18 bring it in, I don't remember if it was Thursday or
19 Friday or something before that date.

20 I believe it was Agent Sassano and Agent
21 Feathers, I believe there may have been a trooper
22 involved, went down there, did it properly, were
23 very clear that this was to be sealed and remain
24 secret. And that didn't happen. And as a
25 consequence of that, the Office of Attorney General,

1 myself, the Attorney General, Linda Kelly, was
2 extremely upset to say the least. And there was --
3 there were extensive discussions as to what to do
4 about that leak.

5 Q. Well, what was done about that leak?

6 A. Hmm?

7 Q. What was done about the leak?

8 A. We conducted -- we directed Agent Sassano and
9 Agent Feathers, I believe, to conduct an
10 investigation, try to find out what happened. I
11 think they got the paperwork, the copies of
12 everything. I think the consensus was -- I'm not
13 saying that we had absolute evidence of this, the
14 consensus was that someone in the district justice's
15 office or perhaps the district justice, I don't
16 know, had either mistakenly or not mistakenly
17 disclosed it. And then there were discussions in
18 the office whether there should be a criminal
19 investigation conducted. And there were discussions
20 of whether heavy-handed efforts should be taken to
21 do something about it. The Attorney General was
22 extremely upset, extremely upset, and she wanted to
23 take profound action over this.

24 Q. I understand about what people want to do
25 when they are upset. Was profound action taken?

1 A. The matter -- the decision was made to turn
2 the investigation over to the Judicial Misconduct
3 Board, based upon the preliminary investigative
4 findings that we had, the documentation and
5 everything, and that's what was done. The
6 supervising judge of the grand jury was also
7 informed because it was a technical violation of his
8 sealing order.

9 Q. Mr. Fina, if I ask you various questions
10 about the sequence of witnesses who were called
11 before the grand jury, would you recall that
12 information?

13 A. You can ask me those questions, I may or may
14 not.

15 MR. LINDSAY: Excuse me just a minute.

16 THE WITNESS: Sure.

17 MR. LINDSAY: That's all.

18 THE COURT: Cross.

19 MS. PETERSON: I have no questions, Your
20 Honor.

21 THE COURT: Thank you. You can step down.
22 We'll take a recess. We'll be in recess until five
23 minutes to 11.

24 (Whereupon, a recess was taken.)

25 THE COURT: We'll be in session. You may be

1 seated. Mr. Lindsay, your next witness.

2 MR. LINDSAY: At this time, the petitioner
3 calls Joseph McGettigan to the stand.

4 JOSEPH EDWARD MCGETTIGAN, III
5 Was called as a witness and having been duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LINDSAY:

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

10 A. Joseph Edward McGettigan, III.

11 Q. And what is your occupation?

12 A. I'm an attorney.

13 Q. And what was your occupation in 2011, 2012?

14 A. I was an attorney then.

15 Q. Did you work for the Attorney General's
16 office?

17 A. I did.

18 Q. Were you involved in the defense of Jerry
19 Sandusky? Not defense, excuse me. Prosecution.

20 A. I was never involved in the defense of Jerry
21 Sandusky.

22 Q. I corrected myself, sir. Were you involved
23 in the prosecution of Mr. Sandusky?

24 A. I was.

25 Q. I'd like to call your attention to a period

1 prior to the preliminary hearing in this case. Do
2 you recall a meeting at the Hilton Garden Inn?

3 A. You'll have to be more specific.

4 Q. All right. Do you recall the night before
5 the scheduled preliminary hearing, you participated
6 in a meeting at the Hilton Garden Inn in State
7 College, Pennsylvania?

8 A. Yes.

9 Q. Do you recall who was present at that
10 meeting?

11 A. Yes.

12 Q. Who was present?

13 A. Myself, Mr. Fina, I believe Judge Cleland was
14 there, the judge who was to preside over the
15 preliminary hearing was present, Mr. Amendola was
16 there, I believe. There may have been other persons
17 present, I don't recall others.

18 Q. What time of day was this, sir?

19 A. It was in the evening.

20 Q. Who called the meeting?

21 A. I think it was by mutual agreement. The
22 parties wanted to meet.

23 Q. Would that be Mr. Amendola and yourself?

24 A. And the Court. Both judges as well.

25 Q. What happened at the meeting?

1 A. You'll have to be more specific.

2 Q. Well, what was discussed at the meeting? Can
3 you recall?

4 A. The disposition of the matter to be heard on
5 the following day.

6 Q. Well, can you be more specific about what was
7 discussed about the disposition of the preliminary
8 hearing the following day?

9 A. Whether there would be testimony heard or
10 whether there would be a waiver of the hearing.

11 Q. Okay. Was there any arrangement made
12 concerning whether there would be a waiver of the
13 preliminary hearing?

14 A. We agreed -- counselor agreed to waive the
15 hearing.

16 Q. Was there anything done in exchange for his
17 waiver?

18 A. I believe we allowed -- we agreed that the
19 conditions of the defendant's bail would remain the
20 same.

21 Q. Is there any reason why they would not remain
22 the same?

23 A. It being held for court, his posture would
24 have changed and bail would have been --

25 Q. I'm sorry, I can't --

1 A. If he had been held for court, as he would
2 have been, his posture legally would have changed
3 and we would have moved for an increase in his bail.

4 Q. And would the -- was it your position as the
5 prosecutor in the case, you would have asked for an
6 increase in bail?

7 A. Absolutely.

8 Q. Do you know what you were asking for, in the
9 way of increase in bail?

10 A. It would have been a substantial increase. I
11 don't recall the exact figure was discussed.

12 Q. And did you agree that if you waived the
13 preliminary hearing that there would not be an
14 increase in bail?

15 A. His bail conditions would remain the same if
16 he waived the hearing.

17 Q. Was there anything else discussed at that
18 meeting that you can recall?

19 A. I'm sure there was.

20 Q. Was there a discussion about when the trial
21 date would take place?

22 A. I don't recall.

23 Q. Mr. McGettigan, I'd like to read a portion of
24 your closing argument, and I want to ask you if
25 recall saying this. I'm referring to page 111.

1 A. I will rest on my recollection of the record.
2 I don't have a specific recollection of my closing.
3 If the record says I said it, I will agree that I
4 said it.

5 Q. I'd like to ask you about it. And so, I'd
6 like to read to you, then we can ask you questions
7 about it. If you don't mind.

8 A. If I do mind?

9 Q. If you don't mind.

10 A. And if I do?

11 Q. I'm going read it.

12 A. Suit it yourself.

13 Q. You state, "I'm not --

14 THE COURT: Now wait, wait. Let's just take
15 it easy here. You ask the questions, you answer the
16 questions. And we'll leave the side chatter aside.
17 Go ahead, Mr. Lindsay.

18 THE WITNESS: I beg your pardon, Your Honor.

19 THE COURT: Go ahead, Mr. Lindsay.

20 BY MR. LINDSAY:

21 Q. I'm going to read a portion of your closing
22 argument at page 111. "I'm not wrenching your
23 heartstrings and I'm not yelling at you. I'm not a
24 loud-spoken person, I tried not to be during this
25 case. I may talk a little too fast sometimes, but

1 I'm not a loud-spoken person, and I don't want to
2 tug at your heartstrings. I want to remind you of
3 what the substance of this case is about because
4 it's what happened to those boys. You know what?
5 Not just those boys, to others unknown to us, to
6 others presently known to God but not to us. But we
7 know what the defendant did to them because adults
8 saw them and adults told you about them." With
9 regard to the others presently known to God but not
10 to us, who are you referring to, sir?

11 A. Oh, the two victims who did not testify.

12 Q. And that would be which? Can you describe
13 them more than the victims who did not testify?

14 A. They were given numerical designations.

15 Q. Victim Number 2?

16 A. Yes.

17 Q. Victim Number 8?

18 A. Yes.

19 Q. And then -- do you recall making that
20 statement, sir?

21 A. Yes.

22 Q. All right. At page 140 and 141, the bottom
23 of page 140, I'm going to read another portion of
24 your closing argument. "The defendant, he had
25 wonderful opportunities to speak out and make his

1 case. He did it in public, he spoke with Bob
2 Costas. That's the other thing that happened to me
3 for the first time, I've been told I'm almost as
4 good a questioner as Bob Costas I think, or close.
5 When he had the chance to talk to Bob Costas and
6 make his case, what were his answers? What was his
7 explanation? You would have to ask him is that an
8 answer? Why would someone say that in an interview?
9 You would have to ask him." Did you say that?

10 MS. PETERSON: Objection, Your Honor. This
11 issue is beyond the scope of the hearing today.

12 MR. LINDSAY: I thought it was exactly on
13 point with what the hearing was.

14 THE COURT: Excuse me?

15 MR. LINDSAY: I think it was within the
16 scope.

17 MS. PETERSON: Your Honor, the 11th
18 delineated issues that are the subject of the
19 hearing today. Mr. McGettigan's comments with
20 respect to Mr. Sandusky's answers to the Bob Costas
21 interview is not one of those issues that Your
22 Honor's ordered testimony be taken in accordance
23 with.

24 THE COURT: Does this somehow fall within the
25 issues that were identified for today?

1 MR. LINDSAY: I believe it does. I believe
2 it deals with the issue of this unknown person. Mr.
3 -- the suggestion is made in the closing argument,
4 sir, that he had the chance to talk to Bob Costas
5 and make his case, you would have to ask him. And I
6 think that's in reference to the only reasonable
7 reference that could be, would be to Victim 2 or
8 Victim 8.

9 THE COURT: That may be a stretch but I'll
10 let you make your record. Overruled.

11 BY MR. LINDSAY:

12 Q. Did you say those things?

13 A. If the record reflects I did.

14 Q. And I'd like to refer to a statement made at
15 page 145. "The defendant's explanation on
16 television, is there anything else that you missed,
17 Mr. Amendola read it with great animation. I'm not
18 sure if there was anything, any other important
19 information communicated because he didn't provide
20 you with something that could have been enormously
21 helpful to us, could have solved many problems
22 today. I think he's talked about this, you know,
23 the shower incident, he didn't say and that's little
24 Johnny who I know now ten years later who lives
25 around the corner. He forgot the name, he

1 remembered the incident clearly. Why did he
2 remember it? I mean, he showered with a lot of
3 boys. Why did he remember this particular incident?
4 He remembered it because he had seen Mike McQueary
5 and he knew this day would come. He remembered it.
6 He remembered that day. One thing he didn't, which
7 he could have provided to Bob Costas, he could have
8 provided it to anybody at that time, he had the
9 complete capacity to exonerate himself at the time
10 and just say who was there, because this is a day
11 you remember Mike McQueary, well I remember him and
12 not this little boy you're soaping and just being
13 innocently cleansing to. But he didn't provide that
14 name to anybody ever, certainly not to Bob Costas.
15 No, he forgot that." Did you say that?

16 A. If the record reflects that I did.

17 Q. Well, do you recall saying it?

18 A. Yes. Of course.

19 Q. Can we agree, sir, that your point was that
20 the boy in the shower who you referred to as little
21 Johnny is known but to God?

22 A. I don't understand your question.

23 Q. Was the point you were making that the boy in
24 the shower who you referred to as little Johnny is
25 known but to God? Is that the point you were

1 making?

2 A. My point was that Victim Number 2 was not
3 known to -- had not identified himself.

4 Q. But you were certainly aware there was a
5 person who claimed to be, as you called him, little
6 Johnny; correct?

7 A. Yes.

8 Q. And that person was Allan Myers; is that not
9 correct?

10 A. Yes.

11 Q. Did you become aware that he was, in some
12 way, hidden prior to the trial, this individual by
13 the name of Allan Myers?

14 A. I don't understand your question.

15 Q. Did you receive any information that Attorney
16 Shubin had secreted him or kept him away from your
17 investigators prior to the trial?

18 A. Yes.

19 Q. What did you know? What were you told?

20 A. Allan Myers was unavailable to us.

21 Q. That's all?

22 A. We couldn't locate him. Mr. Shubin was
23 unhelpful in allowing us to speak with his client.
24 In fact, he was impediment to allowing us to speak
25 to his client. Prior to the preliminary hearing in

1 which Mike McQueary testified, Mr. Shubin would
2 absolutely not make his client available. We
3 couldn't speak with him. We couldn't locate him.
4 Despite our efforts.

5 Q. Did you ever interview Allan Myers?

6 A. No.

7 Q. Have you ever seen him?

8 A. No.

9 Q. There were other witnesses represented by Mr.
10 Shubin; is that not correct?

11 A. I believe so.

12 Q. There was Dustin Struble?

13 MS. PETERSON: Objection. Relevance.

14 THE COURT: Sustained. The issue here is not
15 who Victim 2 was, it was whether or not Mr.
16 McGettigan misrepresented his opinion about Victim
17 2.

18 BY MR. LINDSAY:

19 Q. Did you believe Victim 2 was Allan Myers?

20 A. I did not then. I do not now.

21 Q. And why?

22 A. For a variety of reasons. And I can tell
23 you. First of all, Mr. Myers, I believe, was born
24 in 1987. And that would -- the young boy described
25 by Michael McQueary was 10-years-old. At the time

1 of the incident, Myers would have been at least 14.
2 Mr. Myers, subsequently, was unable to describe the
3 location in which the attack occurred. He drew a
4 diagram which did not match. Mr. Myers, on the
5 first interview, denied any untoward contact with
6 the defendant over there. He denied it in an
7 interview with state police. He subsequently, as I
8 understand now, arrived at Mr. Amendola's office and
9 again denied untoward contact with the defendant.
10 And he only -- frankly, I never spoke with him.

11 The only information I had that alleged that
12 he was, in fact, a victim of Mr. Sandusky, more
13 specifically Victim Number 2, came from Mr. Shubin,
14 who refused to allow us to contact him and confirm
15 whatever his client had to say until after Mike
16 McQueary testified. And I believe at that hearing,
17 that one of Mr. Shubin's associates was present to
18 listen to the details of Mike McQueary's
19 observations, after which Mr. Shubin attempted to
20 force Allan Myers on us because he now had, as some
21 would say, an opportunity to conform the testimony
22 to that of Mr. McQueary. So there are many reasons
23 why Allan Myers was not, to me in my mind, then or
24 now Victim Number 2. At any time.

25 Q. So at this point, to this day, you believe

1 that Victim 2 is known only to God?

2 A. Well, he's known to that person as well, the
3 defendant. And at any time, he could have told
4 anyone who that person was. He declined to do so to
5 Mr. Costas, he didn't -- I don't know if he did it
6 to his own attorney. But I sat in a room with him
7 when he was arrested and waited for his attorney, he
8 could have told me then because the circumstances of
9 the victimization of Victim 2 were well known. And
10 he could at any time have told any number of
11 persons. He declined to do so. So it's not
12 entirely accurate, sir, if I may explain my answer.
13 He was known to God and the convicted Jerry
14 Sandusky.

15 MR. LINDSAY: That's all.

16 THE COURT: Cross.

17 MS. PETERSON: I have no questions, Your
18 Honor.

19 THE COURT: Thank you. You can step down.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: May this witness be excused?

22 MR. LINDSAY: Yes.

23 THE COURT: You are excused.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Anything further?

1 MR. LINDSAY: That's all I have today, sir.

2 THE COURT: Anything further from the
3 Commonwealth?

4 MS. PETERSON: No, Your Honor.

5 THE COURT: Counsel -- we will be adjourned,
6 or in recess, pending further hearings scheduled for
7 some later time. Counsel, if I could please see you
8 in chambers.

9 MR. SALEMME: Thank you, Judge.

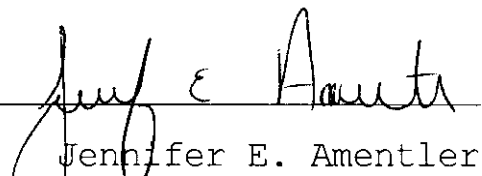
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C E R T I F I C A T E

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

11/4/16

Date

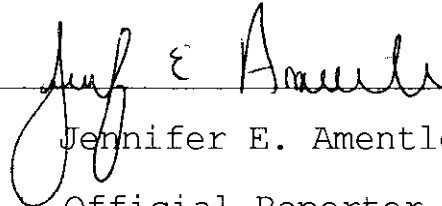

Jennifer E. Amentler
Official Reporter

C E R T I F I C A T E

I hereby certify that a copy of this transcript was furnished and made available to counsel of record for the parties, advising they had until September 28, 2016, in which to file any objections or exceptions to the same. That time period having elapsed without recording of objections or exceptions, the transcript is therefore lodged with the Court for further action.

11/4/16

Date



Jennifer E. Amentler
Official Reporter

ACCEPTANCE BY COURT

Upon counsel's opportunity to review and to offer objections to the record, the foregoing record of proceedings is hereby accepted and directed to be filed.

Date

11/4/16


John M. Cleland
Senior Judge
Specially Presiding