

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

COMMONWEALTH : NO. CP-14-CR-2421-2011
: NO. CP-14-CR-2422-2011

VS :

GERALD A. SANDUSKY :

TRANSCRIPT OF PROCEEDINGS
(Jury Trial)
(Day 7)

BEFORE: John M. Cleland, Senior Judge

DATE: June 20, 2012

PLACE: Centre County Courthouse
Courtroom No. 1
102 South Allegheny Street
Bellefonte, PA 16823

APPEARANCES:

FOR THE COMMONWEALTH:
Joseph E. McGettigan, Esq.
Frank G. Fina, Esq.

FOR THE DEFENDANT:
Joseph Amendola, Esq.
Karl Rominger, Esq.

NOTES BY: Patricia A. Grey, RPR
Official Court Reporter
Room 208, Centre County Courthouse
102 South Allegheny Street
Bellefonte, PA 16823
814-355-6734 OR FAX 814-548-1158

INDEX TO THE WITNESSES				
	DIRECT	CROSS	REDIRECT	RECROSS
COMMONWEALTH:				
(None)				
DEFENDANT:				
Jonathan Dranov	9	13	15	--
Henry Lesch	17	22	24	--
Chad Rexrode	36	40	47	--
David Hilton	48	54	62	63

INDEX TO THE EXHIBITS			ADMITTED
COMMONWEALTH:			
No. 1	Handwritten Note		89
No. 2	Photograph		89
No. 3	Photograph		89
No. 4	Photograph		89
No. 5	Photograph		89
No. 6	Photograph		89
No. 7	Photographs		89
No. 8	Photographs		89
No. 9	Photographs		89
No. 10	Photographs		89
No. 11	Photographs		89

	INDEX TO THE EXHIBITS CONTINUED	
		ADMITTED
3	COMMONWEALTH:	
4	No. 12 Photographs	89
5	No. 13 Photographs	89
6	No. 14 Photograph	89
7	No. 15 Photograph	89
8	No. 16 Photograph	89
9	No. 17 Photograph	89
10	No. 18 Photograph	89
11	No. 19 Photograph	89
12	No. 20 Photograph	89
13	No. 21 Photograph	89
14	No. 23 Photographs	89
15	No. 24 Handwritten Letter	89
16	No. 25 The BJ Story	89
17	No. 26 Handwritten Note	89
18	No. 27 Handwritten Note	89
19	No. 28 Handwritten Note	89
20	No. 29 Handwritten Note	89
21	No. 30 1999-2000 Contract	89
22	No. 31 Positive Action Program	89
23	No. 32 1999-200 Contract	89
24	No. 33 Youth Referral Form	89
25	No. 34 Photograph	89

	INDEX TO THE EXHIBITS CONTINUED	
		ADMITTED
3	COMMONWEALTH:	
4	No. 35 Photograph	89
5	No. 36 Newspaper Article	89
6	No. 37 Photographs	89
7	No. 38 Photograph	89
8	No. 39 Photograph	89
9	No. 40 Photograph	89
10	No. 41 Photographs	89
11	No. 42 Photographs	89
12	No. 43 Photographs	89
13	No. 44 Photographs	89
14	No. 45 Photographs	89
15	No. 46 Photographs	89
16	No. 47 Photographs	89
17	No. 48 Brochure	89
18	No. 49 Brochure Photograph	89
19	No. 50 Photographs	89
20	No. 51 Photographs	89
21	No. 52 Photographs	89
22	No. 53 Photographs	89
23	No. 54 Photographs	89
24	No. 55 Receipts	89
25	No. 56 Receipts	89

	INDEX TO THE EXHIBITS CONTINUED	
		ADMITTED
3	COMMONWEALTH:	
4	No. 57 Photograph	89
5	No. 58 Photographs	89
6	No. 59 Photograph	89
7	No. 60 Photograph	89
8	No. 61 Photograph	89
9	No. 62 Drawing	89
10	No. 63 Certificate	89
11	No. 64 Certificate	89
12	No. 65 Photograph	89
13	No. 66 Certificate	89
14	No. 67 Certificate	89
15	No. 68 Photograph	89
16	No. 68A Photograph	89
17	No. 69A Photograph	89
18	No. 70 Drawing	89
19	No. 71 Photograph	89
20	No. 75 Photograph	89
21	No. 78 2005 Camper List	89
22	No. 79 <i>Sports Illustrated</i>	89
23	No. 80 1998-1999 Outback Bowl	89
24	No. 81 1999 Alamo Bowl	89
25	No. 82 TV Guide	89

	INDEX TO THE EXHIBITS CONTINUED	
		ADMITTED
3	COMMONWEALTH:	
4	No. 83 Photograph	89
5	No. 84 Photograph	89
6	No. 85 Photograph	89
7	No. 86 Photograph	89
8	No. 87 Photograph	89
9	No. 88 Photograph	89
10	No. 89 Photograph	89
11	No. 90 Photograph	89
12	No. 91 Photograph	89
13	No. 92 Photograph	89
14	No. 93 Database Sheet	89
15	No. 94 1995 Camper List	89
16	No. 95 1998 Camper List	89
17	No. 96 Handwritten Letter	89
18	No. 99 1999 Contract	89
19	No. 101 Photograph	89
20	No. 102 Photograph	89
21	No. 102A Photograph Back	89
22	No. 103 Photograph	89
23	No. 104 Transcript	89
24	No. 105 Photograph	89
25	No. 106 Photograph	89

	INDEX TO THE EXHIBITS CONTINUED	
		ADMITTED
1		
2		
3	COMMONWEALTH:	
4	No. 107 Photograph	89
5	No. 123 Transcript	89
6	No. 125 Photograph	89
7		
8	DEFENDANT:	
9	No. 1 Scholarships	89
10	No. 2 Photographs	89
11	No. 5 Atkins Curriculum Vitae	89
12	No. 6 Letter/Report	89
13	No. 8 Letter	89
14	No. 9 Photographs	89
15	No. 10 Golf Classic List	89
16	No. 11 Golf Classic List	89
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 THE COURT: We'll be seated. You may
3 bring the jury in.

4 (Whereupon, the jury was escorted into
5 the courtroom.)

6 THE COURT: Good morning, ladies and
7 gentlemen.

8 Despite the delay of getting started, we
9 still are on schedule. I assure you.

10 We have been contacted by Juror 6 this
11 morning who reported that she was too ill to come
12 to court, and I have excused her with the consent
13 of counsel and, consequently, Ms. Storch, would
14 you take seat 6 please?

15 (Whereupon, Juror 13 changed seats.)

16 THE COURT: So Juror 13, the first
17 alternate, will assume seat 6.

18 THE COURT: Mr. Amendola.

19 MR. AMENDOLA: Your Honor, Mr. Rominger.

20 MR. ROMINGER: Your Honor, we call Dr.
21 Jonathan Dranov. I believe he's in the room.

22 Whereupon,

23 JONATHAN DRANOV

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

1 DIRECT EXAMINATION

2 BY MR. ROMINGER:

3 Q. Can you give your name and address for
4 the record, sir?5 A. Jonathan Dranov. My home address is 602
6 Windmill Road, Boalsburg, Pennsylvania.7 Q. Are you acquainted with Mike McQueary
8 and John McQueary?

9 A. Yes, I am.

10 Q. How do you know them?

11 A. I have known John since years ago when I
12 was at Duke University. We both worked in the
13 P.A. program. I was the medical director and he
14 was the administrator in the P.A. program.15 Q. Subsequently, here in State College,
16 have you known each other over the years?17 A. Yeah. We recruited John could come up
18 and be our administrator for our medical practice
19 in 1981 I believe.20 Q. And your profession is that of a medical
21 doctor?

22 A. Yes.

23 Q. Are you currently practicing as a
24 medical doctor?

25 A. Yes.

1 Q. You were practicing as a medical doctor
2 back in 2001-2002?

3 A. Yes.

4 Q. Do you recall sometime in 2001 John
5 contacting you and asking you to come to his
6 house?

7 A. Yes.

8 Q. Can you tell us what happened?

9 A. It was a night before I was supposed to
10 go out of town. I was working late in the
11 office, finishing up paperwork, dictations, and
12 John called me. I guess he had tracked me down
13 because it was in the evening, probably 9:00,
14 9:30, I believe. And he asked if I could come
15 over. He sounded concerned and upset.

16 So I said sure. What's the matter, but
17 he didn't want to talk about it on the phone. So
18 I told him that I would be over. I was just
19 about finished doing what I was doing. I told
20 him I would stop on my way home which I did.

21 Q. When you got over there, did you
22 encounter John and his son, Mike?

23 A. Yes.

24 Q. Did Mike relay any details of something
25 he had seen earlier in the evening to you?

1 A. Yes, he did.

2 Q. What did he tell you?

3 A. Well, when I came in, John was there.
4 Mike was there. I believe Mike's mother was
5 there but she disappeared. We sat down. Mike
6 was on the couch. He was visibly shaken and
7 upset. John told him to tell me what, you
8 know -- what he was -- wanted me to hear or what
9 he was going to tell me.

10 And that is that he had gone into the
11 Penn State football locker room to put away some
12 sneakers that he had apparently just bought. And
13 when he came in, he heard what he described as
14 sexual sounds.

15 Q. And what did he say subsequent to that?

16 A. I asked him what he meant and said,
17 Mike, what do you mean? He said, well, sexual
18 sounds, you know what they are. I said, no,
19 Mike, you know, what do you mean? And he
20 couldn't go on. He just seemed to get a little
21 bit more upset. So I kind of left that.

22 And then he said he looked toward the
23 locker or the shower and a young boy looked
24 around. He made eye contact with the boy. I
25 asked him -- to the best of my recollection, I

1 asked him if the boy seemed upset or frightened.
2 He said no. An arm reached out and pulled the
3 boy back.

4 Q. That's about all he told you he saw?

5 A. No. I can't remember exactly what he
6 said after that, but it was something about going
7 back to his locker and then he turned around and
8 faced the shower room and a man came out and it
9 was Jerry Sandusky.

10 Q. That's basically the description he left
11 you with to the best of your recollection that
12 night?

13 A. Yes.

14 Q. And no one called 911 or police or
15 anything that particular evening?

16 A. No.

17 Q. And neither you nor John to your
18 knowledge followed up and filed anything?

19 MR. McGETTIGAN: Objection. Leading.

20 THE COURT: Sustained.

21 By MR. ROMINGER:

22 Q. Did you guys do anything else at that
23 point?

24 A. Well, I mean the conversation went on in
25 terms of what had to be done or what should be

1 done. I think it was clear in Mike's mind that
2 this was an incident that had to be reported and
3 it was discussed what he should do. You know, he
4 knew that he had to report it, and I encouraged
5 him to report it to his supervisor who was Joe
6 Paterno. So he was strongly advised to do that.
7 I'm not so sure he needed the advice.

8 Q. As you recollect, did he describe any
9 particular sex act?

10 MR. McGETTIGAN: Objection. I think
11 he's asked and answered it about the universe of
12 his statements. I think he said, it's all.

13 THE COURT: Overruled. Go ahead and you
14 can ask that question.

15 BY MR. ROMINGER:

16 Q. Did he describe seeing any particular
17 sex act?

18 A. No, he did not. He implied that it had
19 gone on with what he talked about with sexual
20 sounds. But did he give me any kind of graphic
21 description? No.

22 Q. Nothing further.

23 MR. McGETTIGAN: Very briefly, Your
24 Honor.

25 CROSS-EXAMINATION

1 BY MR. McGETTIGAN:

2 Q. Good morning, Dr. Dranov. How are you?

3 A. Fine.

4 Q. Okay. The first time you had an
5 occasion to be asked about this incident was
6 sometime in 2009 or '10 -- '10, '11?

7 A. I can't recall. It was either very late
8 2010 or early 2011.

9 Q. Okay. And correct me if I'm wrong, is
10 it accurate to say that you weren't sure of what
11 year this happened at the time this was brought
12 to your attention?

13 A. That's correct.

14 Q. And again the human mind being what it
15 is, not certain recollection of the time frame
16 when you were advised of these by Mike, but
17 there's no forgetting the state of agitation he
18 was in when he spoke with you, is there?

19 A. Absolutely. I mean, if I could describe
20 it. I mean his voice was trembling, his hands
21 were shaking. He was visibly shaken.

22 Q. And you arrived after Mike had already
23 arrived at his dad's house; did you not?

24 A. That's correct, yes.

25 Q. And Mike was still in this state?

1 A. Yes.

2 Q. Okay. And you have known Mike McQueary
3 since he was?

4 A. Smaller than that.

5 Q. Smaller than that. Now he's a lot
6 bigger than that. Okay. Not the type of person
7 who's easily shaken?

8 A. Certainly not.

9 Q. This was shocking to you, both to see
10 him like this and to hear these events?

11 A. Yes, it was.

12 Q. Okay. And he has known and respected
13 you his whole life I understand?

14 A. I hope so.

15 Q. Would -- it would not be surprising to
16 you that he was reluctant to enter into graphic
17 detail about what he saw?

18 A. That may be. I'm not sure -- you would
19 probably have to ask him that but.

20 Q. Thanks very much, doctor. I appreciate
21 it.

22 REDIRECT EXAMINATION

23 BY MR. ROMINGER:

24 Q. But, doctor, you asked him three times
25 if he saw a sexual act?

1 MR. McGETTIGAN: Objection. That's just
2 a leading question and improper redirect.

3 THE COURT: Overruled.

4 BY MR. ROMINGER:

5 Q. Right?

6 A. In the conversation, yes. I didn't use
7 the term did you see a sexual act. I kept saying
8 what did you see and each time he would come back
9 to the sounds. I kept saying but what did you
10 see. And it just seemed to make him more upset.
11 So I backed off that.

12 Q. You're a mandatory reporter?

13 A. Yes.

14 Q. Nothing further.

15 MR. McGETTIGAN: I have nothing further.
16 Thank you, doctor.

17 THE COURT: Thank you, doctor. You can
18 step down.

19 MR. ROMINGER: We call Hank Lesch.

20 Whereupon,

21 HENRY LESCH

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

24 MR. ROMINGER: Your Honor, I would ask
25 to mark some exhibits after I ask him to identify

1 himself.

2 DIRECT EXAMINATION

3 BY MR. ROMINGER:

4 Q. Can you give your name and address for
5 the record?

6 A. Henry Lesch.

7 THE COURT: You're just blocking the
8 jury, that's all.

9 MR. ROMINGER: I'm sorry.

10 THE WITNESS: Henry Lesch, 170 Beacon
11 Circle, Boalsburg, Pennsylvania.

12 BY MR. ROMINGER:

13 Q. I'm putting in front of you, sir,
14 Exhibits 8, 9, 10, and 11. But before I ask you
15 to specifically identify them, did you have
16 involvement in The Second Mile golf program?

17 A. I did.

18 Q. What did you do and how were you
19 involved?

20 A. It would depend what year you were
21 talking about. But generally I was in charge of
22 the sponsorships and overall operations of the
23 golf tournament.

24 Q. The records that you have in front of
25 you, can you look through those and tell us --

1 identify what each one is generally?

2 MR. McGETTIGAN: Your Honor, I have no
3 objection. I would just like counsel to
4 enlighten me as I don't have any copies of these
5 in front of me.

6 THE COURT: Do you have copies?

7 MR. ROMINGER: I showed them copies a
8 moment ago and they handed them back to me,
9 Judge.

10 MR. McGETTIGAN: We've usually provided
11 them with copies. We got a lot of documents
12 here, Your Honor.

13 THE COURT: Do you have copies?

14 MR. ROMINGER: Do we have another copy
15 for Mr. McGettigan?

16 THE COURT: Do you want to look at them
17 again?

18 MR. McGETTIGAN: No, Your Honor. We'll
19 find -- we just have a lot of paper here. I'm
20 sorry. I thought he might have a copy for us.

21 THE COURT: You would have thought he
22 might have. Go ahead.

23 BY MR. ROMINGER:

24 Q. Sir, you were able to locate those or
25 retrieve those from your records in your archives

1 of the golf outings?

2 A. I was not the one to locate these. It
3 would be people at The Second Mile who did.

4 Q. But you can recognize them from --

5 A. I can.

6 Q. And you believe that those are true and
7 correct copies of The Second Mile records that
8 would be maintained?

9 A. That would be correct.

10 Q. What is Exhibit 8?

11 A. It's a letter to Mike McQueary thanking
12 him for participating in the 23rd Annual Uni-Mart
13 Golf Classic.

14 Q. When was that golf outing?

15 A. That would have been in June of 2003.

16 Q. And Exhibit 9 is what?

17 A. There are two pictures on the page. One
18 indicating cars that would have been displayed
19 during the golf tournament and on the bottom,
20 pictures of I presume folks who were playing in
21 the golf tournament.

22 Q. Do you know what Mike McQueary looks
23 like?

24 A. I do.

25 Q. Does he appear to be in any of those

1 photos?

2 A. Yes, on the bottom left.

3 Q. And what year was that golf outing
4 again?

5 A. I don't know on this particular picture
6 what year the golf outing was from. The letter
7 indicates 2003.

8 Q. That picture would have gone with that
9 letter and was something that was sent to him?

10 A. Not necessarily.

11 Q. You don't know?

12 A. I don't know.

13 Q. What's the next exhibit?

14 A. The next exhibit is indicating for the
15 staff and the staff at Penn State golf
16 operations, the foursomes who would participate
17 in our golf outing.

18 Q. So if somebody had registered to
19 participate in the golf outing, their name would
20 be in that roster?

21 A. That would be correct.

22 THE COURT: This is exhibit?

23 THE WITNESS: That's Exhibit 10.

24 MR. ROMINGER: 10.

25 BY MR. ROMINGER:

1 Q. And does Mike McQueary's name appear
2 there?

3 A. It is on the bottom foursome.

4 Q. What year was that golf outing?

5 A. It would say here. Parings as of
6 6/25/2001.

7 Q. So that particular Exhibit 10 is from
8 2001's fall golf outing?

9 A. That's what it indicates on the top.

10 Q. After June some time?

11 A. It says as of June 25th.

12 Q. The next exhibit, Exhibit 11?

13 A. It's number of names of either
14 celebrities who played or potentially celebrities
15 who would have played in our golf classic.

16 Q. What year is that?

17 A. It would have been for the golf classic
18 on June 21, 2001.

19 Q. Did Mr. McQueary's name appear there as
20 well?

21 A. It does.

22 Q. Based on your records it appears that he
23 played in the golf outing in both 2001 and 2003?

24 A. It would indicate that.

25 MR. ROMINGER: Nothing further.

1 MR. McGETTIGAN: May I, Your Honor?

2 THE COURT: Yes, you may.

3 MR. McGETTIGAN: May I approach the
4 witness?

5 THE COURT: Yes.

6 CROSS-EXAMINATION

7 BY MR. McGETTIGAN:

8 Q. Mr. Lesch, is it, sir?

9 A. It is.

10 Q. Pardon?

11 A. Lesch.

12 Q. Lesch. The one thing you showed us --
13 one exhibit, that's Exhibit No. 8 I think, is a
14 letter addressed to Mr. McQueary?

15 A. That's correct, sir.

16 Q. It's not from him?

17 A. That's correct, sir.

18 Q. It's not an acknowledgment that he
19 has -- that he did play or would play or anything
20 like that. It's just a letter to him, correct?

21 A. That's correct.

22 Q. The picture that you said that's of the
23 golf outing, he played throughout the nineties;
24 did he not?

25 A. He played --

1 Q. In this golf tournament. He played in
2 the golf tournament?

3 A. I couldn't tell you whether he did or
4 not. We had so many.

5 Q. And you have no idea when this picture
6 is from?

7 A. No, sir.

8 Q. Okay. Did you take a close look at it?

9 A. I did.

10 Q. Is the defendant in this picture?

11 A. No.

12 Q. Okay. And these lists that you showed
13 us here from June 21st of 2001?

14 A. Yes, sir.

15 Q. Okay. Every single person that's in
16 here you're sure played in the golf tournament?

17 A. That's who was proposed to play in the
18 golf tournament.

19 Q. Proposed.

20 A. There would be people who would fall out
21 for health reasons or travel reasons.

22 Q. Same thing here?

23 A. Yes, sir.

24 Q. Okay. So we have undated picture, a
25 letter to Mr. McQueary, but not from him with no

1 acknowledgment return and a couple lists of
2 people who may or may not have played in the golf
3 tournament; is that pretty much it?

4 A. Yes.

5 Q. Did they reflect anything about who you
6 know who actually played?

7 A. I would recall people who would have
8 played. Mr. McQueary is not one of them.

9 Q. He didn't. Thank you very much.

10 REDIRECT EXAMINATION

11 BY MR. ROMINGER:

12 Q. The letter is an acknowledgment that
13 says thank you for playing?

14 A. Right.

15 Q. So those letters were mailed to people
16 who actually played?

17 A. Yes, sir.

18 MR. ROMINGER: Nothing further.

19 THE COURT: Thank you, sir. You can
20 step down.

21 MR. AMENDOLA: Your Honor, we would call
22 Sara Ganim.

23 MR. STAUDENMAIER: Your Honor, you
24 indicated in chambers we could see you at sidebar
25 on the record.

1 THE COURT: Where is she?

2 MR. STAUDENMAIER: She's on her way,
3 Judge.

4 THE COURT: You want to approach the
5 bench, please?

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

8 THE COURT: Is she going to testify?

9 MR. STAUDENMAIER: She's not, Your
10 Honor.

11 (End of sidebar discussion.)

12 THE COURT: Okay. Ladies and gentlemen,
13 we going to take a short recess. We're not going
14 to take a recess but I am going to excuse you and
15 we'll bring you back in here shortly.

16 (Whereupon, the following discussion was
17 held at sidebar:)

18 THE COURT: Might as well -- once the
19 jury is out, you might as well put her on. I've
20 told the sheriff to be ready to take her.

21 MR. STAUDENMAIER: I understand, Your
22 Honor. You understand it's no disrespect to the
23 Court.

24 THE COURT: I understand it's no
25 disrespect. I hope you understand that, by God,

1 this guy is going to get a fair trial.

2 MR. STAUDENMAIER: I understand, Your
3 Honor. I would expect nothing less.

4 THE COURT: How do you want to --
5 propose to summarize all of this? Do you want me
6 to summarize it? Do you want to summarize it and
7 then give you an opportunity to state --

8 MR. STAUDENMAIER: I think that would be
9 preferable, Your Honor, because we have discussed
10 it at some length and you'll probably do a good
11 job of summarizing it and it will cut me from
12 repeating things perhaps.

13 THE COURT: No, I don't want to preclude
14 you from making any record that you want to make.

15 MR. McGETTIGAN: I beg your pardon. Is
16 it -- may I inquire? Is it fair to -- for the
17 Court to state that the Commonwealth has taken no
18 position in this? We have neither objected to
19 nor sought her testimony and we have taken no
20 position.

21 The defense is seeking to call her. We
22 had issues about the relevance about this and
23 things like that but we have taken no position
24 whether Ms. Ganim should be called. I don't want
25 to be put in the position that the guy -- that's

1 your job to look like the guy who locked her up.
2 If Your Honor thinks otherwise --

3 THE COURT: No, no, no. If she's not
4 going to answer the very first question which is
5 purely a factual question.

6 MR. AMENDOLA: It's the only question I
7 would propose to ask her.

8 THE COURT: I'm just astonished. I,
9 frankly, am astonished. But if that's -- if
10 that's what she wants to do.

11 MR. STAUDENMAIER: Well, Your Honor, we
12 had a rather long protracted discussion.

13 THE COURT: I can imagine she feels
14 strongly about this.

15 MR. STAUDENMAIER: And, Your Honor, here
16 again, with all due respect to the Court, you
17 know, our position is that, you know, that it's
18 not -- it's a Pandora's box and once it's opened,
19 closing it is, you know, impossible or dangerous
20 and leads to other things.

21 We have the utmost respect for the Bench
22 and the Court would keep the shield law and other
23 aspects in mind. However, you know, we feel that
24 from the get-go that she should not take the
25 stand for the reasons that I'm sure we'll get

1 into in a moment.

2 THE COURT: With all due respect, it's
3 not her call whether the box has been opened.

4 MR. McGETTIGAN: Your Honor, maybe the
5 fairest thing to do is to say she's called a
6 witness and not indicate either --

7 THE COURT: Excuse me?

8 MR. McGETTIGAN: Maybe the fairest thing
9 to do is to say she's declined to offer testimony
10 if called and not indicate either side.

11 THE COURT: Well, got to put her on the
12 stand. She has to assert the privilege and then
13 I put her in jail.

14 MR. STAUDENMAIER: Unless, Judge -- you
15 know, the one option we haven't discussed is that
16 Mr. Amendola, knowing that, whether he still
17 wants to call her or move on with other aspects
18 of the case that would perhaps do what he needs
19 to do anyway and that would eliminate the issue.

20 Your Honor, will recall I think
21 yesterday Mr. Amendola even indicated he was
22 prepared to do that because he felt that, you
23 know, there was other information available that
24 could maybe get around that issue or substantiate
25 his case on that basis and we could all avoid,

1 you know, an unsightly situation but recognizing
2 it's my client's choice that's creating it.

3 MR. McGETTIGAN: You know, I think, Your
4 Honor, carefully crafted the question that
5 Mr. Amendola could ask and if the Commonwealth
6 were to refrain from cross-examination, I think
7 it just has to do with the date of the article;
8 does it not? No, communication that --

9 MR. FINA: We would -- if it's just that
10 one question, we will sit. We will agree not to
11 cross.

12 MR. McGETTIGAN: We will agree not to
13 cross.

14 MR. FINA: Makes this a lot simpler,
15 doesn't it?

16 MR. STAUDENMAIER: It may, Your Honor,
17 but I need to ask my client.

18 MR. AMENDOLA: Could I propose another
19 way, guys? If you would propose not to cross,
20 could we stipulate to that -- stipulate that this
21 question would be asked and this would be the
22 answer?

23 MR. FINA: And the answer is yes.

24 MR. AMENDOLA: Yes. That would be --
25 because that's what she would do if she

1 testified.

2 MR. McGETTIGAN: Frankly, the
3 stipulation I'll go along with. Maybe I'll read
4 it.

5 MR. STAUDENMAIER: I'm sorry.

6 MR. McGETTIGAN: I'm not interested in
7 trying to force --

8 MR. AMENDOLA: I phrased this exactly
9 the way the Court asked me to. Prior to charges
10 being filed in this case, did you contact the
11 mother of an alleged victim and provide her with
12 contact information for an investigator in this
13 case?

14 MR. McGETTIGAN: Sure.

15 MR. AMENDOLA: The answer would be yes.
16 If we can stipulate -- if you're not going to
17 cross-examine her --

18 MR. FINA: That's fine.

19 MR. AMENDOLA: -- why don't we stipulate
20 to it?

21 MR. McGETTIGAN: I'll read that and say
22 the answer is yes.

23 MR. STAUDENMAIER: I'm not sure I have a
24 dog in the fight on that basis, Judge.

25 THE COURT: Let me summarize our

1 pretrial conferences in chambers to make sure
2 that we have a clear record about this.

3 MR. STAUDENMAIER: I was going to ask
4 that, Judge.

5 THE COURT: Yesterday afternoon, the
6 Commonwealth issued the subpoena to Sara Ganim --
7 the defense issued the subpoena to Sara Ganim.
8 The counsel for *The Patriot News* filed a motion
9 to quash the subpoena. We held argument at the
10 close of court yesterday.

11 I met with counsel at 8:30 this morning.
12 Counsel for the reporter has asserted the
13 Reporter Shield Law as a basis to quash the
14 subpoena. Following discussions which are now
15 not relevant because the issue has been resolved
16 by agreement, I indicated very clearly that if
17 the reporter refused to answer a carefully-worded
18 factual question about her conduct that I did not
19 believe implicated the Reporter Shield Law, that
20 I was prepared to put her in jail and I had
21 contacted the sheriff to make those arrangements.

22 Subsequently, she has been called as a
23 witness. The jury has been excused from the
24 courtroom. Counsel have approached the bench and
25 have agreed that the Commonwealth and the defense

1 will stipulate that if Ms. Ganim is -- was asked
2 a specific question, the answer would be yes.
3 And, therefore, it would preclude calling her and
4 the Commonwealth would leave any
5 cross-examination.

6 MR. STAUDENMAIER: Judge, if I may, may
7 I add to that in light of that stipulation that
8 Mr. Amendola, the defense, withdraws the subpoena
9 issued to Ms. Ganim?

10 MR. AMENDOLA: Of course, I do, Your
11 Honor.

12 THE COURT: Yes.

13 MR. AMENDOLA: Your Honor, the only
14 other, caveat if she were to have testified, she
15 would identify herself as Sara Ganim who is a
16 reporter of the *Harrisburg Patriot News*.

17 THE COURT: Oh, sure. Yes.

18 MR. AMENDOLA: Put that in the record.

19 MR. McGETTIGAN: You have the question
20 written out?

21 MR. FINA: That's fine, Your Honor.

22 MR. McGETTIGAN: Can I see it?

23 MR. FINA: As much as, frankly, I
24 personally would like to see Ms. Ganim in jail
25 for unrelated reasons --

1 MR. STAUDENMAIER: Judge, is this on the
2 record?

3 MR. FINA: -- we agree with that --

4 THE COURT: It is.

5 MR. FINA: -- with that representation.
6 I'm fine with it being on the record.

7 MR. STAUDENMAIER: Judge.

8 THE COURT: It was a gratuitous comment.

9 MR. STAUDENMAIER: It was a gratuitous,
10 okay.

11 THE COURT: And I'll note for the record
12 it was done with a smile and in good humor.

13 MR. STAUDENMAIER: I will take it in the
14 spirit in which it was said.

15 MR. AMENDOLA: And just to identify her,
16 she's a reporter which is what she would have --

17 MR. STAUDENMAIER: *The Patriot News*.

18 THE COURT: We'll go off the record.

19 MR. AMENDOLA: *The Patriot News*.

20 MR. STAUDENMAIER: Well, no, Judge, I
21 just wanted to put one more thing on.

22 THE COURT: You want something on the
23 record?

24 MR. STAUDENMAIER: Just one more thing.

25 THE COURT: Okay.

1 MR. STAUDENMAIER: And Your Honor
2 summarized our assertions of defenses very well
3 except we also were asserting our privileges
4 under the First Amendment in addition to the
5 Reporter Shield Law in Pennsylvania law.

6 THE COURT: We're off the record now.

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

9 (End of sidebar discussion.)

10 THE COURT: Bring the jury in.

11 (Whereupon, the jury was escorted into
12 the courtroom.)

13 THE COURT: We'll be back in session and
14 note for the record that the jury has returned to
15 the courtroom.

16 Did we decide you would do the
17 stipulation?

18 MR. McGETTIGAN: I'm happy to oblige,
19 Your Honor. Thank you kindly.

20 THE COURT: Go ahead.

21 MR. McGETTIGAN: May it please the
22 Court.

23 THE COURT: Yes.

24 MR. McGETTIGAN: Ladies and gentlemen of
25 the jury, there's been a stipulation entered into

1 by and between counsel for the defendant, Jerry
2 Sandusky, and counsel for the Commonwealth,
3 counsels, Mr. Fina and myself, and the
4 stipulation is a very short one and has to do
5 with the testimony that would be offered by one
6 individual. Her name is Sara Ganim, G-a-n-i-m,
7 who is a reporter for the *Harrisburg Patriot*
8 *News*.

9 And the stipulation is that if she were
10 called as a witness to testify, she would be
11 asked one question. That would be: Prior to
12 charges being filed in this case, did you contact
13 the mother of an alleged victim and provide her
14 with contact information for an investigator in
15 this case?

16 That would be the question we would pose
17 to her and her response would be yes.

18 Did I read it too fast or is that okay?

19 THE COURT: Thank you.

20 MR. McGETTIGAN: Thank you, Your Honor.

21 MR. FINA: Your Honor, we call Chad
22 Rexrode.

23 Whereupon,

24 CHAD REXRODE

25 was called as a witness and having been duly

1 sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ROMINGER:

4 Q. Name and address for the record, sir?

5 A. My name is Chad Rexrode, and I live in
6 Pittsburgh.

7 THE COURT: Excuse me. Where?

8 THE WITNESS: Pittsburgh, PA.

9 THE COURT: Thank you.

10 BY MR. ROMINGER:

11 Q. How old are you?

12 A. I'm 35.

13 Q. Were you ever involved with The Second
14 Mile?

15 A. Yes.

16 Q. What ages?

17 A. At the age of 10 to 15.

18 Q. Did you ever have a chance to meet Jerry
19 Sandusky?

20 A. Yes, I have.

21 Q. Did you have contact with Mr. Sandusky
22 outside of The Second Mile?

23 A. Yes.

24 Q. Describe that for the jury.

25 A. Since I moved to Pittsburgh, I -- my mom

1 got a job in Pittsburgh and that's what made us
2 move to Pittsburgh, and whenever I left
3 Pittsburgh he always kept communicating with me
4 and seeing how I was doing and just kind of
5 making sure that, you know, everything was good
6 because I never had a father in my life and he
7 was like a father figure to me. He would -- just
8 wanted to keep in touch with me just to see how I
9 was doing.

10 Q. Did he help you with various things?

11 A. A lot of things. Like I said, I didn't
12 have a father figure and my dad had left me when
13 I was one-year old and he took me in. And he
14 would check on my grades and just, you know, see
15 how I was doing. He would contact me about
16 different things. He would invite me up to
17 different events and like Penguin games, Pirate
18 games and also Penn State games.

19 Q. Did you ever stay at his house?

20 A. Yes. I stayed at his house many times.
21 Also, when I lived in Pittsburgh, I would come
22 back to visit him for a football game and I would
23 stay at his house with Dottie and Jerry.

24 Q. And how did you come to spend extra time
25 with Jerry if you were just in The Second Mile?

1 How did you meet him personally?

2 A. I'm originally from Chambersburg, PA,
3 and when we moved to State College, because my
4 mom was enrolled at Penn State, I went to
5 Easterly Parkway Elementary School and one of our
6 projects was, in the third grade, was to write
7 letters to someone that we admired and what I
8 admired was Penn State, Penn State football. I
9 loved Penn State, players, coaches.

10 So I wrote letters out. And I wrote
11 letters to the players and the coaches. I wrote
12 to Joe Paterno. I wrote to Jerry, and a lot of
13 the players and the coaches responded and one of
14 those letters was from Jerry Sandusky.

15 Q. And then you became in contact with him
16 that way?

17 A. Yes. Jerry through letters knew my
18 background, that I didn't have a father figure
19 and my mom was going to school and she was also
20 working full time at the hospital and he saw that
21 I needed some guidance and direction, you know,
22 because it was only from my mother. That's how I
23 learned to meet Jerry Sandusky.

24 Q. Do you have kids of your own now?

25 A. Yes. I have a son -- he's seven -- and

1 a daughter that's five.

2 Q. Are you married?

3 A. I'm married nine years.

4 Q. What do you do for a living now?

5 A. I have an accounting degree at Robert
6 Morris. However, I didn't choose to take an
7 accounting degree because I thought two
8 accounting degrees since my wife is an accountant
9 and me, it wouldn't work out in the household.
10 So I choose to be a landscaper.

11 Q. And do you know Jerry Sandusky then?

12 A. I know him very well.

13 Q. Do you know people that know him in the
14 community?

15 A. Absolutely. You never hear anything bad
16 about Jerry. It's always positive.

17 Q. Let me stop you. Have you discussed
18 Jerry with those people?

19 A. Oh, absolutely with -- my family just
20 admires him and --

21 Q. I've got to stop you. This is a
22 character testimony that we're going to ask. It
23 has to be certain rules.

24 Have you had a chance to discuss his
25 reputation for truthfulness, honesty,

1 nonviolence, and law-abidingness?

2 A. Yes, I have.

3 Q. What is that reputation, sir?

4 A. His reputation is being someone that
5 reaches out to people and goes way out of his
6 way.

7 MR. McGETTIGAN: Objection.

8 THE COURT: Objection is sustained.

9 BY MR. ROMINGER:

10 Q. Is the answer yes?

11 A. Yes.

12 Q. Thank you.

13 THE COURT: Cross.

14 MR. McGETTIGAN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. McGETTIGAN:

17 Q. Can you tell us about the first
18 time that you -- Is it Rexrode?

19 A. Yes, Rexrode.

20 Q. I'm saying it right Rexrode?

21 A. Yes.

22 Q. Okay. Not a Rexroth?

23 A. No.

24 Q. Okay. Can you tell us about the first
25 time you came in personal contact with the

1 defendant; do you remember that?

2 A. Yes, I do.

3 Q. Okay.

4 A. When I first met Jerry, he actually came
5 to my house, and he would pick me up, and he took
6 me over to his house, and I met his family, and I
7 always was doing activities with him. That was
8 the very first time I met him was going to his
9 place and meeting his family.

10 Q. So when you wrote this letter, you wrote
11 to Coach Paterno as well?

12 A. Yes, I did.

13 Q. You're a big fan?

14 A. Yeah, big Penn State fan.

15 Q. Huge blue and white guy?

16 A. Yes.

17 Q. Where were you from originally?

18 A. I'm originally from Chambersburg, PA.

19 Q. So not that far away?

20 A. No.

21 Q. The blue and white says a wide area?

22 A. Exactly.

23 Q. You wrote a letter to Coach Paterno and
24 bunch of other coaches?

25 A. Yes.

1 Q. Okay. And did others respond or was it
2 the defendant who responded?

3 A. Jerry responded and other players
4 responded, like John Shaffer and Penn State guys
5 were on 86-87 year.

6 Q. Okay. What year was that, if you
7 recall?

8 A. It was '87.

9 Q. And you're a fairly big guy now. You
10 weren't so big were you?

11 A. No.

12 Q. No?

13 A. I wasn't big when I was a kid, no.

14 Q. Without offending you, skinny little
15 blonde guy?

16 A. Little blonde boy, yes.

17 Q. Okay. And so after you wrote this
18 letter to the defendant, did you explain to him
19 your family circumstances there, you know, that
20 you had no dad in the home, things like that?

21 A. Yeah. When he asked me the questions
22 through letters, yeah, I did tell him my
23 background and that I was an only child and I
24 didn't have a father.

25 Q. Difficult -- did you have siblings,

1 brothers or sisters?

2 A. No brothers or sisters.

3 Q. Okay. And your mom worked?

4 A. My mom worked full time at the community
5 hospital.

6 Q. It was just you and your mom living
7 together?

8 A. Just my mom and I in Easterly Parkway
9 Apartments.

10 Q. Okay. So because of this contact and
11 because of the absence of a father figure at
12 home, your mom thought this was a great idea?

13 A. Yes. My mom thought this was a great
14 chance to show your support for what he's done
15 for me.

16 Q. No, no. I'm talking about back then.
17 You thought it was a good idea?

18 A. Absolutely, absolutely.

19 Q. And you lived in Chambersburg at the
20 time?

21 A. Yes, I did.

22 Q. How far away is that from here?

23 A. It's probably about two hours, an hour
24 45 minutes.

25 Q. Two hours. So after an exchange of

1 correspondence in which you discussed your
2 personal history, your biography with the
3 defendant, he wrote back to you?

4 A. Yes.

5 Q. Okay. Multiple times?

6 A. Multiple times.

7 Q. Did he ask you for a picture of yourself
8 or anything like that?

9 A. No, then we started communicating by
10 phone.

11 Q. Okay. And after that, he drove that
12 whole two hours just to pick you up?

13 A. Well, no. I lived in State College at
14 the time when we were writing the letters. I had
15 a project to do with writing letters to someone
16 that I admired. I was already living in the
17 State College area because my mom started to
18 attend Penn State.

19 Q. I'm sorry. I got Chambersburg mixed up.
20 That's Chambersburg now? Is that where you live
21 now?

22 A. No, I live in Pittsburgh, PA, now.

23 Q. Where does Chambersburg come in?

24 A. Chambersburg is where I'm from. When my
25 mom graduated from high school at Chambersburg,

1 she enrolled here at Penn State.

2 Q. Okay. So the defendant didn't have to
3 drive that far to pick you up?

4 A. No, just probably three miles.

5 Q. Okay. And then he would take you to his
6 home?

7 A. Yes.

8 Q. Okay. And did you go work out as well?

9 A. Yes. As I got older and I learned --
10 you know, he took me to different activities and,
11 yes, the weight room is one of them.

12 Q. Did you shower together?

13 A. No.

14 Q. Okay. Not once?

15 A. Not once.

16 Q. Okay. And when you stayed in the home,
17 where did you stay, upstairs or downstairs?

18 A. Downstairs.

19 Q. Downstairs. In the basement?

20 A. Yes.

21 Q. By yourself?

22 A. Yes.

23 MR. McGETTIGAN: May I approach the
24 witness, Your Honor?

25 THE COURT: Yes.

1 BY MR. McGETTIGAN:

2 Q. Mr. Rexrode, I am going to approach and
3 hand you a document that's two pages, just the
4 first page is marked Commonwealth No. 125. Can
5 you identify that photograph?

6 A. Yes, I do. That's my high school
7 football picture.

8 Q. Okay. And you were encouraged to play
9 football by the defendant as well, were you not?

10 A. Not really. He really didn't push me to
11 play football. If I wanted to play football, you
12 know, he was there for me in support, yes.

13 Q. I take it -- you're not nervous, are
14 you?

15 A. Not at all.

16 Q. Okay. Good. I take it that when you
17 stayed at the defendant's home that there were
18 other people there?

19 A. Yes, all the time.

20 Q. You slept downstairs in the basement?

21 A. Yes.

22 Q. The defendant would make sure that you
23 got to bed okay?

24 A. He would just say, hey, it's time to go
25 to bed. Go downstairs. And he would show me the

1 room and where I needed to stay. And he would
2 show me where the bathroom was to, you know, take
3 a shower in the morning or whatever. That's --
4 that was it.

5 Q. Anything else you recollect about that?

6 A. Not at all.

7 Q. Anything else you recollect about your
8 contact with the defendant that you would like to
9 tell us about?

10 A. I just wanted to thank him for
11 everything he's done for me and this guy has done
12 so much for me and for so many other people.
13 That's why I'm here today.

14 Q. Anything else you would like to tell us
15 about your contact with the defendant?

16 A. No.

17 Q. Are you sure?

18 A. Yes.

19 Q. Thank you.

20 MR. McGETTIGAN: Nothing further, Your
21 Honor.

22 Oh, wait. That's all right. I was
23 going to publish the photograph. I need not,
24 Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. ROMINGER:

2 Q. Nothing inappropriate ever happened?

3 A. Never.

4 Q. Thank you.

5 MR. ROMINGER: Nothing further, Your
6 Honor.

7 THE COURT: You can step down.

8 THE WITNESS: Thank you.

9 MR. ROMINGER: Your Honor, we call David
10 Hilton to the stand.

11 Whereupon,

12 DAVID HILTON

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

15 DIRECT EXAMINATION

16 BY MR. ROMINGER:

17 Q. Sir, could you give your name and
18 address for the record?

19 A. David Hilton. I live in Lancaster
20 County.

21 THE COURT: Mr. Hilton, if you just turn
22 that mic -- there you go.

23 THE WITNESS: Good?

24 BY MR. ROMINGER:

25 Q. Where are you from?

1 A. I live in Lancaster County.

2 Q. How old are you?

3 A. I'm 21.

4 Q. How do you know Jerry Sandusky?

5 A. I met him through The Second Mile.

6 Q. How old were you -- do you know how old
7 you were when you started in The Second Mile?

8 A. I want to say fifth grade. I met Jer in
9 fifth grade through The Second Mile.

10 Q. Did you just meet him at the camp?

11 A. That's how you first meet him, yeah.

12 Q. And then what happened?

13 A. He had a speaking engagement in my town
14 about The Second Mile and they wanted some kids
15 to come there and I actually -- it was in my
16 town. So that's how I met him, through there.

17 Q. Okay. So you met him at a speaking
18 engagement in your town?

19 A. Right, right.

20 Q. And then did the two of you develop a
21 personal relationship?

22 A. Right, after that, yeah.

23 Q. What happened?

24 A. I don't know exactly if it was like the
25 day after or whatever, but I got a phone call one

1 day and we ended up going swimming I think it
2 was, like, the second time I ever met him and
3 from there we just hung out from there.

4 Q. Did he ever have you come over to his
5 house?

6 A. Yeah. I have been to his house lots of
7 times.

8 Q. More than 10, more than 50?

9 A. Probably more than 50, yeah.

10 Q. Did you ever go to football games with
11 him?

12 A. Yeah.

13 Q. Did you ever travel anywhere with him?

14 A. Yeah.

15 Q. Where did you go?

16 A. We went to California, San Francisco.

17 Q. How long were you there for?

18 A. I want to say about a week or so.

19 Q. Did you have a good time?

20 A. Yeah, a good time.

21 Q. How would you describe Jerry's
22 involvement in your life? What kind of things
23 has he been involved in?

24 A. He was definitely a father figure. He's
25 helped me out with a lot of things academic wise.

1 Q. What do you mean by that?

2 A. You know, both of my parents are deaf.
3 So I was always behind in school. He used to
4 call me up everyday and do, like, dictionary
5 words and I would look up the words and what they
6 meant and stuff like that -- stuff that like.

7 Q. You have a father and a mother?

8 A. Right, right.

9 Q. But you needed some help with academics?

10 A. Right, because they were both deaf. So
11 I was always behind, you know, to pick up words.

12 Q. Did Jerry help you catch up?

13 A. Yeah, oh definitely, definitely.

14 Q. Now, did he ever take you or get you a
15 membership at fitness center or something like
16 that?

17 A. Yeah, actually in my town there, yeah.

18 Q. In your hometown?

19 A. Yeah, yep.

20 Q. Not up here?

21 A. No, no, no. In my hometown.

22 Q. So he got that for you so you could work
23 out?

24 A. Right.

25 Q. Was he there with you to work out?

1 A. I think he might have come once or
2 twice, yeah, but not, like, daily.

3 Q. Did he ever help you with employment?

4 A. Yeah. He actually got me a job, I think
5 I was in eighth grade or ninth grade at
6 Utilities. It's a tractor trailer industry.

7 Q. Down where you live?

8 A. Yeah.

9 Q. Jerry ever criticize any of the
10 decisions you have made?

11 A. No, like, I never really wanted to do
12 the academic program. I mean, I did then but I
13 didn't, like, but --

14 Q. He would ride you a little bit about
15 that?

16 A. Right, right. Who wants to do academics
17 in 8th grade, you know?

18 Q. At some point did the police come out to
19 talk to you?

20 A. Yeah.

21 Q. How many times did the police come and
22 talk to you?

23 A. Three times at my house. I met one guy
24 for five minutes when he gave me a subpoena and
25 then one time I met him in Harrisburg.

1 Q. So about three or four interviews?

2 A. Right.

3 Q. Describe the first interview just
4 generally.

5 A. The first time, you know, I mean, it
6 went pretty good, you know. I mean, they just
7 asked me a bunch of questions. When it got to
8 the second or third time, like, I felt like they
9 wanted me to say something that wasn't true.
10 Like, they would ask me the same questions and
11 ask it a different way to, I guess, to see if I
12 would slip up or whatever.

13 Q. Did you get the impression they wanted a
14 particular answer from you?

15 A. Right.

16 Q. Did they tell you that anything bad
17 would happen to you if you didn't provide the
18 answers they wanted?

19 A. They said if I was lying that I could
20 get in trouble and like a felony or I can get in
21 trouble somehow.

22 Q. That was during some of the later
23 interviews?

24 A. That was one of the interviews at my
25 house.

1 Q. Did anything inappropriate ever happen
2 to you with Jerry?

3 A. No.

4 Q. You have traveled out of state with him
5 and stayed at his house?

6 A. Yeah.

7 Q. Do you know people who know Jerry
8 Sandusky?

9 A. Yeah.

10 Q. Have you had an opportunity to discuss
11 with those people Mr. Sandusky?

12 A. Yeah.

13 Q. Have you discussed with them his
14 reputation for truthfulness and nonviolent
15 behavior and know his reputation in that area?

16 A. Yeah. I never heard nothing bad, you
17 know, nothing but good things about Jer.

18 MR. ROMINGER: Nothing further.

19 THE COURT: Mr. McGettigan.

20 MR. McGETTIGAN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. McGETTIGAN:

23 Q. Mr. Hilton, how are you doing?

24 A. Hi. How are you doing?

25 Q. Are you okay?

1 A. I'm good I guess.

2 Q. A little nervous?

3 A. A little bit.

4 Q. Okay. How old were you when you met the
5 defendant?

6 A. I was in Second Mile like fifth grade.
7 So fifth grade, I would be like 11 or 12 or so.

8 Q. Okay. Do you recollect him introducing
9 himself to you; do you remember that event?

10 A. Yeah, I remember meeting him at the
11 time, yeah.

12 Q. Okay. What do you remember about him?
13 Did you go up and say this is who I am or did he
14 come up and say this is who he is?

15 A. I met him through Second Mile. It was
16 during -- at the pool time. We were swimming and
17 everybody was always all over Jerry, you know,
18 because it was Jerry.

19 Q. Okay. And how old are you now, if I may
20 ask?

21 A. I'm 21.

22 Q. Twenty-one. Okay. At the time you met
23 you were a little blonde guy?

24 A. Yeah, that's right.

25 Q. Skinny guy?

1 A. Yeah.

2 Q. Okay.

3 A. Still am.

4 Q. Back then, did you work out with the
5 defendant? Did he ever go to the gym or any of
6 that kind of stuff?

7 A. When I was -- like, when I met him,
8 like, when I was younger?

9 Q. Yeah?

10 A. Yeah.

11 Q. Did you take showers with him or
12 anything like that?

13 A. No, I never took a shower with him, no.

14 Q. Okay. Now, counsel asked you about the
15 police officers?

16 A. Um-hum.

17 Q. Okay. Did anybody say you had to say
18 this particular thing?

19 A. They -- no. But they asked me a lot of
20 questions and then they would ask it, like, in a
21 different way to see if I would, I guess, say it.

22 Q. Anybody handcuff you?

23 A. No.

24 Q. Anybody mace you?

25 A. No.

1 Q. Anybody give you anything to read and
2 say, say this?

3 A. No.

4 Q. Okay. Did you get the feeling somebody
5 was trying to make you tell a lie?

6 A. Yeah. I felt like -- when they kept
7 asking, I felt like they wanted me to say
8 something that wasn't true.

9 Q. Well, let's see if we can distinguish
10 that today. Did they want you to say something
11 true or did they happen to think something other
12 than what you thought or what you knew you said?

13 A. Right.

14 Q. That's -- and you recall -- do you
15 recall meeting me?

16 A. Yeah, in Harrisburg.

17 Q. Okay. Because we had a conversation.
18 In fact, I think our conversation consisted about
19 you and your family background?

20 A. Right.

21 Q. Okay. Are you going to -- did I ever
22 try to make you say anything that wasn't true?

23 A. No, no, no.

24 Q. And did I say all you have to do is tell
25 the truth to the best you can?

1 A. Right.

2 Q. And you said you had nothing to tell me?

3 A. Right.

4 Q. We chatted for a while. You also have a
5 -- we're talking about family matters, you have a
6 brother?

7 A. Right.

8 Q. Who was similar.

9 A. Okay.

10 Q. We talked about that?

11 A. Yeah.

12 Q. Spent most of our time talking like
13 that?

14 A. Yeah.

15 Q. You said you wanted to go and I said if
16 you ever want to call me, call me back?

17 A. Right, you did, yeah.

18 Q. Okay. Did I ever tell you anything
19 about what you had to say?

20 A. No.

21 Q. Okay. Did I ever say you had to say
22 anything other than the truth?

23 A. Right.

24 Q. Did we get along fine?

25 A. Yeah, you were a cool guy. Yeah, we

1 talked.

2 Q. I didn't hear your answer.

3 A. You were a pretty cool guy.

4 Q. Thanks. Okay. And I don't know.

5 Normally I said give me a call if you have
6 anything you want to talk about?

7 A. Yeah.

8 Q. Okay.

9 MR. McGETTIGAN: May I approach the
10 witness, Your Honor?

11 THE COURT: (Nods head up and down.)

12 BY MR. McGETTIGAN:

13 Q. Mr. Hilton, I'm going to show you a
14 picture called C-105, do you recognize the
15 persons in that picture?

16 A. Yeah.

17 Q. Who are they?

18 A. It's me and Jer.

19 Q. May I have C-105 please?

20 This is when you were this big?

21 A. Yeah.

22 Q. At an Eagles game or a Penn State game?

23 A. I'm thinking that's a Penn State game.

24 Q. I'm sorry.

25 MR. McGETTIGAN: May I approach again,

1 Your Honor? I'm sorry.

2 BY MR. McGETTIGAN:

3 Q. May as well give you both of these,
4 Mr. Hilton. 106 and 107. Okay. Can you
5 identify both of those?

6 A. That's me. I must have been at a ninth
7 grade game junior high. And the letter --

8 Q. 106 please. And 106. Was that to you?

9 A. Yeah. I do recall the letter. I don't
10 recall when I got it. It must have been during
11 my birthday.

12 MR. McGETTIGAN: And I'm going to
13 approach once again if I may, Your Honor?

14 BY MR. McGETTIGAN:

15 Q. I'm sorry you got to keep doing this.

16 A. That's fine.

17 Q. You have been handed now a document that
18 says C-108. If you can just look at C-108. Do
19 you recognize -- can you tell us who it's
20 addressed to?

21 A. It's to my mom and dad.

22 Q. Okay. And did you ever see that letter
23 before?

24 A. Not that I can recall, no.

25 Q. And if you can just roll it to the last

1 page. Who's it from? Do you recognize who it's
2 from?

3 MR. ROMINGER: Your Honor, can we get a
4 copy to look at?

5 MR. McGETTIGAN: We provided them with a
6 copy.

7 BY MR. McGETTIGAN:

8 Q. Okay.

9 A. Okay. It says Jer.

10 Q. Do you know who it's from?

11 A. Yeah.

12 Q. Who's it from?

13 A. It's from Jer.

14 Q. Thanks very much. I just have a few
15 more and we're going let you go.

16 A. That's fine.

17 Q. Do you have an uncle who lives in Maine?

18 A. Yeah.

19 Q. Okay. What's his full name?

20 A. Timothy Burns.

21 Q. Okay.

22 THE COURT: I'm sorry. What was his
23 name?

24 MR. McGETTIGAN: Timothy Burns I believe
25 the witness said.

1 BY MR. McGETTIGAN:

2 Q. Is that correct?

3 A. Yes.

4 Q. And did you know that your uncle had
5 contacted the authorities, contacted the police?

6 MR. ROMINGER: Objection, Your Honor.
7 Hearsay.

8 MR. McGETTIGAN: I'm not asking what was
9 said. Just asking if he knew he contacted us.

10 THE COURT: Okay.

11 THE WITNESS: I didn't know he contacted
12 you but he did call me and asked if I ever needed
13 any lawyers or, you know, so forth that they
14 would help me out.

15 BY MR. McGETTIGAN:

16 Q. And now you're aware that he called us?

17 A. Right.

18 Q. And do you know what he told us and
19 that's why you were spoken to a number of times
20 now, don't you?

21 A. Okay. Thank you.

22 Q. Thanks very much, David.

23 MR. McGETTIGAN: I have nothing further,
24 Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. ROMINGER:

2 Q. Your family knew that you were
3 associated with Mr. Sandusky and then the charges
4 came out?

5 A. Right.

6 Q. That's when your uncle contacted you?

7 A. Right.

8 Q. Nothing inappropriate ever happened?

9 A. No.

10 MR. ROMINGER: Nothing further.

11 MR. McGETTIGAN: Just one more.

12 THE COURT: Better be a good faith basis
13 for this question.

14 MR. McGETTIGAN: Absolutely, Your Honor.

15 RE CROSS EXAMINATION

16 BY MR. McGETTIGAN:

17 Q. Did you know he called us last night?

18 A. Who? My uncle, Tim?

19 Q. Yeah.

20 A. No. I had no idea.

21 Q. Thank you.

22 MR. McGETTIGAN: Thanks.

23 MR. ROMINGER: Asked and answered. I
24 don't have anything else.

25 THE COURT: Thank you. You may step

1 down.

2 MR. ROMINGER: Your Honor, may be time
3 for a recess at this point.

4 THE COURT: Ladies and gentlemen, we're
5 going to be in recess until 11:00 o'clock.

6 We'll remain seated while the jury is
7 taken out please.

8 (Whereupon, the jury was escorted from
9 the courtroom.)

10 THE COURT: We'll be in recess until
11 11:00 o'clock.

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

14 (Whereupon, the following discussion was
15 held in chambers:)

16 THE COURT: We'll note for the record
17 that we are in chambers. It's 11:15 a.m. and
18 counsel for the defense has indicated they are
19 prepared to rest without calling Mr. Sandusky to
20 testify and the purpose of being in chambers is
21 to colloquy Mr. Sandusky regarding his decision.

22 We'll put on the record that there was
23 some discussion at sidebar about whether this
24 colloquy should occur in chambers or in open
25 court. It is my decision that the matter should

1 be done in chambers if there is a decision not to
2 testify, because it's my understanding that one
3 of the considerations in that decision is the
4 fact that Matt Sandusky may be called in rebuttal
5 and that the prejudicial effect should that
6 information become public would be so devastating
7 that I don't know if we could necessarily assure
8 the jury could be protected from hearing that
9 information with all reasonable efforts.

10 And in addition, if there should happen
11 to be a reversal of this case and a retrial, the
12 fact that that became known in this trial might
13 prejudice the ability to receive a fair trial in
14 any subsequent proceedings.

15 With that statement, Mr. Amendola, I'll
16 permit you to colloquy Mr. Sandusky regarding his
17 right to testify.

18 MR. AMENDOLA: Yes, Your Honor. May I
19 preface the colloquy with the statement of our
20 position as to how this decision was made?

21 THE COURT: Yes.

22 MR. AMENDOLA: The Commonwealth, as the
23 Court knows, in a conference call with me and the
24 Court, I believe Mr. McGettigan and Mr. Fina last
25 Thursday evening, after the Commonwealth had all

1 but closed, but late hour of the day, asked for
2 permission to remain open pending an
3 investigation that was occurring at that time.

4 Contacted me by phone somewhere, I
5 believe it was 8:00 or 8:30 p.m., and advised me
6 that Matt Sandusky, Jerry Sandusky's son, had
7 approached them, had interviewed with them, and
8 made a statement that his father had abused him
9 and that they potentially intended to use this
10 testimony, this evidence at trial.

11 Now, up until that time, Your Honor,
12 Mr. Sandusky had always wanted to testify on his
13 own behalf. He always wanted to tell people his
14 side to the allegations in this case. However,
15 that potential evidence, whether true or not, was
16 so devastating and so is -- I think Mr. Fina has
17 used the term in the past so nuclear to his
18 defense, from that point on we were very
19 concerned whether or not Mr. Sandusky could
20 testify.

21 Mr. Fina later narrowed the scope of
22 that potential damage by indicating to me that
23 the Commonwealth would agree not to call Matt
24 Sandusky in its case in chief but reserved the
25 right to call him as a rebuttal witness should

1 evidence come out at trial that would allow him
2 to testify and more specifically, obviously, if
3 Mr. Sandusky testified at trial, which still left
4 us with a grave concern.

5 Subsequently, we also found out there
6 was another part of the interview with Bob Costas
7 when Mr. Sandusky interviewed with him shortly
8 after his arrest in these matters by phone. That
9 interview was by phone, which statement that we
10 anticipated the Commonwealth would cross-examine
11 Mr. Sandusky on, although, in our opinion, it was
12 unclear as to what he was saying and the context
13 of getting a specific answer from him certainly
14 in our opinion would have opened the door for
15 rebuttal testimony from Matt Sandusky.

16 Because of that situation, as well as
17 the admitted part of Mr. Sandusky's interview
18 with Mr. Costas, specifically relating to the
19 part of are you sexually attracted to young boys,
20 and that was the part that was played twice and
21 the Court corrected that issue, we felt
22 Mr. Sandusky could give no answer at trial that
23 would not allow the Commonwealth to call Matt
24 Sandusky as a rebuttal witness.

25 So after many discussions with

1 Mr. Sandusky, based upon that evidence,
2 Mr. Sandusky chose not to testify despite the
3 fact I had at least eluded in my opening
4 statement on a number of occasions to the jury
5 that they would hear from Mr. Sandusky.

6 Our position on the Matt Sandusky
7 development coming literally at the close of the
8 Commonwealth's case basically took the heart out
9 of our defense, because our defense was going to
10 be Mr. Sandusky testifying.

11 Today, after we called our last fact and
12 character witness, the Court gave us time to
13 consult with Mr. Sandusky as to whether or not he
14 wanted to testify with all this information
15 before him, and he decided that he did not want
16 to testify for the reasons I have set forth.

17 Following a recent conference, within
18 the last 20 minutes or so, the Commonwealth
19 advised us -- advised counsel for Mr. Sandusky
20 that the Commonwealth would agree not to call
21 Matthew Sandusky if Mr. Sandusky wanted to
22 testify. As a follow-up and a clarification of
23 that information, which we conveyed to
24 Mr. Sandusky when we returned to chambers, I
25 asked Mr. McGettigan, counsel for the

1 Commonwealth, would that include
2 cross-examination references or cross-examination
3 of Mr. Sandusky as to Matthew Sandusky? He
4 indicated it would not; that he would still leave
5 the door open to cross-examine Mr. Sandusky about
6 Matt Sandusky, I imagine any sort of
7 inappropriate contact he had with him.

8 Having said that, my opinion is we're
9 back to square one. That is, that based upon not
10 only threat but the absolutely -- and I can
11 assure the Court that we have researched this,
12 Mr. Rominger and I. We discussed it with
13 Mr. Sandusky -- that there's no way we see that
14 we would call him to the stand under the current
15 circumstances and protect him from being exposed
16 to Matthew Sandusky being called as a
17 Commonwealth witness on rebuttal.

18 Having said that, I would ask the Court,
19 because it was such a surprise to us and because
20 it was such an integral part of our case that
21 Mr. Sandusky testify that we feel we have really
22 put ourselves in a tough situation with the jury,
23 a situation because we inferred, if not stated
24 specifically, that Mr. Sandusky would testify and
25 they would hear from him at some point in some

1 fashion.

2 We would as a result of that move for a
3 mistrial because of the extreme prejudice we feel
4 which has occurred to our defense post beginning
5 of trial, not having had an opportunity to cure
6 this and kind of shift strategies prior to the
7 commencement of trial. So our motion would be
8 for a mistrial.

9 There's a further point of
10 clarification, too. That is, Matt Sandusky had
11 been a part of our defense and actually had told
12 us he would testify for his dad and testify as to
13 fact situations ironically involving Brett
14 Swisher Houtz who ironically in a statement that
15 Mr. Sandusky gave to the Commonwealth, Matt
16 Sandusky indicated to them that he was in fact
17 present when certain things occurred with
18 Mr. Houtz.

19 So this really complicated our case. To
20 make matters even more prejudicial, Your Honor,
21 we had intended to call three other sons of Jerry
22 Sandusky, Jeff, E. J., and John as substantive
23 and character witnesses which we had been
24 precluded from doing because, obviously, they
25 would be subjected, even potentially as character

1 witnesses, to cross-examine about Matt which
2 potentially could have opened a door for Matt to
3 come in as a rebuttal witness even if
4 Mr. Sandusky didn't testify.

5 For all those reasons, we feel that we
6 should request -- make a motion for a mistrial
7 and maybe ask the Court and the Commonwealth to
8 address those issues at this time, and then I'll
9 colloquy Mr. Sandusky.

10 MR. McGETTIGAN: I thought that was your
11 request earlier on, that he colloquied.

12 THE COURT: We'll get to that, but I
13 think the first issue is do you want to address
14 the mistrial or do you want me to just rule on
15 it?

16 MR. FINA: Sure, Your Honor.

17 I guess initially I would say that I'm
18 not -- we would respectfully assert that there's
19 not a legal basis for a mistrial. There has not
20 been any assertion of facts that provide a valid
21 grounds for a mistrial.

22 The fact, Your Honor, that the defense
23 had a strategy or theory that involved a
24 potential witness and that that potential witness
25 it turned out was going to say something

1 different than they suspected is a consequence of
2 advocacy and the legal proceedings. It's not a
3 basis for a mistrial.

4 There was nothing predatory here, Your
5 Honor. There was no conduct by the Commonwealth
6 that in any way interfered with the defense
7 strategy. The simple fact of the matter is that
8 in the middle of the trial on Thursday at
9 approximately 4:00 o'clock, we were informed by a
10 defense witness that he wanted to talk to us and
11 tell us something.

12 We had not reached out to him. We had
13 not contacted him. We had not had any spoken
14 words or contacts with him for -- I don't
15 remember the exact amount of time, Judge, but it
16 was six months to a year before this trial before
17 we had any contacts with him. So he came
18 forward. He made a statement and we recorded it
19 and promptly provided it to the defense.

20 Again, Judge, the fact that the strategy
21 of the defense or the plans of the defense went
22 awry, which happens commonly, and happens to the
23 Commonwealth as well, is not the basis for a
24 mistrial. I just don't know of any legal or case
25 law basis to support that type of notion.

1 In addition, Your Honor, I would just
2 clarify, at least from the Commonwealth's
3 perspective, what happened here today. We
4 certainly have represented to Attorney Amendola,
5 I personally did, that we would not use Mr. Matt
6 Sandusky's testimony in our case in chief; that
7 we would reserve him for rebuttal and use him
8 only if his testimony would be admissible and
9 relevant to rebuttal.

10 After discussions here today regarding
11 the potential testimony of Defendant Sandusky, we
12 agreed that we would not use Matt Sandusky in
13 rebuttal. After that agreement, I believe
14 Attorney Amendola spoke with his client, came
15 back, and wanted further conditions on
16 Mr. Sandusky's -- Defendant Sandusky's testimony.
17 Wanted us to agree in addition to not putting
18 Matt Sandusky on rebuttal that we would not ask
19 any questions of Defendant Sandusky about Matt
20 Sandusky, and that was an agreement that we could
21 not comply with. So I just wanted to clarify
22 that.

23 THE COURT: First, with regard to the
24 motion for mistrial, that motion will be denied.
25 It is not an unusual circumstance that the theory

1 of a party is thrown into disarray as the search
2 for truth or the factual developments occur
3 during a trial in ways that are not anticipated
4 pretrial.

5 Counsel did mention in an earlier
6 discussion of this off the record before Court
7 this morning a concern about the fact that in the
8 defense opening, there had been a reference to
9 the defendant testifying. I don't recall exactly
10 what that was. My impression that at the close
11 of the opening statement was that I wasn't sure
12 whether or not the defendant was going to
13 testify. Of course, I have no idea what the jury
14 thinks about that.

15 In any event, I will certainly affirm to
16 the jury that the defendant has no obligation to
17 present any evidence and certainly not to testify
18 himself. He has an absolute constitutional right
19 with regard to that and the jury cannot draw any
20 inference or conclusion that he's guilty because
21 he did not testify.

22 And I certainly will, since I'm giving
23 the charge before closing arguments, I feel quite
24 confident that the Commonwealth will not make any
25 reference to that in the closing arguments

1 because to do so would be prejudicial and would
2 result in a very prompt admonition from me if
3 that would happen. I have no reason to think
4 that counsel would engage in that strategy.

5 So the motion for mistrial is denied.

6 Your colloquy then regarding --

7 MR. AMENDOLA: Yes.

8 Mr. Sandusky, would you state your full
9 name please?

10 THE COURT: Do we need to swear him?

11 MR. AMENDOLA: I'm sorry. Yes.

12 Whereupon,

13 GERALD SANDUSKY

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

16 EXAMINATION

17 BY MR. AMENDOLA:

18 Q. Mr. Sandusky, will you state your full
19 name please?

20 A. Jerry Sandusky.

21 Q. And where do you reside?

22 A. State College.

23 Q. How old are you?

24 A. Sixty-eight.

25 Q. Are you the defendant in this case?

1 A. Yes.

2 Q. Have we discussed on a number of
3 occasions, but more recently, most recently
4 within the last half hour to 45 minutes, your
5 right to testify on your own behalf at your
6 trial?

7 A. Yes.

8 Q. And have we discussed that on many
9 different occasions since you were charged with
10 these offenses since last November?

11 A. Yes.

12 Q. And prior to learning about your son,
13 Matt Sandusky's, statement to the attorney
14 general staff that somehow you inappropriately
15 sexually touched him, was it your intention to
16 testify at this proceeding?

17 A. Yes.

18 Q. Do you understand that you have the
19 right to testify?

20 A. Yes.

21 Q. You have the absolute right to testify;
22 you understand that?

23 A. Yes.

24 Q. And you have the right to present
25 witnesses on your own behalf?

1 A. Yes.

2 Q. In fact, we have presented a number of
3 witnesses; is that true?

4 A. Correct.

5 Q. If you don't testify, do you understand
6 that the Court will give a specific instruction
7 to the jury that the jurors cannot infer any sort
8 of guilt or culpability on your part based upon
9 the fact that you did not testify?

10 A. Yes.

11 Q. That the judge will inform the jurors
12 that the Commonwealth has the absolute burden to
13 prove you guilty beyond a reasonable doubt as to
14 each and every element for whatever offenses they
15 would determine that you are guilty?

16 A. Yes.

17 Q. And that you wouldn't have to present
18 any evidence at all?

19 A. Right.

20 Q. Not one witness; do you understand that?

21 A. Yes.

22 Q. Do you understand by not testifying,
23 obviously, although I know you wanted to do this
24 up until recent days, that the jury will not hear
25 from you in this case?

1 A. I understand.

2 Q. But again, the judge will make sure that
3 the jury is very aware of your constitutional
4 right not to take the stand on your own behalf?

5 A. I understand.

6 Q. And that the judge will instruct the
7 jury that they cannot infer anything in a
8 negative fashion, guilt or potential guilt, from
9 the fact you did not testify?

10 A. I understand.

11 Q. Are you taking any medications today?
12 Any medication?

13 A. Normal.

14 Q. Anything that would affect your ability
15 to understand --

16 A. No.

17 Q. -- your rights with regard to
18 testifying?

19 A. No.

20 Q. Have counsel discussed with you the pros
21 and cons of testifying?

22 A. Yes.

23 Q. The advantages and disadvantages?

24 A. Yes.

25 Q. And the likelihood in this instance that

1 if you were to take the stand and testify,
2 virtually anything you said after you were sworn
3 in would in all likelihood, if not certainly,
4 trigger the ability of the Commonwealth to call
5 your son, Matthew Sandusky, as a witness against
6 you in rebuttal?

7 A. Yes.

8 Q. And is that the reason why you have
9 chosen not to testify?

10 A. Yes.

11 Q. Are you making this decision -- granted
12 that it has to do with Matthew and the
13 information that came out last Thursday evening,
14 but aside from that, given that fact, is this
15 decision on your part not to testify given the
16 current circumstances being made by you
17 knowingly?

18 A. Yes.

19 Q. Is it being made intelligently?

20 A. Yes.

21 Q. Is it being made voluntarily?

22 A. Yes.

23 Q. Has either Mr. Rominger or myself or
24 anybody else on the defense team or anybody in
25 your family or any of your friends coerced you

1 into testifying or not testifying?

2 A. No.

3 Q. Is this your own decision?

4 A. Yes, it is.

5 Q. Based upon the posture of the case?

6 A. Correct.

7 MR. AMENDOLA: Would Your Honor like to
8 ask questions?

9 THE COURT: No.

10 Supplemental questions?

11 MR. McGETTIGAN: Your Honor, just one
12 clarification.

13 Your Honor, the Commonwealth after
14 hearing Mr. Amendola's first representation about
15 his client's basis for not testifying, came back
16 and, before the Court, Mr. Amendola advised we
17 would not call Matthew Sandusky in rebuttal if
18 the defendant were to testify and that is our
19 position presently.

20 After that, after we made that
21 statement, Mr. Amendola sought to further
22 restrain the Commonwealth's ability to function
23 as a prosecutor by saying, well, you can't ask
24 him questions about that on cross-examination and
25 those sorts of statements and he --

1 MR. AMENDOLA: I --

2 MR. McGETTIGAN: If I may finish,
3 counsel. And then he further advised his client
4 -- told his client whether to testify.

5 I would just say that the statements
6 made by counsel in seeking an affirmative or
7 negative response from his client as to the basis
8 for his client to testify, there's so much
9 surplusage that the defendant is fully advised of
10 all the ramifications of his potential testimony,
11 in fact, he's had the benefit of the doubt much
12 more than other defendants -- the benefit of
13 certainty to things that the Commonwealth has
14 agreed, agreed to limit its potential rebuttal
15 testimony.

16 THE COURT: Does this have anything to
17 do with the colloquy conducted by Mr. Amendola?

18 MR. McGETTIGAN: It does in one respect,
19 Your Honor. I'll try to be brief. That I would
20 ask that the questions regarding the basis for
21 his decision not to testify be stricken because
22 the real basis for his declining to testify is a
23 full understanding of his legal position and not
24 on the one thing I'm concerned about is an
25 appellate issue for that reason, because we have

1 already agreed Matt would not testify. We
2 withdrew him from our case in chief and now to
3 claim that this is the sole linchpin of his
4 decision is unfair to the Commonwealth.

5 THE COURT: That motion is denied.

6 MR. McGETTIGAN: Thank you, Your Honor.

7 MR. AMENDOLA: Your Honor, I have
8 nothing further for Mr. Sandusky.

9 THE COURT: I will make the ruling that
10 I find that the decision is counseled after
11 consultation with both Mr. Amendola and
12 Mr. Rominger, that the defendant has made a
13 knowing, intelligent, and voluntary decision,
14 free of any coercion and independent of any other
15 outside influence and his own decision and,
16 therefore, we will proceed.

17 The defense is now ready to rest?

18 MR. AMENDOLA: Yes, except we have, Your
19 Honor, we have the issue of the exhibits. I
20 think we all have to -- if we can have just
21 technically some time to get those all together
22 and see what's going to be admitted.

23 THE COURT: Is there any rebuttal?

24 MR. McGETTIGAN: I hate to ask for five
25 minutes but I would like to actually --

1 THE COURT: Let's take five minutes and
2 then --

3 MR. McGETTIGAN: You can always dismiss
4 the jury while we resolve the jury issue.

5 THE COURT: Well, I guess the question
6 is, are you going to have any more witnesses?

7 MR. McGETTIGAN: We may, Your Honor.

8 MR. FINA: There's one potential, Judge.

9 THE COURT: Okay. I don't want to
10 dismiss the jury, obviously, until I know the
11 answer to that question.

12 MR. McGETTIGAN: Fine.

13 THE COURT: Go ahead and take five
14 minutes. We'll go back in and you formally rest
15 and work out the exhibits issue.

16 MR. AMENDOLA: We'll be able to do the
17 exhibits after we rest?

18 MR. ROMINGER: After they rest and don't
19 present any rebuttal, we will have one motion to
20 make for dismissal of one of the series of
21 charges.

22 THE COURT: Okay.

23 (End of discussion in chambers.)

24 THE COURT: You can be seated and bring
25 the jury in please.

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

3 THE COURT: Mr. Amendola.

4 MR. AMENDOLA: Your Honor, at this time
5 the defense rests.

6 THE COURT: Mr. McGettigan.

7 MR. McGETTIGAN: Your Honor, the
8 Commonwealth has nothing additional.

9 THE COURT: Ladies and gentlemen, you
10 have now heard the evidence that will be
11 presented to you and for your consideration
12 during your deliberations.

13 We're going to be in recess now until
14 9:00 o'clock tomorrow morning. That will give
15 you an opportunity to make the arrangements that
16 we talked about yesterday for being sequestered.
17 All of you, including the alternates, should come
18 prepared tomorrow to be sequestered.

19 Between now and then, again I will
20 stress I don't know how important it is -- how
21 could I say it more importantly that you not read
22 about the case, permit anyone to talk about the
23 case, watch any television news, listen to
24 anything on the radio, permit anyone to talk to
25 you about it or express any opinion that someone

1 could come back at some point and say, oh, yeah,
2 one of the jurors expressed an opinion about it
3 before they started their deliberations.

4 We will begin at 9:00 o'clock tomorrow
5 morning with my instructions to you. And then
6 counsel for the defense will have their closing
7 argument.

8 We'll remain seated here until we get
9 done. Please remain seated.

10 Counsel for the defense will have their
11 closing arguments and then counsel for the
12 prosecution will have their closing arguments. I
13 will give you some final short instructions about
14 how you conduct your deliberations and just
15 mechanical instructions that might be helpful to
16 you.

17 With that, I will excuse you. You can
18 either -- I think your food has already arrived.
19 You can stay here and eat or take it with you.
20 That's your own decision. I'll leave that up to
21 you to decide, but the van will be ready whenever
22 you're ready to go back to your cars.

23 Okay.

24 With that, I will see you at 9:00
25 o'clock tomorrow morning.

1 We'll remain seated while the jury is
2 taken out.

3 (Whereupon, the jury was escorted from
4 the courtroom.)

5 THE COURT: We'll being back in session.
6 We'll be back in session.

7 With regard to the exhibits, I believe
8 we have discussed that over the noon hour counsel
9 will review which exhibits have been marked for
10 identification will be offered into evidence and
11 the Court will then make an appropriate order
12 taking care of that without reconvening court.

13 MR. AMENDOLA: Yes.

14 THE COURT: Is that agreed to,
15 Mr. Amendola?

16 MR. AMENDOLA: Yes.

17 THE COURT: Mr. McGettigan?

18 MR. McGETTIGAN: Yes, sir, absolutely.

19 THE COURT: For the notification of
20 press and the public so that you can plan your
21 day tomorrow appropriately, during the closing
22 charge no one will be permitted to enter or leave
23 the courtroom and during closing arguments no one
24 will be permitted to leave -- enter and leave the
25 courtroom to assure that there's no distraction

1 to the jury at this very important stage of the
2 trial. We'll take a recess obviously at some
3 point. However, no one will be permitted to
4 enter or leave while those three phases are going
5 on.

6 Counsel.

7 MR. ROMINGER: I have one motion, Your
8 Honor.

9 THE COURT: All right.

10 MR. ROMINGER: On Docket No.
11 CP-14-CR-2224-2011, the amended information
12 counts 36 through 40 involving Alleged Accuser
13 No. 8 where the janitors who testified, in the
14 amended Bill of Particulars, the Commonwealth
15 stated the offenses occurred between the dates of
16 November 20th and November 27, 2000, Thursday or
17 Friday evening on a weekend when the football
18 team had an away football game. The only date
19 that was established for the last football game
20 of 2000 was when Dick Anderson who testified for
21 the defense that that was on November 18, 2000.

22 Even if he wasn't found credible, the
23 Commonwealth presented no other information on
24 what the last game of the season was but the Bill
25 of Particulars limits the proof between November

1 20th and November 27th. Last game was November
2 18 and that's the only date of record and I
3 believe therefore because the Bill of Particulars
4 was not met and counts 36 through 40,
5 inclusively, must be dismissed.

6 THE COURT: I'll give the Commonwealth
7 an opportunity to respond to that in writing
8 since I assume this is the first notice that you
9 have of this argument.

10 MR. McGETTIGAN: Sure, Your Honor.
11 Thanks.

12 THE COURT: We will -- I will give you
13 an opportunity to reply and then, counsel, I want
14 to have this charging conference with you this
15 afternoon. So we'll plan on that at 1:00
16 o'clock. All right.

17 Unless you want to respond now?

18 MR. FINA: I'll respond just quickly,
19 Judge, and then I can also just supplement it if
20 you want some case law.

21 The Bill is not what under -- I think
22 the Court is well aware -- is not what dictates
23 the issue here. It's the information. And the
24 information under all those counts says that on a
25 Thursday or Friday evening in November of 2000.

1 That's the charging document. That's the formal
2 binding document and we are fully in compliance
3 with that. We'll supplement that with case law,
4 Your Honor.

5 THE COURT: With that, we are adjourned
6 until 9:00 o'clock tomorrow morning.

7 (Whereupon, court was recessed for the
8 day.)

9 (Whereupon, the following occurred in
10 judge's chambers:)

11 THE COURT: I don't know that I am going
12 to get this in any particular order so.

13 We'll note for the record that at
14 approximately 1:00 o'clock I met with counsel in
15 chambers for a charging conference and to clean
16 up any outstanding issues remaining at the
17 conclusion of trial.

18 Counsel have met and all exhibits which
19 have been identified are admitted into evidence
20 except for Commonwealth Exhibit 22 to which a
21 defense exhibit -- a defense objection has been
22 sustained with the understanding, however, that
23 counsel may refer to the exhibit insofar as it
24 was used by the defendant's expert in his closing
25 argument.

1 Two. Counsel have agreed that the tape
2 of the Costas interview may be supplied as a
3 substitute for the tape actually being played
4 with the correction that the question and answer
5 which was repeated will be corrected so that the
6 question and answer each appear once in the
7 transcript and that the transcript may be sent
8 out with the jury as a remedial measure even
9 though it is not otherwise authorized under the
10 Rules of Criminal Procedure.

11 It is stipulated.

12 These will all be numbered.

13 It is stipulated that counsel for the
14 defendant may argue to the jury as evidence in
15 support of an argument of bias that those
16 accusers who are represented by counsel may have
17 a financial interest in a verdict in favor of the
18 Commonwealth.

19 That the -- next number. That the
20 request of members of the media that counsel
21 stand at a podium with a microphone or use a
22 mobile mic during closing arguments will not be
23 granted since it's the intention of the Court to
24 honor the requests of counsel that their ability
25 to communicate with the jury not be restricted in

1 favor of the opportunity of the press to get a
2 clearer version of what's being said.

3 Next number. The Court has distributed
4 to counsel a draft of the final charge, verdict
5 slip, a work sheet for the jury concerning each
6 of the offenses charged with the request that the
7 matter be reviewed and suggestions, corrections,
8 and additions offered. It is agreed that count
9 17 and 18 regarding Accuser Houtz are identical
10 and as a result the Court will dismiss count 18.

11 The Court has brought to the attention
12 of counsel that regarding count 16 and 19
13 involving Accuser Houtz that the counts allege
14 penal and digital penetration of the anus and
15 that this, to the appearance of the Court, is not
16 supported by the evidence presented and counsel
17 are requested to review a transcript of his
18 testimony which has been supplied this afternoon
19 to counsel.

20 It is agreed that none of the exhibits
21 will be automatically sent out with the jury
22 since they are voluminous in number more than a
23 hundred; is that correct?

24 MR. FINA: Yes.

25 MR. AMENDOLA: Yes.

1 THE COURT: And will be made available
2 to the jury on a requested basis -- as requested
3 basis.

4 The Court will hold a charging
5 conference at 8:00 o'clock tomorrow morning. In
6 the interim counsel are invited to exchange
7 e-mails between themselves or among themselves
8 and the Court raising any additions which may be
9 deemed appropriate so that all parties can be
10 prepared to address the matters in the morning.

11 It is agreed that the Court will present
12 the initial closing charge to the jury before
13 arguments explaining the jury's function and the
14 applicable law. Counsel will then have closing
15 arguments of approximately an hour to an hour and
16 a half, and it is anticipated that the case would
17 be in the jury's hands sometime between 12:00
18 o'clock and 1:00 o'clock.

19 The Court has for informational purposes
20 advised counsel that the jury will be sequestered
21 at the -- now I forgot.

22 MR. McGETTIGAN: Hampton Inn.

23 THE COURT: And they will be in the
24 custody of two deputies that all negotiations
25 will take place in the courthouse. It's my

1 expectation that the jury will deliberate in the
2 courthouse after dinner and will, if necessary,
3 deliberate through the weekend, including
4 Saturdays and Sundays.

5 Counsel may depart from the premises
6 with the understanding that they will be
7 available to return here on 20-minute's call.

8 Questions from the jury will be
9 initially handled in chambers. Counsel for the
10 defendant will decide on a case-by-case basis
11 whether the defendant must be present and at some
12 point a waiver may be placed on the record
13 regarding his presence.

14 Those questions requiring that they be
15 answered in court will, of course, be done so in
16 the presence of the jury.

17 The gag order will remain in effect
18 until the verdict is returned.

19 Did I miss anything? Mr. McGettigan?

20 MR. McGETTIGAN: I don't think so, Your
21 Honor.

22 MR. AMENDOLA: No, Your Honor.

23 MR. McGETTIGAN: Do you know how long
24 you're going to keep the jury deliberating at
25 night? I don't know if we need to be on the

1 record.

2 THE COURT: The jury's schedule will
3 essentially be their own, although I intend that
4 they work pretty hard. I'm not going to drive
5 them into the night but, you know, I think they
6 certainly have a duty to deliberate after dinner
7 for some reasonable period of time before I
8 excuse them for the evening.

9 MR. McGETTIGAN: Pardon just so that we
10 know when we can be at liberty, you know.

11 THE COURT: Well, I don't know.

12 MR. McGETTIGAN: Okay. We'll find out.

13 THE COURT: If they say they want to
14 keep deliberating until 10:00 or 11:00 at night,
15 I'll let them go.

16 MR. ROMINGER: Okay.

17 THE COURT: I would be more inclined not
18 to let them go early than prevent them from
19 working late.

20 MR. ROMINGER: Is that order going to be
21 public, Your Honor?

22 THE COURT: No. Which order?

23 MR. ROMINGER: The one you just
24 dictated.

25 THE COURT: No.

1 MR. FINA: Okay.

2 THE COURT: For memorandum purposes
3 essentially.

4 MR. FINA: Okay.

5 THE COURT: So we have memorialized the
6 agreements that we made.

7 MR. AMENDOLA: Thank you, Judge.
8 Nothing, fine, Judge.

9 MR. ROMINGER: Fine, Judge, okay.

10 THE COURT: Okay.

11 Thank you very much.

12 MR. McGETTIGAN: Thank you, Your Honor.

13 (End of discussion in chambers.)

14 E N D O F P R O C E E D I N G S

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

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

Date _____ Patricia A. Grey, RPR
Official Reporter

A P P R O V A L O F C O U R T

The foregoing record of the proceedings had upon the hearing in the within case, upon review and approval of counsel, is hereby approved and directed to be filed.

Date _____ John M. Cleland, Senior Judge
Specially Presiding