

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

IN RE:	:	SUPREME COURT PENNSYLVANIA
	:	217 M.D. MISC. DKT. 2010
THE THIRTY-THIRD STATEWIDE	:	
INVESTIGATING GRAND JURY	:	DAUPHIN CO. COMMON PLEAS
	:	No. CP-22-CR-3616-2013
	:	

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	SUPREME COURT PENNSYLVANIA
	:	217 M.D. MISC. DKT. 2010
v.	:	
	:	DAUPHIN CO. COMMON PLEAS
	:	No. 1386-MD-2012
GARY C. SCHULTZ,	:	
Defendant.	:	

SEALING ORDER

AND NOW, to-wit, this _____ day of _____, 2013, it is hereby
ORDERED that the enclosed pleading be filed under seal with the Clerk of Courts
of Dauphin County until further Order of this Court.

BY THE COURT:

_____, J.

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

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COMMONWEALTH OF
PENNSYLVANIA,

v.

GARY C. SCHULTZ,
Defendant.

SUPREME COURT PENNSYLVANIA
217 M.D. MISC. DKT. 2010

DAUPHIN CO. COMMON PLEAS
No. 1386-MD-2012

ORDER

AND NOW, to-wit, this _____ day of _____, 2013, upon due consideration of Defendant Gary C. Schultz' Motion for Disclosure of the Complete January 12, 2011 Transcript of Grand Jury Colloquy, it is hereby ORDERED and DECREED that the motion is GRANTED. The Commonwealth will provide counsel for Gary C. Schultz with the complete transcript of the January 12, 2011 grand jury colloquy beginning at 9:04 AM.

BY THE COURT:

_____, J.

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

IN RE: : SUPREME COURT PENNSYLVANIA
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217 M.D. MISC. DKT. 2010
DAUPHIN CO. COMMON PLEAS
No. 1386-MD-2012

DAUPHIN COUNTY
PENNA

2013 OCT -8 PM 3:56

RECEIVED
OFFICE OF
CLERK OF COURTS

DEFENDANT GARY C. SCHULTZ' MOTION FOR DISCLOSURE OF THE
COMPLETE JANUARY 12, 2011 TRANSCRIPT OF GRAND JURY
COLLOQUY

TO THE HONORABLE NORMAN A. KRUMENACKER, III, SUPERVISING
JUDGE:

AND NOW, comes the defendant, Gary Charles Schultz, by and through his
attorney, Thomas J. Farrell, Esquire, and respectfully files this Motion for
Disclosure of Complete January 12, 2011 Transcript of Grand Jury Colloquy and
states the following in support:

1. Pursuant to Notice of Submission of Investigation No. 1, the Thirtieth Statewide Investigating Grand Jury conducted an investigation into reported sexual assaults of minor male children by Gerald A. Sandusky ("Sandusky") over a period of years.

2. On January 12, 2011, defendants Gary C. Schultz ("Schultz") and Timothy M. Curley ("Curley") testified before the grand jury investigating the allegations against Sandusky.

3. Attorney Cynthia A. Baldwin, then general counsel for PSU, represented Messrs. Schultz and Curley as grand jury witnesses. Attorney Baldwin prepared Schultz and Curley for their grand jury testimonies, accompanied each defendant to a pre-testimony interview with the Office of the Attorney General ("OAG"), and attended their testimony in the grand jury hearing room, as only counsel for a witness may do. 42 PA.C.S. § 4549(B); PA. R. CRIM. P. 231(A).

4. On April 13, 2011, Attorney Baldwin represented Graham B. Spanier ("Spanier") as a grand jury witness.

5. On November 7, 2011, Messrs. Schultz and Curley were each charged with one count of Perjury, a violation of 18 PA.C.S. § 4902 and a felony of the third degree, and one count of Failure to Report in violation of 23 PA.C.S. § 6319, a summary offense.

6. On November 1, 2012, Schultz and Curley were also charged by Complaint with two counts of Endangering Welfare of Children in violation of 18

PA.C.S. § 4304, a felony of the third degree, and Obstruction of Justice, a violation of 18 PA.C.S. § 5101, a misdemeanor of the second degree.

7. On November 1, 2012, defendants Schultz and Curley, and Graham B. Spanier ("Spanier"), were also charged with three counts of Conspiracy, in violation of 18 PA.C.S. § 903, based on the underlying offenses of Obstruction of Justice, a misdemeanor of the second degree, Perjury, a felony of the third degree, and Endangering Welfare of Children, a felony of the third degree. A Presentment issued by the Thirty-Third Statewide Investigating Grand Jury (the "Spanier Presentment") was attached to the criminal complaint.

8. The Spanier Presentment alleges, in pertinent part, that Mr. Schultz conspired with Messrs. Curley and Spanier to commit perjury in their respective grand jury testimonies.

9. Mr. Schultz hereby requests production of the entire grand jury colloquy, beginning at 9:04 AM on January 12, 2011, preceding his testimony. The grand jury colloquy is necessary and material to the defense and is reasonably requested.

10. Rule 230(B)(1) of the Pennsylvania Rules of Criminal Procedure provides:

When a defendant in a criminal case has testified before an investigating grand jury concerning the subject matter of the charges against him or her, upon application of such defendant the court shall order that the defendant be furnished with a copy of the transcript of such testimony.

PA. R. CRIM. P. 230(B)(1).

11. This Court, pursuant to PA. R. CRIM. P. 230(B)(1), ordered the release of an excerpt of the colloquy preceding Mr. Schultz' testimony, attached as Exhibit A, and a copy of the transcript of Mr. Schultz' testimony, attached as Exhibit B, to defense counsel for Mr. Schultz.

12. Page 7 of the colloquy is redacted except for three lines of text, and begins with the OAG notifying Judge Feudale that witnesses, Curley and Schultz, needed to be sworn. See Exhibit A at page 7.

13. Page 12 of the colloquy is redacted except for a single word, in which Supervising Judge Feudale granted the Commonwealth's oral motion for an OAG agent and a Pennsylvania State Trooper to be present during the testimonies of Schultz and Curley. See Exhibit A at page 12.

14. Defense counsel for Mr. Schultz anticipates an evidentiary hearing on motions pending before Judge Hoover regarding Attorney Baldwin's representation of Messrs. Schultz, Curley, and Spanier in their respective appearances as grand jury witnesses. See Thomas J. Farrell September 25, 2013 Letter to Judge Hoover, attached as Exhibit C.

15. In addition, motions are also pending before the trial court concerning Attorney Baldwin's own grand jury testimony in October 2012 against her former clients. Defendants argue that her testimony violated Defendants' right to counsel, attorney-client and work-product privileges, and breached statutorily-protected grand jury secrecy. See Exhibit D (Joint Motion to Quash, omitting its 300 pages of exhibits). We raised this motion before Judge Feudale, who decided that he did not

have jurisdiction. The Supreme Court denied our Petition for Review "without prejudice for petitioner to raise the issue in the underlying criminal prosecution." Exhibit E (June 7, 2013, Order).

16. Judge Hoover has asked the parties to expeditiously obtain transcripts that may bear on these motions. See Pamela Parascandola October 1, 2013 Email to Counsel, attached as Exhibit F.

17. On September 23, 2013, this Honorable Court granted Dr. Spanier's Motion for Disclosure of Complete Grand Jury Transcripts, and ordered the Commonwealth to release the full transcripts of Dr. Spanier's grand jury testimony, including the colloquy. See Supervising Judge Norman A. Krumenacker, III, September 23, 2013, Order, attached as Exhibit G.

18. The colloquy should reveal whether Ms. Baldwin, or the OAG, raised the conflict of interest issues during the colloquy and provided Judge Feudale with an opportunity to evaluate whether the grand jury witnesses would be "adversely affected" by her representation. See 42 PA.C.S. § 4549(c)(4) ("If the supervising judge determines that the interest of an individual will or is likely to be adversely affected [by multiple representation], he may order separate representation of witnesses.") It also should shed light on whether Ms. Baldwin was representing the Defendants as their counsel and thus was obligated to keep their communications confidential.

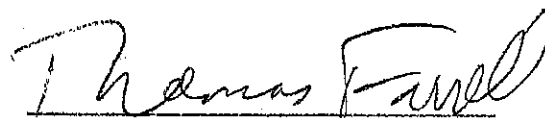
19. The production of the entire colloquy is necessary for Mr. Schultz to litigate the issues surrounding Ms. Baldwin's representation of him in his capacity as a grand jury witness. Thus, this Court must order the Commonwealth to produce

the colloquy in its entirety and ensure the colloquy is available for future hearings before the trial court.

WHEREFORE, for the reasons stated, Defendant Schultz respectfully requests this Honorable Court to enter an Order that the Pennsylvania Office of the Attorney General must disclose to defense counsel for Mr. Schultz the entire grand jury colloquy, beginning at 9:04 AM on January 12, 2011, preceding his testimony.

Respectfully submitted,

By:



Thomas J. Farrell, Esquire
Attorney for Defendant,
Gary C. Schultz
Pa. I.D. No. 48976
Farrell & Reisinger
436 7th Avenue, Suite 200
Pittsburgh, PA 15219

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

IN RE:	:	SUPREME COURT PENNSYLVANIA
	:	217 M.D. MISC. DKT. 2010
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	:	No. CP-22-CR-8616-2013

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COMMONWEALTH OF
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v.

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Defendant.

SUPREME COURT PENNSYLVANIA
217 M.D. MISC. DKT. 2010

DAUPHIN CO. COMMON PLEAS
No. 1386-MD-2012

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within pleading was sent
by email and First Class Mail, this 7th day of October, 2013, to the following:

The Honorable Norman A. Krumenacker, III
Supervising Judge
Cambria County Courthouse
200 S. Center Street
Ebensburg, PA 15931
nakadmin@co.cambria.pa.us

Angela Beaverson
Executive Secretary for the Grand Jury
Office of the Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

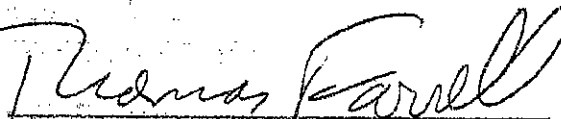
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Thomas J. Farrell, Esquire
Attorney for Defendant, Gary C. Schultz

Dated: October 7, 2013

Distribution:

The Honorable Norman A. Krumenacker, III, Judge, Court of Common Pleas
Cambria County Courthouse, 200 S. Center St., Ebensburg, PA 15931

The Honorable Judge Todd A. Hoover, President Judge, Court of Common Pleas
Dauphin County Courthouse, 101 Market Street, Harrisburg, PA 17101

Bruce R. Beemer, Senior Deputy Attorney General, Office of Attorney General
Criminal Law Division, 16th Floor, Strawberry Square, Harrisburg, PA 17120

Caroline M. Roberto, Esquire
Law & Finance Building, 5th Floor, 429 Fourth Avenue, Pittsburgh, PA 15219

Thomas J. Farrell, Esquire
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Brian Perry, Esquire
2411 N. Front St., Harrisburg, PA 17110

George H. Matangos, Esquire
P.O. BOX 222, 831 Market Street, Leymonye, PA 17403-0222

Timothy K. Lewis, Esquire
Schnader Harrison Segal & Lewis LLP, 1600 Market Street, Suite 3600,
Philadelphia, PA 19103

Elizabeth A. Ainslie, Esquire
Schnader Harrison Segal & Lewis LLP, 1600 Market Street, Suite 3600,
Philadelphia, PA 19103

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
THIRTIETH STATEWIDE INVESTIGATING GRAND JURY

IN RE: NOTICE NO. 29

TRANSCRIPT OF PROCEEDINGS
OF GRAND JURY

BEFORE: BARRY FEUDALE; SUPERVISING JUDGE

DATE: JANUARY 12, 2011, 9:04 A.M.

PLACE: STRAWBERRY SQUARE
VERIZON TOWER, EIGHTH FLOOR
WALNUT STREET
HARRISBURG, PA 17120

COUNSEL PRESENT:

OFFICE OF THE ATTORNEY GENERAL
BY: JAMES BARKER, ESQUIRE
FRANK FINA, ESQUIRE
JONELLE ESHBACH, ESQUIRE
FOR - COMMONWEALTH

PENNSYLVANIA STATE UNIVERSITY
BY: CYNTHIA BALDWIN, ESQUIRE
FOR - TIM CURLEY AND GARY SCHULTZ

SHANNON MANDERBACH
REPORTER-NOTARY PUBLIC



ARCHIVE REPORTING
& CAPTIONING SERVICE, INC.

2336 N. Second Street • Harrisburg, PA 17110

(717) 234-6922
FAX (717) 234-8190

EXHIBIT A-1

23 MR. BARKER: Judge, we're here on
24 Notice 29. We have some witnesses to be sworn,
25 Mr. Curley and Mr. Schultz.

EXHIBIT A-2

1 JUDGE FEUDALE: Represented by?

2 MS. BALDWIN: My name is Cynthia
3 Baldwin, general counsel for Pennsylvania State
4 University.

5 JUDGE FEUDALE: Will you be providing
6 representation for both of those identified
7 witnesses?

8 MS. BALDWIN: Gary is retired but was
9 employed by the university and Tim is still an
10 employee.

11 JUDGE FEUDALE: Good morning. I'm
12 Barry Feudale. I'm a Senior Judge from
13 Northumberland County. I've been assigned by
14 Chief Justice Ronald Castille to supervise the
15 30th Statewide Investigative Grand Jury which has
16 subpoenaed both of you to appear as witnesses
17 before it.

18 As witnesses before the Grand Jury,
19 you're entitled to certain rights and subject to
20 certain duties which I am now going to explain to
21 you. All of these rights and duties are equally
22 important and it's important that you fully
23 understand each of them.

24 First, you have the right to the
25 advice and assistance of a lawyer. This means you

EXHIBIT A-3

1 have the right to the services of a lawyer with
2 whom you may consult concerning all matters
3 pertaining to your appearance before the Grand
4 Jury.

5 You may confer with your lawyer at
6 any time before, during and after your testimony.
7 You may consult with your lawyer throughout your
8 entire contact with the Grand Jury. Your lawyer
9 may be present with you in the Grand Jury room
10 during the time you're actually testifying and you
11 may confer with her at that time.

12 You also may at any time discuss your
13 testimony with your lawyer and except for cause
14 shown before this Court, you may disclose your
15 testimony to whomever you choose, if you choose.

16 You also have the right to refuse to
17 answer any question pending a ruling by the Court
18 directing you to respond if you honestly believe
19 there are proper legal grounds for your refusal.
20 In particular, you have the right to refuse to
21 answer any question which you honestly believe may
22 tend to incriminate you.

23 Should you refuse to answer any
24 question, you may offer a reason for your refusal,
25 but you're not obliged to do so. If you answer

EXHIBIT A-4

1 some questions or begin to answer any particular
2 question, that does not necessarily mean you must
3 continue to answer your questions or even complete
4 the answers you have started.

5 Now, any answers you give to any
6 question can and may be used against you either
7 for the purpose of a Grand Jury Presentment, Grand
8 Jury Report or a Criminal Information.

9 In other words, if you're uncertain
10 as to whether you may lawfully refuse to answer
11 any question or if any other problem arises during
12 the course of your appearance before the Grand
13 Jury, you may stop the questioning and appear
14 before me, either alone or in this case with your
15 counsel, and I will rule on that matter whatever
16 it may be. Now, do you understand these rights?

17 MR. CURLEY: Yes.

18 MR. SCHULTZ: Yes, sir.

19 JUDGE FEUDALE: Next, a witness
20 before the Grand Jury has the duty to give full,
21 truthful, complete and honest answers to all
22 questions asked except where the witness
23 appropriately refuses to answer on a proper legal
24 ground.

25 I'm hereby directing both of you to

EXHIBIT A-5

1 observe and obey this duty. In this regard I must
2 caution you that if a witness answers
3 untruthfully, he may be subjected to prosecution
4 for perjury which is punishable under the Crimes
5 Code of Pennsylvania. It's a very serious
6 offense. It's a felony.

7 So I ask you, do you have any
8 questions regarding your rights and obligations
9 before this Grand Jury?

10 MR. CURLEY: No.

11 MR. SCHULTZ: No.

12 JUDGE FEUDALE: Noting no questions,
13 please raise your right hand. You do solemnly
14 swear or affirm that the testimony you will give
15 before the 30th statewide Investigative Grand Jury
16 in the matters being inquired into by it will be
17 the truth, the whole truth and nothing but the
18 truth. If so, say I do.

19 MR. CURLEY: I do.

20 MR. SCHULTZ: I do.

21 JUDGE FEUDALE: Any motions?

22 MS. ESHBACH: We are requesting that
23 both our agent as well as the State Trooper be
24 permitted to be present in the room.

25 JUDGE FEUDALE: That motion is

EXHIBIT A-6

1

granted.

EXHIBIT A-7

<p>1 COMMONWEALTH OF PENNSYLVANIA 2 THIRTIETH STATEWIDE INVESTIGATING GRAND JURY 3 IN RE: NOTICE NO. 29 4 5 TRANSCRIPT OF PROCEEDINGS 6 OF GRAND JURY 7 8 WITNESS: GARY SCHULTZ 9 DATE: JANUARY 12, 2011, 12:02 P.M. 10 PLACE: STRAWBERRY SQUARE 11 VERIZON TOWER, EIGHTH FLOOR 12 WALNUT STREET 13 HARRISBURG, PA 17120 14 15 COUNSEL PRESENT: 16 OFFICE OF THE ATTORNEY GENERAL 17 BY: DONELLE ESHBACH, ESQUIRE 18 FRANK PENA, ESQUIRE 19 FOR - COMMONWEALTH 20 PENNSYLVANIA STATE UNIVERSITY 21 BY: CYNTHIA BALDWIN, ESQUIRE 22 FOR - GARY SCHULTZ 23 24 SHAMON MANDERSBACH 25 REPORTER-NOTARY PUBLIC</p>	<p>1 GARY SCHULTZ, called as a witness, 2 being previously sworn, testified as follows: 3 4 EXAMINATION 5 6 BY MS. ESHBACH: 7 Q Would you please introduce yourself 8 to the Grand Jury and spell your last name for the 9 court reporter's benefit? 10 A Sure. My name is Gary Schultz, 11 S-c-h-u-l-t-z. I am a retired senior vice 12 president for finance and business at Penn State 13 University. 14 Q You are accompanied today by counsel, 15 Cynthia Baldwin; is that correct? 16 A That is correct. 17 Q When did you retire from the 18 University? 19 A In June of 2009. 20 Q In June of 2002, did you occupy that 21 position as senior vice president? 22 A Yes, I did. 23 Q Could you please explain to the Grand 24 Jury in that capacity what operations of the 25 University were under your authority?</p>
<p>1 INDEX 2 EXAMINATION 3 WITNESS PAGE 4 Gary Schultz 3 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 A Yes. Within an academic institution, 2 we have the chief academic officer. That's 3 commonly referred to as the provost. That's not 4 me. I really run the operations of the 5 university, the physical plant, all the facilities 6 and services of those facilities, all the housing 7 and food services; if you have ever been on Penn 8 State campus, the Nittany Lion Inn, the airport, 9 all kinds of printing and fleet, human resources, 10 university police, and all the finance elements of 11 the university which would include the controller, 12 the budget office and the investment office. 13 Q With regard to Penn State's athletic 14 program, the Grand Jury has already met the 15 athletic director. Could you explain your 16 position vis-a-vis Mr. Curley as the athletic 17 director? 18 A Yes. Mr. Curley directly reports to 19 the president of the university, but kind of a 20 day-to-day working arrangement is that he would 21 often behave like he reported to me as well. 22 Q I'd like to direct your attention to 23 a time around spring break of 2002 as it's been 24 reported to us. Do you recall being called and 25 requested to attend a meeting with coach Paterno</p>

EXHIBIT B-1

<p>1 to report an unusual incident?</p> <p>2 A I do recall such a meeting.</p> <p>3 Q Would you please tell the Grand</p> <p>4 Jurors what you remember, everything that you can</p> <p>5 remember about that incident and the time that it</p> <p>6 occurred?</p> <p>7 A Yes. I believe the meeting occurred</p> <p>8 in my office. It included the athletic director,</p> <p>9 Tim Curley, and Coach Paterno. Coach Paterno</p> <p>10 wanted the meeting. It was essentially called at</p> <p>11 his request. He indicated that someone observed</p> <p>12 some behavior in the football locker room that was</p> <p>13 disturbing. I believe the impression I got was it</p> <p>14 was inappropriate and he wanted to bring that to</p> <p>15 Tim Curley and my attention.</p> <p>16 Q Specifically, did Coach Paterno tell</p> <p>17 you who had observed this inappropriate disturbing</p> <p>18 behavior?</p> <p>19 A No, I don't believe he did. I recall</p> <p>20 having the impression that it was a student or a</p> <p>21 grad student that observed the purported incident.</p> <p>22 Q Did you know who it was that had</p> <p>23 allegedly engaged in this inappropriate conduct?</p> <p>24 A Well, yes.</p> <p>25 Q Who was it?</p>	<p>1 I'm using words now, when I tell you, that was the</p> <p>2 impression that I had. I don't recall his exact</p> <p>3 words.</p> <p>4 Q Again, where was this incident</p> <p>5 supposed to have occurred?</p> <p>6 A I believe it was in the Lash</p> <p>7 Building.</p> <p>8 Q What kind of a facility is that?</p> <p>9 A Well, the Lash Building is the</p> <p>10 football building. The coaches have their offices</p> <p>11 there and it's the team's locker room.</p> <p>12 Q That would be a building that would</p> <p>13 be expected that Jerry Sandusky would have access</p> <p>14 to as a former coach?</p> <p>15 A Yes. With all the years of service</p> <p>16 that Jerry had, I believe that when he decided to</p> <p>17 retire, that he continued to have relationships</p> <p>18 with the football program and access to the</p> <p>19 building.</p> <p>20 Q While you're on the subject of his</p> <p>21 retirement, what were the circumstances of his</p> <p>22 retirement? Was there anything unusual about his</p> <p>23 retirement that you can recall?</p> <p>24 A No. I candidly have recollections</p> <p>25 that Coach Paterno and Jerry had reached a point</p>
<p>1 A He told me that it was Jerry Sandusky</p> <p>2 and some unnamed young boy.</p> <p>3 Q Who was Jerry Sandusky? Who did you</p> <p>4 know Jerry Sandusky to be at that time?</p> <p>5 A Was this in 2002?</p> <p>6 Q Yes, please.</p> <p>7 A Well, in 2002 Jerry Sandusky was</p> <p>8 retired from coaching at Penn State and, you know,</p> <p>9 continued to have involvement with the Second</p> <p>10 Mile.</p> <p>11 Q What's the Second Mile?</p> <p>12 A Well, I mean, the Second Mile is a</p> <p>13 program that I think Jerry founded that provides</p> <p>14 opportunities for children who might have had some</p> <p>15 difficulty in their early life and giving them</p> <p>16 life skills and mentoring to try to improve their</p> <p>17 future.</p> <p>18 Q It's a not-for-profit that helps</p> <p>19 children?</p> <p>20 A It's my understanding, yes. It's not</p> <p>21 for profit.</p> <p>22 Q The incident that was reported to you</p> <p>23 by Coach Paterno, were the words disturbing and</p> <p>24 inappropriate -- were those Paterno's words?</p> <p>25 A I don't remember his precise words.</p>	<p>1 where I think Coach Paterno felt it would be best</p> <p>2 to make a coaching change. I had that underlying</p> <p>3 feeling or understanding. Jerry was enrolled in</p> <p>4 the Commonwealth State Employee Retirement System,</p> <p>5 which employees at Penn State have the option to</p> <p>6 elect into.</p> <p>7 It turns out at the time that he was</p> <p>8 contemplating retirement, there was a retirement</p> <p>9 incentive. I think they called it a retirement</p> <p>10 window or something that was referred to as such.</p> <p>11 But in other words, if you retired by a certain</p> <p>12 date, a window of time, your retirement was</p> <p>13 enhanced.</p> <p>14 So Jerry had that as kind of a factor</p> <p>15 or a key factor in deciding the timing of his</p> <p>16 retirement, which I believe the window would close</p> <p>17 at the end of June in that particular year. So if</p> <p>18 he didn't make the decision to retire by the end</p> <p>19 of June, he would have lost the benefit of that</p> <p>20 early retirement window.</p> <p>21 Q Do you recall knowing of any other</p> <p>22 reason that might have motivated him to retire at</p> <p>23 that time?</p> <p>24 A No.</p> <p>25 Q Did you know him to be spending a lot</p>

EXHIBIT B-2

<p>1 of time with the Second Mile program at that time?</p> <p>2 A I wasn't that close to how he spent</p> <p>3 his time. He certainly was visible as an identity</p> <p>4 of the Second Mile. They used to refer to them as</p> <p>5 Jerry's kids. So his name was clearly a brand</p> <p>6 associated with the Second Mile, but I had no idea</p> <p>7 how much time he physically spent.</p> <p>8 Q You said that you did not have -- did</p> <p>9 you ever meet directly with Mike McQueary?</p> <p>10 A Yes.</p> <p>11 Q When?</p> <p>12 A I don't recall the exact</p> <p>13 circumstances. In fact, it was this morning when</p> <p>14 you asked me a question that I first recalled that</p> <p>15 there was such a meeting.</p> <p>16 Q You don't recall where it took place?</p> <p>17 A I think it occurred in my office I</p> <p>18 believe.</p> <p>19 Q At that time, did McQueary relate to</p> <p>20 you what he had observed in the locker room?</p> <p>21 A No. My recollection was McQueary and</p> <p>22 Joe both only described what was observed in a</p> <p>23 very general way. There was no details.</p> <p>24 Q Did you, nevertheless, form an</p> <p>25 <u>impression about what type of conduct this might</u></p>	<p>1 report?</p> <p>2 A I believe Tim and I had -- yes, we</p> <p>3 had conversation at that time.</p> <p>4 Q Whose recommendations -- what was</p> <p>5 done, first of all?</p> <p>6 A Well, my recollection was -- and I'm</p> <p>7 not so sure it's -- I'm not as confident, but I</p> <p>8 think we decided it would be appropriate to just</p> <p>9 say to Jerry that you shouldn't be bringing the</p> <p>10 Second Mile kids onto campus in the football</p> <p>11 building. So I believe Tim communicated to Jerry</p> <p>12 that that type of thing should not be occurring in</p> <p>13 the future. I also have a recollection that we</p> <p>14 asked the child protection agency to look into the</p> <p>15 matter.</p> <p>16 Q When you say child protective agency,</p> <p>17 was that a university department or something off</p> <p>18 university?</p> <p>19 A Yeah. My understanding is it's</p> <p>20 somehow affiliated with the Commonwealth of</p> <p>21 Pennsylvania.</p> <p>22 Q Who specifically asked that that</p> <p>23 investigation be done?</p> <p>24 A I don't recall.</p> <p>25 Q Was it you?</p>
<p>1 have been that occurred in the locker room?</p> <p>2 A Well, I had the impression that it</p> <p>3 was inappropriate. Telling you what kind of thing</p> <p>4 I had in my mind without being clear, without him</p> <p>5 telling me, but, you know, I had the feeling that</p> <p>6 there was perhaps some kind of wrestling around</p> <p>7 <u>activity and maybe Jerry might have grabbed the</u></p> <p>8 <u>young boy's genitals or something of that sort is</u></p> <p>9 <u>kind of the impression that I had.</u></p> <p>10 Q Would you consider that to be</p> <p>11 inappropriate sexual conduct?</p> <p>12 A Oh, absolutely. Well, I don't know</p> <p>13 the definition of sexual, but that's certainly</p> <p>14 inappropriate for somebody to do.</p> <p>15 Q It would give you pause or concern if</p> <p>16 an adult male and an underage male were in a</p> <p>17 shower and that adult male grabbed the genitals of</p> <p>18 the younger male?</p> <p>19 A Yes.</p> <p>20 Q Do you not recall anything more</p> <p>21 specific than that that Mike McQueary reported to</p> <p>22 you?</p> <p>23 A I do not recall, no.</p> <p>24 Q Did you consult with Tim Curley as to</p> <p>25 what would be done as a result of this 2002</p>	<p>1 A It may have been. I don't recall.</p> <p>2 Q Do you remember to whom you would</p> <p>3 have or anyone would have made such a request, an</p> <p>4 individual, the name of the agency, where it was</p> <p>5 located?</p> <p>6 A I don't recall the details, but I can</p> <p>7 tell you that there was an investigation earlier</p> <p>8 that the child protection agency -- and I may have</p> <p>9 that technically incorrect, but it was this agency</p> <p>10 that I'm referring to that conducted an earlier</p> <p>11 investigation. So my recollection would be in</p> <p>12 2002 that they were asked to look into this</p> <p>13 allegation.</p> <p>14 Q Now, I don't want to necessarily get</p> <p>15 away from 2002, but you're referring now to an</p> <p>16 incident that was reported in 1998 involving Mr.</p> <p>17 Sandusky and one or two young boys on the campus</p> <p>18 at the university; is that correct?</p> <p>19 A I believe it was in '98, yes.</p> <p>20 Q And that incident was reported to the</p> <p>21 university police, correct?</p> <p>22 A My recollection is that the mother</p> <p>23 contacted university police with regard to her son</p> <p>24 and that that started a police investigation.</p> <p>25 Q Are you practically certain that</p>

EXHIBIT B-3

<p>13</p> <p>1 there was a police investigation in 1998?</p> <p>2 A Well, I know the police were</p> <p>3 involved, but my recollection is that it was</p> <p>4 decided that this child protection agency would be</p> <p>5 the better entity to do the investigation.</p> <p>6 Q Were you, yourself, ever questioned</p> <p>7 with regard to that '98 incident?</p> <p>8 A I don't recall I was, no.</p> <p>9 Q Do you know if any criminal charges</p> <p>10 arose from the 1998 report?</p> <p>11 A To the best of my knowledge, there</p> <p>12 were none.</p> <p>13 Q What did you understand the 1998</p> <p>14 incident, in a general way, to allege?</p> <p>15 A Again, I thought that it had some</p> <p>16 basis of inappropriate behavior, but without any</p> <p>17 specifics at all.</p> <p>18 Q At the time of finding out in 2002</p> <p>19 about the allegations of the inappropriate conduct,</p> <p>20 in the shower by Sandusky, you were aware of the</p> <p>21 1998 allegations --</p> <p>22 A That's correct.</p> <p>23 Q -- of the same nature involving</p> <p>24 Sandusky?</p> <p>25 A An allegation, yes.</p>	<p>14</p> <p>1 Q Knowing that there was an incident in</p> <p>2 1998 involving a boy or boys and the incident in</p> <p>3 2002, did you not feel it was appropriate to</p> <p>4 further investigate the incident to determine if</p> <p>5 something truly sexually inappropriate had</p> <p>6 occurred on campus?</p> <p>7 A Yes. Again, '98 was investigated.</p> <p>8 There was an allegation, I have no idea what the</p> <p>9 conclusion of that investigation was, whether</p> <p>10 there was any merit to the allegation or not. I</p> <p>11 did have the impression that it concluded without</p> <p>12 any charges being filed. The incident in 2002,</p> <p>13 again, I recall that it was also turned over to</p> <p>14 that same agency for investigation and it's</p> <p>15 appropriate for them to do that, not for me to</p> <p>16 determine the name of the boy. I wasn't doing an</p> <p>17 investigation.</p> <p>18 Q Do you remember whether the District</p> <p>19 Attorney was consulted at all in the 1998</p> <p>20 investigation?</p> <p>21 A I believe the District Attorney was</p> <p>22 in 1998. I think, again, my recollection -- this</p> <p>23 is a long time ago. But my recollection was that</p> <p>24 between the university police chief and the</p> <p>25 District Attorney and perhaps university legal</p>
<p>15</p> <p>1 Q It's your testimony that you believed</p> <p>2 the 2002 incident was reported to the same agency,</p> <p>3 that child protective services agency, for an</p> <p>4 investigation as the '98 one had been?</p> <p>5 A That's my recollection, yes.</p> <p>6 Q You did not meet with Jerry Sandusky</p> <p>7 about any of these incidents whatsoever?</p> <p>8 A No, I did not.</p> <p>9 Q Did Tim Curley report back to you</p> <p>10 about his contact with Jerry Sandusky regarding</p> <p>11 the incident in 2002?</p> <p>12 A I can't say for sure. I had the</p> <p>13 impression that Tim did follow through and make</p> <p>14 sure Jerry understood that he was no longer</p> <p>15 permitted to bring second mile children into the</p> <p>16 football facility.</p> <p>17 Q Did you, yourself, ever attempt to</p> <p>18 determine the identity or age of the boy in the</p> <p>19 shower in the 2002 incident?</p> <p>20 A No.</p> <p>21 Q Do you know if anyone in the</p> <p>22 university under your auspices then when you were</p> <p>23 senior vice president attempted to learn that</p> <p>24 information?</p> <p>25 A No.</p>	<p>16</p> <p>1 counsel and myself, the decision was made to use</p> <p>2 the child protection agency as the appropriate</p> <p>3 investigative agency.</p> <p>4 Q Who was the university legal counsel</p> <p>5 when that decision was made?</p> <p>6 A His name was Wendell Courtney.</p> <p>7 Q He was with the firm of McGuire</p> <p>8 Alaska?</p> <p>9 A That's correct.</p> <p>10 Q Do you believe that you may be in</p> <p>11 possession of any notes regarding the 2002</p> <p>12 incident that you may have written memorializing</p> <p>13 what occurred?</p> <p>14 A I have none of those in my</p> <p>15 possession. I believe that there were probably</p> <p>16 notes taken at the time. Given my retirement in</p> <p>17 2009, if I even had them at that time, something</p> <p>18 that old would have probably been destroyed. I</p> <p>19 had quite a number of files that I considered</p> <p>20 confidential matters that go back years that</p> <p>21 didn't any longer seem pertinent. I wouldn't be</p> <p>22 surprised. In fact, I would guess if there were</p> <p>23 any notes, they were destroyed on or before 2009.</p> <p>24 Q You indicated that you consulted with</p> <p>25 Tim Curley. Did you agree with his</p>

EXHIBIT B-4

<p>17</p> <p>1 recommendations as to how this should be handled?</p> <p>2 A I don't know if it was a</p> <p>3 recommendation but, yes, we reached agreement. I</p> <p>4 can't remember if I recommended, he recommended or</p> <p>5 who recommended, but at the conclusion of</p> <p>6 discussion, there was agreement. There was no</p> <p>7 disagreement.</p> <p>8 Q Did you, yourself, directly consult</p> <p>9 with Graham Spanier, the president of the</p> <p>10 University, concerning the 2002 incident?</p> <p>11 A I believe so. It was a routine way</p> <p>12 of kind of handling business, that I would've had</p> <p>13 a conversation with the president about such a</p> <p>14 matter, yes.</p> <p>15 Q Did the president of the university</p> <p>16 express concern about this incident at the time it</p> <p>17 was reported to him?</p> <p>18 A Very similar to mine and Tim's, yes.</p> <p>19 We took it seriously.</p> <p>20 Q Did President Spanier appear to</p> <p>21 approve of the way in which you and Athletic</p> <p>22 Director Curley handled this?</p> <p>23 A Yes. Again, my recollection was that</p> <p>24 there was agreement.</p> <p>25 Q Do you know if President Spanier was</p>	<p>18</p> <p>1 A I probably would have been able to,</p> <p>2 but it was my practice that I didn't ask the</p> <p>3 police for police reports.</p> <p>4 Q In 2002 when you became aware of this</p> <p>5 allegation in the shower, did you then seek out</p> <p>6 the 1998 report to find out what it was that</p> <p>7 Sandusky specifically was alleged to have done?</p> <p>8 A No, I did not. Honestly, I don't</p> <p>9 know what the procedures are. I assume that that</p> <p>10 report was with the child protection agency and</p> <p>11 not Penn State University Police. I thought the</p> <p>12 police turned it over and that investigation was</p> <p>13 then handled independently.</p> <p>14 Q You thought that the university</p> <p>15 police would not have kept any kind of record of</p> <p>16 that investigation?</p> <p>17 A That there was a -- yeah, I think</p> <p>18 they would have a record that a complaint was</p> <p>19 received and that it was turned over. But I</p> <p>20 wouldn't have assumed that they would have the</p> <p>21 report from the other agency.</p> <p>22 Q You wouldn't assume that the police</p> <p>23 would keep reports of all their investigations</p> <p>24 that they have conducted?</p> <p>25 A They didn't conduct it. The other</p>
<p>19</p> <p>1 aware of the 1998 incident at the time of the 2002</p> <p>2 incident?</p> <p>3 A I believe so, yes.</p> <p>4 Q Why do you believe so? Did you tell</p> <p>5 him or was it discussed?</p> <p>6 A Again, I don't remember the specifics</p> <p>7 of the conversation I had with him, but it would</p> <p>8 have been a routine kind of way of handling</p> <p>9 things, that I would have kept him informed about</p> <p>10 the '98 as well as the 2002 reports.</p> <p>11 Q You knew, of course, that the</p> <p>12 incident in 1998 was alleged to have taken place</p> <p>13 very similarly in the Lash Building in the shower</p> <p>14 with a young boy or more than one young boy?</p> <p>15 A I honestly don't recall that '98 I</p> <p>16 knew anything about the details of what the</p> <p>17 allegation was from the mother. I do recall there</p> <p>18 was a mother with a young boy who reported some</p> <p>19 inappropriate behavior of Jerry Sandusky, but I</p> <p>20 don't recall it being reported in the Lash</p> <p>21 Building or anything of that sort.</p> <p>22 Q The reports on that were something</p> <p>23 that you could have had access to as the director,</p> <p>24 the police being under your purview of the</p> <p>25 university, is that correct?</p>	<p>20</p> <p>1 agency did was my understanding. So, yeah, I</p> <p>2 believe they have reports of investigations that</p> <p>3 they have done, but this I thought was turned over</p> <p>4 to another agency.</p> <p>5 Q You knew the university police were</p> <p>6 involved in the 1998 investigation, right?</p> <p>7 A Yes.</p> <p>8 Q But you didn't attempt to find out</p> <p>9 whether they had anything that would substantiate</p> <p>10 or cause you to come to some conclusions regarding</p> <p>11 the 2002 incident and whether or not it might have</p> <p>12 actually occurred? That didn't occur to you, to</p> <p>13 check into the 1998 incident more firmly?</p> <p>14 A No.</p> <p>15 Q And you didn't attempt to find out</p> <p>16 anything about the identity of the youth that was</p> <p>17 in the shower in 2002?</p> <p>18 A No.</p> <p>19 Q You've referenced and Mr. Curley also</p> <p>20 referenced reporting this incident to the Second</p> <p>21 Mile. You've indicated that you thought this was</p> <p>22 a child from the Second Mile in the 2002 incident</p> <p>23 and we know that in the 1998 incident it was a</p> <p>24 Second Mile child. Why did you think that a</p> <p>25 Second Mile child was involved in the 2002</p>

EXHIBIT B-5

<p>21</p> <p>1 incident when you didn't investigate to make sure?</p> <p>2 A. Well, I'm not sure that I know for</p> <p>3 sure it was a second mile child in 2002. I think</p> <p>4 I knew that it was a younger boy. I'm not sure I</p> <p>5 knew definitively it was a second mile child.</p> <p>6 Q. Did you have occasion to see Sandusky</p> <p>7 in the company of young boys who were affiliated</p> <p>8 with the second mile program?</p> <p>9 A. I would see Jerry from time to time</p> <p>10 at second mile events in the presence of lots of</p> <p>11 children, sure.</p> <p>12 Q. Did you ever see him on university</p> <p>13 property at any time with boys who were of that</p> <p>14 age, second mile age?</p> <p>15 A. Well, technically, yes. I mean, some</p> <p>16 of the second mile fundraising events and so forth</p> <p>17 would be held on university property in either the</p> <p>18 Mittany Lion Inn or the Penn State. So, yes, I</p> <p>19 would see him at those events.</p> <p>20 Q. Did you ever see him around at any</p> <p>21 football games or football practices with kids?</p> <p>22 A. No.</p> <p>23 Q. It that because you didn't go or</p> <p>24 because you didn't see him?</p> <p>25 A. I don't go to the practices. I do go</p>	<p>23</p> <p>1 something like that was going on in the locker</p> <p>2 room and perhaps in the course of that, that</p> <p>3 somebody might have grabbed the genitals, that</p> <p>4 Jerry might have grabbed the genitals of the boy.</p> <p>5 I had no impression that it was anything more</p> <p>6 serious than that. That was my impression at the</p> <p>7 time.</p> <p>8 Q. Didn't you previously tell us in our</p> <p>9 interview that you had the impression -- I have it</p> <p>10 written down -- that this was inappropriate sexual</p> <p>11 conduct?</p> <p>12 A. Again, depending on what you call --</p> <p>13 I mean, grabbing the genitals of the boy is what I</p> <p>14 had in mind. Now, is that sexual? Yes.</p> <p>15 Q. We can all agree that an adult male</p> <p>16 under no circumstances other than a doctor should</p> <p>17 be grabbing the genitals of a young boy?</p> <p>18 A. I agree completely with that.</p> <p>19 Q. And that it doesn't happen</p> <p>20 accidentally?</p> <p>21 A. Rather than just agreeing to I</p> <p>22 thought it was sexual conduct or misconduct, I'm</p> <p>23 explaining what I really thought might have gone</p> <p>24 on. You know, you can define that as you want.</p> <p>25 I'm telling you what I thought was going on.</p>
<p>22</p> <p>1 to the games. There's a hundred some thousand</p> <p>2 people. I don't know if I saw Jerry there.</p> <p>3 Q. So you're indicating that as far as</p> <p>4 you know, no one from the university investigated</p> <p>5 the 2002 incident at all?</p> <p>6 A. Yeah. As far as I know, the</p> <p>7 university asked the other agency to follow up as</p> <p>8 it did in '98.</p> <p>9 Q. One more thing I just want to be</p> <p>10 clear on. When you met with Mike McQueary, was it</p> <p>11 or was it not your impression that he was</p> <p>12 reporting inappropriate sexual conduct, your</p> <p>13 impression --</p> <p>14 A. Yes.</p> <p>15 Q. Inappropriate sexual conduct by Jerry</p> <p>16 Sandusky?</p> <p>17 A. You know, I don't know what sexual</p> <p>18 conduct's definition to be, but I told you that my</p> <p>19 impression was -- you know, Jerry was the kind of</p> <p>20 guy that he regularly kind of like physically</p> <p>21 wrestled people. He would punch you in the arm.</p> <p>22 He would slap you on the back. He would grab you</p> <p>23 and get you in a headlock, etc. That was a fairly</p> <p>24 common clowning around thing.</p> <p>25 I had the impression that maybe</p>	<p>24</p> <p>1 Q. Would you agree with me that if it</p> <p>2 had been sodomy, that is, anal sex, that would</p> <p>3 clearly be inappropriate sexual conduct?</p> <p>4 A. No doubt.</p> <p>5 BY MR. FINA:</p> <p>6 Q. Sir, I just want to be real clear on</p> <p>7 this. It was your impression after you talked to</p> <p>8 McQueary that this was about some physical</p> <p>9 conduct, some horsing around, some wrestling that</p> <p>10 resulted in contact with a boy's genitals in the</p> <p>11 context of wrestling. That was your impression of</p> <p>12 what McQueary was reporting to you?</p> <p>13 A. I don't recall what McQueary</p> <p>14 specifically reported, but I can tell you that I,</p> <p>15 after going through whatever we went through in</p> <p>16 2005, had that impression that that was probably</p> <p>17 the kind of thing that had taken place.</p> <p>18 Q. Nothing else? No further sexual</p> <p>19 conduct?</p> <p>20 A. No, I had no basis --</p> <p>21 Q. No intercourse?</p> <p>22 A. I had no basis of anything else, and</p> <p>23 I only formed the impression that I had based on</p> <p>24 kind of what I observed of Jerry and the kind of</p> <p>25 horsing around that he does.</p>

EXHIBIT B-6

<p>25</p> <p>1 Q No, no. Please follow my 2 questioning. I'm not asking you what impression 3 you had of your observations of Mr. Sandusky over 4 the years. I'm asking you of your impression, 5 what you learned from Mr. McQueary, what he 6 observed in the shower. 7 A I don't recall himself telling us 8 what he observed specifically. 9 Q What generally did he report? 10 A I believe that he said that he saw 11 something that he felt was inappropriate between 12 Jerry and a boy. 13 Q And from his saying along the line of 14 something inappropriate, you took, oh, they must 15 have been wrestling and maybe he touched the kid's 16 groin? 17 A I could imagine that might have taken 18 place, yes. 19 Q Was McQueary upset? Was he emotional 20 about this? 21 A No, I don't recall him being upset. 22 Q He was calm; he was collected? 23 A Yes. 24 Q Nobody, not you, not Curley, nor 25 anybody else went back to McQueary and asked for</p>	<p>27</p> <p>1 A Well, the child protection agency, 2 the same one that I think handled the '98 3 investigation. 4 Q Sir, it might surprise you to know 5 that the '98 investigation was handled by your 6 police department and there's a -- 7 A In its entirety? 8 Q There's a 95-page police report on 9 that incident. 10 A In its entirety? 11 Q Correct. 12 A Wow, I thought that it was turned 13 over to the child protection agency for 14 investigation. 15 Q Did it ever occur to anybody that the 16 police might need to be contacted, either campus 17 police or this entity known as the Pennsylvania 18 State Police? 19 A I don't recall that we talked about 20 it being turned over to the police. 21 Q That was never part of the 22 discussions between you and Curley or you and 23 Spanier or you and anybody else? 24 A No. 25 Q Are you aware of any memorandums or</p>
<p>26</p> <p>1 specifics or at the time asked for specifics? 2 A No. Again, I recalled that we asked 3 this agency to do the investigation and I would 4 let them follow up. 5 Q The agency that you were never 6 interviewed by, correct? 7 A That's correct. 8 Q Are you aware of anybody at the 9 university who was interviewed by any agency about 10 this incident? 11 A About 2002, I don't. 12 Q How is it that this agency, this 13 whatever it was, would even know who to talk to, 14 to talk to McQueary or to talk to you or to talk 15 to whoever? Who was supposed to relay this 16 information? 17 A I don't recall, I don't recall who 18 contacted the agency. I'm telling you, to the 19 best of my recollection, I believe that the agency 20 was asked to follow up on the investigation. 21 Q At no time did you contact any law 22 enforcement entity or individuals? 23 A I had the impression that that agency 24 had some law enforcement authority. 25 Q The agency that you can't identify?</p>	<p>29</p> <p>1 any written documents other than your own notes 2 that existed either at the time of this incident 3 or after this incident about the 2002 events? 4 A No. 5 Q Would that be standard? Would that 6 be the way the university operates when an 7 allegation is made against a current employee or a 8 very famous prior employee, that nothing be put in 9 writing? 10 A The allegations came across as not 11 that serious. It didn't appear as that time, 12 based on what was reported, to be that serious, 13 that a crime had occurred. We had no indication a 14 crime had occurred. 15 Q Do you recollect going to Joe 16 Paterno's house on a Sunday to be informed of 17 this? 18 A No. 19 Q No, that you don't recollect? No, 20 that it did not happen? 21 A No, I don't recollect it. Again, I 22 thought I was informed in a meeting that Joe and 23 Tim and I had at my office. Now, could it have 24 happened at Joe's house? Possibly. 25 Q Would that be unusual, to be called</p>

EXHIBIT B-7

<p>28</p> <p>1 to Joe Patarnib's house on a Sunday to discuss 2 something that wasn't even criminal or sexual? 3 A Well, it wasn't an everyday thing, 4 but Tim and I and others would meet with Joe 5 weekends, Sundays and so on. But, yeah, it would 6 be an important matter if we were meeting with Joe 7 on a Sunday. 8 BY MS. ESHBACH: 9 Q In terms of University policy at the 10 time that you were the senior vice president, how 11 would a matter of inappropriate conduct by an 12 employee be handled, something along the lines of 13 perhaps a theft, criminal conduct? 14 A If there was an allegation of a 15 criminal act, it would be turned over to the 16 university police for handling. On occasion, 17 depending on the nature of it, university internal 18 audit might get involved initially to do some 19 background work just to confirm an allegation. 20 Q If there had been inappropriate or 21 criminal conduct by a student, would that go to 22 the provost's side of things or would that come to 23 your side of things? 24 A Well, if it was a criminal act, it 25 would be investigated by the police, yes.</p>	<p>29</p> <p>1 contained in the Master Transcript.) 2 (Witness and counsel enter the room.) 3 BY MS. ESHBACH: 4 Q Can you give me an example of what 5 you would consider to be inappropriate conduct 6 that wasn't criminal? We did a lot of talking 7 about what's inappropriate, what's criminal, not 8 criminal. Give me an example of conduct -- for 9 example, a university professor does something to 10 a student and a student reports it. I assume that 11 would go to the university police, right? 12 A No, not necessarily. You asked for 13 an example. Not all inappropriate conduct is 14 criminal. Cursing at a student in class, if 15 you're a faculty member losing your temper, 16 perhaps might not be criminal, but it's not 17 appropriate for a faculty member to do such a 18 thing. 19 Q How about an adult individual being 20 naked in the shower with a young boy and touching 21 that young boy? Clearly inappropriate, right? 22 A Yeah, I would say. 23 Q But not criminal in your mind, not 24 potentially criminal? 25 A I didn't get the impression that</p>
<p>30</p> <p>1 Q How about an incident of criminal 2 conduct involving a student athlete? How would 3 that be handled? 4 A If it was criminal, it would be the 5 police. If it's not, there's an office of student 6 conduct. 7 Q How about, again, inappropriate 8 conduct of an employee of the university? 9 A If there was an allegation of some 10 criminal conduct, it would be handled by the 11 police. 12 Q And finally, a person in the status 13 of Mr. Sandusky who had access to the university 14 even though he was no longer an employee? 15 A Same. 16 Q You're saying that this incident 17 wasn't referred to the university police for 18 investigation because you didn't think it was 19 criminal? 20 A There was no indication that it was. 21 MS. ESHBACH: You can step out with 22 counsel and we will see if the Grand Jury has any 23 more questions. 24 (Witness and counsel leave the room.) 25 (Proceedings before the Grand Jury</p>	<p>31</p> <p>1 there was something like that going on. 2 Q I thought you said that you thought 3 perhaps he had grabbed his genitals? 4 A Well, you know, whether he -- I don't 5 know. I mean, I wasn't told what was really going 6 on. But if he did, if that was what it was, he 7 shouldn't do that. That's inappropriate. I don't 8 know if that's criminal. If it's in the context 9 of wrestling or something like that, I don't know. 10 Q The Grand Jurors would like to know 11 your age. 12 A Sixty-one. 13 Q You retired in May of 2009? 14 A June. 15 Q June of 2009? 16 A Yes. 17 Q When you retired, were you aware of 18 any other allegations of sexual conduct by Jerry 19 Sandusky against any other young boys not in 1998 20 and not in 2002, but any subsequent to that? 21 A No. 22 Q You knew of nothing? 23 A Nothing. 24 Q You look young for your age. 25 A Thank you.</p>

EXHIBIT B-8

33

1 (Witness consults with counsel.)

2 BY MS. ESHBACH:

3 Q Since this incident came to light in

4 2002 involving Sandusky and this boy in the

5 shower, did the university do anything in terms of

6 adopting a policy with regard to nonstudent youth

7 being on university facilities in the

8 circumstances that this young boy was?

9 A No, I don't believe so.

10 Q Did anybody do anything to prevent

11 something like this from happening again other

12 than telling Jerry Sandusky he's not supposed to

13 bring a kid on campus?

14 A Well, we did that.

15 Q But that was on the honor system,

16 right?

17 A Well, I don't know. I think Tim

18 handled it and I'm not quite sure what the

19 enforcement mechanism of that was. It may have

20 been an honor system. I think Tim trusted Jerry

21 and if Jerry said he understood and wouldn't do

22 it, that's what he believed.

23 Q As far as you know, the university

24 took no steps to prevent something like this from

25 happening again?

34

1 A Well, with regard to Jerry, I think

2 we did, yeah.

3 Q Now about other individuals?

4 A I don't know exactly how to answer

5 that. I can imagine instances where adult men

6 would perhaps be in the shower with young boys.

7 Q In a group?

8 A Perhaps.

9 Q But not alone?

10 A Perhaps or maybe not. I don't know.

11 I mean, our recreation buildings, for example,

12 separate from the football building, which has

13 some restrictions, are pretty much open.

14 Q Again, that would be a circumstance

15 where there would be likely a number of persons

16 present?

17 A Could be, yeah.

18 Q But the Lash building was not a

19 public building?

20 A No, but you know, it's a building

21 that generally is active. It's used with all the

22 individuals on the team, the coaches, all the

23 support staff and so on. Football is a 12 month a

24 year program. It's less open than a public

25 recreation facility would be, but I don't want to

35

1 characterize it as a place that's only used like

2 on a limited basis. It's used regularly.

3 Q Would you agree with me that on a

4 Friday night before the start of spring break,

5 there probably wouldn't be very many people in

6 that building?

7 A Probably, yes.

8 Q And a former staff member would

9 understand that, would know that kids would be

10 gone?

11 A Probably, yes. Sure.

12 MS. ESHBACH: That's it.

13 (Testimony concluded at 3:52 p.m.)

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1 I hereby certify that the proceedings

2 and evidence are contained fully and accurately in

3 the notes taken by me on the within proceedings

4 and that this is a correct transcript of the same.

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COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Shannon L. Menderbach, Notary Public
Town of Enola, Cumberland County
My Commission Expires June 19, 2013

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September 25, 2013

Via e-mail and U.S. Mail: thoover@dauphinc.org

The Honorable Todd A. Hoover
President Judge
Dauphin County Courthouse
101 Market Street
Harrisburg, PA 17101

Re: Commonwealth of Pennsylvania v. Curley, Spanier and Schultz

Dear Judge Hoover:

I write on behalf of all defense counsel with respect to scheduling a hearing on the pending motions regarding former Penn State General Counsel Cynthia A. Baldwin. The motions involve two general issues: (1) Ms. Baldwin's representation (or not) of the defendants during their grand jury appearances in January and April 2011, and (2) the attorney-client and work product privilege issues arising from Ms. Baldwin's own testimony as a grand jury witness in October 2012.

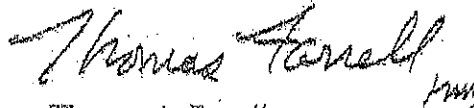
Defense counsel have conferred with each other and with our respective expert witnesses, and we propose December 17 - 20 for an evidentiary hearing on the Baldwin motions. Two of our witnesses, Larry Fox and David Rudovsky, teach (at the University of Pennsylvania Law School and Yale Law School) and have exam obligations in December, so we were unable to find earlier dates that worked for everyone. We expect that the hearing will last two or three days.

EXHIBIT C-1

Of course, we are available for any scheduling conference, whether in person or by telephone, the Court wishes to hold on this matter.

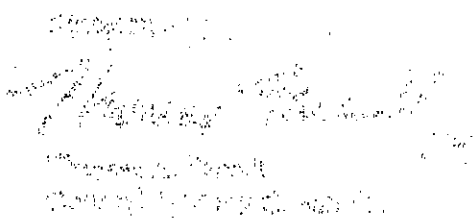
Thank you for your consideration in this matter.

Sincerely,



Thomas A. Farrell
Counsel for Gary C. Schultz

cc: Pam Parascandola, Esq.
Caroline Roberto, Esq.
Elizabeth Ainslie, Esq.
George Matangos, Esq.
Brian Perry, Esq.
Bruce Beemer, DAG
Laura Ditka, DAG



Thomas A. Farrell
Counsel for Gary C. Schultz

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PA
: 217 M.D. MISC. DKT. 2010
THE THIRTY-THIRD :
STATEWIDE INVESTIGATING : DAUPHIN COUNTY COMMON
GRAND JURY : PLEAS
: No. CP-22-CR-5164-2011
: No. CP-22-CR-5165-2011

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IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
v. : SUPREME COURT OF PA
: 217 M.D. MISC. DKT. 2010
: DAUPHIN COUNTY COMMON
: PLEAS
: Complaint No. G07-1146135
TIMOTHY M. CURLEY and :
GARY C. SCHULTZ, : REQUEST EXPEDITED REVIEW
:
Defendants. :

**JOINT MOTION TO QUASH PRESENTMENT AS DEFECTIVE
FOR RELYING ON ATTORNEY-CLIENT PRIVILEGED
COMMUNICATIONS AND WORK PRODUCT**

AND NOW, come the defendants, Timothy Mark Curley, by and through his attorney, Caroline M. Roberto, Esquire, and Gary Charles Schultz, by and through his attorney, Thomas J. Farrell, Esquire, and respectfully file the within Motion to Quash Presentment and state the following in support:

1. Pursuant to Notice of Submission of Investigation No. 1., a statewide investigating grand jury conducted an investigation into reported sexual assaults of minor male children by Gerald A. Sandusky over a period of years. See Exhibit A, November 1, 2012, Presentment at 1.
2. On January 12, 2011, defendants Timothy M. Curley and Gary C. Schultz testified before the grand jury investigating the allegations against Sandusky.

EXHIBIT D-1

3. As we described at length in our Omnibus Pretrial Motions, Exhibit G, then PSU General Counsel Attorney Cynthia A. Baldwin represented Messrs. Curley and Schultz as their counsel in connection with their grand jury appearances. She prepared Curley and Schultz for their grand jury testimonies, accompanied each defendant to interviews with the Office of the Attorney General on January 12, and attended their testimony in the grand jury hearing room, as only counsel for a witness may do, 42 Pa.C.S.A. § 4549(b) and Pa. R. Cr. P. 231(A). The Commonwealth, in its Answer to our Omnibus Pretrial Motions, agrees that Baldwin told everyone, including the Deputies and the grand jury supervising judges, that she represented Curley and Schultz. See Exhibit H, Answer at p.6, ¶17; p.8, ¶36; p.10 ¶13; p.23.

4. On November 4, 2011, Curley and Schultz were each charged with one count of Perjury based on their respective grand jury testimonies, a violation of 18 Pa.C.S. § 4902 and a felony of the third degree, and one count of Failure to Report in violation of 23 Pa.C.S. § 6319, a summary offense.

5. On November 1, 2012, Curley and Schultz were also charged with two counts of Endangering Welfare of Children in violation of 18 Pa.C.S. § 4304, a felony of the third degree, and Obstruction of Justice, a violation of 18 Pa.C.S. § 5101, a misdemeanor of the second degree.

6. On that same date, defendants and Graham B. Spanier were also charged with three counts of Conspiracy, in violation of 18 Pa.C.S. § 903, based on the underlying offenses of Obstruction of Justice, a misdemeanor of the second degree, Perjury, a felony of the third degree, and Endangering Welfare of Children, a felony of the third degree. A Presentment issued by the Third-Third Statewide Investigating Grand Jury was attached to the criminal complaint. See Exhibit A.

7. The Presentment indicates that the additional charges brought against Curley and Schultz are based, in large part, on Baldwin's testimony before the grand jury as to privileged communications with her clients Schultz, Curley and Spanier and attorney work-product performed for them. Testimony by Baldwin was specifically presented as evidence that certain acts committed by Curley and Schultz were part of alleged conspiracy to obstruct justice.

8. Baldwin's testimony was offered to substantiate the allegation that Curley, Schultz, and Spanier conspired to make false statements to the grand jury. See Presentment at 38. Baldwin's testimony about her privileged conversations with Schultz, Curley and Spanier is in fact the sole support for the existence of a conspiracy to commit perjury. She testified before the grand jury that based on her conversations with her clients, it was evident that Curley and Schultz "extensively discussed" their grand jury testimonies with Spanier. See Presentment at 25.

9. Baldwin's testimony about privileged attorney-client conversations also was presented to support the accusation that Curley and Schultz conspired to obstruct justice by deliberately preventing compliance with grand jury Subpoena 1179. See Presentment at 38.

According to the Presentment:

During this meeting, and at a number of other meetings, Baldwin sought to determine if any of the information required by Subpoena 1179 was known to Athletic Director Curley, Vice President Schultz, and President Spanier. Each personally and directly assured her that they knew of no information or documents involving alleged misconduct or inappropriate contact by Jerry Sandusky. They also assured her that they would look and see if they could find any such information or documentation. In the several weeks after the receipt of Subpoena 1179, all three individuals - Spanier, Schultz and Curley - assured Baldwin that they had investigated and determined that they possessed no information or documents that would be responsive to Subpoena 1179. She was specifically assured that they had searched through their emails and physical documents for any Sandusky-related materials. In addition, Athletic Director Curley informed Baldwin that the Athletic Department did not possess any applicable responsive materials.

EXHIBIT D-3

Presentment at 21. These assertions, which form a substantial part of the basis for the obstruction and conspiracy charges, come entirely from Baldwin's description of privileged communications with her clients.

10. It should be noted that Baldwin's assertions are inconsistent with Schultz' and Curley's grand jury testimony. Mr. Curley was not asked in the grand jury about any documents or his search for them. Exhibit G. At the time Mr. Schultz testified, he was retired from PSU and had been replaced as Senior Vice President for Finance and Business. When asked about notes, Mr. Schultz volunteered to the grand jury that he believed he did create notes. While he believed they had been destroyed when he retired, he suggested that they might still exist, but he did not know for certain:

Q: Do you believe that you may be in possession of any notes regarding the 2002 incident that you may have written memorializing what occurred?

A: I have none of those in my possession. I believe that there were probably notes taken at the time. Given my retirement in 2009, if I even had them at that time, something that old *would have probably* been destroyed. I had quite a number of files that I considered confidential matters that go back years that didn't any longer seem pertinent. I wouldn't be surprised. In fact, *I would guess* if there were any notes, they were destroyed on or before 2009.

Exhibit I, Schultz GJ Transcript at 16 (emphasis added).

11. Follow-up questions from the prosecutor showed that the prosecutor understood Mr. Schultz' answer to indicate that the notes might exist:

Q: Are you aware of any memorandums or any written documents *other than your own notes* that existed either at the time of this incident or after this incident about the 2002 events?

A: No.

Schultz GJ Transcript at 27-28 (emphasis added).

EXHIBIT D-4

12. Thus to the extent that the obstruction of justice charge relies on an alleged misrepresentation by Mr. Curley or Mr. Schultz that they had no responsive documents, that misrepresentation, if indeed it was made, was made only to Ms. Baldwin, in a confidential communication, not to the grand jury.

13. Messrs. Curley and Schultz have not waived their privileges. To the contrary, on June 1, 2012, counsel for Mr. Schultz wrote Ms. Baldwin's counsel to inform him that Mr. Schultz did not waive the privilege and to instruct him that his client should "assert the attorney-client and work-product privileges in response to any and all requests from the OAG, the USAO in the Middle District of Pennsylvania, Louis Freeh and his investigative group and anyone else who may ask." Exhibit B. On June 11, 2012, counsel for Mr. Curley also sent a letter to Ms. Baldwin's attorney asserting the attorney-client privilege and requesting that, "you and Justice Baldwin assert the attorney-client work product privileges in response to all requests from the Attorney General, the United States Attorney's office in the Middle District, the Louis Freeh investigation and those associated with it, and all others seeking information or response related to Mr. Curley." Exhibit C.

14. On October 2, 2012, Attorney Michael M. Mustokoff, counsel for the Pennsylvania State University sent this Court a letter partially waiving the attorney-client privilege concerning certain communications and correspondence of its former General Counsel, Cynthia A. Baldwin. Counsel for Curley and Schultz were copied. Exhibit D.

15. On October 11, 2012, counsel for Curley and Schultz separately wrote to this Court asserting the attorney-client privilege concerning communication and correspondence with their counsel, Ms. Baldwin, "against production to the Grand Jury, the Office of Attorney General of Pennsylvania and any other party." Exhibits E and F, respectively.

16. On December 13, 2012, a preliminary hearing regarding the new charges against Curley and Schultz is scheduled before the Honorable Magisterial District Judge William C. Wenner. Defendants also intend to file before Judges Hoover and Wenner, a motion to preclude the testimony of Ms. Baldwin at the preliminary hearing.

17. 42 Pa.C.S.A. § 5916 requires this Honorable Court to exclude the testimony of Ms. Baldwin in the Grand Jury proceedings against her former clients, Curley and Schultz. In the absence of a waiver by the client, an attorney is barred from testifying, in a criminal matter, regarding statements that the client made to the attorney in confidence. 42 Pa.C.S.A. § 5916.

18. The presentment is defective as it relies upon communication in violation of the attorney-client privilege. 42 Pa.C.S.A. § 5916.

19. Quashal is the appropriate remedy for defects in the presentment. See, *In re: County Investigation Grand Jury VIII*, 2003, 2005 WL 480744 (Pa. Com. Pl.); *Commonwealth v. Schwarzman and Schwartz*, 1981 WL 207427 (Pa. Com. Pl.).

20. Title 42 Pa.C.S.A. § 722(5) permits a direct appeal to the Pennsylvania Supreme Court "where the matter relates to the convening, supervising, administration, operation or discharge of an investigating grand jury or otherwise directly affects such a grand jury or any investigation conducted by it." Rule 3331 of the Pennsylvania Rules of Appellate Procedure also authorizes a direct appeal to the Supreme Court under similar circumstances.

21. Moreover, the Pennsylvania Supreme Court has consistently held that "orders overruling claims of privilege and requiring disclosure are immediately appealable." *Commonwealth v. Harris*, 32 A.2d 243, 251 (Pa. 2011) (PCRA court ruling that psychologist-patient privilege had been waived immediately appealable); *Commonwealth v. Kennedy*, 876

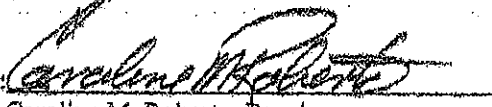
A.2d 939, 943-44 (Pa. 2005) (trial court order overruling assertion of attorney-client work product privilege immediately appealable.)

22. Thus, we request that the Court consider this issue expeditiously so that the parties may seek appellate review and a stay of the preliminary hearing if necessary.

WHEREFORE, for the reasons stated, defendants respectfully request this Honorable Court to Quash the Presentment as defective for including testimony of Cynthia A. Baldwin in violation of the attorney-client privilege.

Respectfully submitted,

By:


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EXHIBIT D-7

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: THE THIRTY-THIRD STATEWIDE : No. 61 MM 2013
INVESTIGATING GRAND JURY

PETITION OF: G.C.S.

ORDER

PER CURIAM

AND NOW, this 7th day of June, 2013, the Petition for Review is **DENIED** without prejudice for petitioner to raise the issue in the underlying criminal prosecution.

EXHIBIT E-1

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: THE THIRTY-THIRD STATEWIDE : No. 62 MM 2013
INVESTIGATING GRAND JURY

PETITION OF: T.M.C.

ORDER

PER CURIAM

AND NOW, this 7th day of June, 2013, the Petition for Review is **DENIED** without prejudice for petitioner to raise the issues in the underlying criminal prosecution.

EXHIBIT E-2

From: Caroline Roberto [mailto:croberto@choiceonemall.com]
Sent: Tuesday, October 01, 2013 4:01 PM
To: Tom Farrell
Subject: Fw: Request for hearing

----- Original Message -----

From: Parascandola, Pam
To: bbsamer@attorneygeneral.gov; croberto@choiceonemall.com; EAinslie@schnader.com; hberrv@coslawfirm.com; lditka@attorneygeneral.gov; amatangcs@costopoulos.com
Sent: Tuesday, October 01, 2013 2:49 PM
Subject: Request for hearing

Dear Counsel,

The court is in receipt of Defense Counsel's correspondence dated September 25, 2013, which proposes the scheduling of a hearing on December 17-20, 2013. The court will await the Commonwealth's response to the proposal.

Before scheduling such hearing, Judge Hoover requests that all counsel ensure that they possess any transcripts which they deem necessary to disposition of the matters at issue.

Also, it would be helpful to the court if, in advance of such hearing, counsel identify all pending motions, at the various dockets, which raise the identified issues.

Finally, kindly take note of the court's prior directive that parties may not present joint filings. Rather, even if identical, parties must file pleadings individually under the respective dockets.

Thank you,

Pamela S. Parascandola

Judicial Law Clerk to

The Honorable Todd A. Hoover

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EXHIBIT F-1

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: 217 M.D. MISC. DKT. 2010
THE THIRTY-THIRD STATEWIDE :
: DAUPHIN COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : NO. 1325 M.D. 2010
:
: NOTICE NO. 1

ORDER

AND NOW, this 23rd day of September 2013, IT IS HEREBY ORDERED,
DIRECTED AND DECREED that the Motion for Disclosure of Complete Grand Jury
Transcripts is GRANTED. The Commonwealth will provide counsel for Graham B. Spanier
pages 1 - 34 of the transcript of April 13, 2011 beginning at 8:57 a.m., and pages 1 - 44 of the
transcript of April 13, 2011 beginning at 9:53 a.m.

BY THE COURT:

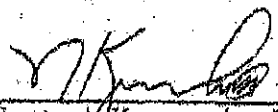

Norman A. Krumenacker, III
Supervising Judge

EXHIBIT G-1