

1 COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
2 : DAUPHIN COUNTY, PENNSYLVANIA
3 V. :
4 TIMOTHY MARK CURLEY : No. CP-22-MD-1385-2012

6 COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
7 : DAUPHIN COUNTY, PENNSYLVANIA
8 V. :
9 GARY CHARLES SCHULTZ : No. CP-22-MD-1386-2012

11 COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
12 : DAUPHIN COUNTY, PENNSYLVANIA
13 V. :
14 GRAHAM B. SPANIER : No. CP-22-MD-1387-2012

17 TRANSCRIPT OF PROCEEDINGS

18 PRELIMINARY HEARING

19 VOLUME 1

21 BEFORE: MAGISTERIAL DISTRICT JUDGE
WILLIAM WENNER

22 DATE: TUESDAY, JULY 30, 2013

23 PLACE: COURTROOM NO. 1
24 DAUPHIN COUNTY COURTHOUSE
25 HARRISBURG, PENNSYLVANIA

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1 (On Tuesday July 30, 2013, the following
2 proceedings occurred, beginning at 9 a.m.):

3

4 THE COURT: Bruce.

5 MR. BEEMER: Good morning, Your Honor.

6 Commonwealth calls Lisa Powers.

7

8 LISA POWERS,

9 called as a witness, being duly sworn, testified
10 as follows:

11

12 MR. BEEMER: Just so the Court is aware,
13 we're taking Ms. Powers out of order. So all the
14 exhibits were pre-marked, so they're not going to
15 be in sequential order, but we'll get there
16 eventually.

17 THE COURT: Thank you.

18

19 DIRECT EXAMINATION

20 BY MR. BEEMER:

21 Q Good morning. Could you please state
22 your name?

23 A Lisa Powers.

24 Q And, Ms. Powers, how are you employed?

25 A I am the director of public information

1 at Penn State University.

2 Q And how long have you been in that
3 position?

4 A Since 2007.

5 Q And prior to that, did you work at Penn
6 State?

7 A I did.

8 Q In what capacity?

9 A I was the speech writer for Graham
10 Spanier for seven years.

11 Q And what kinds of things do you do in
12 your current job?

13 A Well, it's the job of university
14 relations to manage and protect the image of the
15 university and to answer media queries and
16 basically to put out positive stories about the
17 university, its faculty, staff, students.

18 Q And prior to mid-November of 2011 when
19 Graham Spanier was still president of Penn State,
20 what was your chain of command with him?

21 A Above me is an associate vice president,
22 above her is a vice president, and then above him
23 was President Spanier.

24 Q Who were those people in that time frame,
25 2010, 2011?

1 A The associate vice president was Cindy
2 Hall. The vice president was Bill Mahon.

3 Q Were there -- the job title that you
4 held, were there ever times where the president
5 would reach out to you directly or would it
6 always go through that chain that you just
7 described?

8 A No, he would reach out directly.

9 Q And obviously you knew him from your
10 seven years working for him as a speech writer?

11 A Correct.

12 Q Did you get any sort of a handle on
13 Mr. Spanier's management style during your time
14 both as a speech writer and your current
15 position?

16 A Sure, yeah.

17 Q Could you describe your observations of
18 that?

19 A He was a very demanding employer. He was
20 into the details. He, I guess, could be
21 described as a micro-manager. That's probably
22 about it. He was open to conversations, but
23 generally things would happen the way he wanted
24 them to happen.

25 Q Tell us about the relationship that your

1 department, and I mean your current department,
2 has and had back in really from your time there
3 with the athletic department.

4 A I mean, it was obviously a cordial
5 relationship but they have no direct reporting
6 line to us. They don't have a dotted line to us.
7 They have their own public information staff
8 within athletics. They have their own marketing
9 department within athletics, so they were pretty
10 much self-contained. We didn't cross over a
11 whole lot except if there was an issue.

12 Q Was that -- in your experience, was that
13 a successful type of structure?

14 A My understanding is that it's pretty
15 common in higher education, but I think that more
16 conversation and more communication is probably
17 better.

18 Q Now, who was the head of the athletic
19 department at that time back in 2010, 2011?

20 A Tim Curley.

21 Q And who did you understand that he
22 reported to?

23 A The president.

24 Q Tell us about when you first remember
25 becoming aware that there could be a -- there was

1 an issue with Jerry Sandusky.

2 A I believe that the president received an
3 e-mail in September of 2010 from a reporter with
4 the Patriot News who was asking a pretty vague
5 question about whether he was aware of an
6 investigation for criminal activity involving
7 Jerry Sandusky.

8 MR. BEEMER: Judge, this is one you do
9 not have.

10 THE COURT: Thank you.

11 BY MR. BEEMER:

12 Q I'm going to show you what I've marked
13 for identification as Commonwealth's 32 and ask
14 you if you recognize that?

15 A I do.

16 Q What is that?

17 A It's the e-mail that came from Jan Murphy
18 of the Patriot News and was blind copied to me
19 and Bill Mahon from President Spanier.

20 Q Were you familiar with President
21 Spanier's e-mail address?

22 A Oh, yeah.

23 Q And how would you in your experience,
24 your time working as his speech writer and then
25 in your current duties when you worked with him,

1 did you know him to use e-mail?

2 A Oh, yes, often.

3 Q How often would you describe that you
4 communicated with him through e-mail?

5 A If not daily, at least four times a week.

6 Q Was he the type of person that -- did you
7 often not get a response or was it ignored?

8 A No, he was very prompt in his responses.
9 Generally within an hour.

10 Q And that could have been on any of a
11 variety of matters or topics involving the
12 university?

13 A Yes.

14 Q And is your e-mail address noted on this?

15 A Yes. Well, in the further conversation,
16 not in the initial.

17 Q Right. Can you identify on this document
18 where your e-mail address is? It's on the top.

19 A When I respond that I have not heard of
20 anything either. It's at the very top.

21 Q What's the actual address?

22 A Lmr8@psu.edu.

23 Q Spanier's was what?

24 A GSpanier@psu.edu.

25 Q Did you know was this always the e-mail

1 address typically that you would have
2 communicated with him on?

3 A Yes.

4 Q Do you have a specific recollection of
5 this e-mail exchange happening back in 2010?

6 A Yes.

7 MR. BEEMER: Your Honor, I would move for
8 the admission of Commonwealth's 32.

9 MS. AINSLIE: No objection.

10 MR. FARRELL: No objection.

11 MS. ROBERTO: No objection.

12 THE COURT: So moved.

13 BY MR. BEEMER:

14 Q Now, there is an initial e-mail that sort
15 of prompts more discussion within the university.
16 And who did that e-mail come from?

17 A I'm not sure which part you're talking
18 about.

19 Q Was there an e-mail that came in from a
20 reporter?

21 A Right.

22 Q And who did that go to?

23 A It went to Graham Spanier.

24 Q And who was the e-mail from?

25 A Jan Murphy of the Patriot News.

1 Q And can you identify the question that
2 she asked or the information that she provided to
3 Spanier?

4 A Are you aware of any police investigation
5 into Jerry Sandusky for suspected criminal
6 activity that occurred while he was a Penn State
7 employee? If so, can you elaborate on what you
8 know?

9 Q And you were apparently copied in
10 Mr. Spanier's response; is that correct?

11 A Correct.

12 Q And he responded to her in what fashion?

13 A He said he had not heard this, can you
14 tell me more.

15 Q Okay. Now, you were provided with this
16 information at some point?

17 A In the blind copy?

18 Q Yes.

19 A Yes.

20 Q And who would have blind copied you?

21 A President Spanier.

22 Q As a result of getting the blind copy on
23 that, what did you do?

24 A Sent it to a few people within our unit
25 to see if they had heard anything, and one of

1 them was Cindy Hall and the other was Bill Mahon,
2 and Bill had also been blind copied.

3 Q And were you able to find out anything?

4 A Cindy indicated that she had seen
5 something on a blog about Jerry Sandusky touching
6 boys. And then we had a short conversation about
7 the title of his book, and I went and looked at
8 this particular blog. It was a body building
9 blog. But any comment related to Jerry Sandusky
10 had been taken down within that half hour.

11 Q Did you receive any information from the
12 president of the university about the existence
13 of a '98 investigation?

14 A No.

15 Q Were you told to go to speak with anyone
16 else in the university about the existence of a
17 1998 investigation?

18 A No.

19 Q Were you asked to speak to the senior
20 vice president, Gary Schultz?

21 A No.

22 Q So what was to your knowledge Penn
23 State's official response to this reporter about
24 the existence of this 1998 investigation?

25 A Jan Murphy did not respond after

1 President Spanier asked her what she might know.
2 So it just sort of went into a black hole. I
3 contacted or forwarded it to Steve Shelow who at
4 the time was the chief of police for Penn State
5 and asked what he might know.

6 Q Did you ever get a response from
7 Mr. Shelow?

8 A Steve said he didn't know anything but he
9 would look into it, but then after that I didn't
10 hear anything.

11 Q So you never heard anything about this
12 until considerably later in 2011?

13 A That's correct.

14 Q Now, did you ever -- did you know who
15 Jerry Sandusky was?

16 A Vaguely.

17 Q And did you ever do anything on your own
18 to try to educate yourself about Mr. Sandusky?

19 A I did. I believe it was in February of
20 2011, I Googled him. I'm not from the state of
21 Pennsylvania. I lived in Ohio, so I wasn't
22 familiar with him except that he was a former
23 employee and coach.

24 Q Did you become aware in February of 2011
25 that some reporters had reached out -- or someone

1 had reached out to the former police chief, Tom
2 Harmon?

3 A Yes.

4 Q How did you become aware of that?

5 A I was having a conversation with Al
6 Horvath, who at the time was the vice president
7 for finance and business. And we were talking
8 about the upcoming state budget and he mentioned,
9 oh, by the way, a reporter had camped out at Tom
10 Harmon's house asking about an investigation of
11 Jerry Sandusky, former employee, who had been
12 gone from the university for ten years and that
13 investigation, she was asking about, was closed.
14 There were no findings.

15 Just wanted you to know that there was a
16 reporter outside of Tom Harmon's house.

17 Q And is that what prompted you to do
18 further research?

19 A Yes, in part to find out exactly, you
20 know, who Jerry Sandusky was in his previous life
21 and also to see if there was anything out there
22 in the news related to him that would give me a
23 clue as to why there was a reporter camped
24 outside of a former police officer's house.

25 Q I'm going to -- were you aware at the

1 time that there was an exchange between the
2 president of the university and Al Horvath about
3 how to address the information as it related to
4 you?

5 A No, I was not.

6 Q I'm going to show you what I've marked
7 for identification as Commonwealth's 24. Do you
8 recognize the e-mail address of Graham Spanier on
9 there?

10 A Yes, um-hmm.

11 Q How about Al Horvath?

12 A Yes.

13 Q And what's the date on the e-mail?

14 A February 4th of 2011.

15 MR. FARRELL: Excuse me, I didn't hear
16 the date, February 4th of what year?

17 THE WITNESS: 2011.

18 MR. FARRELL: Thank you.

19 BY MR. BEEMER:

20 Q And does this include the e-mail from Tom
21 Harmon indicating -- I'm sorry, an e-mail from
22 Steve Shelow to Al Horvath indicating that he had
23 received communications from Tom Harmon?

24 A Yes.

25 Q And that was the incident that you were

1 referring to where the reporter showed up?

2 A Yes.

3 Q And does Horvath send an e-mail to the
4 president of the university in response to this?

5 A I don't -- yes, he does. I'm sorry.

6 It's an FYI. He just forwarded it.

7 Q And what does he tell the president?

8 A He doesn't say anything, but the
9 president responds.

10 Q And what was the president's response?

11 A We probably need to brief Bill -- I'm
12 sorry, that's from Al Horvath, you're correct.
13 We probably need to brief Bill and Lisa soon.
14 Bill being Bill Mahon.

15 Q And on February 4th at what indicates to
16 be 10:41 a.m., the president responds to Al
17 Horvath?

18 A Yes.

19 Q What does he tell him?

20 A I'll clue her in with just as much as she
21 needs to know to field media inquiries and
22 without exacerbating the situation.

23 Q And what were you clued in on, what were
24 you told?

25 A That someone had camped outside of Tom

1 Harmon's house, that it was related to an
2 employee who was ten years removed from the
3 university and that the case, you know, that they
4 were digging into had been closed and there were
5 no criminal findings.

6 Q And who told you that?

7 A Al Horvath.

8 Q Did you have a conversation with the
9 president about this?

10 A I did not.

11 MR. BEEMER: Move for the admission of
12 24, Your Honor.

13 THE COURT: Any objections to 24?

14 MR. FARRELL: No.

15 MS. ROBERTO: No, Your Honor.

16 MS. AINSLIE: No, Your Honor.

17 THE COURT: So moved.

18 BY MR. BEEMER:

19 Q Now, did you hear after that incident in
20 February, did you hear anything more about this
21 issue until the fall?

22 A Yes.

23 Q And when was that?

24 A March 28th in 2011, Sara Ganim, a
25 reporter with the Patriot News, sent a note to

1 the athletics department which was then forwarded
2 to me to respond to an inquiry about Jerry
3 Sandusky.

4 Q And were you responsible for handling
5 that?

6 A Yes.

7 Q And who did you deal with in formulating
8 a response?

9 A I think I went off of what Al Horvath had
10 originally told me, and I believe the response
11 was something along the lines of we don't know
12 anything, which was absolutely true at that
13 point. I didn't know anything. And that he was
14 a former employee that had not been with the
15 university for ten years.

16 Q And did you become aware at some point
17 that a number of high ranking administration
18 officials had been asked to testify in front of
19 the grand jury?

20 A Only through the newspaper report that
21 came out on the 31st of March.

22 Q So that was the first you had heard of
23 that occurring?

24 A Absolutely.

25 Q And were you the individual responsible

1 for preparing the response to Sara Ganim?

2 A Yes.

3 Q And did it deviate in any way from what
4 you just indicated?

5 A No.

6 Q Now, did anymore news reports come out
7 that you had to address?

8 A Not immediately. And in the interim I
9 contacted Cynthia Baldwin, the general counsel
10 for the university. And I was not aware of what
11 a grand jury was. I only knew it as something
12 that happened with the mafia. So I was asking
13 her to basically explain to me what a grand jury
14 was, what it meant, and why there were three
15 administrators named as having testified.

16 And in my phone conversation with her,
17 she said that this was the fourth time that the
18 grand jury had convened, that they had found no
19 evidence, that there was nothing to talk about
20 because there was no presentment, that it was a
21 fishing expedition. And that she explained the
22 grand jury process to me and said we have nothing
23 to say. There is nothing -- there are no
24 findings yet.

25 Q Okay. And had the 1998 incident been out

1 in the news media at that time?

2 A I think right after that, like early
3 April, I recall mostly sports stories indicating
4 that Joe Paterno would have to answer to this,
5 that he would have to address the issue at some
6 point.

7 And so mostly I considered it an
8 athletics matter. I was still under the
9 impression that this was a former employee who
10 didn't have any relationship to Penn State as it
11 was, although I was concerned that senior
12 administrators were asked to testify.

13 Q And essentially the information you were
14 working off and that you were given was that this
15 was an issue involving Sandusky and not the
16 university?

17 A Yes. And that the matter had been closed
18 in 1998.

19 Q Were you ever told at that time about
20 another incident that occurred in the early 2000s
21 involving something that an employee had seen in
22 one of the showers?

23 A No.

24 Q What are the president council meetings?

25 A President's council?

1 Q Yes.

2 A It's the senior leadership of the
3 university, perhaps 15, 12 to 15 vice presidents.
4 I'm sorry, I don't know off the top of my head.
5 But it's the senior leadership that leads all of
6 the major units of the university.

7 Q Did you ever attend those?

8 A Yes.

9 Q During this period of time, we'll say
10 from early 2011 up through October, was the
11 incident surrounding the grand jury investigation
12 ever discussed at a president's council meeting?

13 A Not while I was in attendance.

14 Q Did you late in October, did you become
15 aware of an issue of some importance involving
16 this matter?

17 A Yes.

18 Q What happened?

19 A On October 28th in 2011, I was asked to
20 attend a meeting with Graham Spanier and Cynthia
21 Baldwin. And so Bill Mahon and I went to the
22 meeting. And Cynthia Baldwin, Graham Spanier and
23 Steve Garban were there, I believe.

24 And we were --

25 Q Let me ask you. At that time were you

1 informed of the fact that there may be a
2 presentment that was going to be issued?

3 A Yes, on October 28th. Yes, they told us.

4 Q And how did the president of the
5 university react at that meeting?

6 A The purpose of the meeting was to tell us
7 that --

8 MS. AINSLIE: Your Honor, I have no idea
9 what he's asking. React to what? It's an
10 extraordinarily general question. It's vague. I
11 don't know how --

12 THE COURT: Mr. Beemer?

13 BY MR. BEEMER:

14 Q Let me ask you this. Was there a
15 discussion at the meeting about whether or not
16 certain individuals associated with the
17 university were going to be charged criminally?

18 A Yes. That was the purpose of the
19 meeting.

20 Q And who was it your understanding at the
21 meeting were going to be charged?

22 A Tim Curley and Gary Schultz.

23 Q And who provided that information?

24 A Both Graham Spanier and Cynthia Baldwin
25 at various times.

1 Q And during the course of that discussion,
2 did the president of the university -- what was
3 -- what was he saying relative to those charges?

4 A He began by telling us that two senior
5 leaders could be charged with lying and that he
6 knew for a fact that this was wrong, that he knew
7 with certainty that they had handled everything
8 appropriately. He indicated he had never seen
9 the 1998 report and neither had Tim Curley.

10 He said that when he was told about the
11 2001 incident that it was described to him as
12 horseplay, that no one ever said the words sodomy
13 or rape or child abuse, and that he felt this was
14 just people targeting the university and his
15 senior leadership, and that he wanted to put his
16 unconditional support behind Gary and Tim.

17 Q Did he tell -- did he say in that meeting
18 that he participated in the discussions in 2001?

19 A No, he did not.

20 Q Did you have any further meetings with
21 the president prior to the charges actually being
22 filed?

23 A Not that I recall.

24 Q What happened -- let's start with
25 Saturday, November 5th, what occurred?

1 A We were anticipating the charges to come
2 out and I guess the presentment was leaked first
3 and then charges were filed. So the president
4 called together his senior leadership again,
5 president's council plus a few other folks and
6 with Cynthia Baldwin, and wanted to share the
7 statement that he basically crafted with them.

8 Q Let me back you up. This was a meeting?

9 A Yes, um-hmm.

10 Q Who was present at that meeting?

11 A Most of PC, which is president's council,
12 with the exception of Tim Curley, but Gary was
13 there. And some other folks who might be
14 associate vice presidents, a couple of them. I
15 was there, Bill Mahon was there, Cynthia Baldwin.

16 Q Did he discuss at that meeting whether or
17 not he had conducted any kind of inquiry himself
18 or whether he had anyone within the university
19 try to find out what had actually happened to the
20 child in the shower in 2001?

21 MS. AINSLIE: Objection, leading.

22 THE COURT: I'm going to allow her to
23 answer.

24 THE WITNESS: He did not.

25 BY MR. BEEMER:

1 Q What was your reaction sitting there
2 during the presentation by the president?

3 A I'm not sure how to answer that. I mean,
4 obviously we were all in shock. And I had
5 previously asked him in the October 28th meeting
6 why he wanted to throw his full support behind
7 Gary and Tim.

8 And he had indicated that if you were
9 doing your job in a leadership position and he
10 knew you were doing it correctly, that wouldn't
11 you want him to support you or your supervisor to
12 support you.

13 Q Now, did -- were you one of the people
14 responsible for helping to craft a release or a
15 press statement?

16 A Yes and no.

17 Q Can you explain?

18 A When we went to the meeting on October
19 28th, the statement was already written. And it
20 had been written by Graham himself. And he slid
21 it across the table to both Bill Mahon and
22 myself, and we looked at it.

23 And the first thing that Bill Mahon
24 indicated was there was no line in there about
25 the victims or about child abuse. So Graham took

1 the paper back and scribbled the very first two
2 sentences of his statement, which indicate that
3 it's appropriate to investigate and that children
4 should be protected. And then the rest of it was
5 his support for Gary and Tim.

6 Q I'm going to show you what I've marked
7 for identification as Commonwealth's 25, ask you
8 if you can identify that?

9 A Yes, it's the first statement that came
10 out from the university.

11 Q And is this a -- the statement that
12 you're referencing that was changed on October
13 28th by the president?

14 A Yes.

15 Q And were you responsible for putting this
16 out?

17 A Yes.

18 MR. BEEMER: Your Honor, I move for the
19 admission of Commonwealth's 25.

20 MR. FARRELL: No objection.

21 THE COURT: Ladies?

22 MS. AINSLIE: Just a moment. I haven't
23 had a chance to look at all of it.

24 MS. ROBERTO: Just by point of
25 clarification, is 25 the two pages that have the

1 statement by Penn State as well as the statement
2 by myself and Mr. Farrell?

3 THE COURT: That's what I have.

4 MR. BEEMER: Yes.

5 MS. ROBERTO: All of the e-mail?

6 MR. BEEMER: Yes.

7 MS. AINSLIE: No objection.

8 THE COURT: So moved.

9 BY MR. BEEMER:

10 Q Now, I want to talk about the top part of
11 the statement. Specifically, it indicates
12 statement issued by Penn State President?

13 MS. AINSLIE: I'm sorry. Who is this
14 from? Who is this e-mail from? I don't see any
15 --

16 THE WITNESS: I believe it's from me.
17 The last page.

18 MS. AINSLIE: On the normal e-mail line
19 at the top, it doesn't have any from.

20 MR. BEEMER: It's a subject --

21 BY MR. BEEMER:

22 Q Can you identify this as an e-mail that
23 you would have sent?

24 A Yes, it would have been the final
25 statement so that everyone could see it.

1 MS. AINSLIE: Thank you.

2 BY MR. BEEMER:

3 Q It indicates statement issued by Penn
4 State President. You referred to an October 28th
5 meeting where there was -- Al Horvath had made a
6 comment. What was the comment again?

7 A He wasn't in the October 28th meeting.

8 Q I'm sorry. Who was in the October 28th
9 meeting?

10 A Cynthia Baldwin, Graham Spanier and Steve
11 Garban.

12 Q And at some point did the statement get
13 -- was it pushed over to you or handed to you?

14 A Yes.

15 Q And was there a change made?

16 A Yes. The top two sentences were added.

17 Q And how did that happen, why were they
18 added?

19 A Because my supervisor, Bill Mahon, was
20 reading the statement and there was no indication
21 of empathy or any concern expressed and he felt
22 that was lacking.

23 Q So did the statement as it was originally
24 given to you on October 28th, was it as it is on
25 that paper but for those first top two lines?

1 A Well, probably the second paragraph was
2 altered to follow but, yeah, it was basically he
3 was giving his unconditional support to Tim and
4 Gary.

5 Q Now, the last line of the second
6 paragraph says what?

7 A I have complete confidence in how they
8 have handled the allegations about a former
9 university employee.

10 Q And there was something else included in
11 the statement that wasn't just from the president
12 of the university, correct?

13 A Not initially.

14 Q How did that happen?

15 A Initially we posted the president's
16 statement and then, I believe, Bill Mahon
17 received a request from the president to post the
18 statements from Tim Curley's attorney and Gary
19 Schultz's attorney.

20 So I was not in the office at that time,
21 but my assistant director then began to add those
22 statements to our original statement.

23 Q And did you have any sort of reaction or
24 say anything about that?

25 A I did. I indicated to both the assistant

1 director and Bill Mahon that I didn't think that
2 that was appropriate, that it seemed to go a
3 little bit further than we should. But both of
4 them said we were told to do this so we're doing
5 it.

6 Q Now, in your position as --

7 A Director.

8 Q -- director, would you say there was a
9 considerable amount of interest in the statement
10 that was put out?

11 A I would characterize it as all hell broke
12 loose.

13 Q And were you -- did you become aware of
14 how that statement was reacted to internally by
15 board members and others?

16 MS. AINSLIE: Objection, Your Honor;
17 relevance, leading, any number of reasons.

18 MR. BEEMER: It's very relevant because
19 it goes to the issue of putting out this
20 statement and why it would be put out and --

21 MS. AINSLIE: Your Honor, I don't see how
22 any of this is relevant to the charges that bring
23 us here today.

24 THE COURT: I'm going to allow Mr. Beemer
25 to explore this to some degree.

1 THE WITNESS: And the question was?

2 BY MR. BEEMER:

3 Q In your dealings with the university, how
4 would you say the board of trustees reacted or
5 did you have any reaction from them?

6 A I did not get an initial reaction from
7 them. I was not aware that they were angry until
8 later, a day later probably.

9 Q Did another statement go out at some
10 point?

11 A Yes, and that was supposed to have been
12 crafted with the help of the board of trustees.
13 I don't recall how it was crafted. I did not
14 have a hand in it, but I did post it.

15 Q I'm going to show you what I've marked
16 for identification as Commonwealth's 26 and ask
17 you if you recognize that?

18 A I do.

19 Q What is that?

20 A It's an e-mail from January of 2012 from
21 Graham Spanier to me in which he's asking me for
22 the final statement, because as I've since
23 learned the trustees were questioning the --
24 whether the statement had been changed or not.
25 And they believed that President Spanier had

1 changed that statement.

2 Q Did you, in fact, provide that?

3 A No, because I don't know which statement
4 was accurate.

5 Q Okay.

6 A I had two versions obviously.

7 Q Now, I'm also going to show you what I've
8 marked for identification as Commonwealth's 27
9 and ask you if you can identify that?

10 A Yes. It's an e-mail from Graham Spanier
11 on November 9th, 2011, in which he's telling me
12 there's a new version of the statement that will
13 be issued tonight after the board takes its
14 action which, of course, was the termination of
15 his presidency, and he asked us to hold it until
16 then.

17 Q I'm sorry. I didn't give you the back
18 part of that which is page 2. Was the statement
19 attached?

20 A This is not the correct statement that
21 was posted.

22 Q Okay. What is that?

23 A This is the statement that President
24 Spanier wanted to be posted. It differs in one
25 paragraph.

1 Q How does it differ?

2 A Well, the paragraph -- the trustees
3 obviously did not want him to say, although I
4 have always acted honorably and in the best
5 interest of the university -- no, I'm sorry,
6 that's not it.

7 This may be -- I'm sorry, this may be the
8 correct statement. The incorrect statement
9 included a line that said that Graham was
10 stepping aside for the betterment of the
11 university. On behalf of the university, he saw
12 fit to no longer lead.

13 And on the night of November 9th, I
14 received several calls from President Spanier
15 asking me to post his version of the release.
16 And I kept indicating that I needed to hear from
17 John Surma. And he called me four times asking
18 again had I heard from John Surma, indicating
19 that John had said it was okay to post this
20 release, but I had never heard from John Surma.

21 So on the final call, he again asked if I
22 had heard from any of the attorneys and was I
23 going to post this particular version, and I
24 said --

25 MS. ROBERTO: I'm going to object to any

1 of the attorneys. If she would get more
2 specific. Was I included in that? I want her to
3 be more specific if she can be.

4 THE COURT: Can you be specific about --
5 you referenced attorneys, that you didn't hear
6 from attorneys.

7 THE WITNESS: That would be the
8 university's attorneys at the time, I'm sorry.
9 But on the last call when he asked me once again
10 to post it, I said, I'm sorry, I'm told I no
11 longer work for you.

12 So I did not post his version, which
13 included the line about him stepping aside
14 voluntarily and --

15 MR. BEEMER: Your Honor, move for the
16 admission of 26 and 27 and offer for cross.

17 MS. AINSLIE: I object on the grounds of
18 relevance, Your Honor, but I understand Your
19 Honor has already, I guess, ruled on that.

20 THE COURT: Objections to the documents
21 from other counsel?

22 MR. FARRELL: The same objection.

23 THE COURT: 26 and 27 are in. Offered
24 for cross.

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CROSS EXAMINATION

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BY MS. AINSLIE:

Q Good morning, Ms. Powers.

A Hi.

Q I'm Elizabeth Ainslie. I'm Dr. Spanier's lawyer.

I have seen e-mails between you and your family and Dr. Spanier after his departure that indicated a certain degree of friendship. Is it fair to say that your relationship with Dr. Spanier and your family was?

A I think you're referring to some November 11th e-mails?

Q I am.

A Correct.

Q And your daughter is well?

A Correct.

Q And in those e-mails it's referenced that it's been a tough week for both of you, both you and Dr. Spanier?

A That would be accurate.

Q And I have also seen reference to something like 76 e-mails that went back and forth about this press release that Mr. Beemer's shown you a few e-mails about. Does that sound

1 about right?

2 A I honestly couldn't tell you. I don't
3 know.

4 Q Okay. But it was a tough week and there
5 was a great deal of back and forth among people
6 at the university who were, as you said, in
7 shock; is that fair to say?

8 A I wouldn't know that for certain.

9 Q Well, as between you and Bill Mahon and
10 Cynthia Baldwin and President Spanier, all of you
11 were scurrying to try to make sense of this
12 situation; is that fair?

13 A I think after October 28th, we were just
14 waiting. We were sort of in a holding pattern
15 waiting for whatever was to come from the state.

16 Q Okay. But in the week, that's not the
17 time period I was talking about. It was really
18 the time period of, you know, after there was at
19 least some leak of a presentment and then it
20 disappeared; isn't that right?

21 A I gather that it was up and it was down.

22 Q But you knew that something bad was
23 coming with respect to Mr. Sandusky?

24 A Yes.

25 Q And probably also with respect to

1 Mr. Schultz and Mr. Curley?

2 A Based on what I was told, yes.

3 Q Right. And at the time you were drafting
4 the release, you didn't have the full presentment
5 in front of you; isn't that right?

6 A We did not.

7 Q So you didn't know that, you know,
8 Mr. Sandusky had not only been accused of
9 activities on Penn State but activities with
10 other children in other places, and your job was
11 to take care of Penn State, correct?

12 A Correct.

13 Q So you had to take care of Penn State in
14 the absence of any real detail about what the
15 charges were going to be about; fair?

16 A Fair.

17 Q Okay. One of the -- well, to go back to
18 what you just finished talking about, Dr. Spanier
19 called you about the release of his own
20 statement?

21 A He did.

22 Q And, you know, you said he called you
23 four times about it and was clearly anxious to
24 get the statement out, correct?

25 A Correct.

1 Q And the statement was not purporting to
2 be on anybody else's behalf but his own, true?
3 This was his statement talking about his own
4 decision or the circumstances of his stepping
5 down?

6 A It was my understanding that any
7 statements coming out needed to have the approval
8 of the board of trustees.

9 Q Well, I understand that that was your
10 understanding, but you can see from Dr. Spanier's
11 point of view, this was his own statement and he
12 was speaking from the heart about his departure
13 from Penn State?

14 A It still required the approval of the
15 board.

16 Q I'm just saying from Mr. -- I understand
17 your position was you were in a tough place, you
18 were -- you know, Dr. Spanier was saying this is
19 -- I'm leaving the university I've served for 16
20 years and it's broken my heart, but I'm about to
21 leave; and you were saying, yes, I understand but
22 the trustees have said I can't do anything
23 officially without their approval; is that fair?

24 A Correct.

25 Q Dr. Spanier says in this -- and I'm

1 talking about the second page of Exhibit 27 -- I
2 am heartbroken to think that any child may have
3 been hurt and have deep convictions about the
4 need to protect children and youth. My heartfelt
5 sympathies go out to all those who may have been
6 victimized.

7 I would never hesitate to report a crime
8 if I had any suspicion that one had been
9 committed. The acts of no one person should
10 define this university. Penn State is defined by
11 the traditions, loyalty and integrity of hundreds
12 of thousands of students, alumni and employees,
13 correct?

14 A Correct.

15 Q And this was -- Mr. Beemer, I think, took
16 you through sometimes some statements early on
17 that omitted or had relatively little reference
18 to children, correct?

19 A Correct.

20 Q And that was when you hadn't seen the
21 presentment, but this statement now that I've
22 just read from, by that time the presentment had
23 come out and people knew what Mr. Sandusky had
24 been accused of, correct?

25 A It had been almost a week.

1 Q Okay. So, yes, I'm right?

2 A Correct.

3 Q Okay. So when the details came out,
4 Dr. Spanier made strong efforts to express his
5 sorrow and shock at the accusations involving
6 children; isn't that right?

7 A After advice, yes.

8 Q And Mr. -- Dr. Spanier was someone who in
9 your experience with him, had he ever shown any
10 callousness toward children?

11 A No.

12 Q Had he, in fact, shown concern for
13 children?

14 A Yes.

15 Q I thought I heard you say that, when Mr.
16 Beemer was asking you questions, that Dr. Spanier
17 in one of these meetings didn't say he had
18 himself participated in the earlier incident in
19 2001?

20 A Correct.

21 Q But I thought immediately before that you
22 had -- he had told you that what he had been told
23 about that incident was that it was concerning
24 because it was a man in a shower with a boy, but
25 what was going on was only horseplay. Did I

1 mishear you?

2 A No, that's what Graham Spanier said.

3 Q Okay. So he was told about the 2001
4 incident and told you about the 2001 incident and
5 said that as far as he knew it only involved
6 horseplay, true?

7 A Correct.

8 Q Now, there were other questions from Mr.
9 Beemer that implied that you were kept out of the
10 loop as far as the investigation was concerned
11 early on?

12 A Very much so.

13 Q And then when you talked to Cynthia
14 Baldwin, she said it was no big deal?

15 A Correct.

16 Q It was a fishing expedition, no problem?

17 A There were no charges, don't worry about
18 it, the only thing we had to say was we were
19 aware.

20 Q And do you know whether she was telling
21 other people that same thing?

22 A I do not.

23 Q But Cynthia Baldwin was the contact, the
24 university's main contact with the investigation,
25 true?

1 A I wouldn't know but I would gather.

2 Q Yeah. She's the general counsel,
3 correct?

4 A Correct.

5 Q And she was a former Supreme Court
6 Justice, am I right?

7 A Yes.

8 Q Okay. Did you at any time hear that
9 there is an issue called grand jury secrecy?

10 A Yes.

11 Q How did you -- did you hear that from
12 Dr. Spanier or from Cynthia Baldwin or some other
13 place?

14 A I had only heard it after October 28th.

15 Q Okay.

16 A And my understanding is that the person
17 who testified is able to talk about their
18 testimony if they wish.

19 Q And how did you hear that?

20 A I believe Dr. Spanier and Cynthia Baldwin
21 told the roomful of people at the meeting that
22 that was the case.

23 Q Okay. And do you understand that an
24 error -- a disclosure of things that go on in the
25 grand jury, if one strays over that particular

1 line could be contempt, imprisonment, something
2 like that?

3 MR. BEEMER: Objection to relevance of
4 her knowledge of that.

5 MS. AINSLIE: Your Honor, there was an
6 implication that she was -- there was some
7 sinister reason.

8 THE COURT: I'll let you ask the
9 question.

10 BY MS. AINSLIE:

11 Q So you understand that grand jury secrecy
12 is taken very seriously by the courts, correct?

13 A Yes, for the content of the testimony.

14 Q Okay. If a person knows about an
15 investigation, am I -- well, are people allowed
16 to say to Sara Ganim or someone else, I hear
17 there's a grand jury investigation, I was there,
18 I was -- this is what they're talking about?

19 A Well, the only people --

20 MR. BEEMER: Objection. It's a vague
21 question. Who is someone?

22 BY MS. AINSLIE:

23 Q Okay. Are grand jury leaks of any
24 concern to the public according to the courts to
25 your knowledge?

1 MR. BEEMER: Objection to the relevance
2 of her knowledge.

3 THE COURT: I just don't know that she
4 would know that.

5 MS. AINSLIE: All right. I'll go on.

6 BY MS. AINSLIE:

7 Q Now, you were shown a bunch of e-mails
8 about an inquiry from Jan Murphy, I believe it
9 was?

10 A Yes.

11 Q And she was asking about had we heard
12 anything about an investigation into a former
13 employee, I guess she said?

14 A She said Jerry Sandusky.

15 Q She did. And immediately after that
16 e-mail came in to Dr. Spanier, he replied and
17 blind copied you; is that right?

18 A That's correct.

19 Q And is that in accordance with your
20 normal procedures, that if Dr. Spanier saw
21 something that might be of importance to the
22 university's public image he would let you know?

23 A Yeah. That was standard protocol simply
24 because not only for alerting people to issues
25 but also because media tend to tap everybody.

1 Q Sure. So as soon as -- and I assume that
2 in your job potential problems came to your
3 attention fairly regularly?

4 A Yes.

5 Q Okay. So there was a standard procedure,
6 and as soon as anybody in the organization saw a
7 potential problem on the horizon, you expected
8 them to blind copy or let you know somehow?

9 A It was not a formal procedure. It was
10 based more on people's practices.

11 Q Right. Sure. But it was a need to know,
12 heads up, alert kind of situation?

13 A Correct.

14 Q And so Dr. Spanier was not covering up
15 this issue that had arisen, he was, in fact,
16 alerting you and Bill Mahon and, I believe,
17 others of this inquiry that had come in, correct?

18 A Correct.

19 Q This is a --

20 MS. AINSLIE: I apologize for the botched
21 up copies, but may I approach the witness?

22 THE COURT: Yes, please.

23 BY MS. AINSLIE:

24 Q I'm showing you what I've marked GPS-5,
25 and it purports to be an e-mail from you to

1 Dr. Spanier, Bill Mahon, and Cynthia Baldwin.
2 And I draw your attention to this additional
3 pages that I think this e-mail is in response to.
4 Do you recognize this?

5 A Yes.

6 Q So this is an --

7 THE COURT: Do you have a copy for me?

8 MS. AINSLIE: I'm sorry, Your Honor.

9 I'll give you this one. I think I know it well
10 enough.

11 (Document provided to the Court.)

12 BY MS. AINSLIE:

13 Q Is it fair to say that this is another of
14 the e-mails, Mr. Beemer showed you some, and this
15 is another of the e-mails that were done in the
16 period between October 28th and November 5th or
17 whatever when all hell broke loose, as you said?

18 A Um-hmm, yes.

19 Q This is, again, talking about a potential
20 statement if this comes to pass, this is what we
21 want to have ready?

22 A Correct.

23 Q And I just draw your attention to your
24 having said on October 28th, 2011, I also added
25 in red a stronger dismissal of the claims against

1 Tim and Gary. It's not needed but just a more
2 strongly worded version. Your choice.

3 And is that fairly typical of the sort of
4 exchange that you and Dr. Spanier went through in
5 the course of this week?

6 A I would assume, yes.

7 MS. AINSLIE: May I have a moment, Your
8 Honor?

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 MS. AINSLIE: Nothing further, Your
12 Honor.

13 THE COURT: Thank you, ma'am.

14 MS. AINSLIE: Thank you.

15

16 CROSS EXAMINATION

17 BY MR. FARRELL:

18 Q Good morning, Ms. Powers, I'm Tom
19 Farrell.

20 A Good morning.

21 Q First, I want to correct something. I
22 think Mr. Beemer made a misstatement in one of
23 his first questions to you. He asked you about
24 the September 2010 communications after there was
25 some notice that there was an investigation. Do

1 you recall those questions?

2 A Yes, I recall the 2010 e-mail.

3 Q And he asked you if you talked to the
4 senior vice president of finance and business in
5 order to come up with a response or learn what it
6 was about. Do you recall him asking that?

7 A I do.

8 Q And he said the senior vice president for
9 finance and business, Gary Schultz. But
10 Mr. Schultz was not the senior vice president for
11 finance and business at the time, was he?

12 A You'll have to tell me because I don't
13 recall the order. Gary was and then he wasn't.

14 MR. BEEMER: My recollection is I said Al
15 Horvath. If I did not, then it was a
16 misstatement.

17 THE COURT: Okay.

18 MR. FARRELL: Okay. That's all I wanted,
19 the correction, that Mr. Horvath was the senior
20 vice president in September 2010.

21 THE WITNESS: Okay.

22 BY MR. FARRELL:

23 Q All right. And, in fact, you did not
24 communicate at all with Mr. Schultz in September
25 2010?

1 A No.

2 Q Mr. Schultz returned in a temporary role
3 as senior VP for finance and business after
4 Mr. Horvath left, right?

5 A Correct.

6 Q Which was about September of 2011, right?

7 A I'll have to believe you.

8 Q Okay. Thank you. During that time
9 period from September 2010 to September 2011, we
10 heard there were some communications you had
11 about the investigation with Ms. Baldwin, for
12 example, right?

13 A Correct.

14 Q And you tried to learn what the
15 investigation was about?

16 A Correct.

17 Q In order to make a response to the media
18 if one was deemed advisable?

19 A Correct.

20 Q You never communicated with Gary Schultz
21 in that time period from September 2010 to
22 September 2011 about the investigation, did you?

23 A No, I did not.

24 Q He was not in any of the phone calls you
25 had about the investigation, was he?

1 A No.

2 Q Apparently you had a conversation with
3 Ms. Baldwin after the March 31st, 2011 Sara Ganim
4 article about the investigation?

5 A Correct.

6 Q That was a telephone conversation, not in
7 person?

8 A Correct.

9 Q And the two of you were the only ones on
10 the line?

11 A That's correct.

12 Q And that's the conversation in which she
13 would characterize the investigation as a fishing
14 expedition?

15 A That's correct.

16 Q One of the exhibits included was a
17 statement by President Spanier, a press release,
18 that included press releases from me and from Ms.
19 Roberto. You recall that exhibit, of course?

20 A Yes.

21 Q You had a conversation with Bill Mahon
22 about the inclusion of my statement and Ms.
23 Roberto's statement; is that right?

24 A That's correct.

25 Q And he stated to you that we were told to

1 include my statement and Ms. Roberto's statement;
2 is that right?

3 A Correct.

4 Q Did he clarify told by whom?

5 A The indication was by Graham Spanier.

6 Q All right. Not by anyone else?

7 A No.

8 MR. FARRELL: I have nothing else. Thank
9 you.

10

11

CROSS EXAMINATION

12 BY MS. ROBERTO:

13 Q Good morning, Ms. Powers. My name is
14 Caroline Roberto and I represent Mr. Curley. Can
15 you hear me okay?

16 A Yes, I can.

17 Q Okay. Great. We've never met before?

18 A No.

19 Q We've never communicated by e-mail?

20 A I don't think so.

21 Q We've never communicated by telephone?

22 A No.

23 Q Okay. And when you say that you were
24 given my statement regarding Mr. Curley and it
25 was included in Commonwealth Exhibit 25, you

1 didn't help me write that statement, did you?

2 A I did not.

3 Q Okay. And you received that statement
4 from?

5 A Bill Mahon.

6 Q From Bill Mahon?

7 A Um-hmm.

8 Q Okay. But you didn't meet with me
9 regarding this statement?

10 A I did not.

11 Q And you didn't meet with Mr. Curley
12 regarding this statement?

13 A I did not.

14 Q Okay. Now, you said that I think when
15 Mr. Beemer was asking you a few questions that
16 athletics, the athletic department at Penn State
17 was generally self-contained?

18 A That's correct.

19 Q Okay. And would it be fair to say that
20 if there was a sports matter dealing with the
21 football program, for instance, they would often
22 issue their own public statements?

23 A Depending.

24 Q Depending. And so in this particular
25 case, you said that there was an e-mail that was

1 sent by Sara Ganim to the athletic department and
2 it was forwarded to you?

3 A Um-hmm.

4 Q And would that -- that means yes?

5 A Yes, I'm sorry.

6 Q Was that e-mail forwarded to you by
7 Mr. Curley or by someone else, do you recall?

8 A It was forwarded to a member of my staff
9 who forwarded it to me, but it came from Jeff
10 Nelson.

11 Q Who is Jeff Nelson?

12 A He is the public information officer in
13 athletics.

14 Q And do you know whether he works for
15 Mr. Curley?

16 A Yes, he does.

17 Q Okay. And so at least in this particular
18 situation, there was information flowing from the
19 athletic department to administration?

20 A That was not unusual when there was a big
21 problem.

22 Q Okay. And so we considered this or at
23 least at this point it was considered a problem?

24 A I gather, yes, they sent it to me.

25 Q Okay. And so you said that you never met

1 with Mr. Curley regarding the statement that was
2 included in this November 5th e-mail. Did you
3 meet with Mr. Curley concerning any statement
4 regarding the Sandusky matter?

5 A No.

6 Q All right. And in fact, Mr. Curley, I
7 think you said, at the president's council
8 meeting on November 5th, he was not present?

9 A That's correct.

10 MS. ROBERTO: I have no other questions.
11 Thank you.

12 THE COURT: Thank you.

13 MS. AINSLIE: Your Honor, just one brief
14 point. I think I overlooked formally moving in
15 GPS-5. I would do that at this time.

16 THE COURT: Any objections?

17 MR. FARRELL: No.

18 MR. BEEMER: No.

19 THE COURT: So moved. Any other
20 questions, Mr. Beemer?

21 MR. BEEMER: I just have a follow-up.

22

23 REDIRECT EXAMINATION

24 BY MR. BEEMER:

25 Q Ms. Ainslie asked you if you were all

1 scrambling during that period of time. Were you
2 scrambling more because leadership had not given
3 you any information to address this issue?

4 MS. AINSLIE: Objection. That's totally
5 speculative and totally irrelevant.

6 THE COURT: Overruled. You can answer.

7 THE WITNESS: That would be a large
8 portion of it. Our office had no idea what -- we
9 did not anticipate the presentment, we did not
10 anticipate the fallout, and we were inundated
11 with media from everywhere.

12 And I didn't answer my phones and I
13 couldn't answer e-mails. There were just too
14 many of them.

15 Q And you don't know what information
16 President Spanier had been told during his
17 appearance at the grand jury or any materials, do
18 you?

19 MS. AINSLIE: Objection. What she
20 doesn't know is clearly not relevant.

21 MR. BEEMER: Ms. Ainslie went out of her
22 way to make the point, Your Honor, that nobody
23 had seen the presentment. I think it's a fair
24 question as to --

25 THE COURT: I'll allow her to answer.

1 THE WITNESS: Could you repeat?

2 BY MR. BEEMER:

3 Q Sure. You were not made aware of any of
4 the information, materials or knowledge that
5 Dr. Spanier had in his possession about Jerry
6 Sandusky and his contact with children?

7 MS. AINSLIE: Objection, Your Honor.
8 Again, that implies that he had any. I think --

9 MR. BEEMER: I think we've already
10 introduced evidence that he had some, Your Honor,
11 so I think it's a fair question.

12 MS. AINSLIE: Your Honor, as of 2000 --
13 well, we can argue this later. I'll withdraw the
14 objection.

15 THE COURT: Thank you. You can answer.

16 THE WITNESS: From the September 2010
17 e-mail up until October, I was not told that
18 anyone was appearing before the grand jury. I
19 was not told any additional information.

20 MR. BEEMER: That's all I have.

21 MS. ROBERTO: I just have one brief
22 question.

23 THE COURT: Yes, ma'am.
24
25

1 RE CROSS EXAMINATION

2 BY MS. ROBERTO:

3 Q Ms. Powers, were you aware that as early
4 as February 2010, Judge Feudale of the grand jury
5 issued a nondisclosure order to Penn State
6 regarding the investigation?

7 A I was not aware of the investigation so I
8 was not aware of that.

9 MS. ROBERTO: Thank you.

10 MR. BEEMER: I don't have anything
11 further.

12 MR. FARRELL: I would. I'm sorry.

13

14 RE CROSS EXAMINATION

15 BY MR. FARRELL:

16 Q In your conversations with Ms. Baldwin,
17 did she make you aware that she had appeared in
18 the grand jury with Mr. Schultz, Mr. Curley,
19 Mr. Spanier?

20 A Later in April, she did tell me that we
21 had received a subpoena for all of our records,
22 but I was never told that she appeared or -- I
23 only read it in the newspaper and then questioned
24 her.

25 Q And then you questioned her?

1 A I questioned her after I read that Tom
2 Harmon, Gary Schultz and one other, it may have
3 been Tim Curley, I don't know, had appeared.

4 Q And what did you ask her?

5 A I said what is this about, and she
6 indicated again that it was a past complaint. It
7 was a fishing expedition, no charges had been
8 filed. It was an employee who had not been there
9 for ten years.

10 Q Did she tell you that she had represented
11 Mr. Curley, Mr. Schultz in the grand jury?

12 A No.

13 Q Did she tell you whether or not she was
14 in the grand jury?

15 A No.

16 Q The April subpoena you referred to, did
17 she describe what that was for?

18 A It was for records dating back to, I
19 believe, 1997.

20 Q Did she ask for your assistance in
21 finding records?

22 A No.

23 Q Did she tell you what, if any, search had
24 been done for records?

25 MR. BEEMER: Your Honor, I'm going to

1 object. This is beyond the scope of redirect.

2 THE COURT: How many more questions, Mr.
3 Farrell, but we're definitely behind the scope.

4 MR. FARRELL: Could I just get an answer
5 to that last one?

6 THE COURT: Go ahead.

7 THE WITNESS: No.

8 MR. FARRELL: Thank you.

9 MR. BEEMER: Nothing further.

10 THE COURT: You're dismissed. Thank you
11 very much.

12 (Witness excused.)

13

14

BRADEN COOK,

15 called as a witness, being duly sworn, testified
16 as follows:

17

18

DIRECT EXAMINATION

19 BY MR. BEEMER:

20 Q Could you please state your name?

21 A Braden Cook.

22 Q And, Mr. Cook, how are you employed?

23 A I am the senior supervisory special agent
24 with the Office of Attorney General, Computer
25 Forensics Unit.

1 Q And can you describe briefly your -- one
2 moment.

3 MR. BEEMER: Your Honor, we have a
4 stipulation from counsel that Mr. Cook is an
5 expert in the area of computer forensics and
6 analysis.

7 THE COURT: Thank you.

8 MR. BEEMER: I'll briefly go through
9 that.

10 BY MR. BEEMER:

11 Q Mr. Cook, can you describe what your
12 duties are as the Senior Supervisory Special
13 Agent?

14 A My day-to-day duties include managing all
15 of the agents and labs within the Office of
16 Attorney General Computer Forensic Unit. We have
17 presently two labs, one in Harrisburg/Lemoyne
18 area, and one in the North Huntingdon/Pittsburgh
19 area.

20 Additionally, I supervise the intake and
21 analysis of all computer equipment that is done,
22 and I also participate in the examination. I
23 carry a full caseload as well as all the agents
24 under me, in the intake process of evidence, the
25 processing of evidence, and the production of

1 reports related to the cases that we do.

2 Q And you've been qualified and testified
3 in courts in Pennsylvania previously?

4 A Yes, I have.

5 Q And how long have you been with the
6 office?

7 A I've been with the Attorney General's
8 Office for about eight and a half years, and
9 prior for four years with the Pennsylvania State
10 Police as a civilian examiner as well.

11 Q Now, when did you first become involved
12 in this particular investigation?

13 A Mid-November 2011, I was contacted by the
14 supervisory staff of this case and directed to
15 attend a meeting at Penn State to talk about the
16 production of evidence related to subpoenas that
17 were issued.

18 Q Okay. Prior -- just to give us a time
19 frame, was this -- would this have been after
20 charges were filed against Jerry Sandusky, Gary
21 Schultz and Tim Curley?

22 A I believe the Jerry Sandusky charges were
23 done in the beginning of November 2011. And this
24 would have been subsequent to that.

25 Q Had you been asked prior to that to

1 review or forensically examine any items of
2 information that had been turned over by Penn
3 State relevant to this investigation?

4 A I had not.

5 Q So in mid-November, that was your first
6 initial contact?

7 A Correct.

8 Q Now, did you ultimately work with members
9 of the forensics department at Penn State
10 University to collect evidence potentially
11 relevant to this inquiry?

12 A Yes. During the meeting in November of
13 2011, I met with Mr. John Corro of the security
14 operations and services unit from Penn State, at
15 which point we talked about the process we were
16 going to go through to collect the evidence that
17 was necessary.

18 And then I worked directly with him from
19 beginning -- from November 2011 through December
20 2012 in the collection and processing of the
21 evidence.

22 Q And how much -- can you give us an idea
23 of how much evidence was collected? I don't want
24 you to go through it specifically, but how much
25 evidence was collected in this case?

1 A We identified 108 items that were
2 collected relative to approximately 60
3 individuals. That included desk top computers,
4 laptop computers, cell phones, handheld devices
5 such as I-pads and also server backups, mail, and
6 network file share, files for every individual.

7 Q Okay. Now, once you obtained these items
8 what's your method of examination, what do you
9 do?

10 A The process that was involved in this
11 one, we obtained the original hard drives in the
12 presence of Mr. Corro with the security
13 operations group, and we duplicated the hard
14 drives with Mr. Corro. The duplicate hard drive
15 was returned back to Penn State, and we
16 maintained the original hard drive.

17 After maintaining the original hard
18 drive, we took it to our lab, did a forensic
19 image of each of the hard drives that we could
20 work on with our forensic software, and then the
21 original hard drives were placed into our
22 evidence room.

23 That same process was done with the
24 server results that we got for keyword searching.
25 We, again, imaged all of the hard drives and

1 worked off our forensic images.

2 In relation to the cell phones and the
3 I-pads, they were all imaged with a software
4 called Cellebrite. And the results were then
5 produced back to the investigators.

6 Q And who would give you the direction as
7 to what kinds of information you were looking for
8 given the volume of what you had?

9 A There was a process that we went through
10 with each and every device. The first process
11 was we ran approximately 60 keywords for a search
12 for privileged or confidential material related
13 to attorneys and counsel for either individuals
14 or the University in particular.

15 After that keyword search was completed,
16 those results were turned over to Dwayne Morris
17 in a sealed envelope for them to review for any
18 privileged or confidential information.

19 Q Duane Morris was counsel for Penn State
20 University?

21 A Correct.

22 Q Now, what was the next step?

23 A The next step was to take the items that
24 were not identified under the keyword search.
25 And that would be all of the active files and

1 e-mails. Those were produced over to our
2 investigators for them to keyword search.

3 Additionally, I ran 39 keywords myself on
4 those items relative to the investigation, and
5 that was to identify any information that may be
6 in the unallocated space, which would be deleted
7 files and those kinds of things, and also
8 relative to the e-mails in the files that were
9 not considered for the privilege review.

10 Q Okay. And were -- I want to talk
11 specifically about some of your results that are
12 considered relevant to this matter and this
13 investigation. Did you locate relevant e-mails
14 in a file relating to Gary Schultz, and if you
15 could describe how that occurred?

16 A Yeah. We were reviewing the information
17 that was received. And in March of 2011, we
18 identified that an item that we supposedly had
19 received had not been accounted for. We
20 contacted security operations, and they provided
21 us with a disk of Gary Schultz's network file
22 share files.

23 The network file share is basically when
24 a computer network, you can store files on a
25 server, which is basically the main hub computer

1 for the entire network. And many corporations
2 set up an individual location for each user to
3 store files. That way it's not on their local
4 machine. It's on a place where they can access
5 them from any machine on that network, either
6 from a different office, a conference room,
7 something like that.

8 We received those in March of 2011. And
9 in that was a file called Gary's archived.PST.
10 That file is a mail archive file created using
11 Microsoft Outlook. Inside of that identified
12 several e-mails that were relevant to the matters
13 under investigation.

14 Q And would that have been -- did you
15 become aware of the fact that there was a change
16 that occurred in the mid 2000s that would have
17 necessitated this type of thing to occur in order
18 to preserve earlier e-mails?

19 A Yeah. During the course of the
20 investigation, it was identified that in 2005,
21 the e-mail system went from what was the Eudora,
22 E-u-d-o-r-a, Eudora e-mail system to Microsoft
23 Exchange.

24 At that process, it was identified that
25 Mr. Gary Schultz had a voluminous amount of

1 e-mails and the exchange system would not be able
2 to maintain those e-mails and allow him to move
3 forward with new e-mails.

4 So what was created was this PST archive
5 that could be accessed later using Microsoft
6 Outlook, and then the e-mail system began from
7 there with the Outlook in 2005. And that is how
8 that archive was created.

9 Q Now, you indicated that your review of
10 that particular area located some particularly
11 relevant e-mails?

12 A Yes, it did.

13 Q And what do you do with those once you
14 find them?

15 A When I identified those e-mails, I
16 contacted the review staff with our AG's Office,
17 identified where those were at, and allowed them
18 to identify them. And those e-mails were
19 archived and printed out for use later on.

20 Q And how do -- did some of these e-mails
21 contain communications only between the three
22 Defendants that are here in court today?

23 A Yes, they relate to all three of them.

24 Q Can you describe to the Court how you go
25 about the process of, say, forensically

1 authenticating those e-mails?

2 A To authenticate the e-mails is kind of a
3 twofold process. The first one is to
4 authenticate if the e-mails are true and accurate
5 and unchanged. The process that we took in this
6 case was to look at those e-mails and identify if
7 any changes had been made from the time the
8 archive was created.

9 In this case, the archive was actually
10 supplied to us on a DVD, so we were unable to
11 look at any dates related to the written access
12 dates of the physical PST file. However, every
13 e-mail within that PST file had been unchanged
14 since May of 2005. They were all within the same
15 time frame, actually within seconds of each other
16 being put into the archive, which was consistent
17 with the archive being created in 2005. So those
18 e-mails were unchanged at that point.

19 Additionally, we look at whether or not
20 the e-mail addresses are valid e-mail addresses
21 that would have been able to send and receive
22 e-mails from those. In this case, all of the
23 e-mail addresses were identified as having
24 multiple e-mails sent to and from the e-mail
25 addresses, which identified that they were valid

1 e-mail addresses on the psu.edu network.

2 I should say also that additionally these
3 e-mails were authenticated back to the year 2000.
4 There was an additional item that was received on
5 July 2nd, 2011 -- or 2012, and this was an
6 administration end of year backup that was
7 created in 2007.

8 On that backup were actually the original
9 Eudora e-mail boxes related to Mr. Gary Schultz.
10 And we were able to authenticate the e-mails back
11 to January of 2000 when those Eudora e-mail boxes
12 were actually last accessed.

13 Q Okay. I'm going to show you what I've
14 marked for identification as Commonwealth's 19
15 and ask you if you recognize that document?

16 A Yes, I do.

17 Q What is it?

18 A This is an e-mail that was sent from Gary
19 Schultz to Mr. Tim Curley and cc'd to Mr. Graham
20 Spanier.

21 Q And what was the date on the e-mail?

22 A The e-mail was sent on May 6th, 1999, at
23 2:06 p.m.

24 Q Check the year again, please.

25 A Sorry, 1998. I apologize.

1 Q And was this one of the e-mails that was
2 recovered in the fashion that you've just
3 described for the Court?

4 A Yes, it was.

5 Q Those particular e-mail addresses, did
6 you do anything to go about verifying or
7 authenticating the e-mail addresses and who they
8 relate to?

9 A I did. The e-mail address, gcs2@psu.edu,
10 it was verified as being the e-mail address of
11 Mr. Gary Schultz. In this case, the to and the
12 cc do not contain e-mail addresses. They are
13 just names. The name for the two is Tim Curley.
14 The cc is Spanier-Graham (GBS).

15 In order to identify those, I went back
16 to look to see if there was other e-mails within
17 the e-mail system that was sending and receiving
18 e-mail with these identifiers. The name Tim
19 Curley was gone back to and looked at, and it
20 came up as tmc3@psu.edu as being the address
21 associated with Mr. Tim Curley.

22 And the address for Spanier-Graham (GBS)
23 was identified being GSpanier@psu.edu. And the
24 name Spanier-Graham only occurs in the e-mail box
25 for Mr. Gary Schultz. It's a moniker that is

1 identified through the system. It does not show
2 up in any other e-mail boxes in that fashion.

3 MR. BEEMER: Okay. Your Honor, I would
4 move for the admission of Commonwealth's 19.

5 MS. AINSLIE: No objection.

6 MR. FARRELL: No objection.

7 MS. ROBERTO: No objection.

8 THE COURT: So moved.

9 BY MR. BEEMER:

10 Q Now, the header is what you were just
11 referring to; is that correct?

12 A Correct.

13 Q Now, there's time indicated that the
14 e-mail was sent?

15 A Correct.

16 Q And can you give us an understanding is
17 that -- do you know that to be correct, the time?

18 A There's no way for me to accurately
19 account for the time because the e-mail system
20 that was used was no longer in service. So this
21 was on a server and the time would be generated
22 from that mail server.

23 Without being able to go back and look
24 physically to the original mail server, there's
25 no way accurately to translate that time.

1 Q How about the date?

2 A The date is consistent with all the other
3 e-mails. The dates and times were consistent
4 with all the other e-mails within that archive
5 and within the vast majority of e-mails that I
6 looked at.

7 Q And this particular e-mail, as many
8 others, have subject headers?

9 A Yes, they do.

10 Q The subject header here is what?

11 A Re: Joe Paterno.

12 Q Is there an original or other e-mail that
13 was indicated that it was sent on this particular
14 document?

15 A Yeah, this is actually a reply to an
16 original e-mail that would have had the subject
17 Joe Paterno, and the original e-mail is located
18 at the bottom of this portion where you see the
19 little caret that comes in on the side. And that
20 would be the one that appears to have been sent
21 from Mr. Tim Curley on May 5th, 1998.

22 Q How about that time that's contained in
23 that?

24 A The time on there is 5:24 p.m. with a
25 minus four offset from universal time code.

1 Q What does that mean?

2 A The universal time code is the standard
3 by which all time is calculated, and that is from
4 the Greenwich Mean Time. This is a minus four
5 hours which would put that at Eastern Standard
6 Time.

7 Q And the text reads what?

8 A The text reads, I have touched base with
9 the coach. Keep us posted. Thanks. Tim Curley,
10 tmc3@psu.edu.

11 Q This is the e-mail that Mr. Schultz
12 replies to?

13 A Correct.

14 Q And he replies what?

15 A He replies: Will do. Since we talked
16 tonight I've learned that the Public Welfare
17 people will interview the individual Thursday.

18 Q Describe for the Court when somebody as
19 in this case is cc'd, what happened?

20 A When somebody is cc'd on an e-mail, it
21 would be sent to the e-mail address of that
22 individual. It could be delivered to one of
23 possibly two places, the inbox or a spam box
24 location.

25 In this case, considering that the e-mail

1 address was on the same network psu.edu and was
2 given a moniker, which means it's a commonly used
3 e-mail address, this would go to the actual inbox
4 of the individual.

5 Q I'll show you Commonwealth's 20. Is that
6 another e-mail?

7 A Yes, this is another e-mail that was
8 obtained from the Gary Schultz archive.

9 Q Okay. And I'm going to actually run
10 through these three very quickly, Commonwealth's
11 21 and 22. Are they all referenced e-mails
12 around the same time?

13 A Yes, they do. They are all an actual
14 e-mail from an e-mail string, and that would be a
15 conversation back and forth between individuals.

16 MR. BEEMER: Your Honor, I move for the
17 admission of 20 through 22 collectively.

18 THE WITNESS: The individuals on --

19 MR. BEEMER: Hold on one second.

20 MS. ROBERTO: No objection.

21 MR. FARRELL: No objection.

22 MS. AINSLIE: No objection.

23 THE COURT: So moved.

24 BY MR. BEEMER:

25 Q Go ahead.

1 A The individuals on No. 20, it was from
2 Gary Schultz to Tim Curley.

3 Q No. 20, is this also a response e-mail?

4 A Yes, this is a response e-mail. The
5 original e-mail was from Mr. Tim Curley.

6 Q What was the text of that?

7 A The original or the response?

8 Q The original.

9 A The original e-mail was sent from
10 Mr. Curley on May 13th, 1998 at 2:21 p.m. And
11 the text is: Anything new in this department?
12 Coach is anxious to know where it stands.

13 Q And the reply?

14 A The reply from Mr. Schultz to Mr. Curley
15 was: Tim, I understand that a DPW person was
16 here last week; don't know for sure if they
17 talked with Jerry. They decided to have a child
18 psychologist talk to the boys sometime over the
19 next week. We won't know anything before then.

20 Q Now, is it possible for -- I mean,
21 someone could take this, for example, in this
22 case Mr. Schultz, could send an e-mail to someone
23 else and forward the text of this so that someone
24 would know what the context is?

25 A It is possible to forward the e-mail,

1 yes. In those cases, it would actually come up
2 with a subject line generally of forward
3 represented by an FW or an FWD.

4 Q And No. 21?

5 A No. 21 is, again, from Mr. Gary Schultz
6 to Tim Curley. And this is a response back as
7 well.

8 Q And what is that response?

9 A There's actually three responses on
10 there. The first is the original e-mail that was
11 sent on May 13th, 1998 that was represented in
12 Exhibit No. 20. And the response as well, that
13 was represented in No. 20.

14 Q So is it fair to say that -- well, let me
15 ask you. Is it likely that Mr. Curley on May
16 18th, 1998 just replied to the original -- to
17 Mr. Schultz's reply of his original e-mail?

18 A Yes. There was -- Mr. Curley sent the
19 original e-mail. Mr. Schultz replied to it.
20 Mr. Curley then sent another reply back, and this
21 is a response back from that third reply.

22 And Mr. Curley replied to Mr. Schultz on
23 May 18th, 1998 at 9:37 p.m.: Any update?

24 Q And what was the reply?

25 A And Mr. Schultz then replies back: No,

1 but I don't expect we'll hear anything prior to
2 the end of this week. And that was sent on May
3 19th, 1998 at 1:47 p.m.

4 Q And 22?

5 A 22 is a continuation of this e-mail
6 string with a response from Tim Curley to Exhibit
7 No. 21 on May 30th, 1998 at 10:27 a.m. And the
8 text is: Any further update?

9 And then Mr. Schultz responds back to
10 Mr. Curley on June 9th, 1998 at 2 a.m.: Tim, I
11 don't have an update at this point. Just before
12 I left for vac, Tom told me that the DPW and
13 university police services were planning to meet
14 with him. I'll see if this has happened and get
15 back to you.

16 Q Okay. Now I want to show you -- did you
17 also recover -- and there have been a number of
18 other e-mails from 1998 that have already been
19 introduced. But did you recover any e-mails that
20 were relevant to the investigation in February of
21 2001?

22 A Yes, I did.

23 Q And did you recover them in the same way?

24 A Yes, they were actually from the same
25 archive. Within the archive of Gary 's

1 archive.PST, there were folders that were
2 labelled 1998, 1999, 2000, and 2001, and they
3 were recovered the same way from the exact same
4 location, I believe.

5 Q I'm going to show you a document I marked
6 for identification as Commonwealth's 23 and ask
7 you if you can identify that?

8 A This is an e-mail that I did recover,
9 yes.

10 Q And what is it?

11 A This is an e-mail from Gary Schultz to
12 Graham Spanier and Tim Curley. And this is
13 actually a conversation between the three of the
14 individuals.

15 Q Now, is it fair to say most of these
16 e-mails that you were recovering were e-mails
17 that were -- where the original was sent by Gary
18 Schultz?

19 A Correct.

20 Q Why is that?

21 A Because they were found in his archive,
22 and these are the e-mails that were sent from him
23 to other individuals.

24 Q These particular items were -- were these
25 e-mails you're identifying as Gary Schultz, Tim

1 Curley, Graham Spanier, were these -- you were
2 able to identify these particular e-mail boxes?

3 A I was. Unfortunately, we weren't able to
4 find any of the other e-mails in either
5 Mr. Curley's e-mail boxes or Mr. Spanier's e-mail
6 boxes.

7 MR. BEEMER: Your Honor, I move for the
8 admission of Commonwealth's 23.

9 MR. FARRELL: No objection.

10 MS. AINSLIE: No objection.

11 THE COURT: So moved.

12 BY MR. BEEMER:

13 Q On Commonwealth's 23, I want to start at
14 the bottom text from Tim Curley. If you could
15 identify that information?

16 A The information from Mr. Curley was sent
17 February 27th, 2001 at 8:10 p.m. And the text as
18 well?

19 Q Yes.

20 A The text reads -- and you'll see right at
21 the very beginning where it says block quote
22 type, that is actually formatting that is put in
23 there from a web page. So that wasn't part of
24 the actual e-mail. That was just some formatting
25 that's in there.

1 Q Okay.

2 A The text starts: I had scheduled a
3 meeting with you this afternoon about the subject
4 we discussed on Sunday. After giving it more
5 thought and talking it over with Joe yesterday, I
6 am uncomfortable with what we agreed were the
7 next steps. I am having trouble with going to
8 everyone but the person involved. I think I
9 would be more comfortable meeting with the person
10 and tell him about the information we received.

11 I would plan to tell him we are aware of
12 the first situation. I would indicate we feel
13 there is a problem and we need to assist the
14 individual to get professional help. Also, we
15 feel a responsibility at some point soon to
16 inform his organization and and maybe the other
17 one about the situation.

18 If he is cooperative, we would work with
19 him to handle informing the organization. If
20 not, we do not have a choice and will inform the
21 two groups. Additionally, I will let him know
22 that his guests are not permitted to use our
23 facilities.

24 Q And was there a response to that e-mail?

25 A Actually, there's another line to that

1 e-mail.

2 Q I'm sorry.

3 A I need some help on this one. What do
4 you think about the approach?

5 Q And was there a response to that?

6 A It looks like there was another comment
7 made to that subsequent at 10:18 p.m. by
8 Mr. Graham Spanier.

9 Q Could you read the text of that, please?

10 A The text is: Tim, this approach is
11 acceptable to me. It requires you to go a step
12 further and means that your conversation will be
13 all the more difficult, but I admire your
14 willingness to do that and I am supportive.

15 The only downside for us is if the
16 message isn't heard and acted upon, and we then
17 become vulnerable for not having reported it.
18 But that can be assessed down the road. The
19 approach you outline is humane and a reasonable
20 way to proceed.

21 Q And the final reply from Mr. Schultz?

22 A The final reply is: Tim and Graham, this
23 is a more humane and upfront way to handle this.
24 I can support this approach with the
25 understanding that we will inform his

1 organization with or without his cooperation. I
2 think that's what Tim proposed. We can play it
3 by ear to decide about the other organization.

4 Q Now, did you do a review of the
5 information that was obtained relevant to Graham
6 Spanier?

7 A Yes, I did.

8 Q Could you describe that for the Court?

9 A On the initial information that we
10 received for Graham Spanier, which would have
11 been the desk top computer and several other
12 items, I reviewed both the files and the e-mail
13 that was contained on those systems. It was
14 noted that the e-mail box that was received
15 contained no e-mails.

16 Additionally, we reviewed items that were
17 contained on the archive from 2007. And several
18 e-mail boxes for Mr. Spanier were identified
19 under two different e-mail addresses. One was
20 president@psu.edu and one was GSpanier@psu.edu.
21 Both those e-mail boxes did contain e-mails. The
22 e-mails on that system ranged from 1995 through
23 2007.

24 Q There were e-mails as far back as 1995?

25 A Contained on that system, yes, and those

1 were in the Eudora e-mail boxes.

2 Q Were any of the e-mails that I just
3 showed to you, specifically Commonwealth's 23 and
4 Commonwealth's 19, were either of those e-mails
5 contained in that system?

6 A They were not.

7 Q I'm also going to -- I'm going to show
8 you what's been previously admitted as
9 Commonwealth's 8 and ask you if you can tell me
10 whether this particular e-mail was located within
11 that system?

12 MS. AINSLIE: I'm sorry, what number is
13 it?

14 MR. BEEMER: No. 8.

15 THE WITNESS: No, these were not
16 identified in his e-mail boxes either.

17 BY MR. BEEMER:

18 Q Now, one of the people on Commonwealth's
19 Exhibit 8 who was copied was the chief of police
20 at the time, Tom Harmon. If Mr. Harmon would
21 have received that e-mail in the cc, can you
22 describe for us what relevance that might have to
23 anybody else that's contained on the e-mail?

24 A The way the cc is set up, you'll see both
25 individuals that were cc'd on this were

1 identified by what is considered a moniker or an
2 identifying name related to an e-mail address.

3 In this case the moniker for Mr. Harmon
4 is Harmon-Thomas (TRH). And this would have been
5 related to Mr. Harmon's psu.edu e-mail address.
6 It is set up in the same fashion as the other
7 e-mail Spanier-Graham (GBS) and would also have
8 been a moniker for Mr. Spanier's e-mail address
9 on the psu.edu system, which would have been the
10 GSpanier@psu.edu e-mail.

11 Considering that the e-mail address was a
12 valid e-mail address and was being used at the
13 time, it would be -- it would have been delivered
14 to his e-mail box. So both individuals would
15 have received that e-mail.

16 Q I believe you talked about this earlier,
17 but there's one of two ways it can come in,
18 either in the inbox or the spam box?

19 A In an inbox or a spam box. Generally a
20 spam box is used for e-mails that could possibly
21 be outside of the e-mail network, in this case
22 psu.edu, or for e-mails that are used for
23 advertisements or the such.

24 Considering this was within the psu.edu
25 system and that it was a commonly used e-mail

1 address that was used to converse back and forth,
2 it would have been delivered to the inbox and not
3 a spam box. I identified that because there was
4 other e-mails between the individuals that were
5 present that were using the same e-mail address.

6 Q Can you give the Court an idea of when
7 you say there were e-mails located as far back as
8 1995 in Mr. Spanier's box, is that something that
9 he had -- would he have had to have done
10 something during the changeover to make that
11 happen; and by changeover I mean when they
12 changed systems?

13 A The e-mails that were identified back in
14 1995 and prior to 2005 were in the old Eudora
15 e-mail system. Those e-mail boxes are separate
16 from what the changeover system was, Microsoft
17 Exchange.

18 During the process, the e-mails would
19 have been imported from Eudora into the Microsoft
20 exchange system. So any e-mails prior to 2005
21 would not have been acted upon, deleted or
22 changed in the migration.

23 So any e-mails that were there were
24 retained by the owner of the e-mail box. Any
25 e-mails that were deleted would have been

1 selectively deleted by that individual as well.

2 Q Suffice it to say the relevant
3 information that you have discussed today and
4 that was presented came exclusively or almost
5 exclusively from one location?

6 A Correct.

7 Q And that was where?

8 A That was from the Gary Schultz e-mail,
9 either from the archive or they're actually
10 identified in the original Eudora e-mail boxes as
11 well.

12 Q And the decision that he would have made
13 to do that would have occurred when; in other
14 words, to keep those?

15 A After the e-mail was received.

16 Q But, I mean, when would that change --
17 when would that have occurred during the
18 changeover?

19 A Actually, the e-mails were retained back
20 when they were originally received because they
21 were still located in the original Eudora mail
22 boxes. When the e-mail system was changed, those
23 e-mail boxes were imported into the exchange
24 system and would have been retained as well.

25 So the decision to keep them would have

1 been back in 1998 and those years subsequent to
2 that.

3 MR. BEEMER: That's all I have.

4 THE COURT: Can we take a recess?

5 MS. AINSLIE: Of course.

6 THE COURT: We'll adjourn until 10 after
7 11. Thank you.

8 (Court was held in recess at 10:48 a.m.)

9 (Recess.)

10 (The following proceedings occurred,
11 beginning at 11:07 a.m.):

12 MR. BEEMER: Can we approach for one
13 second?

14 THE COURT: Yes.

15 MR. BEEMER: It can be off.

16 (A discussion was held off the record at
17 sidebar.)

18 THE COURT: Welcome back. I believe we
19 were ready for cross.

20 MR. BEEMER: Yes.

21

22 CROSS EXAMINATION

23 BY MS. AINSLIE:

24 Q Good morning, Mr. Cook.

25 A Good morning.

1 Q I'm Elizabeth Ainslie. I'm here
2 representing Graham Spanier.

3 I am a complete novice at computers, so
4 please bear with me.

5 A No problem.

6 Q Now, I have been laboring under the
7 impression that Penn State gave me that there
8 were no e-mails retrievable from before 2004 or
9 2005. Am I hearing you right that you say that's
10 wrong?

11 A In the original e-mail box that was
12 collected, which would be the present up to the
13 time that it was collected. In the present
14 e-mail system, there were no e-mails in that
15 e-mail box.

16 Q Okay.

17 A However, there was a backup that we
18 received on July 2nd, 2012.

19 Q Who gave you that if I can ask?

20 A That was from Penn State. It was a taped
21 backup system that was identified, I believe, in
22 a closet was the information I had. It was then
23 sent out to a company called Reclamere and they
24 restored that to a hard drive.

25 We received that from Penn State on July

1 2nd, 2012, and that was a year end backup from
2 2007 for the administration. And there were
3 e-mail boxes on there that contained e-mail from
4 2007 and prior.

5 Q You know nothing more about the
6 providence of this additional collection of
7 e-mails than that you've got it from Penn State?

8 A They turned it over subsequent to the
9 subpoenas.

10 Q Okay.

11 A That's all I know.

12 Q Okay. Have you talked to the IT people
13 at Penn State about what happened in this
14 transition?

15 A You would have to ask them how that was
16 done. They didn't relay any information except
17 that they identified it, sent it to a company to
18 be restored, and then I received the encrypted
19 restored information.

20 Q So you just got it -- you haven't talked
21 to any of the IT people at Penn State about how
22 this phenomenon came about?

23 A As far as how it was received?

24 Q No. As far as, I mean, it sounds like a
25 relatively strange phenomenon whereby you saw

1 some e-mails from earlier than 2004 and some not?

2 A It's not a strange phenomenon in the fact
3 that the e-mails in the present system could have
4 been deleted by the user prior to the collection
5 of the data.

6 Q Right.

7 A The e-mails --

8 Q In fact, aren't we encouraged to do that
9 by IT people, delete things as soon as we deal
10 with them?

11 A I don't know if you are or not. I'm not.
12 I keep e-mails that are relevant to information
13 that I may be dealing with in cases for several
14 years.

15 Q Oh, yes. But then when you don't need it
16 anymore, you delete it; am I right?

17 A If I decide that it's not relevant or
18 something that I don't need to have, I will
19 delete my e-mails, yes.

20 Q And are you aware that people often are,
21 especially people who get large quantities of
22 e-mail, encouraged by their IT people to delete
23 unnecessary e-mails from storage; isn't that
24 right?

25 A It may be that some IT departments do

1 that.

2 Q Okay. Now, one of the things that you
3 said, I think, was you were asked by Mr. Beemer
4 about certain e-mails; for instance, Commonwealth
5 Exhibit 19. Do you have that in front of you?

6 A Yes, I do.

7 Q And that's one of two e-mails that you
8 have talked about that actually have Graham
9 Spanier's name on, correct?

10 A Yes, and they're both in a cc format.

11 Q Right. The one that we're looking at
12 now, Commonwealth 19, he's cc'd on an e-mail
13 exchange between Mr. Schultz and Mr. Curley and
14 the RE line is Joe Paterno, right?

15 A Correct.

16 Q Is Jerry Sandusky's name anywhere in this
17 e-mail exchange?

18 A I don't see it in there, no.

19 Q And basically the only thing this e-mail
20 says is: Since we talked last night I've learned
21 that the Public Welfare people will interview the
22 individual Thursday, right?

23 A That is what it says, correct.

24 Q So for all that the world knows, they
25 could be interviewing Joe Paterno about

1 something, isn't that?

2 A I'm not familiar with what the context
3 is.

4 Q And, likewise, the other e-mail that you
5 were asked to look at -- well, go back to another
6 -- sorry, there were three e-mails. I misstated
7 that. Exhibit 8, do you have that in front of
8 you?

9 A Yes, I do.

10 Q And, again, Dr. Spanier is just copied on
11 that e-mail?

12 A His is a cc on this, correct.

13 Q Okay. And it says they met with Jerry.
14 It doesn't say Sandusky but just says Jerry; am I
15 right?

16 A It does say Jerry, correct.

17 Q And concluded there was no criminal
18 behavior. I think the matter has been
19 appropriately investigated and I hope it is now
20 behind us. Am I reading that correctly?

21 A You actually skipped one of the sentences
22 in there.

23 Q Correct.

24 A I related to you --

25 Q He was a little emotional and expressed

1 concern as to how this might have adversely
2 affected the child. And then it goes on and
3 says: I think this matter has been appropriately
4 investigated and I hope it is now behind us?

5 A That is what it says.

6 Q So there's nothing more to be done with
7 this issue, is that the way you interpret that?

8 A That's just the conversation that they
9 had.

10 Q Okay. And, finally, with respect to
11 Commonwealth 23, there is an e-mail actually from
12 Dr. Spanier in the middle of this page?

13 A It would appear that the information from
14 Mr. Spanier occurred in between the conversation
15 of the other two.

16 Q Okay. So it's a conversation?

17 A Correct.

18 Q At one point Dr. Spanier is talking about
19 seeing to it that a message is received by the
20 individual? Do you see that? The only downside
21 for us is if the message isn't heard and acted
22 upon?

23 A Yes.

24 Q Do you know what message he was talking
25 about?

1 A I only know what's in the e-mail.

2 Q So you don't know what Dr. Spanier was
3 told about this issue, it doesn't appear on the
4 face of the e-mail, does it?

5 A The only thing I can say as to what he
6 was told was what was written by Mr. Curley as to
7 what he would be told.

8 Q Okay. So you can't add anything to the
9 surface of these e-mails?

10 A I wouldn't add anything to the e-mail
11 that would change the --

12 Q Okay. Now, in the course of your work on
13 the e-mail files at Penn State, is it fair to say
14 that on an average basis Dr. Spanier received
15 hundreds of e-mails or at least a hundred daily?

16 A I wouldn't know that because the e-mail
17 system that was present had no e-mails in it, so
18 I wouldn't be able to tell you how many he
19 received or did not.

20 Q Did you look into the deleted e-mails,
21 into the outbox?

22 A I looked in all aspects of his e-mail
23 system. His e-mail box was actually quite large,
24 but there were no e-mails in the inbox or outbox.
25 It was all deleted.

1 Q And do you know -- when did you receive
2 this?

3 A I received the information related to his
4 e-mail box, I believe it was on December 22nd or
5 December 28th, 2011.

6 Q So he had already been gone for eight
7 weeks by then?

8 A I don't know when Mr. Spanier left the
9 university.

10 Q You don't know when he left?

11 A No.

12 Q Did you ask anyone at the IT facility
13 again, Mr. Neeper, Mr. Corro, any of the people
14 at Penn State, why there were no e-mails that you
15 could see in that box?

16 A Actually, I did ask because it was kind
17 of an interesting point.

18 Q Yeah.

19 A And they related that he received
20 multiple e-mails and actually maintained multiple
21 e-mails on a regular basis, and they couldn't
22 explain why he had deleted all the e-mails out of
23 his e-mail box because he regularly maintained a
24 large volume of e-mail.

25 Q Okay. So it's a mystery?

1 A To them, they just explained that he
2 deleted everything.

3 Q Okay.

4 A That was what was expressed to me.

5 MS. AINSLIE: Okay. Thank you. We'll
6 ask Mr. Neeper if we see him. Thank you.

7 (Pause.)

8 MS. AINSLIE: I'm sorry. May I ask one
9 more question?

10 THE COURT: Yes, ma'am, of course.

11 BY MS. AINSLIE:

12 Q Mr. Cook, I'll still puzzled, I'm sorry.
13 A witness from Penn State testified a few days
14 ago saying that there were something like 84,000
15 e-mails in Graham Spanier's outbox. Can you
16 explain that?

17 A I wasn't here for his testimony. I'm not
18 sure as to what he would be referring to.

19 MS. AINSLIE: Okay. Thank you.

20

21 CROSS EXAMINATION

22 BY MS. ROBERTO:

23 Q Good morning.

24 A Good morning.

25 Q My name is Caroline Roberto and I

1 represent Mr. Curley, who is a former athletic
2 director at Penn State. And I want to ask you a
3 couple questions. Okay?

4 A Sure.

5 Q I think you said when you were talking
6 about the e-mails related to the 1999 -- I'm
7 sorry, 1998 e-mail thread and then the February
8 2001 e-mail, that you hadn't found any of those
9 e-mails in Mr. Curley's e-mail account; is that
10 right?

11 A Correct.

12 Q Okay. Now, when you were working with
13 Penn State in gathering these e-mails in November
14 and December and forward after that, did you
15 attempt to access athletic department e-mails
16 prior to 2004?

17 A We had requested from the athletic
18 department. The way Penn State has their
19 information set up, the athletic department has
20 their own network --

21 Q Sure.

22 A -- and e-mail servers. We requested from
23 them any and all backups that they maintained.
24 The information that was relayed back to us is
25 that there were no backups that were retained

1 prior to that time frame. And we were going off
2 the subpoenas, so that's the information that we
3 had.

4 Q Okay. And so there were no backups
5 because was it your understanding that in late
6 2003, 2004, that time frame, the athletic
7 department changed e-mail servers?

8 A I don't remember how they -- how their
9 e-mail system works. I know that the university
10 as far as the administration changed from the
11 Eudora system to the exchange system. I assume
12 that the e-mail system had changed also with the
13 athletic department, but they just maintained
14 that there were no backups that were maintained.

15 Q Did you ever attempt to further
16 investigate whether there were indeed any backups
17 from -- prior to 2004 in the athletic department?

18 A Again, we made requests to the athletic
19 department, to the administrator of the network
20 for that through Mr. Corro. Again, we were
21 working on subpoenas to produce any and all
22 backups, and the information that they returned
23 to us is that there were none.

24 Q Okay. So do you have any evidence that
25 there were backups from the athletic department

1 pre2004 e-mail system?

2 A Again, they didn't supply anything to us,
3 so unless they were withholding stuff that they
4 didn't inform us of, we have no backups.

5 Q Do you have any evidence that they were
6 withholding?

7 A Again, we have nothing from them. They
8 said there were no backups. They didn't supply
9 us with any.

10 Q And did they supply you with everything
11 that they did have in the way of backups from the
12 administrative offices?

13 A Again, we requested it. They supplied us
14 with what they supplied us. Unless they were
15 withholding stuff that we didn't know about, I
16 would assume that we received everything.

17 Q Okay. You would assume that you received
18 everything. Do you know whether there was other
19 agency, any other agency, law enforcement or
20 internal investigation, that attempted to
21 reconstruct the athletic department pre2004
22 e-mail backup?

23 A I don't know that they did that.

24 Q So when you say that there were no
25 pre2004 e-mails from Mr. Curley, there were no

1 pre2004 e-mails for anybody in the athletic
2 department?

3 A Only what we received in their active
4 e-mail system. I would have to review all of the
5 e-mail boxes we received from them to identify if
6 there was any e-mails contained in those prior to
7 2004.

8 Q Okay. So you're not willing to say here
9 today -- well, let me ask you this. Do you have
10 any e-mails from Mike McQueary related to this
11 2001 incident?

12 A We have e-mails from Mike McQueary. I
13 don't know if -- the evidence that I have in
14 front of me doesn't have anything from his e-mail
15 box.

16 Q From 2001?

17 A Not that I know of. I believe there were
18 e-mails from him but I don't -- I can't say that
19 with certainty.

20 Q But it's true that when you went and
21 began working with the Penn State University
22 IT Department, you asked for the e-mails, all
23 e-mails from Paterno, McQueary, Curley, Bradley,
24 Federino, Ganter, Caldwell, and Diehl?

25 A There was approximately 60 individuals

1 from Penn State within the athletic department,
2 administration, police services and physical
3 plant that we requested. The individuals that
4 you just stated were a small portion of the
5 individuals from the athletic department that we
6 requested.

7 Q Okay. And so you would have requested
8 all e-mails from those persons as well?

9 A Yes, they were subpoenaed to supply any
10 and all e-mails and files and computers related
11 to those individuals.

12 Q Okay. Did you ever speak with a systems
13 administrator by the name of Rand Allison who
14 worked at the athletic department?

15 A Not personally I did not, no.

16 Q But you know who he is?

17 A I do not.

18 Q So your only contact person was Braden
19 Cook -- you're Braden Cook. Your only contact
20 person was John Corro?

21 A Our contact person was John Corro.
22 Within the university in response to the
23 subpoenas, he would contact the administrators
24 that were relative to that. I did actually sit
25 in on an interview and conduct an interview with

1 Mr. Neeper. That was the only administrator that
2 I interviewed.

3 Q So when you found out, when you gained
4 the information that there were no backups,
5 pre2004 e-mails in the athletic department, did
6 you receive that information from Mr. John Corro?

7 A I believe that's who it would have been
8 through.

9 Q Okay. I'm going to show you what's been
10 marked as Commonwealth Exhibit 21 and I want you
11 to compare it with Commonwealth Exhibit 8.

12 A I do have those in front of me.

13 Q Okay. Take a look at Commonwealth
14 Exhibit 21.

15 A Yes.

16 Q It's from Gary Schultz to Tim Curley.
17 The time on there is 1:47 p.m.; is that right?

18 A And you're looking at 21?

19 Q I am looking at 21.

20 A Up at the top, correct.

21 Q Yes. Now, if you could look at
22 Commonwealth Exhibit 8.

23 A Okay.

24 Q This is an e-mail thread that contains
25 the same e-mail. Do you see that?

1 A Yes.

2 Q In the middle of the page it says: You
3 wrote; and before that it has the time 9:46 a.m.?

4 A Correct.

5 Q Okay. Could you explain the time
6 difference?

7 A I'm not positive on this. Again, I don't
8 have the servers in front of me. One of the
9 possibilities is the server that -- the e-mail
10 server that the administration would be using and
11 the e-mail server that the athletic department
12 would be using are separate and individual
13 servers.

14 So without having those servers, I cannot
15 verify the dates and times, the time that was set
16 on that server.

17 Q So are you saying that one of them would
18 have had the wrong time or could have had the
19 wrong time?

20 A It could be a different time. It also
21 could be a translation of the time. As you see,
22 one of them says 1:47 p.m. The other one says
23 9:46 a.m. minus four hours, which would be
24 approximately the exact same time if you add the
25 four hours.

1 So one of them could be related in
2 universal time code and one could be in Eastern
3 Standard Time.

4 MS. ROBERTO: Okay. Thank you. That's
5 all I have.

6 MS. AINSLIE: Your Honor, I do have one
7 more question but if Mr. Beemer has redirect --

8 THE COURT: Mr. Beemer, can Ms. Ainslie
9 ask another question? Are you ready for
10 redirect?

11 MR. FARRELL: Your Honor, we have some
12 questions.

13 THE COURT: All right. Please.

14

15 CROSS EXAMINATION

16 BY MR. MATANGOS:

17 Q Is it Agent Cook?

18 A Yes, it is.

19 Q Agent Cook, my name is George Matangos.
20 I'm co-counsel for Gary Schultz. I have a few
21 questions for you.

22 A Sure.

23 Q If you don't understand my question,
24 please ask me so I can clarify it so we're on the
25 same page. Okay?

1 A Not a problem.

2 Q You said in answer to Mr. Beemer's
3 question that you were asked to become involved
4 in November of 2011. Who were you asked by?

5 A I was asked by the attorneys and
6 supervisory staff within our office who were
7 doing the investigation to attend a meeting in
8 November.

9 Q Was that Attorney Fina?

10 A He was one of them, correct.

11 Q Ms. Eshbach?

12 A She was part of the team.

13 Q Was Agent Sassano part of that
14 discussion?

15 A He was the original investigating
16 attorney -- or investigating agent.

17 Q Okay. You indicated in your direct
18 examination that you got this network share file,
19 Gary Schultz's network share file?

20 A Correct.

21 Q In March of 2011?

22 A We received that in, I believe it was,
23 March 23rd, 2011.

24 Q So that was prior to your actual
25 involvement, right?

1 A I'm sorry, March 23rd, 2012. I
2 apologize.

3 Q I assumed. I didn't want to put it into
4 your mouth. It was 2012 actually?

5 A Yes, I'm sorry. I apologize.

6 Q And who provided that to you?

7 A That was provided to me by John Corro.

8 Q John Corro testified yesterday about
9 recovering some 30 terror bytes of information
10 from the Penn State system.

11 A That is correct.

12 Q Was that all provided to the Office of
13 the Attorney General?

14 A Yes, it was.

15 Q Do you know if that material was provided
16 to anyone else?

17 A I don't know. That would have to be
18 asked by -- asked of Penn State. We did not
19 provide anything to anybody else.

20 Q You did not provide anything to any other
21 investigating agencies or to the Freeh group or
22 to Duane Morris or anyone?

23 A To Duane Morris, we did provide them with
24 the information to privilege review. All other
25 items if it was produced, it was produced by Penn

1 State. We didn't produce anything.

2 Q Mr. Corro said there are only two of them
3 in the Penn State IT forensic unit, himself and
4 another gentleman. Was it Mr. Corro that you
5 worked with directly?

6 A Mr. Corro was the main person I worked
7 with. There was another individual, Dan, I
8 believe his last name was Ehrlich, but I'm not
9 completely positive on that. He did assist
10 Mr. Corro, but I dealt directly with Mr. Corro on
11 almost everything.

12 Q Mr. Corro testified about he was asked by
13 Mr. Beemer about wiping data off hard drives.
14 Can you just briefly in your own words describe
15 what you understand wiping data to mean?

16 A Wiping data can mean deleting items and
17 then overwriting them one or multiple times to
18 erase all data.

19 Q Where does that get erased from?

20 A That gets erased from the hard drive or
21 server that the data resides on.

22 Q So, in fact, you could from your computer
23 if your computer storage is on the network
24 server, you could delete material from that
25 network server on your own computer?

1 A You can delete it. It would depend on
2 the program that you were using whether or not it
3 would allow you to wipe. Generally, you can only
4 wipe it on the machine that you're running the
5 program on.

6 Q Mr. Corro mentioned something called auto
7 delete as well. What's that?

8 A I don't know what he was referring to.

9 Q He was asked questions about e-mails and
10 about taking specific information, putting it
11 into a trash bin or recycling bin. And then
12 there's a physical way to empty that trash bin,
13 correct?

14 A Yes, you can empty your trash bin.

15 Q Is there also such a thing as an auto
16 delete that will empty a trash bin at certain
17 time frames or certain quantities of product are
18 in it, is there anything like that?

19 A I don't know what program he's referring
20 to or how it would be set up.

21 Q Can it be set up?

22 A It would depend on the product you're
23 talking about.

24 Q Have you ever known such a thing to
25 exist?

1 A I have seen trash bins can be set up to
2 delete but, again, it would depend on the program
3 that was being used.

4 Q This 30 terror bytes of information, is
5 it my understanding, and please correct me if I'm
6 wrong, that the search that was done on the 30
7 terror bytes was done with search words or
8 specific -- asking for specific words to be
9 sought out in the material?

10 A Yes. It was a string of text that was
11 used to identify anything that might be relevant.
12 Additionally, a majority of the e-mails that were
13 identified, we then went through and identified
14 one by one all of the e-mails and reviewed all
15 the e-mails in that same time frame to identify
16 if there was anything else that didn't contain
17 those key words.

18 Q So the string of words, was that --
19 No. 1, was that created in conjunction with the
20 other investigators or were you asked to provide
21 relevant information for that string or how did
22 that work?

23 A I had some keywords that were obviously
24 relevant, anything like Jerry or Sandusky. But
25 other keywords were provided to me by the case

1 investigators, and then additional keywords were
2 identified through e-mails that may be relevant
3 to find out if there was any other string of text
4 that might -- or e-mail strings that might be
5 relevant with that string.

6 Q Okay. So besides the string, you also
7 went back then and looked for specific
8 information that contained e-mail addresses that
9 you were able to pull from the material, correct?

10 A I'm sorry. Repeat that question one more
11 time.

12 Q Did you use e-mail addresses as well to
13 search?

14 A We didn't use e-mail addresses because
15 the e-mail addresses would be identified over a
16 broad spectrum. We actually used terms that were
17 contained within e-mails that we identified. We
18 did look at all the e-mail addresses.

19 The way the system was done, each
20 individual when I did the forensic examinations,
21 I examined each individual's hard drives
22 separately from all the other individuals, each
23 individual's e-mail separately from all other
24 individuals.

25 So each thing was done in a separate

1 examination. So I had approximately two to three
2 hundred different examinations that were
3 performed. So it wasn't all the information
4 together.

5 Q Right. Are these -- when you say these
6 active searches, I'm assuming for a forensic
7 examiner this is kind of common practice,
8 correct?

9 A Yes.

10 Q Is it the standard of practice for
11 searching this type of material?

12 A We do it through keyword searches. We do
13 it through file extensions if we're looking at
14 documents or e-mails. We also do it on a one by
15 one, look at the text and review it manually.

16 Q It goes without saying it would be
17 impossible to physically review each and every
18 one of the entries as a physical document since
19 there were 30 terabyte of information; is
20 that fair to say?

21 A There's a lot of information to go
22 through, yes.

23 Q We were told yesterday that one terabyte
24 would be almost equivalent to all of the
25 paper product within the Library of Congress.

1 A That would be about accurate, yes.

2 Q In your review, as I understand your
3 testimony, everything we've seen regarding
4 e-mails came from Gary Schultz's network server
5 file prior to 2005, correct?

6 A I believe all the ones that I've seen
7 today were from that, correct.

8 Q And anything prior to 2005 would have had
9 to have come from that, correct?

10 A Actually, all of these e-mails were from
11 prior to 2005, but they were identified in both
12 the 2005 archive that was created and in the
13 original Eudora mailboxes. And those would have
14 been from the '98 to 2001 time frame.

15 Q You said something in your direct
16 testimony about only being able to confirm them
17 back to 2000. What did that mean?

18 A The e-mail box, especially for the 1998
19 ones, there was a 1998, I believe it was titled
20 1998 DLF was the title of the Eudora mailbox.

21 The last written date on that mailbox was
22 January of 2000. So e-mails could have been
23 added up to that time frame, but those e-mails
24 were contained in that e-mail box.

25 Q Is there any way to tell in your forensic

1 review whether you have every single e-mail from
2 that time frame within the material that you were
3 given by Penn State?

4 A There's no way for me to identify that as
5 -- obviously, we don't have every e-mail because
6 e-mails had been deleted as we can see the chains
7 weren't there, so there were e-mails that were
8 deleted from that time frame.

9 Q Is there any way to tell if there were
10 other deletions or changes in that old system?

11 A It would be able to identify if changes
12 were made. The system that was in place, it was
13 a tape archive backup. The tape backup itself
14 cannot be accessed or changed in any way from
15 when that tape was created.

16 Additionally, the created date on the
17 e-mail box, anything that was in there, if you
18 changed a letter A to a letter B, and any e-mail
19 contained in that e-mail box would change the
20 entire e-mail box created date. So there could
21 be no changes that were made after the 2000 time
22 frame.

23 Q The problem with that is you can't
24 confirm that those dates on those e-mails are
25 accurate; isn't that true? The 1998 e-mails, you

1 can't confirm that the dates and times are
2 accurate?

3 A The times, no.

4 Q You can only say they're consistent and
5 seem to be consistent with the e-mails you've
6 recovered, correct?

7 A All of the e-mails on that system were
8 the exact same dates and times as far as the span
9 of them.

10 Q Right. But you can't confirm that the
11 date and time are actually accurate?

12 A I don't know what the server date and
13 time was.

14 Q In fact, you can only tell if anything
15 happened prior to the tape backup being created?
16 I mean, that's kind of a deadline, correct, so if
17 something happened prior to the tape backup's
18 creation, then that would be the deadline or cut
19 off for you to see if there was something done,
20 correct?

21 A Yes, if there was anything done to that
22 system. So like the 2000 date, anything prior to
23 that 2000 date. But after 2000, there was no
24 changes that were made to anything within that
25 system.

1 Q Do you know, yesterday we were told by
2 Mr. Corro that, in fact, there was an extra
3 process required by the Penn State IT Department
4 in order for Mr. Schultz to preserve the old
5 material when the switchover occurred to the
6 Microsoft exchange. Are you aware, did you talk
7 to Mr. Corro about how that actually occurred?

8 A I'm not -- I'm not sure exactly how it
9 occurred.

10 Q It's not as simple as simply importing
11 old e-mails; isn't that true?

12 A I don't know the system that they
13 employed.

14 Q Okay. Did you ask him at any point
15 exactly how the old network server information,
16 how he got that, where it was, how it was
17 created, who asked him back at the time to create
18 that stuff?

19 A I asked -- it wasn't Mr. Corro that
20 created it. It would have been the IT person at
21 the time. And the information that was relayed
22 to me was that the -- at the time Mr. Schultz had
23 a large volume of e-mail that he didn't want to
24 lose and wanted to be able to have access to it
25 further down the road.

1 Therefore, they asked him what he wanted
2 to do with them. He requested that an archive be
3 created or that somehow they be preserved. They
4 said we can create this archive by importing it.
5 That was the information.

6 Q When you say they, that's the Penn State
7 IT Department you're talking about?

8 A Yes.

9 Q And they made it clear to you that was
10 all done at Mr. Schultz's request because he had
11 asked to preserve the old system?

12 A In a discussion with them, that's what
13 was determined.

14 Q Now, my understanding again with that
15 preservation, that system is hard fixed at the
16 date that, for instance, the tape backup, is that
17 the 2000 tape backup that was done or is that the
18 2005 tape backup that you were speaking of
19 earlier?

20 A I'm not sure what your --

21 Q When the system is backed up --

22 A Yes.

23 Q -- you said you can tell if there are any
24 changes to any of the e-mails.

25 A With the archive or with the tape system?

1 Q With the archive, first let's do that.

2 A With the archive, the archive would be
3 imported into our system. Indicates the created
4 date for each of the e-mails within that system.
5 Each of the e-mails within that system were in a
6 sequential time frame on the date in 2005. So
7 all of the e-mails were added the exact same
8 time. So back to that 2000 time frame, anything
9 that was changed after that would change that
10 created date.

11 Q And then the tape, similarly anything
12 prior to?

13 A The tape system cannot be accessed. And
14 any changes made because it is a tape system,
15 they would actually have to create a new tape
16 system if they tried to change anything. And the
17 reason for that is you have to restore the tape.

18 It's kind of like a VHS tape. You have
19 to restore that back to computer hardware. You
20 have to change something and then you would have
21 to re-backup that system which would then change
22 the backup date of the whole process.

23 Q So obviously you can tell from looking at
24 the 2005 and 2000 whether it's the tape or the
25 archive, you can tell that as of those dates,

1 those fixed dates, there were no changes,
2 correct?

3 A Correct.

4 MR. MATANGOS: Thank you.

5 THE COURT: Liz, did you --

6 MS. AINSLIE: Yes.

7

8 FURTHER CROSS EXAMINATION

9 BY MS. AINSLIE:

10 Q Mr. Cook, I'll try not to belabor the
11 point but I'm still puzzled. You talked, I think
12 you said, to Mr. Corro from time to time about
13 the Penn State data?

14 A Mr. Corro was our contact.

15 Q Okay. You didn't talk to Steve Neeper,
16 the boss of IT at Penn State?

17 A I did interview Steve Neeper. He was the
18 network administrator for the administration
19 network.

20 Q Did he tell you that in November of 2011,
21 Graham Spanier's hard drive and all of his e-mail
22 servers were imaged by Penn State?

23 A I would assume that that's when the
24 information was gathered.

25 Q Okay. And it was then -- was that the

1 84,000, did Mr. Corro tell you about the 84,000
2 e-mails in the outbox?

3 A I don't know where that number comes
4 from.

5 Q Okay. The person in charge of collecting
6 the data at Penn State was ultimately the general
7 counsel, Cynthia Baldwin; is that right?

8 A I don't know who. I would assume that's
9 who received the subpoenas, but I don't know
10 because I didn't serve them.

11 Q Okay. And you did no independent
12 investigation, you just took what Penn State gave
13 you; and your analysis, all of your analysis here
14 today is based on what Penn State gave you?

15 A Yes, their response to whatever subpoenas
16 were issued.

17 MS. AINSLIE: Thank you. I have nothing
18 further.

19 MR. BEEMER: Nothing further.

20 THE COURT: You can step down. Thank you
21 very much, sir.

22 (Witness excused.)

23 MR. BEEMER: Your Honor, at this time I
24 believe we have a stipulation to the following:
25 I've marked for identification and admission

1 Commonwealth's 29, which is the April 13th, 2011
2 grand jury testimony of Graham Spanier;
3 Commonwealth's 30, which is the January 12th,
4 2011 testimony of Tim Curley; and Commonwealth's
5 31 which is the January 12th, 2011 testimony of
6 Gary Schultz.

7 In as much as in a prior proceeding in
8 front of Your Honor, Commonwealth's 30 and 31
9 have been previously read into the record, I
10 propose admitting them just in document form.
11 And at this time move for the admission of 29, 30
12 and 31.

13 I believe we have a stipulation that if
14 Shannon Manderbach, the court reporter, who took
15 all three of those testimonies would certify that
16 these are true and accurate copies of her
17 recording of the questions and answers that were
18 given on those days.

19 At this time I think it might actually
20 work out well to put in Commonwealth's 29 into
21 the record at this point. Jim Barker from our
22 office has graciously agreed to read the answer
23 portion and I will do the question portion of
24 Commonwealth's 29.

25 THE COURT: Counsel, are you okay with

1 that?

2 MR. FARRELL: Yes, we're fine.

3 MS. AINSLIE: Yes, Your Honor.

4 MS. ROBERTO: Yes, Your Honor.

5 MR. BEEMER: The contents of

6 Commonwealth's 29: Witness: Graham Spanier.

7 The date: April 13th, 2011, 9:53 a.m. Location:

8 Strawberry Square, Verizon Tower, Eighth Floor.

9 Graham Spanier was called as a witness,

10 was previously sworn, testified as follows:

11 By Mr. Fina: (Reading)

12 Q Sir, could you give your name for the

13 record, please?

14 A Graham Spanier.

15 Q Sir, you're represented by counsel today?

16 A Yes.

17 Q Could you just identify counsel?

18 A Cynthia Baldwin sitting behind me.

19 Q Thank you, sir. Could you start out with

20 giving us your current title and then work in

21 reverse chronology as to your history, your

22 professional history, sir?

23 A I am currently the president of the

24 Pennsylvania State University. I've been in that

25 position since 1995, sixteen years. Before that,

1 I was the chancellor at the University of
2 Nebraska, Lincoln. I was in that position since
3 1991. From 1986 to 1991, I was the provost and
4 vice president for academic affairs at Oregon
5 State University. From 1982 to 1986, I was the
6 vice provost for undergraduate studies at the
7 State University of New York at Stony Brook.

8 From 1973 until 1982, I was professor of
9 human development family studies, professor of
10 sociology, professor of demography and professor
11 of family and community medicine at Pennsylvania
12 State University; and in three successive
13 administrative positions as professor in charge
14 of the undergraduate program and individual and
15 family studies as divisional professor in charge
16 of that academic unit and then as associate dean
17 of what is now called the College of Health and
18 Community Development.

19 Q Sir, your education, can you go through
20 your formal education?

21 A I have a bachelor's degree in sociology
22 from Iowa State University, a master's degree in
23 sociology from Iowa State University and a Ph.D.
24 in sociology from Northwestern University.

25 Q Your degree in sociology, was there any

1 primary focus within that broad study?

2 A My focus is on marriage and family
3 relations. I'm a marriage and family therapist
4 by training, in addition, and demographer.

5 Q Outside of your academic work and your
6 many academic professional positions, have you
7 ever done any clinical or hands-on family
8 therapeutic work?

9 A Yes. For 13 years earlier in my career,
10 I did marriage and family therapy and other areas
11 of therapeutic activity related to marriages,
12 families, adolescent development.

13 Q Did you do that here in Pennsylvania,
14 sir?

15 A Yes, in part, in Pennsylvania.

16 Q Was it in the Penn State area?

17 A Nine years of that time was during that
18 period when I was on faculty at Penn State.

19 Q Jumping now back to the present time,
20 sir, can you give us the broad outlines of your
21 current responsibilities?

22 A Well, I oversee one of the largest and
23 complex universities in the United States. We
24 have 96,000 students, 47,000 paychecks that we
25 issue each month. We operate at 141 different

1 locations. I have 1700 buildings, tens of
2 thousands of acres of land. I oversee a budget
3 of about \$4.3 billion a year. I'm responsible
4 for academic programs, physical plant, business
5 and finance, university relations, research
6 programs, one of the largest academic medical
7 centers in the country. Those are a few of the
8 different variables.

9 Q Can you tell us, sir, who Mr. Tim Curley
10 is and who he has been in relation to Penn State?

11 A Tim Curley is one of the people who
12 reports directly to me. He's the director of
13 athletics.

14 Q Does he have anybody else in his chain of
15 command or is he a direct report to you?

16 A He reports directly to me on the
17 organizational chart. He would also work closely
18 with other senior members of the university
19 administration.

20 Q Can you tell us who those other senior
21 members would be by title and name?

22 A Most prominently, he would also relate to
23 the senior vice president for finance and
24 business, who currently is Al Horvath.

25 Q How long has Mr. Horvath held that

1 position?

2 A Approximately three years, give or take.

3 Q Prior to Mr. Horvath, who held that
4 position?

5 A Gary Schultz.

6 Q How long did Mr. Schultz hold that
7 position?

8 A I think he began in that position in 1993
9 or 1994.

10 Q Has Mr. Curley been there for all the
11 years that you have been the president?

12 A Yes.

13 Q The vice president for finance, can you
14 describe the duties and responsibilities of that
15 individual?

16 A He's the chief financial and business
17 officer of the university, oversees financial
18 expenditures and a broad range of operational
19 areas of the university, auxiliary enterprises,
20 housing, food services, environmental health and
21 safety, public safety, physical plant,
22 transportation, internal audit, controller's
23 office, university budgeting and a number of
24 other areas.

25 Q It sounds like it's a very prominent

1 position?

2 A Yes.

3 Q When you stated public safety in
4 reference to one of the areas that the vice
5 president of finance supervises, is it accurate
6 to state that that would include any police
7 services that the Penn State University controls
8 or supervises?

9 A Yes, it would include our police
10 services, public safety operations.

11 Q Is it accurate that the Penn State
12 University in State College has a police force
13 that has trained police officers that are
14 employed by the university?

15 A Yes. We have a very large police force.
16 We are in some ways like a city in our own right.
17 We have different components of it. We have
18 sworn police officers who are trained like any
19 other State Police or municipal police officer in
20 Pennsylvania. I don't know the exact number, but
21 it's probably 50 or 60 sworn police officers.

22 We then have, I would say, roughly an
23 equivalent number of public safety officers.
24 Those who would not be armed -- excuse me, these
25 would not be armed officers trained in the same

1 way, but people who have public safety and
2 security responsibilities. We also have an
3 auxiliary core of dozens of students who are
4 hired to assist our police operations in security
5 areas. So it's a pretty good size operation like
6 you would find maybe in a medium-sized city.

7 Q And it would be your understanding,
8 sir --

9 Ms. Baldwin: Excuse me, Mr. Fina, just a
10 moment.

11 Mr. Fina: Yes.

12 The Witness: Justice Baldwin was
13 pointing out that maybe I should clarify one
14 thing for you because you used the term State
15 College. What I was referring to was the Penn
16 State University police force. There is a
17 separate police department in the Borough of
18 State College which has, I would say, an
19 equivalent number of sworn police officers.

20 By Mr. Fina:

21 Q Thank you, sir. And the police
22 department -- I made that distinction, sir, just
23 because you said you have 141, I believe,
24 different locations?

25 A Yes.

1 Q We're just going to focus today on the
2 State College area.

3 Ms. Baldwin: Just for a point of
4 clarification, I'm sorry, Mr. Fina, it's
5 University Park. That's why I made the
6 distinction. Actually, it's called University
7 Park.

8 Mr. Fina: Okay. I'll use that term.

9 By Mr. Fina:

10 Q And excuse me. I'm not associated with
11 the university or well-versed in its
12 nomenclature. The University Park police -- is
13 it okay if I describe them in that way?

14 A Yeah. Sure.

15 Q They have full police powers, right, like
16 any other police department, like the State
17 College Police Department? They can investigate
18 crimes and arrest people. They are just like any
19 other cops, right?

20 A Yes, that's correct.

21 Q Sir, as the president of the university,
22 can you describe for us the circumstances in a
23 normal situation under which you would be
24 informed of an allegation of criminal conduct
25 being investigated by the University Park Police?

1 A It would be very rare that I would be
2 informed because we are so large and, like I
3 said, something like a city. We allow the police
4 department to work rather independently and my
5 contact with them would be limited.

6 I would never and have never interfered
7 in any of their activities and typically only
8 informed when there's something of very
9 substantial consequence that might affect the
10 day-to-day operations of the university or a case
11 of a death where I might be in a position to need
12 to inform a family member or communicate with
13 them at least about the situation. I don't
14 really have much contact and certainly no
15 day-to-day contact.

16 Because of the numbers I mentioned
17 earlier, we have a certain amount of crime in our
18 community and a lot of incidents, most of them,
19 thankfully, not of any great consequence. So I
20 don't read the police logs or get informed about
21 the typical day-to-day activities.

22 Q Understood. Who would be the person
23 responsible for informing you of anything
24 noteworthy or that rose to the level of
25 importance that they felt they should tell you

1 about in relation to alleged crimes?

2 A Generally speaking, if I were to be
3 informed about something, it would come from the
4 senior vice president for finance and business
5 because, in that circumstance, the chief of
6 police would have informed that individual as
7 supervisor who would have thought it was
8 important enough to merit my attention.

9 Occasionally, I could learn about it
10 through the grapevine. For example, if it was a
11 matter involving a student, the police chief
12 might inform our office of judicial affairs
13 because it's a student conduct matter.
14 Therefore, our vice president for student affairs
15 would learn about that and perhaps occasionally
16 think it's something I should be aware of.

17 Q Sir, if you could give us a flavor, say,
18 take the past 24 months and tell us without
19 specifics, no names or anything like that, the
20 types of criminal allegations or activities that
21 have been brought to you, revealed to you in that
22 time period, if any.

23 A I would say no criminal activities have
24 been brought to me in the last 24 months. We had
25 one student death that, of course, the police are

1 called to the scene. So in the case of that
2 student who was apparently intoxicated and fell
3 out of a stairwell, I would have learned about
4 that.

5 Because of my work with the FBI, I was
6 informed by the FBI and by our public safety
7 officers of a brewing episode involving a student
8 at another one of our campuses. Those are the
9 only two that I can think of where I was directly
10 notified within a 24-month period.

11 Q Again, as you stated, it is a rare event?

12 A Yes.

13 Q During your tenure as president of Penn
14 State University, was there an occasion where
15 officials came to you with information about
16 Jerry Sandusky?

17 A There was never a time when the
18 university police approached me with any issue
19 concerning Jerry Sandusky. There was one time
20 when our athletic director and senior vice
21 president, the two individuals you mentioned
22 earlier, came to seek my advice on a matter
23 relating to Jerry Sandusky.

24 Q So Mr. Schultz and Mr. Curley?

25 A Yes.

1 Q Again, to the best that you can
2 recollect, approximately when was this that they
3 came to you?

4 A In about 2002.

5 Q You do not remember anything beyond that
6 in terms of the timing, correct?

7 A I can't give you a specific date or
8 month. I don't recall specifically it was 2002,
9 but approximately in that time frame because I
10 remember it being about three years after
11 Mr. Sandusky had retired from Penn State.

12 Q What is it that they informed you and if
13 you could tell me, again, if you recollect, who
14 was it among those two gentlemen who spoke to you
15 and relayed the information?

16 A They asked if they could come over to my
17 office to see me because the athletic director,
18 Mr. Curley, had been approached by a member of
19 his staff saying that he was somewhat
20 uncomfortable because Jerry Sandusky in the
21 football building locker room area in the shower
22 was with a younger child and that they were
23 horsing around in the shower. I believe that was
24 the language that was used.

25 I don't remember specifically whether it

1 was Tim Curley or Gary Schultz who actually made
2 that statement, but that was essentially the
3 entirety of their statement. They said that the
4 individual thought he saw -- and I think the
5 characterization was that he thought he saw them
6 horsing around in the shower and he was a little
7 uncomfortable with it, so he brought it to
8 Mr. Curley's attention.

9 Q Did Mr. Curley identify who it was who
10 witnessed this alleged event?

11 A No, he did not.

12 Q Did you ever become aware of who the
13 individual was that witnessed Sandusky in the
14 shower with the child?

15 A No.

16 Q To this day, do you know who --

17 A I didn't ask.

18 Q To this day, you still don't know who the
19 witness was?

20 A I don't know.

21 Q Did they, either Mr. Curley or
22 Mr. Schultz, explain why they were bringing this
23 information to you?

24 A Well, they felt it was an awkward
25 situation and just wanted to know what my advice

1 was. So I gave them my advice.

2 Q What was your advice?

3 A I said that, you know, it's a university
4 and we do -- at Penn State we're very open in
5 allowing members of the community to use our
6 facilities. We're not like a lot of universities
7 where only employees or only students can use the
8 facilities. We're pretty open. Local high
9 school kids come and use our recreational
10 facilities all the time and we feel that's a
11 community service. So there wasn't any policy
12 prohibiting it. It happens.

13 But we just thought it -- I thought and I
14 told them that something like that could be
15 misconstrued and probably we wanted to discourage
16 people bringing younger kids into our facilities.
17 So my advice was that they should do two things;
18 that they should inform Mr. Sandusky that it was
19 not a good practice to bring people under 18 into
20 our locker room facilities and we'd like to ask
21 him not to do that going forward.

22 Secondly, we thought that -- we thought
23 since he was no longer employed by the university
24 and we really didn't have any responsibility for
25 him at that point in time, that we should also,

1 as a matter of prudence, contact the chair of the
2 board of the Second Mile to simply inform that
3 individual that we were concerned about Second
4 Mile children being brought into Penn State
5 locker facilities and that we were going to ask
6 that that not occur. I think that call was made
7 by Tim Curley. Those are my two pieces of advice
8 on that.

9 Q Was your advice adopted and conducted by
10 Mr. Schultz and Mr. Curley? Do you know?

11 A I believe Mr. Curley at a later time
12 mentioned that he had done both of those things,
13 he had both of these conversations. That was
14 very shortly after and that was the last time I
15 heard of the matter until a few months ago.

16 Q This initial meeting that you had with
17 Mr. Schultz and Mr. Curley, can you estimate how
18 long this whole discussion took?

19 A Probably not less than 10 minutes, nor
20 more than 15 minutes.

21 Q Was it relayed to you as an aside to a
22 larger meeting addressing other issues or was the
23 meeting set up with you specifically for this
24 sole purpose, to inform you of this and discuss
25 this with you?

1 A It was almost a decade ago. I can't
2 remember very precisely whether we might have
3 also touched on another topic, but it seemed that
4 was the main topic of that brief discussion.

5 Q Did either Mr. Schultz or Mr. Curley tell
6 you when this had occurred, whether it had been a
7 week prior or a couple days prior or anything
8 like that?

9 A I don't recall. They may have said but I
10 don't remember. I had the impression that it was
11 a fairly timely meeting, that it was sometime
12 fairly recent.

13 Q Did they inform you whether Joe Paterno
14 had been informed and was in any way involved in
15 the relay of information?

16 A His name was never mentioned to the best
17 of my recollection.

18 Q Did they say anything to you about how
19 they came in possession of this information and I
20 mean the timing of it, whether they were informed
21 immediately, within hours, within days, anything
22 like that?

23 A No, I don't remember, just that a member
24 of the staff had thought he had seen that horsing
25 around and had mentioned it to the athletic

1 director.

2 Q Did they relay that the horsing around
3 that was allegedly seen was after hours, that it
4 was after normal business hours?

5 A I don't recall mention of the timing.

6 Q Did you have any impression that this had
7 occurred at night or during the day or in the
8 morning or anything like that?

9 A No, no impression.

10 Q Did either Mr. Schultz or Mr. Curley
11 inform you that the young person in question, the
12 child in question, was a Second Mile child?

13 A I recall that it was a Second Mile child
14 or if it wasn't specifically told to me, I at
15 least made that assumption. I can't state with
16 certainty now that I knew one way or the other,
17 but that's my impression.

18 It may, indeed, have been stated to me
19 pretty explicitly. But since neither Mr. Schultz
20 nor Mr. Curley witnessed anything themselves,
21 they may have been making the same assumption or
22 perhaps the staff member that observed it knew.
23 So all I can say is that it was my impression or
24 assumption without actually any direct knowledge.

25 Q Was any description of the child

1 provided, either physical description or estimate
2 of age?

3 A Not to my recollection. I don't actually
4 know the child's age, but I believe it was
5 someone under 18. I believe it was a male child
6 because they were in a male locker room.

7 Q So the individual is described as a
8 child, is that correct, and no further
9 description?

10 A I don't even know if the word child was
11 used. It might have been a kid or a Second Mile
12 kid.

13 Q Some statement reflecting a child?

14 A Yes.

15 Q Was any identification of the child made
16 or presented to you?

17 A No.

18 Q Did anyone in this discussion discuss
19 identifying the child or making any kind of
20 effort to identify the child?

21 A No.

22 Q In the discussion about talking to
23 Sandusky in regards to his use of the Penn State
24 facilities with minors, was there any discussion
25 of asking him the identity of the child?

1 A I'm sorry. Say that again.

2 Q Did you or Mr. Curley or Mr. Schultz ever
3 discuss asking Mr. Sandusky who the child was?

4 A I never had any discussion with
5 Mr. Sandusky.

6 Q Understood. But in reference to your
7 recommendations to Mr. Curley to talk with
8 Mr. Sandusky about not using the facilities with
9 minors, was there any suggestion that he should
10 identify who the child was?

11 A I don't know.

12 Q You didn't make any such suggestion?

13 A No, I did not.

14 Q Was there any discussion about reporting
15 the matter to the police or Children and Youth or
16 any other type of public agency?

17 A No.

18 Q Was there any impression by you that had
19 been done -- that that had been done by either
20 Mr. Schultz or Mr. Curley?

21 A No.

22 Q Was there any impression by you that that
23 had not been done by Mr. Schultz or Mr. Curley?

24 A No.

25 Q Was there any discussion or information

1 provided to you about any prior allegations
2 against Mr. Sandusky involving children?

3 A No.

4 Q Were you ever informed before 2011 that
5 there had been an allegation in 1998 that
6 Mr. Sandusky was in one of the Penn State
7 University showers with two young men and that
8 contact had occurred?

9 A No.

10 Q Were you ever informed in any way, shape
11 or form, again, prior to 2011 that the Penn State
12 University Police had investigated allegations of
13 potential sexual misconduct by Mr. Sandusky?

14 A No.

15 Q When Mr. Curly reported back to you in
16 regards to your recommendations, do you remember
17 what it is he stated?

18 A No, and I'm pretty sure we didn't have a
19 follow-up meeting, only that when I saw him next
20 he mentioned that he had had both of those
21 conversations and that they had gone well. That
22 was the extent of it.

23 Q Did you ever have any discussion with
24 Mr. Curley or Mr. Schultz about how Mr. Sandusky
25 was accessing the Penn State facilities? And I

1 mean how in a very mechanical way, whether he had
2 either a key or an electronic access card or
3 anything like that.

4 A No.

5 Q Was there any discussions with Mr. Curley
6 or Mr. Schultz about how the university would
7 enforce the directive to Mr. Sandusky that he not
8 bring minors into the locker rooms or the
9 showers?

10 A No, I'm not aware of any discussions.

11 Q Was anyone else present during your
12 conversation with Mr. Curley and Mr. Schultz on
13 this topic?

14 A I don't believe so.

15 Q Was there any discussion between yourself
16 and Mr. Curley and Mr. Schultz when discussing
17 Mr. Sandusky and this horseplay that occurred
18 about any potential adverse consequences to the
19 image of Penn State University?

20 A I don't recall that we talked about it in
21 those terms. I think as I recall back in telling
22 them what I thought we ought to do to be
23 responsible and follow-up, it was in my mind that
24 we wouldn't feel comfortable with that practice.
25 So I would have to fairly say that I was thinking

1 it, but I don't think we actually discussed it in
2 those terms.

3 Q Sir, can you describe to the grand jury
4 who Mr. Sandusky is and why this is not just an
5 average employee of Penn State University, if
6 that is the case?

7 A Well, I'm not sure any of my employees
8 that I've been associated with over the years
9 would want me to describe them as just average.

10 Q I more than understand that. Is
11 Mr. Sandusky an employee of notoriety than many
12 of the employees?

13 A Well, at Penn State, anybody who's
14 associated with the football program has a
15 certain degree of notoriety. Jerry Sandusky was
16 a well-known and very revered member of our
17 football program for most of his life until he
18 retired. He had a position of responsibility as
19 defensive coordinator and was considered one of
20 the best people in that position ever. He was a
21 long-time member of Joe Paterno's staff. But he
22 was probably equally known and revered for
23 starting and nurturing the Second Mile program
24 which has served thousands of young people and
25 made such a contribution.

1 Certainly, he is a well-known figure and
2 has been widely respected and admired. I
3 actually had very little contact with him over
4 the years. Most of my contact with members of
5 the football staff is with the head coach who I
6 see more regularly.

7 Q Again, I understand this is an opinion,
8 sir, but within that hierarchy of notoriety
9 related to the football program of Penn State
10 University, where would you place Mr. Sandusky?
11 Would he be at the very top or would he be
12 somewhere below the very top?

13 A Well, he would be among the more visible
14 people.

15 Q He may not be a Joe Paterno, but he would
16 be up there in the --

17 A He would be in the next group I would
18 say, yes.

19 Q In your discussions with Mr. Curley and
20 Mr. Schultz in those moments that they came to
21 you and told you of this horseplay, was there any
22 indication that the horseplay could have been
23 sexual in nature?

24 A No.

25 Q Did it ever occur to you that that was a

1 possibility at the time?

2 A No, it didn't, because what was reported
3 was not a report of any activity that was sexual
4 in nature. I know better than to jump to
5 conclusions about things like that.

6 Q Did you ask Mr. Curley or Mr. Schultz
7 whether they had made inquiry of the eye witness
8 as to whether or not there was anything sexual in
9 nature?

10 A All I recall is that it was reported to
11 me in roughly the way I described and it was on
12 that basis that I processed and responded.

13 Q Were you aware of any other occurrences
14 where Mr. Sandusky had brought children into the
15 locker room or the showers of Penn State
16 University?

17 A No.

18 Q In the course of your discussions with
19 Mr. Curley and Mr. Schultz about this incident,
20 did they ever express that Mr. Sandusky had a
21 habit or had previously brought children into the
22 locker room or the showers at Penn State
23 University?

24 A No.

25 Q After this meeting you had with

1 Mr. Schultz and Mr. Curley which you said was
2 approximately 2002, from that point up until
3 2011, had you received any information from any
4 source regarding allegations of potential sexual
5 misconduct by Mr. Sandusky?

6 A No, nothing whatsoever, although your use
7 of the year 2011, it was probably more late 2010.

8 Q Fair enough. Just for the record, you
9 became aware of this investigation or an
10 investigation in late 2010?

11 A Yes.

12 Q Where did you get that information from?

13 A First I heard was an inquiry from a
14 reporter, Jan Murphy, who is -- I think her title
15 is chief of the Capitol News Bureau at the
16 Harrisburg Patriot News. I believe the first I
17 heard was an e-mail from her asking if I knew
18 anything about this and wanted to comment on it.
19 I wrote her back and said no.

20 Q The retirement of Mr. Sandusky, do you
21 recollect, again, when that was, approximately?

22 A It was approximately in 1999.

23 Q Are you aware of any relationship between
24 that retirement and any allegations of misconduct
25 made against Mr. Sandusky?

1 A No, nothing whatsoever.

2 Q What is your understanding of why
3 Mr. Sandusky chose to retire at that time?

4 A Well, Joe Paterno and Tim Curley and I
5 meet from time to time to assess the football
6 program. We meet at least yearly to discuss that
7 subject, sometimes more often. My recollection
8 in the late '90s was that Joe Paterno was not
9 feeling that our defense was clicking on all
10 cylinders and that Jerry Sandusky probably would
11 not be in the best position to succeed him as
12 head coach.

13 You have to understand that Joe Paterno's
14 been on the verge of retirement for all of my 16
15 years there. So this topic is always on the
16 table. And here we are in 2011 and he's still
17 head coach. He's always been talking about
18 getting the program to the point where he wants
19 before he eventually retires.

20 My best recollection of what transpired
21 at that time was that the coach probably had some
22 degree of disenchantment with Jerry's coaching or
23 if not that, if I'm overstating that, it just may
24 have been he was not likely in a position to
25 succeed him. It turns out Joe was not obviously

1 ready to retire in 1999.

2 So some of the people who were possibly
3 in the line of succession were now getting to the
4 age where there wouldn't be enough years for them
5 to be head coach. So that discussion, as it
6 unfolded, was really all about Jerry's future
7 with the program. I never spoke to Jerry
8 Sandusky about that. It was Coach Paterno who
9 had a discussion with Jerry and the consequence
10 of that was Jerry coming forward and saying that
11 he would be retiring.

12 Q In relationship to Mr. Sandusky and the
13 Second Mile, did that impact in any way on Penn
14 State or involve Penn State University?

15 A Certainly in no official way. It's a
16 completely separate organization with no actual
17 connection to the university. There's no
18 financial tie, no organizational tie. Most of
19 the people involved in that I believe are
20 community leaders and philanthropists. I would
21 say that indirectly it was thought to reflect
22 well on the university because a prominent
23 employee was so involved but there was no direct
24 connection.

25 Q The meeting that you had with Mr. Curley

1 and Mr. Schultz, were there any writings that
2 resulted from that meeting? Did anybody prepare
3 a memo or an e-mail or handwritten notes as far
4 as you're aware?

5 A I did not take any notes or prepare
6 anything, nor did I receive anything that anyone
7 else had written. So I think the answer is no.

8 Q The feedback that you received from Mr.
9 Curley after that meeting regarding his
10 fulfillment of the recommendations, do you
11 recollect if that was in writing in any way,
12 shape or form?

13 A Not to my knowledge.

14 Q Just returning to what Mr. Curley and
15 Mr. Schultz informed you of regarding
16 Mr. Sandusky in the shower, was it clear to you
17 that Mr. Sandusky was in the shower naked with a
18 child or a kid?

19 A That was my impression. For those of you
20 who don't know, I think virtually all of our
21 showers in our athletic facilities across the
22 university are what we call gang showers. We
23 don't have private showers. They are all big and
24 in the open. In the locker room I use in rec
25 hall, it's the same thing, one big open shower

1 with lots of shower heads. There could be one
2 person in there or there could be ten people in
3 there at any given time. So that's the physical
4 configuration of a typical shower or locker room
5 at a university.

6 Q Does the university either now or in the
7 past have any regulations or limitations on who
8 can enter the showers with the understanding that
9 they are gender specific?

10 A Yes, they are gender specific. But
11 beyond that, as I said, we're pretty open with
12 our facilities. We have a lot of movement in and
13 out of people in the community, students, faculty
14 members, staff members. So we don't have a lot
15 of rules about those things.

16 Q So there are no age limitations, for
17 example?

18 A I don't believe that we have any such age
19 limitations.

20 Q So there would be nothing that would
21 prohibit a 65-year-old, a 43-year-old, a
22 22-year-old and a 9-year-old from all showering
23 in the group shower together?

24 A Well, I wouldn't want to say there would
25 be nothing prohibiting it. You know, we have

1 twenty-some thousand minor children every summer
2 in for sports camps. We host almost the entire
3 array of PIA Pennsylvania high school sports
4 championships at the university. You have to
5 understand we have a tremendous number of youth,
6 tens of thousands per year, in and out of our
7 athletic facilities and locker rooms.

8 Of course, what's most typical is if you
9 have high school girls basketball going on,
10 they're showering with each other. If you're
11 having boys swimming at the Natatorium, they're
12 showering with each other and they would have
13 adults around, their coaches and staff.

14 There's going to be a certain amount of
15 mingling and certainly a very broad presence of
16 youth on campus. I'm not sure we have any
17 specific rules that say who can be in a
18 particular shower with whom at what time. But
19 when I gave my reaction to that report, it was
20 based more on a sense of an impression and what I
21 would have felt comfortable with.

22 Q Again, sir, focusing on my question, the
23 answer, as I understand it, is that there's not
24 any limitation. As you've said, there are a
25 great many young people who use the facilities

1 and it could certainly happen without any
2 impropriety that a swim team of 9-year-olds would
3 shower with their coach. That would not be
4 prohibited, nor improper, correct?

5 A I don't know specifically that that
6 happens. We have in many sports separate locker
7 rooms where coaches can change. There are such
8 provisions in some facilities. In others there
9 may be not. I can't say I'm close enough to the
10 day-to-day operations of any particular facility
11 and its showers to give you a better answer than
12 that.

13 Q Well, not to belabor this, sir, but you
14 mentioned that you use some facility, you work
15 out at Penn State or something, right?

16 A Yes.

17 Q I mean, you've been in the showers.
18 You've seen people of a variety of ages in there
19 including minors?

20 A Well, not in the shower facility I use
21 because I'm in a locker room that is designated
22 for faculty and staff.

23 Q Are you aware of, in the football
24 facilities, whether there are any limitations
25 based upon age on the use of the locker rooms or

1 the showers?

2 A I'm not aware of their rules there.

3 Q The football facilities, again, if you
4 know, would contain locker rooms and showers and
5 that would be the Lasch Building and Holuba,
6 Holuba Hall?

7 A Yes. The Lasch Building is the
8 principal -- it's where the offices of the
9 football facility is, their weight room, their
10 exercise equipment. Holuba Hall is a big, let's
11 say, barn-like structure. It's an indoor
12 football field under cover. I don't frankly know
13 whether there are locker room or shower
14 facilities in Holuba. I believe they use
15 principally the Lasch Building facilities.

16 Q Sir, you were the president of Penn State
17 in 1998 as well as in 2002, correct?

18 A Yes.

19 Q Do you have any information or insight
20 you can give us as to why allegations against
21 Mr. Sandusky in 1998 were handled differently
22 than those which occurred in 2002?

23 A I'm not aware of allegations against
24 Mr. Sandusky in 1998, nor am I, therefore, aware
25 of how they were handled if there were such

1 allegations.

2 Q If, again, there had been allegations of
3 a very similar nature from 1998 involving
4 Mr. Sandusky, you wouldn't know why Mr. Schultz
5 and Mr. Curley would not have informed you of
6 those as they did in 2002?

7 A I have no information that Mr. Schultz or
8 Mr. Curley had any knowledge in 1998. I don't
9 know if they did or they did not. If they did,
10 they would have brought it to my attention, I
11 think, if they felt that there was something of
12 merit or consequence.

13 I think we have a good enough working
14 relationship and understanding that if something
15 happened that they were concerned about, that
16 they would have probably come and spoken to me
17 which, as we discussed, happened once. I have no
18 idea what, if anything, happened in 1998. I know
19 when we met earlier you asked me the same set of
20 questions and, you know, I don't know any more
21 now than I did at that time.

22 Q Understood. We still, I hope you
23 understand, need to get this stuff on the record.
24 Now, not to be repetitious, but I assume your
25 answer would be the same in regards to why in

1 1998 there was a police inquiry by the University
2 Park Police into the allegations involving
3 Mr. Sandusky in the shower with minors and then
4 why there was not a similar investigation in
5 2002?

6 A I'm reasonably confident that if there
7 was a police inquiry and they would have found
8 something, that that would have come to my
9 attention in a situation like that probably
10 through our senior vice president for finance and
11 administration. Because it would have been a
12 police matter, it would not even necessarily have
13 come to the athletic director. If something did
14 occur then and it was brought to the attention of
15 the police, I would make the assumption that they
16 did not find something at that time. I certainly
17 did not have anything brought to my attention.

18 Q In 2002, when the matter was reported to
19 you by Mr. Curley and Mr. Schultz, did they
20 indicate in any way that they had disclosed the
21 matter to either law enforcement authorities or
22 other public entities?

23 A No.

24 Mr. Fina: Sir, I have no further
25 questions. If you and Ms. Baldwin could step out

1 and return to that room which you were in, I'll
2 see if the grand jurors have any questions and I
3 may have you back in. Thank you.

4 By Mr. Fina:

5 Q Sir, we have a few questions. They're
6 more along the line of physical plant questions
7 I'm not sure you will know, but let me ask you
8 these things. You mentioned that where you use
9 shower facilities at the university in relation
10 to working out or whatever you're involved with,
11 that they are primarily for faculty and staff
12 members?

13 A Well, I do my exercise at rec hall,
14 Recreation Hall. We have athletic facilities
15 spread all over the campus. In rec hall where I
16 exercise, there are 10, maybe 15 different locker
17 rooms. So people who have lockers are assigned
18 to different locker rooms. There are also some
19 very open general locker rooms, public. So
20 there's a male and a female, wide open huge
21 public locker rooms.

22 The one I use is for faculty and staff.
23 It's a lot of our retired faculty members,
24 retired staff members and some current ones. No
25 students as far as I know in -- I'm in probably

1 one of the smallest of the locker rooms. There
2 might be 40 lockers in there, 40, possibly 50.
3 In that locker room, there's one shower room
4 with, I would say, eight to ten shower heads and
5 one bathroom. That's probably the smallest one
6 in that facility.

7 Q So retired faculty and staff still can
8 use these facilities?

9 A Yes.

10 Q For example, Mr. Sandusky could have used
11 that facility as well?

12 A Yes.

13 Q Is there a locker room hierarchy? Are
14 there some locker rooms that are more sought
15 after where people want to get their lockers in
16 there as opposed to someplace else or anything
17 like that?

18 A Probably.

19 Q Everybody wants a locker by yours?

20 A They just gave me this one 16 years ago
21 and I've never asked about the others or
22 systematically surveyed them. Partly it's which
23 building you want to be in. I mean, if you're
24 associated with the football program, you're
25 going to be in the football building.

1 We have the intramural building. We have
2 rec hall. We have the Natatorium. We have other
3 facilities. You know, people ask, what do you do
4 as university president? Well, I'm sort of the
5 complaint department and I must say I've never
6 got any complaints about what I wanted that
7 locker room and got that one. So it's probably
8 not a hot issue.

9 Q But a retired faculty member like
10 Mr. Sandusky, he could have requested a locker in
11 a particular location, right, not that he would
12 have automatically gotten it, but he could have
13 requested it?

14 A I suppose. But I think everyone who is
15 in or has been in the football program -- no, I
16 shouldn't say everyone. Most everyone probably
17 would use the Lasch Building facilities.

18 Q You mentioned the public having access
19 and I think in your earlier testimony you used
20 the word community members. Can the public just
21 walk in or do they have to pay a fee or join a
22 club membership? How does that work?

23 A In the intramural building, which is a
24 big large recreational facility just across the
25 street from Beaver Stadium and next to our

1 largest residence hall complex, East Halls,
2 that's completely wide open. Rec hall, which is
3 more in the heart of campus, is pretty much wide
4 open except for one part of it which is a fitness
5 center where students pay an extra fee to use.

6 Other facilities are a little more
7 restricted and are used by people who have a
8 membership or they're buying time, so to speak,
9 so they can use the swimming pool during
10 recreation hours. There are some facilities
11 where it's fee based and you need a card to get
12 in and then there are others where they are
13 completely wide open.

14 Q Is the Lasch Building a more restricted
15 building or is that one that's open to the
16 public?

17 A I would say the Lasch Building is more
18 restricted in the sense that -- of course,
19 anybody can walk in and that's true of virtually
20 all buildings on campus. I mean, I can perhaps
21 describe it a little more fully. I have 1700
22 buildings under my jurisdiction. And at the
23 University Park Campus, we probably have 800 or
24 900 buildings, round number. Virtually all of
25 them are wide open in the sense that there's no

1 security at the door.

2 We are a university. Our buildings have
3 been built historically with money from the
4 Commonwealth of Pennsylvania, not so much lately,
5 but we see them as quasi-public buildings. The
6 environment of a college campus is intended to be
7 as open as possible.

8 Now, Penn State has a few buildings,
9 because of work we do in the national security
10 arena where we do classified research, that are
11 completely restricted and you can't get through
12 the front door without a security clearance.

13 Then we have, as I said, some athletic
14 facilities where the building may be open but to
15 get into a particular exercise facility, it may
16 be membership based. The Lasch Building would be
17 more typical of that latter category. It is a
18 building for the football program.

19 While people are in and out all the time,
20 you might be in the reception area. You might be
21 there for an appointment. You might be there for
22 a tour. But you're not going to wander into a
23 locker room unless you're escorted by someone who
24 has something to do with the football program.

25 Q There is some access point that requires

1 a key or some permission?

2 A Well, not necessarily.

3 Q In the Lasch Building?

4 A I don't know the specific protocol in the
5 Lasch Building. Most buildings on campus are
6 open working hours. Many of our buildings are
7 open 24 hours a day. Some are locked at certain
8 hours and then when they are locked, you would
9 need a key or a key card to get into the
10 building.

11 Q Do you know when the Lasch Building was
12 opened? Is that a fairly new building?

13 A It was built a few years after I became
14 president. It was somewhat early in my tenure
15 there, but I frankly don't remember the date. I
16 don't know if it was late '90s or within a couple
17 years after 2000. We could get you that
18 information, but it's now been open a number of
19 years. I just don't remember exactly when. It
20 was one of the earlier buildings that I know that
21 I authorized after we got a lead gift for it.

22 Mr. Fina: Thank you, sir. We dismiss
23 you. Thanks.

24 Testimony concluded at 11:12 a.m.

25 (Reading concluded.)

1 THE COURT: Thank you, Mr. Barker.

2 Anything else from the Commonwealth?

3 MR. BEEMER: We have one more witness.

4 THE COURT: We'll take a break.

5 MR. BEEMER: Take a break?

6 THE COURT: Yes. We're going to adjourn
7 for lunch. Come back at 1:30, please.

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9 (Court was held in recess at 12:26 p.m.)

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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the above cause, and that this is a correct transcript of the same.

Date

Brenda S. Shaffer, RMR
Official Court Reporter

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