

1 COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
 2 : OF  
 3 : DAUPHIN COUNTY, PENNSYLVANIA  
 4 V.  
 5 :  
 6 TIMOTHY MARK CURLEY : No. CP-22-MD-1385-2012

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 9 V.  
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 11 GARY CHARLES SCHULTZ : No. CP-22-MD-1386-2012

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 16 GRAHAM B. SPANIER : No. CP-22-MD-1387-2012

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17 TRANSCRIPT OF PROCEEDINGS

18 PRELIMINARY HEARING

19 VOLUME 2

20  
 21 BEFORE: MAGISTERIAL DISTRICT JUDGE  
 22 WILLIAM WENNER

23 DATE: TUESDAY, JULY 30, 2013

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

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

**TUESDAY, JULY 30, 2013**

**AFTERNOON SESSION**

1  
2  
3  
4 THE COURT: Whenever you are ready, Mr.  
5 Beemer.

6 The Commonwealth calls Agent Sassano.

7  
8 **ANTHONY SASSANO,**

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

11 **DIRECT EXAMINATION**

12 BY MR. BEEMER:

13 Q Can you state your name, please.

14 A Anthony Sassano.

15 Q Spell your last name.

16 A S-a-s-s-a-n-o.

17 Q How are you employed?

18 A With the Pennsylvania Office of Attorney  
19 General, Bureau of Narcotics.

20 Q Briefly describe your career in law  
21 enforcement.

22 A From 1979 to 1999, City of Altoona Police  
23 Department. And from December of 1999 to present, the  
24 attorney general's office.

25 Q What is your current title?

1 A Regional director.

2 Q You were one of the lead agents assigned to  
3 this investigation?

4 A Yes, sir.

5 Q About when did that occur?

6 A May of 2009.

7 Q As a result of information you obtained during  
8 the course of the investigation, did you attempt to  
9 ascertain whether or not there had ever been a report  
10 either made to either law enforcement or a child  
11 welfare agency or any other agency within the  
12 Commonwealth of Pennsylvania related to the incident  
13 reported by Mike McQueary?

14 A Yes, I did.

15 Q What did your investigation reveal?

16 A There was no report filed in reference to the  
17 report, which at the last preliminary we thought was  
18 '02. It was 2001.

19 There was no report filed in reference to that  
20 matter.

21 Q Did you check with both police entities and  
22 child welfare?

23 A Yes, and Centre County CYS also.

24 Q Now, I want to ask you, did you participate in  
25 the trial of the Commonwealth of Pennsylvania versus

1 Gerald Sandusky?

2 A Yes, I did.

3 Q And that particular case involved 10 listed  
4 victims. Eight of them were identified; is that  
5 correct?

6 A Yes.

7 Q They were referred to, both in the information  
8 and in other court pleadings, by certain victim  
9 numbers; is that correct?

10 A Yes, you are correct.

11 Q Could you tell the Court, were any of those  
12 victims the subject of abuse by Jerry Sandusky after  
13 February of 2001?

14 A Yes.

15 Q Could you identify who those victims were?

16 A Without saying their names, identifying by the  
17 same numbers we used in the Sandusky trial, they would  
18 be the following: Number one, number five, number  
19 nine.

20 Q And specifically as it relates to number five,  
21 was some of that abuse, was it alleged to have  
22 occurred on Penn State's campus?

23 A Yes, same shower, Lasch Building. Same  
24 showers, I believe, Mr. McQueary witnessed in his  
25 incident.

1 Q And specifically as it relates to victim one  
2 and victim nine, how recent was that abuse in terms of  
3 how long ago did they indicate that they had been  
4 sexually abused by Jerry Sandusky?

5 A 2007-2008 time frame.

6 Q And with regard to victims one and nine, what  
7 was Jerry Sandusky convicted of?

8 A Number one and nine?

9 Q Yes.

10 A Umm --

11 Q Let me ask you what the most serious crime  
12 was?

13 A Number one and number nine was IDSI,  
14 involuntary deviate sexual intercourse, was the most  
15 serious offense. And there were other underlying or  
16 related sexual offenses such as indecent assault and  
17 having contact with a minor, unlawful contact with a  
18 minor, things of that nature, not as serious as the  
19 IDSI.

20 Q And were there criminal charges instituted  
21 related to the 1998 incident that we've heard much  
22 about over the last two days?

23 A There were, yes.

24 Q And that victim was referred to by what  
25 number?

1           A       Number six.

2           Q       Did a jury return a criminal conviction  
3 related to the 1998 incident?

4           A       It did.

5           Q       Could you identify what the jury convicted Mr.  
6 Sandusky of?

7           A       Unlawful contact with a minor, corruption of  
8 minors, endangering welfare of children.

9           Q       And similarly, were there criminal charges  
10 filed against Mr. Sandusky for this conduct and  
11 contact with the boy that was seen in the shower by  
12 Mike McQueary that was testified to yesterday?

13          A       Yes, sir.

14          Q       Were there criminal convictions as a result --  
15 by a jury, as a result of that incident?

16          A       Yes, sir. They were indecent assault,  
17 unlawful contact with a minor, corruption of minors  
18 and endangering welfare of children.

19          Q       Okay. During the course of your  
20 investigation, did you obtain a document from the law  
21 firm McQuaide Blasko?

22          A       Yes, I did.

23          Q       And back in the nineties and well into the  
24 2000s, did McQuaide Blasko have any sort of  
25 relationship with Penn State University?

1           A       They were the legal firm that represented Penn  
2 State in everything, yes.

3           Q       And specifically, did you obtain a document or  
4 a time sheet or a billing record that would be  
5 particularly relevant to this investigation?

6           A       Yes.

7           Q       I want to show you what I've marked for  
8 identification purposes Commonwealth's Exhibit 28 and  
9 ask if you can identify that?

10          A       Yes, I can identify it.

11          Q       What is it?

12          A       It's a billing record from McQuaide Blasko in  
13 reference to their Penn State account.

14                    You look at the entire thing, it is all Penn  
15 State billing records on here. Specifically, the last  
16 three lines are reference to something that occurred  
17 in this investigation.

18          Q       Now, just to clarify, it has been identified  
19 through electronic documents and through testimony  
20 that the date of the Friday night incident that Mike  
21 McQueary witnessed was what date?

22          A       February 9, 2001.

23          Q       And through the testimony, the date that he  
24 would have reported what he had seen to Coach Paterno  
25 was what day?

1           A       The following day, February 10th; Saturday.  
2 February 10th, 2001.

3           Q       Is there any notation in Commonwealth's 28  
4 that is relevant to that time frame?

5           A       Yes. The very last notation on this page is  
6 dated February 11th of 2001.

7           Q       What is the -- what is the indication on that  
8 notation?

9           A       There is some type of case number on there. I  
10 don't know how McQuaide Blasko does that, if they do  
11 it per incident or I don't know their numbering  
12 system.

13                    Anyway, in reference to that, it says,  
14 "PSU-general-finance/business-central." On the next  
15 line it says, "Conference with G. Schultz regarding"  
16 -- it has re -- "regarding reporting of suspected  
17 child abuse."

18                    I will repeat that, "suspected child abuse.  
19 Legal research re" -- r-e -- "same."

20                    Then under that there is another line that  
21 says, "Conference with G. Schultz."

22                    Then beside that there is notation for time  
23 spent which equals 2.90 hours.

24                    So Wendell Courtney would have been the  
25 attorney of record for McQuaide Blasko at the time.

1 He spent, on a Sunday -- on a Sunday -- for suspected  
2 child abuse, he spent 2.9 hours dealing with Gary  
3 Schultz.

4 MR. BEEMER: Move for admission of 28.

5 MR. FARRELL: No objection.

6 MS. AINSLIE: No objection.

7 THE COURT: So moved.

8 BY MR. BEEMER:

9 Q Now, during the course of the investigation,  
10 was there a file folder that was recovered from  
11 Mr. Schultz' office that was noted to be a file  
12 containing information about Jerry Sandusky?

13 A Well, there is one that we recovered which  
14 essentially was empty.

15 Q Right.

16 A There is another one that we recovered  
17 eventually.

18 Q Right. The one that was essentially empty,  
19 what was left in there?

20 A There were -- my recollection is the one that  
21 was provided to us, the one we recovered, had two  
22 pieces of paper in there in reference to Jerry  
23 Sandusky and there was reference to retirement  
24 documents.

25 I don't recall exactly what they were.

1 Q My question is, during the course of the  
2 investigation, did you determine that one of the  
3 people who was involved in dealing with Sandusky's  
4 retirement was Gary Schultz?

5 A Yes. And then through talking to other  
6 people, he fit into the misconduct employee category,  
7 I do believe.

8 MR. BEEMER: That's all I have, Your Honor.  
9 Call for cross.

10 CROSS-EXAMINATION

11 BY MR. PERRY:

12 Q Mr. Sassano, good afternoon.

13 A How are you doing?

14 Q My name is Brian Perry. I represent Tim  
15 Curley with Caroline Roberto.

16 How many child abuse investigations have you  
17 been involved in?

18 A I don't know a number.

19 Q Give me a number?

20 A Oh, I would say less than 10.

21 Q Have you had any training in child abuse  
22 investigations?

23 A Yes.

24 Q Is it the policy of Centre County to ask  
25 children and youth services and law enforcement to

1 interview kids at the same time?

2 A That is my understanding.

3 Q That's typically a statewide thing, isn't it?

4 A It's what they call protocol.

5 Q Because you don't want to interview child  
6 victims too many times, do you?

7 A That's correct.

8 Q One of the reasons why you don't want to do  
9 that is because you want consistency, don't you;  
10 consistent statements?

11 A You want consistent statements and you want  
12 more, you don't want to keep traumatizing the kid more  
13 than necessary.

14 There --

15 Q Sure.

16 A So there's more than just the part that you  
17 emphasized.

18 Q The same is true in these investigations with  
19 witnesses; isn't that true? You want consistency?

20 MR. BEEMER: Your Honor, objection to the  
21 relevance. This is beyond the scope of direct.

22 MR. PERRY: I ask for a little bit of leeway.  
23 I will end it quickly.

24 THE COURT: End it quickly.

25 BY MR. PERRY:

1 Q You want consistency?

2 A What witnesses are you referring to?

3 Q Well, let's talk about Mike McQueary in this  
4 investigation. You interviewed him, didn't you?

5 A Yes.

6 Q Back in November of 2010?

7 A Yes.

8 Q Right?

9 MR. BEEMER: Objection, Your Honor. Now we're  
10 just way afield.

11 MR. PERRY: I will ask one series of  
12 questions.

13 MR. BEEMER: They still need to be relevant.

14 MR. PERRY: These are relevant.

15 THE COURT: I don't know how far we're going.

16 BY MR. PERRY:

17 Q Did you interview him in 2010, Mike McQueary?

18 A You already said I did and I said yes.

19 Q Did you interview him?

20 A I said yes.

21 Q Okay.

22 Were you here yesterday when he testified?

23 MR. BEEMER: Same objection, Your Honor. It  
24 is completely irrelevant.

25 MR. PERRY: It can rebut prima facie, Your

1 Honor. We are here for that, a prima facie finding.

2 THE COURT: We are going to abandon this line  
3 about Mr. McQueary.

4 MR. PERRY: Yes, sir.

5 BY MR. PERRY:

6 Q You talked about the alleged victim or the  
7 victims in the Sandusky trial by number, correct?

8 A I did.

9 Q For the 2001 case involving Mike McQueary in  
10 the shower, what he saw in the shower, what was that  
11 victim's number?

12 A Number two.

13 Q Is it true that the jury acquitted Mr.  
14 Sandusky on penetration-related charges?

15 A Yes, it's true.

16 Q They convicted on indecent assault, right;  
17 which is inappropriate touching?

18 A Yes.

19 Q Corruption and endangering, didn't they?

20 A Yes.

21 Q So no penetration?

22 A And unlawful contact.

23 Q Okay, but they acquitted on involuntary  
24 deviate sexual intercourse, which is penetration; am I  
25 correct?

1           A       That's correct. And if I can give you a  
2 complete answer.

3           Q       Sure.

4           A       From day one, Mike McQueary never said that he  
5 saw penetration. He said he saw Mr. Sandusky behind a  
6 boy in a motion that he believed there was  
7 penetration. However, the only way we would actually  
8 know if there was penetration would be if the victim  
9 would come forward, number one, or if Mr. McQueary  
10 would have actually seen that with his eyes, which he  
11 always said he never saw there.

12          Q       But he later described hands on hips?

13          A       Yes.

14          Q       And lifting, didn't he?

15          A       Yes, that's part of his testimony.

16          Q       Did he describe --

17                 MR. BEEMER: Your Honor, now I got to object.  
18 This is a most far afield area of cross-examination.

19                 THE COURT: Can we move on?

20                 MR. PERRY: Yes, we can.

21 BY MR. PERRY:

22          Q       You are aware when children and youth and law  
23 enforcement get involved in investigations that these  
24 investigations can take some period of time; am I  
25 correct?

1           A       Yes, they can.

2           Q       And sometimes children and youth and law  
3 enforcement have differing opinions; differing  
4 conclusions, don't they?

5           A       I imagine that happens.

6           Q       Back in 1998, are you aware that Centre County  
7 Children and Youth did not have an indicated or  
8 founded finding in their investigation?

9           A       Say that again.

10          Q       In 1998, did Centre County Children and Youth  
11 have an indicated or founded conclusion?

12                   MR. BEEMER:  Objection, relevance.

13                   MR. PERRY:  Absolutely relevant, Your Honor.

14                   MR. BEEMER:  He can say it's relevant, but  
15 it's clearly not.  It is completely beyond the scope  
16 for which he was called.  We could ask Agent Sassano  
17 about everything he did during the investigation.

18                   MR. PERRY:  He is the affiant.  He is in  
19 control of this investigation, Your Honor.  He had --  
20 they've asked about the number of people who were --  
21 the number of alleged victims who led to convictions  
22 after 2001.

23                   I'm asking one question about 1998 where no  
24 criminal charges were filed and children and youth did  
25 not have an indicated or founded status.  And I'm

1 asking if this trooper is aware of that. That's the  
2 only question I will ask him on that line.

3 MR. BEEMER: It's irrelevant whether he is  
4 aware of it. It does not have anything to do with why  
5 he was called or what you have to determine.

6 THE COURT: I'm not going to let him answer  
7 that.

8 MR. PERRY: Okay.

9 BY MR. PERRY:

10 Q When did you become aware of the 1998  
11 incident?

12 MR. BEEMER: Objection, it is also irrelevant.

13 THE COURT: Go ahead. Can you answer that?

14 THE WITNESS: When did we become aware of  
15 1998? It was subsequent to dealing with Mr. McQueary,  
16 so somewhere around November, 2010. Maybe December of  
17 2010, in that time frame.

18 BY MR. PERRY:

19 Q Let's go fast forward. You're suggesting in  
20 2001, when Mike McQueary saw what he saw, that  
21 Mr. Curley, Mr. Schultz and Mr. Spanier, did not act  
22 appropriately, which led to other victimization. Is  
23 that what you are suggesting?

24 MR. BEEMER: Objection. It is not up to the  
25 agent to suggest anything.

1 MR. PERRY: Is that what you have charged?

2 THE COURT: Well, that's a fair question.

3 Is that what you have charged?

4 THE WITNESS: That's what I have charged, yes,  
5 but I haven't suggested anything. You are suggesting.  
6 You are making suggestions. I am giving testimony in  
7 response in your questions.

8 MR. PERRY: I understand.

9 BY MR. PERRY:

10 Q How many alleged victims were victimized post  
11 2001?

12 A Post what?

13 Q Post 2001.

14 MR. BEEMER: Objection. There is no way to  
15 know. It could be hundreds, so it is an impossible  
16 question to answer. If he wants to ask how many were  
17 charged and were convicted, that's another thing.

18 MR. PERRY: Okay. Fair question.

19 BY MR. PERRY:

20 Q How many were charged post 2001?

21 A I just testified to three, but something is  
22 telling me I might have missed one, but at least  
23 three.

24 Q And your belief is that the victimization  
25 occurred between 2001 and 2010?

1 A On the ones charged in 2008 --

2 Q I'm sorry.

3 A 2008 --

4 Q On one?

5 A No, I said on the ones charged.

6 Q On the ones charged?

7 A They would have been between 2001 and 2008.

8 Q Since the Sandusky verdict, have other alleged  
9 victims come forward to you?

10 MR. BEEMER: Objection.

11 THE COURT: All right, I don't know what the  
12 relevance is. We're here for the specific charges set  
13 in the criminal complaints. If there is additional  
14 victims, I don't see that it has a bearing on the  
15 matters before us today.

16 MR. PERRY: Okay. No further questions.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 BY MR. FARRELL:

20 Q Good afternoon, Mr. Sassano.

21 A Hello, Mr. Farrell.

22 Q Don't take this one way or another as either a  
23 compliment or an insult, but you are not a lawyer, are  
24 you?

25 A No.

1 I have a thick skin, so I won't take it either  
2 way.

3 Q Good. You never worked in a law office, have  
4 you?

5 A No, that's one thing I didn't do.

6 Q You wouldn't stoop that low, is that what you  
7 are --

8 A I have hauled garbage. I have done a lot of  
9 things, but I have never been a lawyer.

10 Q All right. The McQuaide Blasko billing  
11 record --

12 A Yes, sir.

13 Q -- you're not -- you don't deal much, in the  
14 course of your work, with attorney's billing records,  
15 do you?

16 A No, not much. In this case somewhat because I  
17 had to, but typically no.

18 Q If you take -- do you have the exhibit in  
19 front of you?

20 A I do.

21 Q 28?

22 A Yes, yes.

23 Q If you would look at the entry, the page, the  
24 last entry, the one for February 11th, 2001, the way  
25 that's set up, is there a description of what appears

1 to be the work the attorney did, right?

2 A You mean the comments after the name Schultz?

3 Oh yeah, you're talking like about the title,

4 general, finance or business.

5 Q Yeah, well, that's the title.

6 A Tell me what you are talking about.

7 Q Yeah, all right. At the top of the page.

8 Let's set this up.

9 A Okay.

10 Q You see there are headings?

11 There's matter I.D., then description, then

12 task/activity, then hours; right?

13 A You're right, yes.

14 Q And matter I.D. on the entry we're talking

15 about appears to correspond to number 4000-450061?

16 A It does, yes.

17 Q All right. Then description. That appears to

18 correspond to PSU-general-finance/business-central; is

19 that right?

20 A Yes.

21 Q Then the task activity, that appears to

22 correspond to the entry "conference with G. Schultz,

23 re reporting of suspected child abuse; legal research

24 re same; conference with G. Schultz," right?

25 A That's correct.

1 Q So what I just read starting with "conference"  
2 and ending with "conference with G. Schultz," that  
3 appears to be the task or activity that the billing  
4 attorney did on that date?

5 A To me it does, yes.

6 Q What it indicates is that -- if we take it in  
7 the sequence in which it was written, first a  
8 conference with Mr. Schultz, then legal research about  
9 the subject of the conference and then another  
10 conference with G. Schultz, right?

11 A I agree.

12 Q Now, each of those task activity descriptions,  
13 none of them has a time immediately after each  
14 activity, does it?

15 A No.

16 Q It just has, in the hours column, a summary  
17 for the amount of hours spent on that day on those  
18 total task activities, right?

19 A That's correct.

20 Q Of 2.9 hours?

21 A That's correct.

22 Q So from reading this, you can't tell how much  
23 time was spent in the first conference with  
24 Mr. Schultz versus how much time was spent for the  
25 legal research versus how much time was spent in the

1 second conference with Mr. Schultz?

2 A Yes, you're right.

3 Q So as far as we know, it could have been .2  
4 hours -- the way we guys do it, tenths of an hour --  
5 .2 hours for the first conference, 2.5 hours for the  
6 research, or .2, and then .2 hours for the last  
7 conference, for example. That's possible?

8 A Perhaps, yes, that could have happened.

9 Q We can't tell from looking at this?

10 A Mr. Courtney could explain it to us. We  
11 can't -- yes, we cannot tell from this document.

12 Q Okay, but you can't tell -- explain it to us?

13 A That's correct.

14 Q Moving on to a different topic, the  
15 investigation you did to check whether there was a  
16 report about what we now know to be the 2001 incident.  
17 Now, as you yourself pointed out back at the time of  
18 the previous preliminary hearing involving Mr.  
19 Schultz, Mr. Curley, we all thought the incident was  
20 2002, right?

21 A That's correct, yes.

22 Q And you testified at that preliminary hearing  
23 about investigating to see whether a report had been  
24 made about this 2002 incident, right?

25 A Yes.

1 Q Since that preliminary hearing, did you go  
2 back and check with the same agencies about the 2001  
3 date?

4 A The only one I checked with, which I didn't  
5 testify the last time, I didn't call DPW. I believe I  
6 just went with Centre CYS. I did call DPW and they  
7 have no report of anything on file in reference to Mr.  
8 Sandusky.

9 I believe my prior testimony, the information  
10 that we had gotten from Carol Smith, the director of  
11 Centre CYS at the time, was for them to provide any  
12 information listing Mr. Sandusky, you know, as a  
13 subject of an investigation, a perpetrator.

14 There were none at all. That would have  
15 covered '02 also.

16 The only thing that she could find or provide  
17 to us in reference to Mr. Sandusky is a 2008 report  
18 and that would be the victim number one report. That  
19 was through child --

20 Q All right.

21 A Hopefully I didn't make that too confusing for  
22 you.

23 Q Well, let me make sure I understand.

24 You checked with CYS before the previous  
25 preliminary hearing, right?

1           A       That's correct, yes.

2           Q       According to what CYS told you, they keep  
3 their records by potential subject or perpetrator  
4 name; is that right? Is that accurate?

5           A       Yes, that's correct. However, if it is  
6 unfounded, they don't have it. They would not have  
7 that record.

8           Q       So if they had a report, investigated it and  
9 decided it was unfounded, they would not keep any  
10 record of it?

11          A       By law they cannot. Yes, you are correct.

12          Q       So the fact that they have no record about  
13 2001, concerning -- let me withdraw that.

14                   Based upon what she told you, they would have  
15 no record and had no record about the 1998  
16 investigation, did they?

17          A       They did not have a record, you're right.

18          Q       And DPW had no record of 1998 either, did  
19 they?

20          A       Yes, that's correct. So then I go to plan B  
21 or C or D and go to the police department who would  
22 have conducted the investigation --

23          Q       Um-hum.

24          A       -- who would have jurisdiction over the  
25 location where the incident occurred or would have

1 occurred. In this particular case, that's Penn State  
2 University Police Department, and I got the report  
3 there from them. It was a 1998 incident with Mr.  
4 Sandusky.

5 Q For the 1998 incident?

6 A Yes, sir. If there would have been an  
7 incident reported in 2001, the DPW or Centre CYS --  
8 and if it was unfounded, where I think you are going  
9 with all of this, if it was unfounded, of course they  
10 would not have a report. However, they cannot conduct  
11 a criminal investigation.

12 One of the other attorneys referred to  
13 protocol that's in place in reference to these types  
14 of matters. They would have done a joint  
15 investigation with, in this particular case,  
16 Pennsylvania State University Police Department, who  
17 would have retained a copy of that report, and there  
18 was none for 2001.

19 Q Let me make sure I understand it.

20 A Okay.

21 Q It seems what you are implying is, if CYS did  
22 an investigation on its own and found the allegation  
23 to be unfounded, it would not maintain a record,  
24 right?

25 A If CYS did? CYS would not do a child sexual

1 abuse investigation on their own. They may take the  
2 initial complaint. They would immediately marry up  
3 with the D.A.'s office and the police department and  
4 this group and this protocol would go out and do the  
5 investigation.

6 Q Is it your understanding that CY5 would and  
7 did do suspected child abuse investigations on their  
8 own?

9 In other words, child abuse, not child sexual  
10 abuse?

11 A They can do some, yes, that's correct. I  
12 thought you meant sexual abuse, because that's what we  
13 are talking about.

14 They can do regular child abuse stuff. If  
15 they see that there is something that the police need  
16 to be involved in, they would call them in.

17 Q They would call the police only if they  
18 determined that it was child abuse of a sexual nature;  
19 is that what you are saying?

20 A There could be other things; extreme violence,  
21 injuries, things like that. So it's not solely just  
22 sexual abuse. There are certain criteria.

23 Q It was up to CY5 to make the initial call to  
24 bring the police in?

25 A Yes -- under which case? Which are you

1 talking about? Just --

2 Q Generally?

3 A Generally, yes, under those conditions.

4 Q Yes.

5 A Perhaps they would get a call that someone  
6 doesn't have food in their house, a child is being  
7 abused, those generalities. They could go into the  
8 house, do a preliminary investigation, and if they see  
9 that there is something there they need the police --  
10 sexual abuse would definitely be something they need  
11 the police for -- they would call them in.

12 Q So CY5 gets an allegation -- you're  
13 understanding is that CY5 would get an allegation, do  
14 an investigation and then decide whether or not to  
15 call the police in, depending upon the nature of what  
16 it found?

17 MR. BEEMER: Objection, relevance. I mean at  
18 this point --

19 MR. FARRELL: The relevance is the absence of  
20 a record may not show that there was no report.

21 THE COURT: If we can wrap this up relatively  
22 quick.

23 MR. FARRELL: All right.

24 THE WITNESS: You have to repeat that.

25 BY MR. FARRELL:

1 Q Your understanding of CYS -- and we're talking  
2 about Dauphin County -- no, we're not. We are talking  
3 about Centre County CYS.

4 A We are.

5 Q Yes.

6 Their practice was, they get an allegation  
7 back in 2001, talking about generally, not this  
8 particular one. Do an investigation and CYS would  
9 make the determination whether or not to call in the  
10 police, right?

11 A In certain matters, yes. That's not  
12 sacrosanct. It is certain matters.

13 Q But it was their call?

14 A Yes.

15 Q If they did an investigation, did not call the  
16 police and determined it was unfounded, there would be  
17 no record with CYS, right?

18 A That's correct.

19 But sexual abuse is different than, I believe,  
20 what we are talking about here. We are talking about  
21 maybe a physical abuse or, like I said, child neglect  
22 or something or other, is my understanding of what you  
23 are relaying to me right now.

24 Q I am going to move on, because I think  
25 everyone is losing patience with the two of us.

1           A       Me too.

2           Q       Your search for the Jerry Sandusky file, you  
3 mentioned finding documents relating to Jerry  
4 Sandusky's retirement in the office of the senior  
5 vice-president of finance and business, right?

6           A       Yes.

7           Q       When did you find that document?

8           A       Can't give you a date. I don't know for sure.  
9                 It was at some point in time after Duane  
10 Morris became involved. Duane Morris law firm became  
11 involved and they turned those over.

12          Q       So it was Duane Morris lawyers who actually  
13 found the record; is that right?

14          A       I don't know that they found it. I know they  
15 turned -- yeah, I guess you could say that. They  
16 turned over a bunch of files from Mr. Schultz' office  
17 and that was amongst those files.

18                 Whether they just went through and gathered  
19 everything up and turned everything over to us or not,  
20 I'm not real clear on that.

21          Q       So it was not you yourself who found the file  
22 or anyone from your office, right?

23          A       My recollection, it was turned over amongst  
24 other documents from Gary's office by Duane Morris.

25          Q       And that was -- so you don't know of your own

1 personal knowledge exactly where they found that  
2 document, do you?

3 A No. I believe it was in that -- I believe it  
4 was in the same file drawer, the credenza.

5 Q Meaning? I'm sorry.

6 A It's like a credenza/bookcase. It was long  
7 and narrow, had three or four drawers on the bottom.

8 Q The one we heard talk about yesterday, right?

9 A Yes. Yes, same one. Joan and --

10 Q Kim?

11 A -- Miss Belcher would know better than me.  
12 They saw it every day.

13 Q Without fixing the specific date, it was found  
14 after the initial charges were filed against  
15 Mr. Schultz and Mr. Curley?

16 A Yes.

17 MR. FARRELL: I have no other questions.

18 THE COURT: Thank you.

19 BY MS. AINSLIE:

20 Q Good afternoon, Agent Sassano.

21 A Hello.

22 Q I think you know who I am by now?

23 A I know who you are and who you represent, yes.

24 Q Good.

25 You said in response to questions from

1 Mr. Beemer that you -- that eight out of the ten  
2 victims were identified at Sandusky's trial?

3 A Yes, and they testified, yes.

4 Q And -- all right.

5 The person that Mr. McQueary says he saw in  
6 the shower room with Mr. Sandusky in February of 2001  
7 was not one of those; isn't that right?

8 A That's correct.

9 Q Do you know who that child is?

10 MR. BEEMER: Objection.

11 MS. AINSLIE: Your Honor, this is at the heart  
12 of this case.

13 THE COURT: I am going to sustain the  
14 objection.

15 BY MS. AINSLIE:

16 Q I'm not going to ask you what this child's  
17 name is, but did you make a decision not to call that  
18 child to testify at Mr. Sandusky's trial?

19 MR. BEEMER: Objection to what went on in Mr.  
20 Sandusky's trial.

21 MS. AINSLIE: Your Honor, the prosecution has  
22 opened the door by bringing in all of these  
23 convictions, all of the Sandusky trial. It was the  
24 predominant subject matter.

25 MR. BEEMER: It's a fact. I mean, we're

1 talking about something the Court could have taken  
2 judicial notice of. She is asking about some  
3 particular strategy or decision by the attorney  
4 general's office. There is a big difference.

5 THE COURT: I don't know that this agent can  
6 answer that.

7 MS. AINSLIE: He can answer it. I don't know  
8 Your Honor. Understand, I am not quarreling with the  
9 Court.

10 THE COURT: I know you're not. I don't want  
11 to go further with this line of questioning with this  
12 witness.

13 MS. AINSLIE: All right.

14 BY MS. AINSLIE:

15 Q Now, you have been shown -- we have been shown  
16 in the course of the last two days, several times, the  
17 e-mail that came on June 9 of 1998, that announced  
18 that they met with Jerry and concluded that there was  
19 no criminal behavior in the 1998 episode. Do you  
20 recall those?

21 A Yeah, I recall a series of e-mails, so I guess  
22 that was one of them.

23 Q Well, I can show you this one if you would  
24 like. Would you like?

25 A If you want me to testify from it, that may be

1 better. Thank you.

2 Q It's the top one that I am talking about.

3 A Okay.

4 Yeah, I do remember this one.

5 Q It's dated what?

6 A June 9, 1998.

7 Q And your investigation revealed, did it not,  
8 that Graham Spanier was out of the country for some  
9 period of time, including June 9th of 1998, did it  
10 not?

11 A Um, I'm not sure if he was out of the country  
12 or not, no. I know he was in country until --

13 Q I'm sorry?

14 A I believe he was in the country until May  
15 22nd. When he returned, I don't exactly recall off  
16 the top of my head.

17 MS. AINSLIE: I am not going to offer it in  
18 evidence, but I will show the witness.

19 BY MS. AINSLIE:

20 Q May I refresh your recollection with Dr.  
21 Spanier's diaries?

22 These were maintained by his secretary,  
23 Carolyn Dolbin, were they not?

24 A It looks like something similar to what I  
25 possess and back at that time Carolyn Dolbin did

1 maintain his day planner.

2 Q That date planner maintained by Carolyn Dolbin  
3 shows that Dr. Spanier was in London for at least  
4 several days, possibly a week, in that vicinity and  
5 certainly was in London on June 9th of 1998, correct?

6 A That's what's in the day planner, yes.

7 You said June 9th?

8 Q Yes.

9 A Yeah.

10 Q I believe that's the date?

11 A Yep, you have it underlined there.

12 Q Yes.

13 Dr. Spanier traveled a great deal, did he not?

14 A Oh my, yes. I don't know how he ran the  
15 university as much as he traveled, to be quite honest  
16 with you.

17 Q He had a great many of e-mails on a daily  
18 basis?

19 A I don't know about that. Braden and those  
20 people would be the e-mail experts.

21 Q That's fine.

22 I'm showing you what I have marked GBS 1,  
23 which is a letter from me to Mr. Beemer?

24 A Okay.

25 Q Could you take a moment to read it?

1           A       Witness complies.

2           Q       In this letter --

3                   MR. BEEMER: I have a number of objections to  
4 this as absolutely nothing to do with Agent Sassano or  
5 any relevance to anything before this Court.

6                   MS. AINSLIE: Your Honor, as Your Honor can  
7 tell, if Agent Sassano has never heard that I made on  
8 behalf of Dr. Spanier an offer to bring him in, if he  
9 could look at his grand jury --

10                  MR. BEEMER: I want to do this at sidebar,  
11 because this is completely --

12                  THE WITNESS: Do I have to step down, Your  
13 Honor?

14                  THE COURT: If you don't mind.

15                         (A discussion occurred off the record at  
16 sidebar.)

17                  THE COURT: Tiva, I think for the record, Miss  
18 Ainslie had requested for us to review this document  
19 that was labeled GBS No. 1. Over her objection, I am  
20 not going to allow this document to be entered or I'm  
21 not going to let this particular agent review this and  
22 be questioned on the matter.

23                  MS. AINSLIE: Very well, Your Honor.

24                         May I retrieve the copy from the witness?

25                  THE COURT: Yes.

1 MS. AINSLIE: And may I have a moment?

2 (Pause.)

3 MS. AINSLIE: I have nothing further, Your  
4 Honor. Thank you very much.

5 MR. BEEMER: No redirect.

6 THE COURT: You are dismissed, Agent. Thank  
7 you, sir.

8 Mr. Beemer.

9 MR. BEEMER: Commonwealth rests, Your Honor.

10 THE COURT: Will there be any specific  
11 testimony or witnesses called on behalf of any of the  
12 Defendants in the matter?

13 MR. FARRELL: Not on our behalf.

14 MS. AINSLIE: No, Your Honor.

15 MS. ROBERTO: Not on behalf of Mr. Curley.

16 THE COURT: Have we worked out an order for  
17 closing arguments among counsel?

18 MS. AINSLIE: I think I'm first, Your Honor.

19 THE COURT: All right.

20 Liz, before you get started, if anybody would  
21 like to leave the courtroom you can go now, but  
22 obviously once we get started in this, nobody is  
23 coming back in. I don't want anybody moving. Thank  
24 you.

25 MS. AINSLIE: Thank you, Your Honor.

1           Your Honor, I actually have a little bench  
2 memorandum to offer the Court.

3           THE COURT: Thank you.

4           MS. AINSLIE: I beg the Court's indulgence.

5           THE COURT: That's all right.

6           MS. AINSLIE: Your Honor, what I propose to do  
7 is to review the evidence very briefly with respect to  
8 Dr. Spanier that you've heard in the last two days and  
9 then relate it to the legal requirements that I set  
10 forth in the bench memorandum. That will basically be  
11 it.

12           Your Honor, the evidence against Dr. Spanier,  
13 I submit, amounts only to innuendo and far-fetched  
14 inference, and I think that you can see that when you  
15 look at the evidence that has been given here.

16           Mr. McQueary testified. I will leave it to my  
17 co-counsel to comment on his credibility. He seems to  
18 be, in my judgment, making it up as he goes along. I  
19 don't think he has ever told anyone the story about  
20 Paterno having told him that Old Main screwed it up or  
21 messed up. I don't think that's -- he is making that  
22 up, but I will leave that to my co-counsel to address,  
23 because, in the end, Mr. McQueary says nothing about  
24 Dr. Spanier. Never spoke to Dr. Spanier. Never  
25 followed up with Dr. Spanier. No relationship

1 whatsoever with Dr. Spanier.

2           Tom Harmon came next, according to my notes,  
3 and also had no conversation with Dr. Spanier. All of  
4 this is not very surprising. Even though they were on  
5 the staff at Penn State, you've heard from numerous  
6 witnesses that Dr. Spanier was in charge of a  
7 university that was vast, that had thousands, tens of  
8 thousands of employees, almost 100,000, I believe,  
9 students. The fact that they would not have had  
10 contact with Dr. Spanier about these incidents is not  
11 that surprising. But the fact remains, they have  
12 nothing to say about Dr. Spanier's culpability in this  
13 case.

14           My notes show that Joan Coble was the next  
15 witness. She likewise had nothing to say about Dr.  
16 Spanier. She was Gary Schultz's lawyer {sic}. She  
17 said nothing about him whatsoever.

18           Kim Belcher, likewise Mr. Schultz' secretary,  
19 also said nothing about Dr. Spanier.

20           John Corro, the IT person at Penn State, said  
21 practically nothing. Said again that it was -- his  
22 file was unusual because the inbox was almost empty,  
23 but there were, I think he said, 84,000 or 64,000 -- I  
24 think 84,000 e-mails in the outbox. That's not  
25 exactly critical evidence bearing on the charges

1 before the Court.

2 He also agreed that the Old Main  
3 administrative e-mail system was changed over in 2004  
4 and that the e-mails from prior to 2004, or I think  
5 maybe he was not sure of the precise date, that those  
6 e-mails that predated that, unless they were saved in  
7 a special system like Mr. Schultz', could not be  
8 retrieved.

9 Lisa Powers testified to back and forth with  
10 Dr. Spanier in the dark days at the end of October and  
11 beginning of November of 2011. Back and forth about a  
12 press release.

13 It still mystifies me what that -- what  
14 relevance that has to these charges. You know, the  
15 fact that Dr. Spanier wanted to express more or less  
16 support for Mr. Schultz, for Mr. Curley, or more or  
17 less effusive expressions of sympathy to Mr.  
18 Sandusky's victims, I don't see how that bears at all  
19 on any of the charges.

20 Finally, Mr. Cook testified and again I'm  
21 mystified, and I think it's not just because I am a  
22 neophyte to computers. It was conflicting. It  
23 conflicted with the other prosecution witness,  
24 Mr. Corro.

25 Again, Braden Cook said, one way or another,

1 some of Dr. Spanier's e-mail disappeared, but some  
2 popped up from before -- what was it? 2004, I think  
3 it was. Some of them popped up from before.

4 All of them were erased in 2011. He couldn't  
5 explain that and he never, apparently, took this  
6 conundrum to Steve Neeper, the head of Information  
7 Technology at Penn State, for an explanation of all of  
8 this.

9 That, I think, Your Honor, is the  
10 prosecution's evidence against Dr. Spanier.

11 He was not -- Agent Sassano testified about  
12 the victims. Again, Dr. Spanier never saw any of  
13 these victims. Never spoke to any of these victims.  
14 He basically had no relationship whatsoever to any of  
15 these victims.

16 He also testified about, you know, the  
17 McQuaide Blasko billing record. He himself did  
18 nothing with respect to the billing record. Again, it  
19 was Mr. Schultz who consulted counsel and obviously  
20 counsel -- I will let Mr. Farrell make his point at  
21 greater length, but obviously Mr. Courtney did not  
22 feel that the allegations warranted a  
23 full-fledged police investigation.

24 Finally, again, Mr. Sassano agreed that with  
25 respect to the e-mails that the prosecution has been

1 taking us through the last couple of days, one of them  
2 -- the first one in 1998 didn't even mention Jerry  
3 Sandusky or even Jerry. It just mentioned Joe Paterno  
4 and said the individual will be interviewed.

5 The subsequent one that did say Jerry in the  
6 re line, didn't say Jerry who. Simply said this  
7 investigation has been fully investigated and is  
8 closed with no criminal wrongdoing.

9 So these two 1998 e-mails are basically  
10 vanilla. They mean nothing. The fact is, Dr. Spanier  
11 was copied on them, did not respond to them.

12 The first one was totally nonspecific and the  
13 second one said, "This investigation has been wrapped  
14 up with no criminal charges."

15 So it's hardly surprising that when, in 2011,  
16 Dr. Spanier appeared before the grand jury, that he  
17 did not recall anything about the 1998 episode. There  
18 wasn't anything to remember. And in any event, he had  
19 not been told anything about the 1998 episode other  
20 than having been copied on two e-mails, one of which  
21 he probably didn't get because he was out of the  
22 country.

23 Finally, Your Honor, the one e-mail that Dr.  
24 Spanier did generate talks about, in February of 2001  
25 -- talks about, for one thing, that it would be humane

1 to deal with it this way. I think that part of the  
2 e-mail is totally explainable in terms of Mr. Curley's  
3 desire to talk to Mr. Sandusky rather than talking  
4 around him. Um, that he should be confronted with the  
5 complaint that Mr. McQueary had made against him and  
6 that he should be offered the opportunity to go to  
7 Second Mile when Mr. Curley told Second Mile that Mr.  
8 Sandusky was not to be bringing any more Second Mile  
9 kids to the Penn State facilities.

10 So the humane part of it was not doing this  
11 behind Mr. Sandusky's back, but getting him involved.

12 There is the part that talks about, you know,  
13 would it be -- it might be vulnerable to criticism,  
14 some such thing, for failing to report it, but they  
15 could cross that bridge when they came to it.

16 Something along those lines.

17 If the rest of the evidence showed that Dr.  
18 Spanier had been told about deviant sexual behavior,  
19 that might be a really very critical e-mail. But in  
20 the absence of that, in the absence of any evidence as  
21 to what Dr. Spanier was told, I submit that this  
22 e-mail says nothing more than what has been said  
23 before, and certainly nothing inconsistent with what  
24 Dr. Spanier said at the grand jury.

25 He has said, and consistently said, that what

1 he was told was upsetting; was that a staff member was  
2 upset at seeing Jerry Sandusky and presumably a Second  
3 Mile kid horsing around in the showers and that it was  
4 inappropriate. So he understood, and there is nothing  
5 in this e-mail to contradict that, that what he was  
6 dealing with was a guy who everyone had revered, at  
7 that time certainly, for having been not only a star  
8 defensive coordinator at Penn State, but also, and  
9 more importantly, having founded Second Mile; having  
10 been in the vanguard of helping troubled youth.

11           Obviously, in retrospect, that has a sinister  
12 sound to it. But in fact, I believe -- I have been  
13 lead to believe that tens of thousands of young people  
14 who Second Mile, through its child psychologist and so  
15 on, helped to lead more productive lives.

16           So he thought -- again, this is -- I'm just  
17 going by the text of the e-mail, that it would be --  
18 you know, they would go to Second Mile, tell Second  
19 Mile that Jerry Sandusky, the founder of Second Mile,  
20 had a problem with boundaries. He did not seem to  
21 understand what was appropriate, what was seemly and  
22 that he should not bring children, Second Mile  
23 children, onto the Second Mile {sic} campus again.

24           Your Honor, I now have sort of summed up my  
25 understanding of the facts that have been produced to

1 you the last two days. What I would just like to  
2 point out, in the bench memorandum, some of the really  
3 important aspects of it.

4 First, Your Honor, the perjury. A lot of  
5 these elements -- there are six elements that I put  
6 down there, but the one that I want to focus on is  
7 number four.

8 Not only does the prosecution have to show  
9 that there was an inconsistency, that testimony was  
10 incorrect, but the prosecution has a burden of  
11 showing, even though it's a low burden here, Your  
12 Honor, I think they have a burden of showing that  
13 Dr. Spanier did not believe the statement to be true  
14 at the time it was made.

15 I see no evidence in this record that Dr.  
16 Spanier did not believe the statement, any of the  
17 statements that he made in that grand jury transcript  
18 to be false at the time. How did I start that?

19 I see no evidence that Dr. Spanier didn't  
20 believe the statement to be true. He did.

21 Secondly, Your Honor, going on to obstruction  
22 of justice, it's the first two of those elements that  
23 I would like to focus on.

24 Dr. Spanier -- the Commonwealth needs to show  
25 that Dr. Spanier had the intent to obstruct the

1 administration of the law or of other governmental  
2 function.

3           Where is the evidence of that? There is no  
4 evidence whatsoever.

5           They also have to show, in addition, that Dr.  
6 Spanier used force or violence, breached an official  
7 duty or committed an unlawful act to do this.

8           Again, there is no evidence in this record  
9 that I have seen that amounts to that kind of level of  
10 evidence.

11           Third, conspiracy to obstruct -- conspiracy to  
12 commit perjury. All of these conspiracy things, they  
13 have to show that Dr. Spanier entered into an  
14 agreement to commit or aid in an unlawful act with  
15 another person or persons; there was a shared criminal  
16 intent.

17           Now, of course, you know it is fairly clear  
18 who the prosecution thinks the co-conspirators were.  
19 It was Dr. Spanier and Mr. Schultz and Mr. Curley.  
20 But that they had a shared criminal intent? There is  
21 absolutely no evidence of that.

22           Next, Your Honor, number four, endangering the  
23 welfare of a child. There are two subsections, as  
24 Your Honor will note, on page three. There's one  
25 which is 4304(a)(1) and another that is 4304(a)(2).

1 I believe the charges fall under both, or at  
2 least it is confusing to me as to which the  
3 Commonwealth wants to charge.

4 But in any event, taking the first one,  
5 (a)(1), the Commonwealth has to show, and I'm looking  
6 at the first two elements, that Dr. Spanier was a  
7 parent, guardian or other person supervising the  
8 welfare of a child under 18 years of age. There is  
9 absolutely no evidence of that.

10 Endangering the welfare of a child, he had no  
11 supervision over these Second Mile children. As his  
12 testimony said, Dr. Spanier and the administration at  
13 Penn State was generous about allowing the community  
14 to use the facilities at Penn State. That is no  
15 crime. And it certainly does not mean that Dr.  
16 Spanier or any of the others in the administration at  
17 Penn State took on the supervision of young people  
18 simply because they came onto the campus.

19 The clear intent of this statute is to talk  
20 about foster parents, uncles and aunts taking care of  
21 children, doctors perhaps, parents, guardians, people  
22 who were supervising the welfare of a child.

23 They also have to show that Dr. Spanier  
24 endangered the welfare of a child by violating a duty  
25 of care, protection or support. Again, that does not

1 apply to this case.

2 Dr. Spanier had no such duty. He was simply  
3 in charge of a large university that made its  
4 facilities available to the Second Mile and many other  
5 organizations and people.

6 The second part of that, 4304(a)(2), if the  
7 Commonwealth is proceeding on that arm of endangering  
8 the welfare of a child, they have to show that he was  
9 in an official capacity with respect to the child.  
10 Not just that he had an official capacity, but that he  
11 had an official capacity with respect to the child.

12 So again, it has to be a guardian, a parent,  
13 something that's official with respect to the child,  
14 and there is no evidence of that.

15 Secondly, they have to show that he prevented  
16 or interfered with the making of a report of suspected  
17 child abuse. Not just that he failed to do so, but  
18 that he prevented or interfered with the making of a  
19 report. There is absolutely no evidence in the record  
20 of that.

21 Finally, Your Honor there is failure to report  
22 child abuse. And the first element there --

23 MR. BEEMER: Your Honor, I don't mean to  
24 interrupt. I submit that is charged as a summary  
25 offense, so the Court would not be entertaining

1 jurisdiction over that offense at this point.

2 MS. AINSLIE: That's fine. I mean, if the  
3 prosecution is not bringing that case to you, Your  
4 Honor, then I needn't trouble you with it.

5 Your Honor, I would just like to --

6 MR. BEEMER: It is just that the Court had  
7 made the decision --

8 MS. AINSLIE: That's fine. I understand. I  
9 think we both understand.

10 Your Honor, one of the things that -- I know  
11 -- I'm not going to argue the statute of limitations.  
12 You can see that that's one of the things that the  
13 prosecution has to show, that they filed these charges  
14 in a timely manner. I'm not going to argue that as a  
15 matter of law, but I would like to argue it, Your  
16 Honor, as a matter of fact.

17 The events that brings us here today almost  
18 entirely occurred 15 years ago, 13 years ago, 12 years  
19 ago. What you are dealing with is recollections of  
20 events when these gentlemen testified in the grand  
21 jury. Recollections of events that were at least 10  
22 years old.

23 So although I'm not going to argue, Your  
24 Honor, the statute of limitations as a legal matter, I  
25 am going to ask the Court to understand and to examine

1 the evidence in light of the fact that the witnesses,  
2 certainly these Defendants, and absolutely Dr. Spanier  
3 was, when he testified in the grand jury, as he said  
4 on several occasions, testifying on the basis of a  
5 recollection; a recollection that was at least 10  
6 years old.

7 Your Honor, I think that's all I have unless  
8 the Court has questions.

9 THE COURT: No, ma'am. Thank you very much.

10 MS. ROBERTO: May it please the Court, members  
11 of the attorney general's office, and my colleagues,  
12 Mr. Curley, Mr. Schultz and Dr. Spanier. I am not  
13 going to belabor the points that were already covered  
14 by Attorney Ainslie, but I would like to just review  
15 very briefly what evidence came out over the last day  
16 or so concerning Mr. Curley.

17 The evidence is repetitive. We heard really  
18 nothing out of the ordinary that we don't always hear  
19 from Mr. McQueary when he takes the witness stand,  
20 except we did hear some embellishment, like we always  
21 do.

22 Nonetheless, Mr. McQueary testified in front  
23 of this Court a year and a half ago and he established  
24 what this Court held was a prima facie case on the  
25 perjury.

1           Mr. McQueary testified to pretty much the same  
2 thing yesterday. He did not address whether Mr.  
3 Curley supervised the child. He did not address the  
4 issue of obstruction of justice. He did not address  
5 the issue of criminal conspiracy.

6           I felt like I was listening to testimony that  
7 may be more germane to a trial on the perjury.  
8 Perjury was held for court in 2011.

9           I heard some testimony related to Mr. Curley,  
10 because I brought it up from John Corro, who was the  
11 individual from Penn State who worked with the SOS.

12           Mr. Corro, after questioning him, stated that  
13 indeed there was a search of e-mails, Mr. Curley's,  
14 Mr. Schultz', Dr. Spanier's and others, as early as  
15 March and April of 2011.

16           I wanted to bring that out because, frankly,  
17 the testimony that I was hearing did not fit at all  
18 this 35 or so page presentment that we were served  
19 with last year.

20           So even though I am trying to make an argument  
21 to the Court, I really don't know what the foundation  
22 is that the prosecution is proceeding on. I guess for  
23 the obstruction of justice -- well, I don't know. I  
24 just don't know.

25           But I thought maybe it would be what they have

1 alleged in their presentment. And so, if you go to  
2 page -- I think it's page 23 of the presentment.

3 The presentment says, as part of the  
4 obstruction, "None of the SOS professionals were ever  
5 shown a subpoena, subpoena 1179. Nor were they  
6 directed to seek any information requested by 1179,"  
7 inferring that there was never any collection of any  
8 evidence, especially the electronic evidence. And  
9 that's wrong. It's just wrong.

10 Mr. Corro did what he was instructed to do by  
11 office of general counsel. He not only gathered  
12 together and collected all of the e-mails that he was  
13 requested to collect, but then he ran a key search on  
14 all of those -- on all of those e-mails and provided  
15 them to general counsel.

16 Mr. Corro said that had Braden Cook, the  
17 special agent, been called in to assist him in March  
18 or April of 2011, he would have gladly worked with  
19 him.

20 It was not until December or November, late  
21 November or early December, 2011, that the attorney  
22 general's office sent Mr. Braden to Penn State  
23 University.

24 So I don't know where we go from there. So I  
25 was also thinking that, well, maybe as per the

1 obstruction of justice facts or the averments that are  
2 alleged on page 32 concerning some boxes that were  
3 found that belonged to Jerry Sandusky in the athletic  
4 department, I waited for all day yesterday and half a  
5 day today and heard nothing about boxes that were  
6 allegedly found in the athletic department.

7           So this document that we received last year  
8 has lots and lots of information in it, but none of it  
9 is really -- or very little of it is really before the  
10 Court.

11           So I think when we look at the obstruction of  
12 justice charge, there really is no evidence presented  
13 by the prosecution that supports that.

14           The other thing -- the other group of  
15 documents that we heard evidence of were the e-mails.  
16 Again, I think the e-mail thread that Mr. Curley was  
17 on relating to the 1998 incident, is clearly not  
18 obstruction of justice. It supports the  
19 Commonwealth's position on the perjury, but the  
20 perjury already has been held for court.

21           There is nothing in that document that  
22 supports a conspiracy to commit perjury. There is  
23 nothing in that report that promotes any kind of  
24 conspiracy to obstruct justice.

25           You know, I want to read to the Court, if I

1 have it here -- if the Court just grants me one  
2 indulgence. Let me get my file.

3 THE COURT: Sure.

4 MS. ROBERTO: I am befuddled by the  
5 obstruction charge, so I went to the bench book which  
6 includes all of the suggested instructions for jury  
7 instruction for the judge to read to a jury.

8 It says on the obstruction, part of it, it  
9 says, "Generally speaking, a person cannot commit a  
10 crime unless he or she uses means to affirmatively  
11 interfere with governmental function. Thus, you  
12 cannot find the defendant guilty if you find that he  
13 merely tried to avoid complying with the law without  
14 affirmatively attempting to interfere with the  
15 governmental function.

16 "The Commonwealth must prove something more  
17 than just, for example, that Defendant fled the scene  
18 of a crime, refused to submit to an arrest, or did not  
19 perform a legal duty" -- or did not perform a legal  
20 duty. They have to prove more than the individual did  
21 not perform a legal duty.

22 "However, if the Defendant was a public  
23 official charged by law with the obligation to perform  
24 the duty, his failure to perform that duty must be  
25 sufficient."

1 Commonwealth offered no evidence before this  
2 court yesterday or today that Mr. Curley was an  
3 official, public official. Which, of course, he's  
4 not.

5 Failure to perform a legal duty, they really  
6 discussed nothing related to performing a legal duty,  
7 so I'm again confused about the obstruction of justice  
8 charge and confused about the conspiracy to commit  
9 obstruction of justice.

10 Regarding the endangering the welfare of  
11 children, I think Miss Ainslie reviewed the elements  
12 of that charge. However, I did want to speak to the  
13 fact that both endangering the welfare of children  
14 charges are felony charges, and I don't see where the  
15 evidence is that Mr. Curley, over a course of a period  
16 of time, endangered welfare of children.

17 And Mr. Curley, at least we know from the  
18 e-mails that were presented, made a decision in 2001,  
19 over a period of 30 or 45 days, and the decision was  
20 made, it was implemented, and it was over. Mr. Curley  
21 did not repeatedly visit that issue. He did not -- he  
22 was not confronted again with the issue.

23 The Commonwealth showed us no evidence that  
24 there were other children that came forward.

25 And I will -- I will tell you, I will read

1 this case -- headnote from this one case, *Commonwealth*  
2 *versus Popow*, P-o-p-o-w.

3 And basically says, the statute defines --  
4 "The offense of third degree felony endangerment of  
5 children is designed to punish a parent who, over  
6 days, weeks, or months abuses his children, such as  
7 repeatedly beating them or depriving them of food."

8 Now, that's not what happened in this case.  
9 There were not repeated times where children came  
10 forward. This decision was not revisited.

11 I understand the Commonwealth's theory that  
12 because there were children who were abused by Mr.  
13 Sandusky after that, that Mr. Curley should be held  
14 responsible for that, but he did not revisit the  
15 decision related to those individual children.

16 Another thing about this statute, the case law  
17 is replete with the Superior Court urging lower courts  
18 and litigants to interpret this statute in a  
19 commonsensical way. And common sense is, if you are  
20 going to hold something like this for court based upon  
21 one decision, then it should not be the continuing  
22 offense that rises to the level of a felony.

23 Now, the Commonwealth may argue this is more  
24 of a sentencing issue, it shouldn't be argued at this  
25 stage. I would point out to the Court, I don't have a

1 copy with me, the new Supreme Court case, United  
2 States Supreme Court case, that any fact that raises  
3 the grading of a crime to a higher grader is an  
4 element and it is not just a sentencing issuing.

5 Even before we get to that, Your Honor, I  
6 don't think that any of the evidence that was  
7 presented related to Mr. Curley meets the prima facie  
8 case of endangering the welfare of children.

9 Then, finally, on the endangering, I think  
10 Miss Ainslie addressed this to you; that the offense  
11 of endangering, the way it is charged by the  
12 Commonwealth, is a post 2007 statute.

13 We all learned from today and yesterday,  
14 looking at the e-mails, this incident occurred in  
15 2001. There was a different statute that was in  
16 effect in 2001 through 2006, and then the statute was  
17 changed.

18 I don't know how the Commonwealth expects to  
19 charge or have this charge with this new statute stick  
20 against our clients. I'm sure that they will bring  
21 that up with the Court and maybe we can respond once  
22 we know. But I think under the circumstances, if we  
23 were back here a year and a half ago, this evidence  
24 may support a prima facie case of perjury, but under  
25 the circumstances, there's no case here for the

1 obstruction, the endangering, and the conspiracy.

2 Thank you.

3 THE COURT: Thank you, ma'am.

4 MR. FARRELL: Good afternoon, Your Honor.

5 THE COURT: How are you, sir?

6 MR. FARRELL: I'm fine. How are you?

7 It's been a long two days. I will try to be  
8 brief, although I promised that before and perhaps  
9 disappointed you.

10 THE COURT: That's all right.

11 MR. FARRELL: I will try.

12 The three quick points -- I am not going to  
13 repeat what my co-counsel said.

14 On the conspiracy charges, there is just no  
15 evidence of anything that Mr. Schultz did in  
16 conjunction with the other two Defendants after 2001.  
17 There's no evidence of a conspiracy.

18 There -- I attempted to bring out, I think the  
19 Court understood, from the various witnesses that  
20 Mr. Schultz was in retirement for 2009 through  
21 September of 2011. He had no involvement in  
22 responding to any grand jury subpoenas for documents  
23 in that time period and there is no evidence that he  
24 was even aware of any grand jury subpoenas.

25 The evidence about Mr. Schultz with respect to

1 obstruction is actually to the contrary. He's the guy  
2 that preserved his e-mails. He's the fellow that kept  
3 his notes. He told his secretary to tell the truth.  
4 Finally, he's the one, through me, who produced the  
5 Sandusky file. All the time not being under subpoena  
6 to do any of that.

7           So contrary of their being a conspiracy case  
8 and obstruction case, there's no evidence of  
9 conspiracy, and actually, evidence of Mr. Schultz  
10 going above and beyond to obey his obligation as a  
11 citizen and cooperate with the investigation.

12           I guess there is -- again, I get pulled into  
13 this, the audacity I had to write a press release in  
14 October proclaiming my client's innocence. That's the  
15 only thing you heard. That is not obstruction of  
16 justice, certainly not from Mr. Schultz's part nor on  
17 my part.

18           Finally, with respect to the endangering the  
19 welfare of a child, you -- the Commonwealth obviously  
20 has charged the post 2006 version of the statute  
21 where, again, the only evidence about Mr. Schultz'  
22 conduct is evidence about his conduct in 2001. But  
23 even under the post 2006 version of the statute, the  
24 Commonwealth doesn't make out its case.

25           Under subsection (a)(1), it has to be shown

1 that Mr. Schultz either supervised the welfare of a  
2 child or supervised one who did supervise the welfare  
3 of a child. No evidence that Mr. Schultz had any  
4 supervisory capacity with respect to any of the  
5 children at issue in this case, and he had no  
6 supervisory role with respect to Mr. Sandusky, because  
7 as of 2001 -- as of 1999, Mr. Sandusky is no longer a  
8 Penn State employee.

9           The other subsection that's charged, (a)(2),  
10 requires that one in his official capacity interferes  
11 with the making of the report of child abuse. There  
12 is no evidence that Mr. Schultz did anything in an  
13 official capacity. Certainly not to interfere.

14           At most, there's evidence suggesting that he  
15 failed to make some sort of report in 2001. I know  
16 the Court doesn't have that issue before it, but it  
17 does have the endangerment issue. The endangerment  
18 requires more than what the summary offense requires.

19           Summary offense is violated, at least  
20 according to the Commonwealth. There is certain  
21 prerequisites that apply. One simply fails to make a  
22 report. What they've charged here is interfering with  
23 the making of a report. There is no evidence before  
24 this Court that Mr. Schultz did anything to interfere  
25 with the making of any report of child abuse.

1 Thank you, Your Honor.

2 THE COURT: Thank you, sir.

3 MR. BEEMER: Your Honor, it's a rather  
4 astounding series of circumstances that go through --  
5 start in 1998, go all the way up, really, into 2011,  
6 2012. The Defense clearly is just misconstruing the  
7 nature of the evidence.

8 It was really rather remarkable, the attempt  
9 to gloss over the historical evidence from 2001. That  
10 e-mail where there is a decision made on how to handle  
11 this case. I could have submitted that e-mail to you,  
12 Your Honor, and made out this case.

13 Now, we gave you quite a bit more. And what  
14 does that establish?

15 It establishes that in 1998 -- you have all of  
16 this evidence that there was tremendous interest in  
17 what was going on from Gary Schultz, from Tim Curley,  
18 and you've heard the evidence from the witnesses who  
19 testified about Mr. Schultz, Graham Spanier. They are  
20 detail-oriented, micromanaging kind of guys. It is an  
21 inconceivable position to take, based on the  
22 documentary evidence, that all three of them did not  
23 know what was going on in 1998, and that they weren't  
24 kept apprised. Because, if Dr. Spanier wasn't kept  
25 apprised, then he's negligent.

1           You have an assistant football coach in the  
2 most-high profile athletic team in a major university,  
3 and the second most well-known person in that  
4 department is being investigated for having contact  
5 with a young boy on your campus, and Miss Ainslie  
6 wants to stand up here and say, "Well he wouldn't know  
7 what that was about because all it said was Joe  
8 Paterno or Jerry."

9           I would submit that is completely inconsistent  
10 with all the other evidence you heard in the case and  
11 it's ridiculous.

12           I submit to you, Judge, that if it had been  
13 1999 or 2000, and some member of the press came and  
14 got ahold of the fact that there was a 1998  
15 investigation, and they went to these guys, you know  
16 what they would have said? They would have said,  
17 "Yeah, of course we knew about it. The police  
18 investigated it, DPW looked at it, the D.A.'s office  
19 declined to prosecute and nothing happened."

20           But it wasn't 1999 or 2000 when they finally  
21 were asked about it, it was 2011. And what happened  
22 in the interim?

23           In 2001, they get a report from Mike McQueary,  
24 and you don't have to make a credibility assessment at  
25 this stage, Your Honor, but I think his testimony

1 speaks for itself. You've now heard him twice.

2 I think the chain of events is remarkable. He  
3 makes a report to Joe Paterno on Saturday, February  
4 10th about something he sees on February 9th. As the  
5 grand jury testimony indicates, he meets with Curley  
6 and Schultz on that Sunday. Immediately there is a  
7 plan of action. They meet with the university legal  
8 counsel about suspected child abuse on a Sunday.

9 On Monday, before anybody's ever talked to the  
10 witness, Schultz formulates, in his notes, a plan of  
11 action. Nobody -- they haven't even talked to Mike  
12 McQueary yet.

13 I think it suggests something. The evidence  
14 is suggestive of the fact that they wanted this to go  
15 a certain way. And if that certain way was to keep  
16 out the police, the department of public welfare,  
17 children and youth and every other agency that could  
18 do a legitimate investigation into what Jerry Sandusky  
19 was doing, that's what they were going to do.

20 It is all laid out in those e-mails on  
21 February 26th and 27th.

22 In fact, Curley says he is uncomfortable with  
23 going to everyone but the person involved. I think I  
24 would be more comfortable meeting with the person and  
25 telling him about the information we received.

1           They feel responsibility to inform his  
2 organization. Spanier replies that the approach is  
3 acceptable to him, "Requires you to go a step forward,  
4 but I admire your willingness to do that. The only  
5 down side for us is if the message isn't heard and  
6 acted upon and we then become vulnerable for not  
7 having reported it. The approach you outlined is  
8 humane and a reasonable way to proceed."

9           That is a question for the jury.

10           Now, the issue about obstruction of justice  
11 and endangering the welfare of children, you saw the  
12 testimony in the grand jury transcript. It's clear.  
13 These guys were in charge of a large university that  
14 by their own admission in their grand jury testimony  
15 had thousands of children on their campus every year  
16 for camps, for all sorts of activities. And they take  
17 this position in 2001, where they are going to allow  
18 Jerry Sandusky to continue to have access to the  
19 university. By their own admission in grand jury  
20 testimony, specifically Mr. Curley, the directive he  
21 gave was unenforceable.

22           So they continue to obstruct justice by not  
23 reporting this when they have a duty to do so to law  
24 enforcement.

25           But that doesn't end it, because there was a

1 conspiracy of silence and they agreed to do this. All  
2 the way up through 2011, the record is replete with  
3 the fact that they are continuing to lie, including  
4 under oath.

5           Why? Because they don't want to be exposed  
6 for not reporting this, for not protecting children  
7 and for avoiding the responsibilities that we all  
8 tragically know came to fruition.

9           Agent Sassano testified about the victims that  
10 were abused by Sandusky, some on Penn State's campus,  
11 some after. That endangerment was continuing and  
12 ongoing because after that statute was changed in  
13 2007, more kids continue to be abused. They are not  
14 relieved of criminal responsibility because their  
15 conspiracy worked for 10 years. That's essentially  
16 what they are asking for.

17           They should be relieved of the criminal  
18 responsibility of endangering children; of obstructing  
19 justice?

20           The statute applies. We're asking the Court  
21 to hold all of the charges. It's clear that Spanier  
22 lied about material facts during the course of his  
23 testimony. It's clear that the three of them  
24 obstructed justice through 2001, all the way up until  
25 the present. And their course of conduct led them to

1 endanger the welfare of children, a role in which they  
2 had an overall supervisory role over the kids on this  
3 campus. Otherwise, it would be an enormous problem at  
4 Penn State.

5 For all of those reasons, ask that you hold  
6 all of the charges that are currently before you for  
7 court.

8 THE COURT: Thank you.

9 I would like to first off commend the  
10 attorneys that were with us, with me, the past two  
11 days for their professionalism shown; the respect for  
12 courtroom decorum. That means a lot to me as a  
13 sitting magisterial district judge.

14 I would also like to thank the Commonwealth.

15 It is a tragic day for Penn State University  
16 to say the least. But with respect to the charges  
17 against Dr. Spanier, Mr. Schultz and Mr. Curley, I am  
18 going to hold all the cases based upon a prima facie  
19 finding.

20 I will advise everyone in the courtroom, if  
21 you want to leave, you can leave. Obviously, the  
22 Defendants and their attorneys and the prosecution  
23 will be required to stay. I have a little paperwork  
24 that I've got to do.

25 Jonesie, if you want to adjourn.

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Everyone if you want to go, go.  
(The proceedings were concluded.)

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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

\_\_\_\_\_  
Nativa P. Wood, RDR  
Official Court Reporter

	<p><b>2006</b> [3] - 59:16, 61:20, 61:23</p> <p><b>2007</b> [2] - 59:12, 67:13</p> <p><b>2007-2008</b> [1] - 8:5</p> <p><b>2008</b> [4] - 21:1, 21:3, 21:7, 26:17</p> <p><b>2009</b> [2] - 6:6, 60:20</p> <p><b>2010</b> [5] - 15:6, 15:17, 19:16, 19:17, 20:25</p> <p><b>2011</b> [11] - 42:11, 43:4, 44:15, 53:8, 53:15, 54:18, 54:21, 60:21, 63:5, 64:21, 67:2</p> <p><b>2012</b> [1] - 63:6</p> <p><b>2013</b> [2] - 1:22, 5:2</p> <p><b>22nd</b> [1] - 36:15</p> <p><b>23</b> [1] - 54:2</p> <p><b>26th</b> [1] - 65:21</p> <p><b>27th</b> [1] - 65:21</p> <p><b>28</b> [5] - 4:4, 10:8, 11:3, 12:4, 22:21</p> <p><b>29</b> [1] - 1:22</p>			
<b>'02</b> [2] - 6:18, 26:15				
<b>1</b>				
<p><b>1</b> [4] - 1:23, 4:6, 37:22, 38:19</p> <p><b>10</b> [5] - 7:3, 13:20, 51:21, 52:5, 67:15</p> <p><b>100,000</b> [1] - 41:8</p> <p><b>10th</b> [3] - 11:1, 11:2, 65:4</p> <p><b>11</b> [1] - 4:4</p> <p><b>1179</b> [2] - 54:5, 54:6</p> <p><b>11th</b> [2] - 11:6, 22:24</p> <p><b>12</b> [2] - 3:3, 51:18</p> <p><b>13</b> [1] - 51:18</p> <p><b>15</b> [1] - 51:18</p> <p><b>18</b> [1] - 49:8</p> <p><b>1979</b> [1] - 5:22</p> <p><b>1998</b> [25] - 8:21, 9:3, 18:6, 18:10, 18:23, 19:10, 19:15, 27:15, 27:18, 28:3, 28:5, 35:17, 35:19, 36:6, 36:9, 37:5, 44:2, 44:9, 44:17, 44:19, 55:17, 63:5, 63:15, 63:23, 64:14</p> <p><b>1999</b> [5] - 5:22, 5:23, 62:7, 64:13, 64:20</p>				
<b>2</b>				
<p><b>2</b> [5] - 1:19, 25:3, 25:5, 25:6</p> <p><b>2.5</b> [1] - 25:5</p> <p><b>2.9</b> [2] - 12:2, 24:20</p> <p><b>2.90</b> [1] - 11:23</p> <p><b>20</b> [1] - 3:3</p> <p><b>2000</b> [2] - 64:13, 64:20</p> <p><b>2000s</b> [1] - 9:24</p> <p><b>2001</b> [33] - 6:18, 7:13, 10:22, 11:2, 11:6, 16:9, 18:22, 19:20, 20:11, 20:13, 20:20, 20:25, 21:7, 22:24, 25:16, 26:2, 27:13, 28:7, 28:18, 31:7, 34:6, 44:24, 57:18, 59:15, 59:16, 60:16, 61:22, 62:7, 62:15, 63:9, 64:23, 66:17, 67:24</p> <p><b>2002</b> [2] - 25:20, 25:24</p> <p><b>2004</b> [3] - 42:3, 42:4, 43:2</p>				
<b>3</b>				
<b>30</b> [2] - 5:2, 57:19				
<b>32</b> [2] - 3:4, 55:2				
<b>35</b> [1] - 53:18				
<b>36</b> [1] - 4:6				
<b>4</b>				
<p><b>4</b> [1] - 3:2</p> <p><b>4000-450061</b> [1] - 23:15</p> <p><b>4304(a)(1)</b> [1] - 48:25</p> <p><b>4304(a)(2)</b> [1] - 50:6</p> <p><b>4304(a)(2)</b> [1] - 48:25</p> <p><b>45</b> [1] - 57:19</p>				
<b>6</b>				
<b>64,000</b> [1] - 41:23				
<b>8</b>				
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