

Analysis of the Freeh Report



allegations against Spanier, Schultz, Curley, and Paterno PRELIMINARY VERSION 3H

Brief description:

Freeh alleges that Spanier, Schultz, Curley, and Paterno knew for more than a decade that Sandusky was a child molester, hid this because of public relations concerns, failed to report Sandusky as required by law, and showed callous disregard for the welfare of children.

But

The evidence shows instead that these men had good and sufficient reason to not suspect Sandusky, never did suspect Sandusky, had no reason to report him, and had no reason to think there were victims needing identification and protection.

Furthermore

The evidence against Sandusky that is currently available to the public is weak, and despite his conviction, his guilt may be reasonably doubted.

Robert Long

September 19, 2012

revised on subsequent dates, most recently on September 9, 2013

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Sections from “Analysis of Evidence in the Sandusky Grand Jury Presentment”
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Documents referenced:

The “Freeh report,” entitled
“Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State
University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky,”
by Freeh Sporkin & Sullivan, LLP,
published July 12, 2012 on the Internet at www.thefreehreportonpsu.com,
and
the related press release.

Two Sandusky grand jury presentments.

The Curley and Schultz preliminary hearing transcript.

Some publically-available documents filed with the Sandusky trial court.

News articles reporting on testimony of Dr. Jonathan Dranov.

A press release issued by the Pennsylvania Attorney General’s office.

The Sandusky trial transcript.



Please e-mail corrections and comments using subject line beginning with “AFR” to
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Contents

INTRODUCTION.....	<u>7</u>
Scope of analysis..	<u>7</u>
Attitude toward Sandusky...	<u>8</u>
Description of the evidence..	<u>8</u>
PART I.....	<u>11</u>
Statutory reporting requirements..	<u>11</u>
The Clery Act..	<u>11</u>
Pennsylvania statutes..	<u>12</u>
What is illegal.....	<u>15</u>
What is legal.....	<u>18</u>
PART II.....	<u>20</u>
The 1998 incident.....	<u>20</u>
Sandusky’s showering before 2001..	<u>21</u>
PART III.....	<u>22</u>
What McQueary said in 2001.....	<u>22</u>
1. Paterno statement to Cynthia Baldwin, January 3, 2011..	<u>22</u>
2. Paterno grand jury testimony, January 12, 2011.....	<u>23</u>
3. Curley grand jury testimony, January 12, 2011.....	<u>25</u>
4. Schultz grand jury testimony, January 12, 2011.....	<u>29</u>
5. McQueary preliminary hearing testimony, December 16, 2011.	<u>34</u>
Direct examination: what McQueary told Paterno.	<u>34</u>
Cross examination: what McQueary told Paterno.....	<u>35</u>
Direct examination: what McQueary told Curley, and Schultz.....	<u>36</u>
6. John McQueary preliminary hearing testimony, December 16, 2011..	<u>38</u>
What John McQueary learned from his son.	<u>38</u>
What John McQueary told Schultz.	<u>40</u>
John McQueary and Dr. Jonathan Dranov.....	<u>41</u>
7. Spanier statement as noted by Cynthia Baldwin, March 22, 2011.....	<u>41</u>
8. Spanier 2012 statement, in Freeh’s Exhibit 2J.....	<u>42</u>
9. Dr. Jonathan Dranov trial testimony, June 20, 2012..	<u>43</u>
Raw testimony and statements, summaries..	<u>45</u>
What McQueary told Paterno in 2001..	<u>48</u>
Extracts of relevant raw testimony and statements.....	<u>48</u>
Summary of what McQueary told Paterno.....	<u>49</u>
Considering the facts in the light of Paterno’s knowledge and experience.....	<u>50</u>

The significance of the mirror..	52
What McQueary told Curley and Schultz in 2001..	54
What McQueary said in 2011..	56
McQueary’s 2011 testimony in narrative form.	56
A summary of what McQueary saw..	59
What actually happened in 2001...	60
1. Dr. Jonathan Dranov..	60
2. The support staff locker room..	61
3. Shower room layout and a plausible scenario..	63
4. So did Sandusky molest the boy, or not?.	65
5. More on what Paterno knew..	66
6. Paterno’s reaction to McQueary..	68
 PART IV.	 70
Freeh’s exhibits and other raw evidence...	70
Table 1: Time line and raw data, with commentary..	70
Table 2: Proposed plans of action...	84
Freeh’s discussion of certain evidence, commentary added...	85
An analysis of Freeh’s Findings..	106
Findings, press release pages 4–5, commentary added.	106
Findings, Freeh report pages 14–17, commentary added.	110
 PART V.	 115
Sandusky’s guilt is doubtful..	115
Allegations against Sandusky...	116
A closer look at what the presentment says regarding alleged victim 1...	119
How an innocent Sandusky could draw so many accusations..	122
 CONCLUSION.	 127
 APPENDICES.	 129
Appendix A. Raw testimony..	129
McQueary testimony on December 16, 2011, selections.	129
Curley grand jury testimony, January 12, 2011, selections, annotated..	140
Schultz grand jury testimony, January 12, 2011, selections, annotated..	144
Appendix B. Alleged victim 8...	157
1. Janitor B’s trial testimony, June 13, 2012..	157
2. Janitor B's story (excerpts from his testimony)..	171
3. Analysis of Janitor B’s story..	173
Appendix Y. A note on McQueary’s trial testimony...	179

Preface

This is a preliminary version of the analysis of the Freeh report as it relates to Spanier, Schultz, Curley, and Paterno. There are two reasons that this is a preliminary version.

1. I have not completed an analysis of the Sandusky trial transcript.
2. I do not have the layout of the assistant coaches locker room in both the Lasch building and in the older East Area Locker Room, and the layout of other places where abuse is alleged to have occurred. If you can help with layouts, please contact me at p462hj@aol.com.

Thanks to pictures at <http://notpsu.blogspot.com> I have been able to diagram the layout with dimensions of most of the support staff locker room. (Unfortunately, the pictures do not show the back of the toilet stall, the urinals, the entrance, or the outside of the locker room. The layout of the entrance is based on the drawing of a user.) I obtained the pictures on Oct 5, 2012.

Thanks also to <http://www.framingpaterno.com/> which is where I found a link to the web site having the pictures. I created a mock-up of the locker room in [Blender](#), and used that to produce views from various positions in the locker room. These are available in a companion document, "The Lasch Building Support Staff Locker Room."

For the latest version of this and companion documents visit

<http://RobertLong1.tripod.com>

INTRODUCTION

Scope of analysis.

The Thirty-Third Statewide Investigating Grand Jury, in two presentments, the first issued on or about November 5, 2011, and the second on or about December 7, 2011, alleged sexual abuse by Gerald A. Sandusky (“Sandusky”) of ten boys (alleged victims 1 through 10), all of whom are now adults. The first presentment also alleged both perjury and failure to report suspected child abuse by both then Athletic Director Timothy M. Curley (“Curley”) and then Senior Vice President for Finance and Business Gary C. Schultz (“Schultz”).

On July 12, 2012, Louis Freeh, through his company Freeh Sporkin & Sullivan, LLP, issued a report entitled “Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky” (hereinafter referred to as “the Freeh report,” “Freeh’s report,” “his report,” “the report,” and the like; and much more often simply by “Freeh,” “he” and the like—references to Louis Freeh himself, if any, will be styled “Mr. Freeh.”)

Freeh claims that former university president Graham Spanier (“Spanier”), Schultz, Curley, and former head football coach Joseph V. Paterno (“Paterno”), primarily with respect to their handling of the 2001 incident involving alleged victim 2, and to a lesser extent with respect to their handling of the 1998 incident involving alleged victim 6, knew or strongly suspected that Sandusky was a child molester, but covered it up out of public relations concerns, and also failed to report Sandusky to authorities as required by law. Freeh says these claims are conclusions based on the evidence he presents.

What follows is an examination of (1) evidence relevant to Freeh’s claims, particularly with respect to the 2001 incident, (2) his analysis of that evidence, and (3) his conclusions. The purpose of this analysis is to see whether the evidence supports Freeh’s conclusions with respect

to the way Spanier, Schultz, Curley, and Paterno handled the 2001 incident.

Attitude toward Sandusky.

Given the evidence contained in the Sandusky grand jury presentments and in the Curley and Schultz preliminary hearing transcript, Sandusky's guilt may be reasonably doubted. I realize that twelve jurors found Sandusky guilty. But conviction of a crime is not evidence of guilt. I also note that Sandusky has not admitted guilt, so far as I know, and is appealing his conviction. I therefore consider Sandusky's guilt unproven and doubtful.

Description of the evidence.

1. Pennsylvania statutes.

Statutes cited include the reporting requirement for those who suspect child abuse, and those which define certain crimes relevant to this analysis.

2. The handbook for the federal Clery Act.

The Clery Act requires universities to report crime statistics. The related handbook tells universities how to implement the act.

3. The Freeh report.

This report was commissioned by The Pennsylvania State University's Board of Trustees ("board of trustees") on November 21, 2011 and published on July 12, 2012 on the Internet at www.thefreehreportonpsu.com. The same site has a related press release, also published on July 12. Errata for both documents is available at the site and have been incorporated into the documents analyzed here. The full report is 267 pages long. The introduction, discussion of evidence, and "findings" occupy pages 8–144. Endnotes begin on page 145 and appendices on page 163. Appendix A consists of about 30 exhibits, 16 of which are emails. Some of the email exhibits include the text of email messages being replied to, and these included messages can be unpacked into separate messages, often along with date, time, sender, and receiver. The

remaining exhibits include letters, notes, including handwritten notes, and a variety of other documents. There are a few duplicates among the exhibits: 2F=5G and 2G=3F. Appendix B consists of three Pennsylvania State University Policies: AD 67, AD 72, HR 99.

4. Two Sandusky grand jury presentments.

The first presentment was issued on or about November 5, 2011, and is 23 pages long. It accuses Sandusky of sexual offenses against 8 boys, and accuses both Curley and Schultz of both perjury and failure to report a suspected sexual offense against a child. The second presentment was issued on or about December 7, 2011, and is 5 pages long. It accuses Sandusky of sexual offenses against an additional 2 boys. Both presentments set forth some of the evidence which motivated the grand jury to indict Sandusky, Curley, and Schultz.

5. The Curley and Schultz preliminary hearing transcript.

This is the transcript of a hearing held on December 16, 2011 in which the state set forth evidence which it felt established a *prima facie* case against Curley and Schultz. Testimony from McQueary and his father are of primary interest here. So, too, is the grand jury testimony of Paterno, Curley, and Schultz which was read into the record.

6. Some publically-available documents filed with the Sandusky trial court.

The courts maintain web sites where they make public some documents related to these cases, one site for Sandusky, and a second site for Curley and Schultz. Certain of these documents set forth the date ranges in which Sandusky is alleged to have sexually assaulted the several alleged victims.

7. A small number of news articles.

Most of these news articles have brief descriptions of the testimony by Dr. Jonathan Dranov (“Dranov”), or information about a particular locker room. All articles were found on the Internet. In addition to these articles, Freeh includes a few news reports as part of his evidence.

8. A November 2011 Pennsylvania Attorney General's office press release.

This press release, Attorney General's Press Office 6270, is cited with respect to the question of when the initial report was made concerning alleged victim 1 to his high school. It was this report that eventually precipitated the grand jury investigation of Sandusky.

9. The Sandusky trial transcripts.

The transcript was not available during the original preparation of this analysis of Freeh's report. But it has been available for some months now. Though I have read all the transcripts, I still have not had time to completely analyze them. So far, I have analyzed and am using here the testimony of Mike McQueary (alleged victim 2), Dr. Jonathon Dranov (alleged victim 2), and Janitor B (alleged victim 8).

PART I

The law

Statutory reporting requirements.

Pennsylvania's Consolidated Statutes, 23 Pa.C.S. §6311, requires certain persons to report suspected child abuse to child protective services. Also, the federal Clery Act requires the number of times sexual assault and certain other crimes occur at a university to be publicly reported on an annual basis, so there is a requirement to report crimes for Clery Act purposes.

The Clery Act.

The federal government publishes "The Handbook for Campus Safety and Security Reporting" (the Clery Handbook). It says on page 73 (emphasis added):

Under Clery, a crime is "reported" when it is brought to the attention of a campus security authority or local law enforcement personnel by a victim, witness, other third party or even the offender. It doesn't matter whether or not the individuals involved in the crime, or reporting the crime, are associated with the institution. If a campus security authority receives the crime information and believes it was provided in good faith, he or she should document it as a crime report. In "good faith" means there is a reasonable basis for believing that the information is not simply rumor or hearsay. That is, there is little or no reason to doubt the validity of the information.

Note that these instructions do not require an incident to be reported if there is sufficient reason to doubt the claim that a crime has occurred. Sufficient reason is explained as more than a "little" reason, a pretty low bar to clear: any good reason to doubt is more than sufficient.

In practice, a Clery crime should not be brought to the attention of a campus security authority for Clery act reporting purposes by a person who thinks there is sufficient reason to doubt a

crime has occurred. And a campus security authority who receives “crime information” should not make a Clery “report” of that information if he thinks there is sufficient reason to doubt that a crime occurred.

Pennsylvania statutes.

Pennsylvania’s Consolidated Statutes, 23 Pa.C.S. §6311 reads or has recently read as follows (emphasis and words in square brackets added):

§ 6311. Persons required to report suspected child abuse [to child protective services]

(a) General rule.--A person...shall report or cause a report to be made [to child protective services] when the person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child...is a victim of child abuse....

...

(c) Staff members of institutions, etc.--Whenever a person is...a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.

The statute read somewhat differently in 2001, but the differences between the 2001 text and the text above are not significant for our purposes here.

Also for our purposes here, and noting that any training a person has is part of his experience, we may shorten paragraph (a) to just this:

(a) A person must report [to child protective services] when the person has reasonable cause to suspect on the basis of experience that a child is a victim of child abuse.

Note that whether a person is required to report is dependent on the person's experience, broadly understood. Some people assessing a set of facts may, based on their experience, conclude they have reasonable cause to suspect child abuse. Other people assessing the same set of facts may, based on their experience, conclude they do not have reasonable cause to suspect child abuse.

Note particularly that the Pennsylvania statute does not require a person to report an incident if the person, based on experience, concludes he does not have reasonable cause to suspect that the child is a victim of child abuse.

In other words, a person is not required to report if, based on experience, he does not think child abuse occurred.

But this statute is something of a "sticky wicket" because of the words "reasonable cause." In law, the word "reasonable" in this phrase means whatever some hypothetical typical person of normal intelligence would think is reasonable. Lifting some words from *Black's Law Dictionary*, "reasonable cause" is a set of facts that "would lead [a] man of ordinary care and prudence to believe and conscientiously entertain honest and strong suspicion [that . . .]."

This law dictionary definition seems to say that one must both believe *and* strongly suspect something. Personally, I think the definition should read "believe (=be sure of) *or* strongly suspect." Either way, *Black's* tells us that reasonable cause is not mild suspicion, or mere wondering.

If *Black's* be our guide, as modified by me, and expanding "experience" to "his experience," meaning all that a person knows no matter how learned, our summary of the statute can be revised to

(a) A person must report [to child protective services] when the facts known to the person, considered

in the light of his experience, would lead a man of ordinary care and prudence to be sure or to strongly suspect that a child is a victim of child abuse.

But since nobody knows what this hypothetical man of ordinary care and prudence would do, save judges, prosecutors, jurors, newsmen, and, well, just about everyone but you, all of whom are infallible on this point even when they disagree—and after the fact we will tell you what you *obviously* should have done—what is a mere layman to do?

Well, you could ask around, get a sense of what is popular, and go with that. But if you are someone for whom morality and personal integrity are important, and your best judgment based on the facts of the case evaluated according to your own experience causes you to be sure that child abuse has occurred, or to *strongly* suspect that it has occurred, then you will report. But if you are neither sure nor *strongly* suspect that it has occurred, then you will not report.

Some may quibble over the word “strongly” in the phrase “strongly suspect.” And to be sure, there is no objective scale that one can use to measure the strength of suspicion. But if people report because they merely wonder whether a crime has occurred, or because they have a mild suspicion that a crime has occurred, the number of reports will be so great that authorities will not have the resources to investigate them all, or at least not adequately investigate them all. And then some, and perhaps many, of the relatively few reports by those who are sure or strongly suspect that a crime has occurred—and these are the reports most likely to be of actual crime—would be neglected for lack of resources.

To “strongly suspect” means to be “almost sure” or “pretty sure.” Using the second of these substitutes, and noting that “his experience” means “his own experience” since the totality of what each person knows is different, our summary of the statute can be revised once more to

(a) A person must report [to child protective services] when the facts known to the person, considered in the light of his own experience, would lead a man of ordinary care and prudence to be sure or

pretty sure that a child is a victim of child abuse.

A summary of the *Black's Law Dictionary* definition of “prudence” is “carefulness, precaution, attentiveness, and good judgment.” So the basic idea of the phrase “care and prudence” is carefulness. Also, “a man of ordinary care and prudence” is a legal fiction: nobody can know what a nonexistent man would think. Removing this blemish, and noting that in this context, “his own experience” means “his own knowledge and experience,” I revise the previous summary of the statute to

(a) A person must report [to child protective services] when the facts known to the person, considered carefully in the light of his own knowledge and experience, make him sure or pretty sure that a child is a victim of child abuse.

This summary of the statute is clear enough for a layman to understand and use, and it is the meaning of the statute that I use here.

Finally regarding the meaning of this statute, considering something carefully in the light of one’s own knowledge and experience can sometimes be done quickly, even contemporaneously with reception of the facts. But except in situations that will not admit of delay, and seeing that a false accusation can do much harm both to the accused and others, before making an accusation, we should take the time to give all the facts at least two careful reviews. We would want the same.

N.B. I am not a lawyer.

What is illegal.

The Clery Handbook says (p37–38):

Forcible Sodomy is oral or anal sexual intercourse with another person, forcibly and/or

against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

Pennsylvania Consolidated Statutes, Title 18, Chapter 31 says or has recently said (text in square brackets added):

§ 3101. Definitions.

"*Deviate sexual intercourse.*" Sexual intercourse per os [os = mouth] or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.

"*Foreign object.*" Includes any physical object not a part of the actor's body.

"*Indecent contact.*" Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.

"*Sexual intercourse.*" In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required.

§ 3123. Involuntary deviate sexual intercourse.

(a) Offense defined.--A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:

...

(7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(b) Involuntary deviate sexual intercourse with a child.--A person commits involuntary

deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.

§ 3125. Aggravated indecent assault.

(a) Offenses defined.--Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

(1) the person does so without the complainant's consent;

...

(7) the complainant is less than 13 years of age; or

(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

§ 3126. Indecent assault.

(a) Offense defined.--A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

...

(7) the complainant is less than 13 years of age; or

(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

Sandusky was charged with violation of other statutes beyond those shown above, but the other statutes are dependent on the ones shown above in such a way that if none of the above statutes

are violated, the remaining statutes cannot have been violated either.

What is legal.

At least as recently as 2011, and hopefully still, the law permits a father to shower alone with his son, even in the Lasch building showers late on a Friday night. Also a grandfather and his grandson. Likewise a man and the son of a friend of the family. And a man and a child he is mentoring. While in the shower a father may wash his son's back, hug him, horse around with him, wrestling and doing other innocent fun things. He may also discipline him and instruct him. Also a grandfather and his grandson. Likewise a man and the son of a friend of the family. And a man and a child he is mentoring. And the law *should* allow all these things. These things do not constitute sexual assault or any other kind of child abuse. Outlawing them would place an unneeded burden on society, a burden both on those who would engage in what is in itself morally innocent behavior, and also on society itself, which is to say, the rest of us, who would have to pay to enforce the law, and who would lose some of the beneficial contribution to society of those otherwise innocent people who are investigated, prosecuted, fined, or jailed.

Here are a few examples of things a man may do with a boy in a shower which are not criminal in themselves but which a chance observer (especially one who comes in at an inopportune moment and who therefore lacks a proper context) might think are extremely sexual, inappropriate, over the line, wrong, perverse, and criminal:

- Incidental genital contact while wrestling or “horsing around” (provided there is no penetration—the law should say no *intentional* penetration)
- Hugging (such as a fatherly hug to comfort a child, or a disciplinary hug to restrain mischief)
- Kissing the head of a young boy as an expression of father-like affection

In short, a man may do many things with a boy in a shower, far more than are listed here, which might appear criminally sexual to an observer but which are not criminal, and should not be

criminal because the acts, in themselves, lack all taint of immorality. (Every act reported in the 1998 incident and every act reportedly *seen* in the 2001 incident is legal and moral unless it can be shown, not merely suspected, to have been done with criminal intent.)

By law, then, if based on the facts reported to them, considered carefully in the light of their respective knowledge and experience, Spanier, Schultz, Curley, and Paterno were neither sure nor pretty sure Sandusky had committed child abuse, then they had no obligation to report to child protective services and no obligation to make a Clery Act report. And if they were neither sure nor pretty sure there was a crime, they had no reason to think the boy was a victim, and therefore no reason to attempt to identify the boy involved, and no reason to fear for his safety.

Some might say that if there is merely a hint of sexual abuse of a child, then a report to authorities and an investigation is appropriate. But that is absurd. Consider the case of Sandusky: after 1998, should the police and DPW have forever thereafter investigated every instance when Sandusky was present with a child or children? After all, even when an activity appears innocent, he *might* be trolling or grooming. More generally, should every contact with a child of every person who someone thinks might have abused a child forever thereafter be investigated? There are not enough resources in the world to support such a policy. And if there were enough resources, virtually all of them would be wasted investigating innocent behavior.

Freeh might agree with this analysis except for one thing: he believes that Paterno, Curley, Schultz, and Spanier *were* sure or pretty sure that Sandusky had committed a crime, but covered it up. He says he concluded this based on the evidence he presents. I believe the evidence does not support his conclusion, and the following analysis explains why I hold this view.

PART II

Things known before 2001

The 1998 incident.

In 1998 Sandusky took a boy to the old Lasch building (now called the East Area Locker Building) where they did a light workout and showered afterward. While in the showers, Sandusky washed the boys back, lifted him up to get his head near the showerhead—in the new Lasch building the showerheads appear in pictures to be nearly 8 feet off the floor in the support staff locker room; perhaps this is true in the old Lasch building showers, too—to rinse his head off, and gave him a hug. These are actions a father might do with his own dear son. They are all legal, but not necessarily prudent, as Sandusky would soon learn. When Sandusky brought the boy home, the boy volunteered to his mother an explanation of why his hair was damp. Upon learning that he and Sandusky had showered together she became alarmed and contacted authorities. The police and the Department of Public Welfare (“DPW”) did an extensive investigation, after which the district attorney declined to prosecute. In short, the investigation discovered no criminal activity. Sandusky was cleared.

Not everyone involved in the investigation was satisfied with this outcome, of course. After all, it is usually impossible to prove innocence. Those who were dissatisfied could not show that a crime had occurred, but they continued to wonder.

Freeh shows us that Spanier, Schultz, Curley, and Paterno all knew of the 1998 shower incident, did not interfere with the investigation of the incident so far as Freeh could detect (Freeh Report page 52), and knew that the authorities cleared Sandusky of wrongdoing (Freeh Report pages 46–47). Freeh thinks the 1998 investigation was flawed. And perhaps it was. But Penn State officials were not involved in the investigation, and did not interfere. So at no time did they have *reason* to question the outcome of the investigation. This is not to say they ceased to wonder whether a crime had occurred. There is testimony that Schultz, at least, did wonder. But

all four Penn State executives behaved as honorable men: they did not allow such wondering to affect their relationship with Sandusky. Nor should they have. To act on such wondering is pernicious: innocent people can never be cleared, and relationships are spoiled. It is true that occasionally a person against whom questions have been raised is actually guilty. But this is not sufficient warrant to adopt an attitude as harmful as crediting gossip, rumor, slander, innuendo, and the like.

Sandusky's showering before 2001.

Freeh tells us that various coaches in the Athletic Department knew that Sandusky frequently showered with kids (Freeh Report page 40), which is and should be legal, let us remember. The Lasch building janitorial staff knew this, too.

PART III

The 2001 incident

What McQueary said in 2001.

Note in what follows the confusion, that is, the doubt as to what is meant, that results from using the words “inappropriate” and “sexual” without explicitly qualifying these words with “criminally” or “non-criminally” as the case warrants. In each instance where these words are used, whether the described action is criminal or noncriminal goes to the heart of the present matter.

In the following, **observations are in green type**, and **opinions are in magenta type**. Text in square brackets is added. **Commentary is in blue type**. Underlining is added. Dotted underlining is used to signal vague testimony.

1. Paterno statement to Cynthia Baldwin, January 3, 2011.

Per Freeh Report page 83:

On Monday, January 3, 2011, Baldwin met with Paterno. Baldwin's notes indicate that Paterno recalled McQueary coming to see him on a Saturday morning. According to her notes, Paterno said **McQueary “[s]aw Jerry horsing around w the kid a young man in shower inappropriate behavior. Turned it over to Tim Curley. Notified Tim Curley didn't talk to Gary [Schultz]. No conv. since then.”**

The phrase “horsing around” probably came from Paterno rather than Baldwin. Paterno’s use of this phrase here provides an explanation of what Paterno meant by “inappropriate behavior”: non-criminal inappropriate behavior. It also guides our understanding of his grand jury testimony. Paterno did not think McQueary had witnessed a crime. And regarding the perjury charges against Curley and Schultz, Paterno’s use of these two phrases corroborates the heart of the testimony of both Curley and Schultz.

2. Paterno grand jury testimony, January 12, 2011.

Paterno grand jury testimony

Question. Without getting into any graphic detail, what did Mr. McQueary tell you he had seen and where?

Paterno. Well, he had seen a person, an older — not an older, but a mature person who was fondling, whatever you might call it — I'm not sure what the term would be — a young boy.

Question. Did he identify who that older person was?

Paterno. Yes, a man by the name of Jerry Sandusky who had been one of our coaches, [but] was not at the time.

Question. You're saying that at the time this incident was reported to you, Sandusky was no longer a coach?

Paterno. No, he had retired voluntarily. I'm not sure exactly the year, but I think it was either '98 or '99.

Question. I think you used the term fondling. Is that the term that you used?

Paterno. Well, I don't know what you would call it. Obviously, he was doing something with the youngster. It was [of] a sexual nature. I'm not sure exactly what it was. I didn't push Mike to describe exactly what it was because he was very upset. Obviously, I was in a little bit of a dilemma since Mr. Sandusky was not working for me anymore. So I told him — I didn't go any further than that except I knew Mike was upset and I knew some kind of inappropriate action was being taken by Jerry Sandusky with a youngster. [As explained in

PART I, there are many things that can be considered sexual in nature that a man may morally and legally do with a child. Some of these are not prudent to do when or where someone might walk in on them and misconstrue what is happening. By "inappropriate action" Paterno meant noncriminal inappropriate action. But the questioner seems to think that Paterno meant criminally inappropriate action. The evidence that the questioner misconstrued Paterno's meaning is that there were no follow-up questions regarding this point such as occurred with Curley and Schultz.]

Question. Did Mike McQueary tell you where he had seen this inappropriate conduct take place?

Paterno. In the shower.

Question. Where was the shower?

Paterno. In the Lasch Building.

Question. Is that on the campus of Penn State University?

Paterno. It's right on the campus.

Paterno grand jury testimony

Question. Did you tell Mike McQueary at that time what you were going to do with that information that he had provided to you?

Paterno. I don't know whether I was specific or not. I did tell Mike, Mike, you did what was right; you told me. Even though Jerry does not work for the football staff any longer, I would refer his concerns to the right people.

Question. You recall this taking place on a Saturday morning, the conversation with Mike?

Paterno. Yes.

Question. When did you — did you do something with that information?

Paterno. Well, I can't be precise. I ordinarily would have called people right away, but it was a Saturday morning and I didn't want to interfere with their weekends. So I don't know whether I did it Saturday or did it early the next week. I'm not sure when, but I did it within the week.

Question. To whom or with whom did you share the information that McQueary had given you?

Paterno. I talked to my immediate boss, our athletic director.

Question. What is that person's name?

Paterno. Tim Curley.

Question. How did you contact Mr. Curley?

Paterno. I believe I did it by phone. As I recall, I called him and I said, hey, we got a problem, and I explained the problem to him.

Question. Was the information that you passed along substantially the same information that Mr. McQueary had given you?

Paterno. Yes.

Question. Other than the incident that Mike McQueary reported to you, do you know in any way, through rumor, direct knowledge or any other fashion, of any other inappropriate sexual conduct by Jerry Sandusky with young boys? [By saying "sexual," the question excludes the 1998 incident, an incident that was much investigated. The investigation discovered no inappropriate sexual conduct by Sandusky, a result known to Paterno.]

Paterno. I do not know of anything else that Jerry would be involved in of that nature, no. I do not know of it. You did mention — I think you said something about a rumor. It may have been discussed in my presence, something else about somebody. I don't know. I don't

Paterno grand jury testimony

remember, and I could not honestly say I heard a rumor.

Question. You indicated that your report was made directly to Tim Curley. Do you know of that report being made to anyone else that was a university official?

Paterno. No, because I figured that Tim would handle it appropriately. I have a tremendous amount of confidence in Mr. Curley and I thought he would look into it and handle it appropriately. [Paterno did not mention Gary Schultz!]

We have no further questions of you.

Testimony concluded at 11:13 a.m.

Paterno’s entire testimony regarding what McQueary said he saw Sandusky *do* is this:

McQueary said he saw Sandusky *“fondling, whatever you might call it — I’m not sure what the term would be — a young boy.”* When asked what he meant by “fondling,” he said, *“Well, I don’t know what you would call it. Obviously, he was doing something with the youngster. It was [of] a sexual nature. I’m not sure exactly what it was.”*

The most striking feature of this account is that it does not describe a crime. Other notable features are its brevity and its complete lack of specific detail. Paterno’s lack of alarm upon hearing this account is also notable. Paterno’s conclusion that what McQueary told him was noncriminal is pivotal, and will be carefully examined in detail below.

3. Curley grand jury testimony, January 12, 2011.

In addition to noticing what Curley says he learned from Paterno and McQueary, notice that both the prosecutor and Curley understand the word “sexual” as criminally sexual.

Curley grand jury testimony, selections

[This is what Curley said that Paterno said that McQueary told him on the day after the incident:]

Curley: [Paterno said to Schultz and me that McQueary] heard and saw, I guess, two people in the shower, in the shower area. And my recollection was that he could see that through a

Curley grand jury testimony, selections

mirror, that there was a mirror that he could see that through, and that the individual was uncomfortable with the activity in the shower area . . . and at that point he felt it was something he should report to Coach Paterno.

[This is what Curley said that McQueary told him and Schultz about two weeks after the incident:]

Question. . . .what exactly did [McQueary] tell you he had seen Jerry Sandusky doing. . .?

Curley. I can't recall the specific conversation with Mike and exactly how he said it. My recollection was that Mike could hear there were people in — they were in the shower area, that they were horsing around, that they were playful, and that it just did not feel appropriate.

Question. Are you saying that Mike McQueary did not tell you specifically that there was anal intercourse occurring between Jerry Sandusky and this child?

Curley. Absolutely not! That?! He did not tell me that!

[The transcript punctuates this as "Absolutely not, that he did not tell me that." McQueary testified on December 16, 2011 that he never told anyone he had seen anal intercourse.]

...

Question. Was there any indication to you of what type of conduct was occurring? How would you characterize what McQueary told you about what the conduct was?

Curley. Again, I can't remember specifically how Mike described it. My recollection was that they were kind of wrestling, there was body contact, and they were horsing around.

Question. Did he indicate to you that they were naked?

Curley. No. I assume they were, but no.

Question. Did he indicate to you that there was sexual conduct? [meaning criminal sexual conduct]

Curley. No.

Question. Of any kind?

Curley. No.

Question. But he was clearly uncomfortable with what he had seen?

Curley. Correct.

...

Question. Were you aware that the report that Mike McQueary made could be considered a crime by

Curley grand jury testimony, selections

Jerry Sandusky? [This is a curious question. Nothing McQueary actually saw is criminal. McQueary thought actions he did not see were criminal. But that is a rather unconvincing crime report.]

Curley. *I didn't think that it was a crime at the time.*

...

Question. Obviously, you're a person of more than reasonable intelligence who's running a Division 1 football program, not only the football program, but the entire athletic program. Did it not occur to you that there was something sexual going on in this incident based on what was referred to you by Mike McQueary? ["Sexual" means criminally sexual in both question and answer.]

Curley. *I was not aware of anything sexual. So I didn't feel that it warranted that and I felt my actions were appropriate. But I was not aware that there was sexual activity.*

Question. If you didn't think this was sexual in nature or criminal in nature, then why did you take the action of barring Sandusky for bringing youths onto the university property? [Here, "sexual in nature" is explicitly equated to "criminal in nature."]

Curley. *Because I didn't think it was appropriate that he would be using our facilities, having young people in there in the evening, and that you're in a shower area horsing around with a young person.*

Question. Did that concern extend to what he might be doing to those youths off university property if you didn't report this to somebody?

Curley. *No, not at the time, it didn't.*

...

Question. But you made this determination without talking to the young person who was there or any other investigative measures. There were no other investigative steps made to determine whether or not there was anything sexual about this conduct? ["sexual" meaning criminally sexual]

Curley. *Again, I don't remember any reports to me that it was sexual in nature. It was inappropriate behavior. So I didn't feel that that was necessary[,] and felt that it was important. Whether I knew it at the time or not, I don't know, but I thought it was probably a Second Mile person. You know, it was a young person. So I thought it was appropriate to give the information to The Second Mile or to the executive director of The Second Mile.*

[By contrasting "sexual" with "inappropriate," Curley explicitly reveals that he understands "sexual" as meaning criminally sexual, and "inappropriate" as non-criminally inappropriate.]

Question. If it was your understanding it was not sexual and you had no information that would lead

Curley grand jury testimony, selections

you to believe it was sexual or even that it involved a Second Mile minor, why would you take the rather extraordinary step of going to the executive director of a nonprofit that is not part of the university and informing them of this incident?

*Curley. Because I think that Mike felt he was uncomfortable with the behavior. And based on what I heard that was reported to me, I just didn't feel it was appropriate that Jerry would be in a shower area with a young person. Whether it was **horsing around** or however you want to describe it, I just didn't think that would be appropriate and shouldn't occur.*

Question. Mr. McQueary was uncomfortable because there was a child who was not a student and not an employee of the university on university property. Is that what you're saying?

*Curley. My recollection was that **he was uncomfortable they were in the shower and it was just the two of them and that they were horsing around and inappropriate conduct. It was inappropriate conduct. I think he felt that this just didn't feel right.***

Question. Well, sir, listening to the words you just used, I think a reasonable person would immediately jump to, there could be a sexual nature to this. You have a grown male with a child naked in the shower horsing around. What is it that specifically alarmed Mr. McQueary? What did you take away from that meeting? [The person asking this question knew of many allegations against Sandusky, and therefore could reasonably suspect that the 2001 incident was criminally sexual in nature. But Curley knew of no such allegations at that time, but did know of a similar incident in 1998 in which authorities, despite much investigation, discovered no inappropriate sexual conduct by Sandusky. So Curley had no reason to suspect Sandusky of criminal activity.]

*Curley. I took away that **he didn't feel comfortable with the activity that was happening and it wasn't appropriate that we had an adult and young child or a person in the shower area and that it was a situation that — and that's what alarmed him.***

The entirety of what Curley mentioned that he had learned from Paterno is this:

McQueary saw *though a mirror* activity in the shower area (by Sandusky and a boy) that made him (McQueary) uncomfortable.

Curley did not remember well what he learned directly from McQueary ten years earlier, but the gist of what McQueary told him, as best he could remember, is this:

McQueary heard and saw Sandusky and a boy by themselves in the shower area in the evening horsing around, being playful, kind of wrestling—there was body contact. McQueary thought what he saw was inappropriate and it made him uncomfortable. McQueary did not say he had witnessed anal intercourse or any other criminal sexual activity.

4. Schultz grand jury testimony, January 12, 2011.

In addition to noticing what Schultz says he learned from Paterno and McQueary, note how Schultz handles the meaning of “sexual.”

Schultz grand jury testimony, selections

[This is what Schultz said that Paterno said that McQueary told him on the day after the incident:]

Question. I'd like to direct your attention to a time around spring break of 2002 as it's been reported to us. Do you recall being called and requested to attend a meeting with Coach Paterno to report an unusual incident?

Schultz. I do recall such a meeting.

Question. Would you please tell the grand jurors what you remember, everything that you can remember about that incident and the time that it occurred?

*Schultz. Yes. I believe the meeting occurred in my office. It included the athletic director, Tim Curley, and Coach Paterno. Coach Paterno wanted the meeting. It was essentially called at his request. He indicated that someone observed some behavior in the football locker room [by Jerry Sandusky] that was **disturbing**. I believe the impression I got was **it was inappropriate** and he wanted to bring that to Tim Curley and my attention.*

...

Question. The incident that was reported to you by Coach Paterno, were the words disturbing and inappropriate — were those Paterno's words?

Schultz. I don't remember his precise words. I'm using words now, when I tell you, that was the impression that I had. I don't recall his exact words.

...

[The following question and answer are duplicated from below because the answer refers to what Paterno said.]

Question. At that time, did McQueary relate to you what he had observed in

Schultz grand jury testimony, selections

the locker room?

Schultz. No. My recollection was McQueary and Joe both only described what was observed in a very general way. There was no details.

...

[This is what Schultz said that McQueary told him and Curley about two weeks after the incident:]

Question. You said that you did not have — did you ever meet directly with Mike McQueary?

Schultz. Yes.

Question. When?

Schultz. I don't recall the exact circumstances. In fact, it was this morning when you asked me a question that I first recalled that there was such a meeting.

[The prosecutor interviewed Schultz earlier on the day of this testimony.]

Question. You don't recall where it took place?

Schultz. I think it occurred in my office, I believe.

Question. At that time, did McQueary relate to you what he had observed in the locker room?

Schultz. No. My recollection was McQueary and Joe both only described what was observed in a very general way. There was no details.

Question. Did you, nevertheless, form an impression about what type of conduct this might have been that occurred in the locker room?

Schultz. Well, I had the impression that it was inappropriate. Telling you what kind of thing I had in my mind without being clear, without him telling me, but, you know, I had the feeling that there was perhaps some kind of wrestling around activity and maybe Jerry might have grabbed the young boys genitals or something of that sort is kind of the impression that I had.

Question. Would you consider that to be inappropriate sexual conduct?

Schultz. Oh, absolutely. Well, I don't know the definition of sexual, but that's certainly inappropriate for somebody to do.

Question. It would give you pause or concern if an adult male and under age males were in the shower and that adult male grabbed the genitals of the younger male?

Schultz grand jury testimony, selections

Schultz. Yes.

Question. Do you not recall anything more specific than that that Mike McQueary reported to you?

Schultz. I do not recall, no.

...

Question. One more thing I just want to be clear on. When you met with Mike McQueary, **was it or was it not your impression that he was reporting inappropriate sexual conduct, your impression** —

Schultz. Yes.

Question. **Inappropriate sexual conduct by Jerry Sandusky?**

Schultz. You know, I don't know what sexual conduct's definition to be, but I told you that my impression was — you know, Jerry was the kind of guy that he regularly kind of like physically wrestled people. He would punch you in the arm. He would slap you on the back. He would grab you and get you in a headlock, etc. That was a fairly common clowning around thing. I had the impression that maybe something like that was going on in the locker room and perhaps in the course of that, that somebody might have grabbed the genitals, the Jerry might have grabbed the genitals of the young boy. I had no impression that it was anything more serious than that. That was my impression at the time.

Question. Didn't you previously tell us in our interview that **you had the impression** — I have it written down — **that this was inappropriate sexual conduct?**

Schultz. Again, depending on what you call — I mean, grabbing the genitals of the boy is what I had in mind. Now, is that sexual? Yes.

Question. We can all agree that an adult male under no circumstances other than a doctor should be grabbing the genitals of a young boy? [Actually, the law does not agree, as a careful reading of the definition of "indecent contact" and of §§ 3126 and 3125 will reveal. Nor should the law agree, seeing there are legitimate reasons for non-physicians, including persons not currently specified in the statutes, to do so. As for grabbing the boy's genitals, there is no evidence that Sandusky did so. Schultz just imagined that this might have happened.]

Schultz. I agree completely with that.

Question. And that it doesn't happen accidentally?

Schultz. Rather than just agreeing to I thought it was sexual conduct or misconduct, I'm explaining what I really thought might have gone on. You know, you can define that as you want. I'm telling you what I thought was going on.

Schultz grand jury testimony, selections

Question. Would you agree with me that if it had have been sodomy, that is, anal sex, that would clearly be inappropriate sexual conduct? [The questioner uses "inappropriate" to mean criminally inappropriate whereas Schultz consistently used "inappropriate" to mean non-criminally inappropriate.]

Schultz. No doubt.

Question. By Mr. Fina.

Sir, I just want to be real clear on this. It was your impression after you talked to McQueary that this was about some physical conduct, some horsing around, some wrestling that resulted in contact with the boys genitals in the context of wrestling. That was your impression of what McQueary was reporting to you?

Schultz. I don't recall what McQueary specifically reported, but I can tell you that I, after going through whatever we went through in 2003 [sic-1998], had the impression that that was probably the kind of thing that had taken place.

Question. Nothing else? No further sexual conduct?

Schultz. No, I had no basis —

Question. No intercourse?

Schultz. I had no basis of anything else, and I only formed the impression that I had based on kind of what I observed of Jerry and the kind of horsing around that he does.

Question. No, no. Please follow my questioning. I'm not asking you what impression you had of your observation of Mr. Sandusky over the years. I'm asking you of your impression, what you learned from Mr. McQueary, what he observed in the shower.

Schultz. I don't recall himself telling us what he observed specifically.

Question. What generally did he report?

Schultz. I believe that he said that he saw something that he felt was inappropriate between Jerry and a boy.

Question. And from his saying along the line of something inappropriate, you took, oh, they must have been wrestling and maybe he touched the kid's groin?

Schultz. I could imagine that might have taken place, yes.

Question. Was McQueary upset? Was he emotional about this?

Schultz. No, I don't recall him being upset.

Schultz grand jury testimony, selections

Question. He was calm; he was collected?

Schultz. Yes.

...

Question. Did it ever occur to anybody that the police might need to be contacted, and either campus police or this entity known as the Pennsylvania State Police?

Schultz. I don't recall that we talked about it being turned over to the police.

Question. That was never part of the discussions between you and Curly or you and Spanier or you and anybody else?

Schultz. No.

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

Schultz. No.

Question. Would that be standard? Would that be the way the university operates when an allegation is made against a current employee or a very famous prior employee, that nothing be put in writing?

Schultz. The allegations came across as not that serious. It didn't appear at that time, based on what was reported, to be that serious, that a crime had occurred. We had no indication a crime had occurred.

...

Question. You're saying that this incident wasn't referred to the university police for investigation because *you didn't think it was criminal?*

Schultz. There was no indication that it was.

...

Question. How about an adult individual being naked in the shower with a young boy and touching that young boy? Clearly inappropriate, right? [Not so. See what is legal in PART I.]

Schultz. Yes, I would say.

Question. But not criminal in your mind, not potentially criminal? [What is not potentially criminal?]

Schultz. I didn't get the impression that there was something like that going on.

Question. I thought you said that you thought perhaps he had grabbed his genitals?

Schultz. Well, you know, whether he — I don't know. I mean, I wasn't told what was really going on. But if he did, if that was what it was, he shouldn't do that. That's inappropriate.

Schultz grand jury testimony, selections

I don't know if it's criminal. If it's in the context of wrestling or something like that, I don't know.

Schultz did not remember Paterno's precise words, but thought the gist of what he learned from Paterno was this:

Someone observed some behavior in the football locker room by Jerry Sandusky that was disturbing and [non-criminally] inappropriate, but no details of the action were provided.

Schultz did not remember McQueary "himself telling us what he observed specifically." This seems to be what Schultz thought McQueary was telling him, but not in McQueary's words:

"Jerry was the kind of guy that he regularly kind of like physically wrestled people. He would punch you in the arm. He would slap you on the back. He would grab you and get you in a headlock, etc. That was a fairly common clowning around thing. I had the impression that *maybe* something like that was going on in the locker room and *perhaps* in the course of that, that somebody *might* have grabbed the genitals, that Jerry *might* have grabbed the genitals of the young boy. I had no impression that it was anything more serious than that. That was my impression at the time." . . . "[I] had the impression that [what happened in 1998] was probably the kind of thing that had taken place [in 2001]." "We had no indication a crime had occurred."

5. McQueary preliminary hearing testimony, December 16, 2011

Direct examination: what McQueary told Paterno

Question. Describe what you did.

MikeMcQ. I went over to his house, sat at his kitchen table and told him that I [saw] Jerry with a young boy in the shower and that it was way over the lines. It was extremely sexual in nature and I thought I needed to tell him about it.

Question. Did you describe for him the positioning of Jerry and the boy?

Direct examination: what McQueary told Paterno

MikeMcQ. The rough positioning I would have described but not in very much detail.

...

Question. Did you make it clear that this was - the acts that you observed were sexual?

MikeMcQ. Without a doubt.

Question. Would you have ever used term sodomy with Coach Paterno?

MikeMcQ. No, never.

Question. Would you have ever used term anal intercourse with Coach Paterno?

MikeMcQ. Never.

Question. Why?

MikeMcQ. Out of respect and just not getting into detail with someone like Coach Paterno, I would not have done it.

...

[This is copied from McQueary's testimony describing his report to Curley and Schultz.]

Q Describe for the Court what happened or what transpired.

...

*MikeMcQ Okay. I can't remember who spoke first in that meeting. I think it was Mr. Curley had said that he received a phone call from Coach, that he [=Paterno] said that I saw something in the showers with Jerry and that **it was sexual**, and that they needed to know the details of it and wanted me to talk through it with them.*

Cross examination: what McQueary told Paterno

Q And how long did you spend with Mr. Paterno?

MikeMcQ Ten minutes.

Q And when you explained what you saw to Mr. Paterno, you did not use the term anal sodomy?

MikeMcQ I've never used that term.

...

Q Did you explain to Mr. Paterno anal sex?

MikeMcQ No, I did not explain that to Mr. Paterno.

Cross examination: what McQueary told Paterno

Q Did you explain to him anal intercourse?

MikeMcQ No, I would have explained to him the positions they were in roughly, that it was definitely sexual, but I have never used the word anal or rape in this — since day one.

...

Q Okay. All right. So when you went to Mr. Paterno's house, did you describe the position that Sandusky and the boy were in?

MikeMcQ Yes. I gave a brief description of what I saw. You don't — ma'am, you don't go to Coach Paterno or at least in my mind I don't go to Coach Paterno and go into great detail of sexual acts. I would have never done that with him ever.

...

Q Now, you told us that you told Coach Paterno that you — well, let me ask you this. Did you tell Coach Paterno that you heard sounds?

MikeMcQ Yes, ma'am.

Q And you told him what you saw, the position of the two individuals?

MikeMcQ Again, roughly, yes.

Q Did you make any conclusion to Coach Paterno about what was happening?

MikeMcQ Yes. It was extremely sexual, yes.

Q Did you say extremely sexual in nature?

MikeMcQ In nature?

Q Yes.

MikeMcQ I can't remember if I said the word in nature or not, ma'am. I don't know that.

Q Did you ever use the word fondling?

MikeMcQ I'm sure I did to help describe what I was seeing. I'm sure I did use the word fondling, yes, ma'am. [But McQueary did not explain to Paterno that though he could not see it, he thought Sandusky was fondling the boy's genitals.]

Direct examination: what McQueary told Curley, and Schultz

Q Who's the next person in any position of authority [after Paterno] that you spoke to about this?

Direct examination: what McQueary told Curley, and Schultz

MikeMcQ *Mr. Curley called me on the phone and said, I've spoken to Coach Paterno.*

...

Q Can you describe what occurred during that phone conversation?

MikeMcQ *He said Coach Paterno had talked to me and that he was aware of what I saw and that he felt like he needed to see me and talk to me about it along with Mr. Schultz.*

Q Describe for the Court what happened or what transpired.

...

MikeMcQ *Okay. I can't remember who spoke first in that meeting. I think it was Mr. Curley had said that he received a phone call from Coach, that he said that I saw something in the showers with Jerry and that it was sexual, and that they needed to know the details of it and wanted me to talk through it with them.*

...

Q What did you tell them?

MikeMcQ *I told them that I saw Jerry in the showers with a young boy and that what I had seen was extremely sexual and over the lines and it was wrong.*

...

Q Did you describe for them what you saw in the shower?

MikeMcQ *Yes.*

...

Q Did you describe for Mr. Curley and Mr. Schultz the body positioning of the individuals in the shower?

MikeMcQ *Yes, I would have given them a rough idea, yes.*

Q When you say a rough idea?

MikeMcQ *I would have said that Jerry was in there in very close proximity behind a young boy with his arms wrapped around him.*

Q Did you describe for them any sounds that you heard?

MikeMcQ *Yes, I would have said I heard slapping sounds. I did say that.*

Q Did you describe for Mr. Curley and Mr. Schultz whether or not either Mr. Sandusky or this young boy had any clothes on?

MikeMcQ *Yes. I would have made it clear that it was in the shower and they were*

Direct examination: what McQueary told Curley, and Schultz

naked.

Q Would you have described for them what you believed the act was that you saw occurring in that shower?

MikeMcQ Yes. Again, I would not have used some of the words that you previously mentioned, but I would have described that it was extremely sexual and that I thought that some kind of intercourse was going on.

...

Q This is in your mind, you've testified no doubt, what you believe to be a sexual act between Jerry Sandusky and a minor?

MikeMcQ No doubt at all.

...

Q Did you — strike that.

Was there any question that you conveyed accurately what you saw in that shower to Tim Curley and Gary Schultz when you met with them at the Bryce Jordan Center?

MikeMcQ There's no question in my mind that I conveyed to them that I saw Jerry with a boy in the showers and that it was severe sexual acts going on and that it was wrong and over the line.

6. John McQueary preliminary hearing testimony, December 16, 2011.

I have inserted << and >> to encapsulate third-party speech. I used these symbols rather than quotation marks because it is not clear whether the third-party speech is actually what was said, or just the gist of what was said.

What John McQueary learned from his son

Question. What was the nature of the contact?

JohnMcQ. That they were in the - he saw Jerry Sandusky in the shower, in the shower area, the shower room, with a young boy; and that between the sounds that he observed and the visualization that he saw, that there was something at best inappropriate going on and it was

What John McQueary learned from his son

sexual in nature. [Here, "at best" allows both "inappropriate" and "sexual" to refer to noncriminal activity.]

But certainly beyond that, I couldn't — I couldn't describe it any further because I wasn't there.

[Questions by MS. ROBERTO, counsel for Curley.]

Question. Now, did you hear from your son on the telephone initially when he phoned you what was - what it was that troubled him?

...

THE WITNESS: ... I did receive a phone call from Mike. ...

...

Question. What was the purpose of the phone call? What do you recall?

JohnMcQ. The best way for me to do that is to tell you about the call.

Question. Okay.

JohnMcQ. My wife actually answered the phone and handed it to me all within probably a nanosecond.

Question. Sure.

JohnMcQ. She said, <<John, it's Mike and there's something wrong.>> And she determined that by not necessarily what he said to her but by the sound of his voice, I believe. I believe that to be accurate.

When I got on, I said, <<Mike, dad, what's the matter,>> because my wife had already predisposed me that there was something wrong. I said, <<what's the matter.>> He didn't respond. I said, <<Mike, I said, are you there, what's up, what's wrong.>>

And collecting myself [sic—himself], he said to me in a very quivering, scared voice - and he's not a scared-type kid, but he was upset and scared. He said, <<I just saw something in the locker room.>> And I said, <<well, what.>>

I thought maybe he was hurt or something by the way he sounded. And he said - and I said, <<what.>>

He says, <<I saw Coach Sandusky in the shower with the little boy.>> He says, <<first I heard it and,>> he said, <<I knew that something was going wrong.>> And he

What John McQueary learned from his son

said, <<I followed—looked into the locker room and saw him there with a little boy.>>

What John McQueary told Schultz

Question. You told Mr. Schultz that it was sexual in nature?

JohnMcQ. I would think that I said that it was at least sexual overtones to it, sexual in nature, it appeared to be sexual. But, again, I'm doing this from memory. I wasn't there, remember. I just want to make sure.

Question. I'm talking about in the meeting you had with Mr. Schultz.

JohnMcQ. Yes. Oh, yes. If you're asking me did he go away from the meeting with an understanding that I was reporting something that I thought was of a sexual nature that occurred in that shower room, yes.

Question. Okay. Did you ask him what was going to be done about it?

JohnMcQ. I believe - and if I knew the sequence, if I knew when he had talked to Mike and didn't talk to Mike, which I don't know. I was expecting something to be done.

I know Mr. Schultz. He's a responsible individual. He's a good person and he - what he - what he indicated was that they had heard of allegations and they were aware of the situation and they were looking into it.

And during that exchange, he said something similar to [this], <<John, there has been a noise level about this>> or <<there have been other innuendos>> or <<there have been other allegations. We looked into them before and,>> more or less in a general sense, said <<we've never been able to really unearth anything or sink our teeth into something that we had that was substantial.>>

But I got the impression he was going to look into this more and do the best to uncover whatever they would find.

Question. Was there any question in your mind that you left that meeting informing Mr. Schultz that the incident was sexual in nature?

JohnMcQ. There's no doubt in my mind short of saying that I viewed an act myself that what Mike reported to me appeared to be sexual in nature, sounded like sexual in nature to

What John McQueary told Schultz

me, and I think he knows that.

John McQueary and Dr. Jonathan Dranov

BY MS. ROBERTO:

Question. Isn't it your recollection that your son described to Dr. Dranov **what happened that evening in the shower as only hearing something in the shower drawing conclusions about what happened but not seeing anything in the shower?** [This agrees with news reports if "not seeing anything" means not seeing sexual acts, such as penetration, or genital contact. The court did not allow this question to be answered.]

...

BY MR. FARRELL:

Question. Was Dr. Dranov present at your home on that night during the whole time that you discussed the incident with your son, in person?

JohnMcQ. He was there for a significant portion of it, but I don't know if I could say exactly the timing. And did we talk afterwards when Dr. Dranov left? I couldn't make that comment.

7. Spanier statement as noted by Cynthia Baldwin, March 22, 2011.

From page 74 of Freeh's report we find (emphasis added, text in square brackets added):

On March 22, 2011, Spanier met with members of the Pennsylvania Attorney General's Office accompanied by Baldwin. The General Counsel's notes of that meeting reflect ***Spanier's statement that Schultz and Curley met with Spanier*** [met when? on Monday Feb 12 at 2:30 p.m. per pages 70–71?] ***to explain that an employee had seen Sandusky "horsing around" in a shower with a child and thought they should bring the issue to Spanier's attention.*** The notes also indicate that ***Spanier said to Schultz and Curley that if "nothing more detailed was reported, Tim should tell JS that we request that he not bring children into shower again. Since JS no longer employed that we advise chair of Board of Second Mile of what we heard."***

Note that Spanier uses “horsing around,” a description he learned from Curley, who apparently learned it from Paterno.

8. Spanier 2012 statement, in Freeh’s Exhibit 2J.

Spanier 2012 statement, Exhibit 2J, excerpts

According to page 70, this exhibit is somehow linked to an interview with the Special Investigative Counsel [=Freeh].

Initial Heads Up

. . . Curley and Schultz shared that they had received a report that a member of the athletic department staff had reported something to Joe Paterno, and that Joe had passed that report on to Tim and Gary. The report was that Jerry Sandusky was seen in an athletic locker room facility showering with one of his Second Mile youth, after a workout, and that they were "horsing around" (or "engaged in horseplay"). It was reported that the staff member was not sure what he saw because it was around a corner and indirect.

I recall asking two questions:

"Are you sure that is how it was described to you, as horsing around"? Both replied "yes."

"Are you sure that that is all that was reported?" Both replied "yes."

We then agreed that we were uncomfortable with such a situation, that it was [non-criminally] inappropriate, and that we did not want it to happen again. I asked that Tim meet with Sandusky to tell him that [1] he must never again bring youth into the showers. We further agreed that [2] we should inform the Second Mile president that we were directing Jerry accordingly and furthermore that we did not wish Second Mile youth to be in our showers.

Notes:

There was no mention of anything abusive, sexual, or criminal.

At no time was it said who had made the report to Joe Paterno. (I never heard Mike McQueary's name associated with this episode until November 7, 2011, when I read it in a newspaper story.)

The hour of the day was not mentioned.

The specific building and locker room were not mentioned.

The age of the child was not mentioned.

Spanier 2012 statement, Exhibit 2J, excerpts

Follow Up

[On Sunday, February 25, 2001, I met with] Tim Curley briefly in my way into the game, I have no recollection of that meeting other than that Tim was worried about how he should handle things if he informed Sandusky that we were forbidding him from bringing Second Mile youth into our facilities and then Sandusky disagreed with this directive.

9. Dr. Jonathan Dranov trial testimony, June 20, 2012.

Dranov trial testimony

Q. Did Mike relay any details of something he had seen earlier in the evening to you? [11.1]

A. *Yes, he did.*

Q. What did he tell you?

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

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

Q. And what did he say subsequent to that?

A. *I asked him what he meant and said, <<Mike, what do you mean?>> He said, <<Well, sexual sounds, you know what they are.>> I said, <<No, Mike, you know. What do you mean?>> And he couldn't go on. He just seemed to get a little bit more upset. So I kind of left that.*

And then he said he looked toward the locker or [I mean] the shower and a young boy looked around. He made eye contact with the boy. I asked him — to the best of my recollection, I [12.1] asked him if the boy seemed upset or frightened. He said <<No. An arm reached out and pulled the boy back.>>

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

A. *No. I can't remember exactly what he said after that, but it was something about*

Dranov trial testimony

going back to his locker and then he turned around and faced the shower room and a man came out and it was Jerry Sandusky.

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

A. Yes.

REDIRECT EXAMINATION

BY MR. ROMINGER:

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

...

A. *In the conversation, yes. I didn't use the term did you see a sexual act. I kept saying <<What did you see?>> and each time he would come back to the sounds. I kept saying <<But what did you see.>> And it just seemed to make him more upset. So I backed off that.*

I have three news reports that apparently report on Dranov's 2011 grand jury testimony. At that time Dranov apparently said the boy looked around the edge of the doorway to the shower room. But at trial Dranov was ambiguous, merely saying the boy "looked around," which could mean he merely turn his head. So it is desirable to establish Dranov's probable meaning of "looked around."

Option: "looked around" means turn the head.

In this case we would have the following sequence of events. The boy turns his head wherever he happens to be standing, perhaps because he hears noises outside the shower room, perhaps not, and sees McQueary, makes eye-contact with him, and then an arm of a man whose body McQueary cannot see pulls the boy out of view. This is possible. If the boy was standing anywhere along the yellow sight line in [Figure 1](#) and turned his head toward the doorway, he would see McQueary in the mirror, and could make eye contact, whereupon a man standing nearby in the blocked region could reach his arm around the boy and pull him out of view.

Option: "looked around" means peer around the edge of the doorway.

As just explained, it is possible that when the boy and McQueary made eye contact, the boy was standing anywhere along the sight line stretching from the doorway to the back wall, including at the doorway itself. So “look around” could certainly mean peering around the edge of the doorway. And before an arm reached around him the boy was free to move where he pleased, so he could have gone to the doorway to take a look at the visitor.

So which is it: did the boy go to the doorway and look, or simply turn his head from wherever he happened to be standing? Well, the primary reason the boy cared to come to the football facility is to see football things, and what could be more interesting to such a boy when in a locker room used by support staff coaches than seeing one of those coaches, live, and up close? Such a boy would hope the visitor was a coach. And going to the shower room doorway and peering around its edge gives one the best view of any visitor, and maybe even a chance to talk with him. And the boy was free to go to the doorway. Add to this the news reports of Dranov’s grand jury testimony that say the boy peered around the edge of the doorway, and it seems most probable to me that the boy did, indeed, go to the doorway, stick his head out, and look at the visitor. So this is the view I take here.

McQueary in his trial testimony, answering questions that seem to be motivated by Dranov’s grand jury testimony, said that perhaps the boy turned his head toward the shower room doorway while he was being hugged by Sandusky, but he was not sure of this. But he denied making eye contact with the boy, or seeing an arm reach around the boy and pull him out of view. So there is a definite disagreement between what Dranov remembers McQueary saying in the first hour or two after the event, and the way McQueary remembers the incident now. I discount McQueary’s remembrance on these points for reasons that will be discussed in due course below.

Raw testimony and statements, summaries.

1. Paterno statement to Cynthia Baldwin, January 3, 2011.

According to Baldwin’s notes, Paterno said McQueary “[s]aw Jerry *horsing around* w the kid a young man in shower [non-criminally] inappropriate behavior. . . .”

2. Paterno grand jury testimony, January 12, 2011.

Sandusky was in the shower “fondling, whatever you might call it — I’m not sure what the term would be — a young boy.” “Obviously, he was doing *something* with the youngster.

[McQueary strongly emphasized his opinion that] it was [of] a *sexual nature*. I’m not sure exactly what it was. I didn’t push Mike to describe exactly what it was because he was very upset.” “I knew *some kind of [non-criminal] inappropriate action* was being taken by Jerry Sandusky with a youngster.”

Paterno agreed that he had given Curley “substantially the same information that Mr. McQueary had given [him].”

3. Curley grand jury testimony, January 12, 2011.

[Paterno said to Schultz and me that McQueary] heard and saw, I guess, two people in the shower, *in the shower area*. And my recollection was that *he could see that through a mirror*, that there was a mirror that he could see that through, and that the individual was uncomfortable with the activity in the shower area . . . and at that point he felt it was something he should report to Coach Paterno. I don’t remember any reports to me [from either Paterno or McQueary] that it was [criminally] sexual in nature.

4. Schultz grand jury testimony, January 12, 2011.

He indicated that someone observed some behavior in the football locker room [by Jerry Sandusky] that was disturbing. I believe the impression I got was it was inappropriate and he wanted to bring that to Tim Curley and my attention. I don’t remember Paterno’s precise words. I’m using words now, when I tell you, that was the impression that I had. I don’t recall his exact words. My recollection was [Paterno] only described what was observed in a very general way. There was no details. We had no indication a crime had occurred.

5. McQueary preliminary hearing testimony, December 16, 2011: what he told Paterno.

He saw Sandusky with a young boy *in the shower together*.

He described the *rough positioning* of Sandusky and the boy, but not in very much detail, just a brief description. (Presumably McQueary said that he saw Sandusky facing away from him with his arms wrapped around the boy.)

He said there was *something extremely sexual* about it, but did not say what. He did not use “sodomy,” “anal intercourse,” “anal sodomy,” “anal sex,” “anal sex”, “anal,” or “rape.” He did not “go into great detail of sexual acts.” He did use the term “fondling.” (Apparently McQueary thought Sandusky was fondling the boy’s genitals, but he did not tell Paterno this.)

6. John McQueary preliminary hearing testimony, December 16, 2011.

[Mike] saw Jerry Sandusky in the shower, in the shower area, the shower room, with a young boy; and that between the sounds that he observed and the visualization that he saw, that there was something at best inappropriate going on and it was sexual in nature.

Question by defense counsel Ms. Roberto: “Isn't it your recollection that your son described to Dr. Dranov what happened that evening in the shower as only hearing something in the shower drawing conclusions about what happened but not seeing anything in the shower?”

Unfortunately for us, the judge did not allow the witness to answer this question.

7. Spanier statement as noted by Cynthia Baldwin, March 22, 2011.

[McQueary] had seen Sandusky "*horsing around*" in a shower with a child.

8. Spanier statement in Freeh's Exhibit 2J, in 2012.

An athletic department staff member told Paterno, and Paterno told Curley and Schultz, and Curley and Schultz told me that *after a workout*, the staff member saw Jerry Sandusky in an athletic locker room facility showering with one of his Second Mile youth, and that they were "*horsing around*" (or "engaged in horseplay"). It was reported that *the staff member was not sure what he saw because it was around a corner and indirect*.

I recall asking two questions:

"Are you sure that is how it was described to you, as horsing around"? Both replied "yes."

"Are you sure that that is all that was reported?" Both replied "yes."

There was no mention of anything abusive, sexual, or criminal.

The hour of the day was not mentioned.

The specific building and locker room were not mentioned.

The age of the child was not mentioned.

9. Dranov's trial testimony, June 20, 2012.

McQueary said he heard "sexual sounds," but would not say what that meant.

McQueary said at some point he looked toward the shower and a young boy looked around and the two make eye contact. The boy did not seem upset or frightened. Subsequently an arm reached out and pulled the boy back [?out of view?].

Dranov is unsure about what McQueary said happened next. It was "something about going back to his locker and then he turned around and faced the shower room and a man came out and it was Jerry Sandusky." (News reports of Dranov's grand jury testimony say Sandusky came out in a towel.)

What McQueary told Paterno in 2001.

Extracts of relevant raw testimony and statements.

1. Paterno, per statement to Baldwin. Paterno concluded from what McQueary said that
McQueary saw Sandusky and a boy horsing around in a shower,
and it was inappropriate in a non-criminal way.
2. Paterno, per testimony. Paterno testified that McQueary told him that
Sandusky fondled, or something, a boy in the Lasch building showers,
and he, McQueary, thought the touching had a sexual nature, but did not explain how.
(As will be shown below, Paterno concluded it was non-criminal inappropriate conduct.)
3. Curley, per testimony. Paterno said that McQueary told him that
he heard two people in the shower area and saw them through a mirror,

and he was uncomfortable with what he saw.

4. Schultz, per testimony.

Paterno provided no details of what occurred.

5. McQueary, per testimony. He told Paterno that

He heard sounds (Let us grant that he said alarming slapping sounds.)

Sandusky was in the shower together with a young boy.

He explained the rough positioning of Sandusky and the boy, but gave no details. (Let us grant that he said he saw Sandusky in the shower with his arms around the boy.)

He said there was something extremely sexual about it, but he did not say what.

7. Spanier, per statement to Baldwin, understood what McQueary saw as

Sandusky "horsing around" in a shower with a child.

8. Spanier, per Freeh's Exhibit 2J, understood that [McQueary] told Paterno who told Curley and Schultz who told him that

after a workout,

[McQueary] saw Sandusky and a boy horsing around in a shower

but he was not sure what he saw*

because he saw things around a corner and indirect

* McQueary himself testified that he was not sure of what he saw in the mirror and took a second, direct, look on that account. But the way Spanier's statement is worded, this could be Paterno's conclusion.

Summary of what McQueary told Paterno.

Extracting what McQueary told Paterno from the above, and eliminating duplicates, we can say that McQueary told Paterno at least this much, and probably not much more:

- He heard some sounds. (Let us grant that he said alarming slapping sounds.)
- He saw Sandusky in the shower together with a young boy.
- He described the rough positioning, but not in detail. (Let us grant that he said he saw Sandusky in the shower with his arms around the boy.)

- He said he thought Sandusky was fondling the boy, but he did not elaborate or explain what that meant.
- He said he saw things across the room through a mirror, and did not mention seeing anything directly.
- He said it seemed to him extremely sexual, but he did not say how.

Considering the facts in the light of Paterno’s knowledge and experience.

The reporting laws oblige Paterno to carefully consider the facts in the light of his own knowledge and experience. McQueary provided the facts listed above. Here is some of Paterno’s knowledge and experience:

- Contact between a man and a boy that that involves genital contact, and which could be called sexual on that account, is not necessarily criminal, as explained in the discussion of the law in PART I (most people know this to some extent, so Paterno probably did, too).
- Just because someone observes something he thinks is criminal, or is alarmed about what he sees, does not mean that the observed action is criminal.
- Paterno was probably among those who knew that Sandusky regularly showered with children (Freeh Report page 40).
- Sandusky was deservedly well-respected, not just as a coach, but as a man—at the time there were no known accusations of child abuse against Sandusky.
- Paterno doubtless also knew that Sandusky liked to roughhouse with kids in the manner Schultz described: “Jerry [Sandusky] was the kind of guy that he regularly kind of like physically wrestled people. He would punch you in the arm. He would slap you on the back. He would grab you and get you in a headlock, etc. That was a fairly common clowning around thing.”
- Paterno probably remembered that Sandusky had showered with a boy in 1998 and done things similar to what McQueary described, and that despite an extensive investigation, the district attorney declined to prosecute: Sandusky was cleared.

Let us now step into Paterno's shoes of 2001 and consider the facts McQueary presented.

1. Nothing McQueary says he actually saw (first a hug, then standing apart) is criminal.
2. McQueary says he heard alarming slapping sounds. Well, Sandusky roughhouses with boys and that could easily make slapping sounds. So the sounds do not indicate anything sinister.
3. McQueary says Sandusky and a boy were showering together, nude, of course. Well, Sandusky regularly does that, so there is no hint of a crime in that.
4. McQueary says Sandusky had his arms around the boy. Well, this sounds like something that went on in 1998, and Sandusky was cleared of wrongdoing in that case.
5. McQueary says he saw all this through a mirror from across the room. Well, then, he probably did not see things well, which would make misunderstanding more likely.
6. McQueary says he thinks what was going on was extremely sexual, but does not say how. Well, a man hugging a boy in the shower is legal, but could easily be mistaken for a sexual act, especially if it is not seen clearly by someone who lacks context.
7. Sandusky has a well-deserved good reputation, and I have not heard of anything he has done that is criminal. So it seems more likely than not that McQueary has misconstrued what he saw.
8. If McQueary told Paterno that the boy did not protest or show any signs of pain or distress, this, too, would argue against criminal activity.

So, now, having considered the facts McQueary provided in the light of some of Paterno's knowledge and experience, we can understand why Paterno would be neither sure nor pretty sure that Sandusky committed a crime. And in fact, having considered the facts in the light of this knowledge and experience, many a reasonable man would be sure, or pretty sure, that Sandusky was innocent. Innocent, but not prudent. Paterno would not have wanted any action in the showers, no matter how innocent, if it could alarm an observer who happened to walk in on it. So Sandusky's showering with children had to stop.

Paterno had more knowledge and experience than is listed above, of course, and some of it will be presented below, along with further consideration of the facts.

The significance of the mirror.

McQueary testified that he first saw Sandusky and a boy through a mirror. But in his testimony recounting what he told Paterno, he did not mention the mirror. And when recounting to the grand jury what McQueary told him and also what he told Curley and Schultz, Paterno did not mention the mirror. McQueary did not mention the mirror in his testimony describing what he told Curley and Schultz. Schultz did not mention the mirror when describing what Paterno told him, and did not mention the mirror when describing what McQueary told him in person. And Curley did not mention the mirror when describing what McQueary told him in person.

But Curley did mention the mirror when recalling what Paterno told him.

This detail about the mirror, namely, that McQueary did tell Paterno that he saw the action through the mirror, is important. Both McQueary and Paterno agree that what McQueary told Paterno was brief, and sparing in detail. And we know that part of this brief, spare account was that McQueary saw Sandusky and the boy through the mirror. This means that the mirror detail is a relatively major portion of the account. Furthermore, it may be that McQueary never told Paterno that he also looked into the shower directly. And if this is so, he would have left Paterno with the impression that everything he saw was seen through the mirror. Now McQueary himself said that after looking through the mirror, “[I] stepped to the right of my locker, to be frank with you, to make sure I saw what I think I saw with my own eyes without the reflection in the mirror.” So if McQueary doubted what he saw in the mirror enough to want a second look, it is plausible that Paterno would have some doubts, too, that what McQueary said he saw through the mirror was what he really saw. And that could easily have left Paterno with the impression that McQueary’s alarm was based on misinterpretation of what he saw.

As just mentioned in the previous paragraph, McQueary testified in 2011 that when he first saw Sandusky hugging the boy, he saw it through a mirror, and was sufficiently unsure of what he was seeing that he moved to where he could see things directly. So how is it that seeing the

action through a mirror has survived in Paterno's account of what McQueary told him? And why is there nothing in Paterno's account about seeing the action directly?

A plausible answer to both these questions derives from these things: McQueary did not wish to burden Paterno with details, and Paterno, noting that McQueary was upset, did not press him for details. So perhaps McQueary began his account by explaining that he had heard some disturbing sounds, then when inside the locker room saw disturbing action through a mirror. Perhaps at this point in his narration of the facts, and wanting to be brief, McQueary thought that this was sufficient detail regarding the means by which he saw the action, so he moved on to describe the relative position of Sandusky and the child, and finished up by emphasizing his opinion that what he had seen was extremely sexual, and wrong.

So now we have a plausible scenario in which McQueary does *not* tell Paterno he saw the action directly. But do we also have reason to believe that McQueary actually did leave this detail out of his account? Yes, we do. If McQueary had *also* said to Paterno that he had seen things directly, in addition to seeing things through a mirror, it is unlikely that Paterno would have even mentioned the mirror to Curley. But viewing things through a mirror is the only way of seeing the action that Curley recalled when testifying to the grand jury, so it is likely that this is all Curley knew about how McQueary viewed the action, all Paterno told him about this, all Paterno knew of this, and all McQueary told Paterno on this score.

So how did Paterno conclude that Sandusky was horsing around? McQueary's description was brief and vague. He apparently only mentioned seeing the action through a mirror. And the sum total of that action is just this: Sandusky first had his arms around a boy, and then a few seconds later, Sandusky and the boy were standing still, separated by a few feet. That is not much action! But McQueary mentioned hearing some slapping sounds. And Paterno knew that Sandusky was notorious for clowning around and roughhousing with boys. So is it really a mystery why Paterno might reasonably conclude that Sandusky's action was horsing around?

And how did Spanier learn the detail that the assistant did not see the action clearly? This began with McQueary's description to Paterno, as explained above, and Paterno's reasonable conclusion that McQueary had not seen the action well. Paterno then reported this to Curley, and Curley reported this to Spanier.

So, then, Paterno had good reason to conclude that what McQueary reported was simply horsing around, nothing criminal. And this is what he conveyed to Curley and Schultz the day after talking with McQueary. And this is what Curley and Schultz conveyed to Spanier that same day.

There is another small detail reported by Curley that he apparently got from Paterno, namely, that McQueary had gone to the Lasch building that evening for a workout. This differs from what McQueary says now, and is not something that he or anyone else says was mentioned in 2001. It may be that McQueary fudged the truth on this trivial point to Paterno in order to simplify his account. Or it may be that Paterno simply concluded that this was McQueary's reason based on other details McQueary told him.

What McQueary told Curley and Schultz in 2001.

Curley remembered McQueary's account this way (copied from above) :

McQueary heard and saw Sandusky and a boy by themselves in the shower area in the evening horsing around, being playful, kind of wrestling—there was body contact. McQueary thought what he saw was inappropriate and it made him uncomfortable. McQueary did not say he had witnessed anal intercourse or any other sexual activity.

Schultz (this also is copied from above) did not remember McQueary "himself telling us what he observed specifically." This seems to be what Schultz thought McQueary was telling him:

"Jerry was the kind of guy that he regularly kind of like physically wrestled people. He would punch you in the arm. He would slap you on the back. He would grab you and get you in a headlock, etc. That was a fairly common clowning around thing. I had the impression that maybe something like that was going on in the locker room and perhaps in the course of that, that somebody might have

grabbed the genitals, that Jerry might have grabbed the genitals of the young boy. I had no impression that it was anything more serious than that. That was my impression at the time." . . . "[I] had the impression that [what happened in 1998] was probably the kind of thing that had taken place [in 2001]."

And McQueary in 2011 said that in 2001 he told Curley and Shultz this (a summary and paraphrase of his testimony):

I saw Sandusky in the showers with a young boy. Sandusky was in very close proximity behind the boy, with his arms wrapped around him. And I also said I heard slapping sounds. And I made it clear that it was in the shower and they were naked. And I said I thought it was extremely sexual.

Stripping away McQueary's opinions, all that is left is just this: he saw Sandusky hugging a boy in the shower area. And that is all he describes, so far as the action is concerned. Just typical Sandusky. Nothing to be alarmed about. He also heard slapping sounds he thought were sexual. But slapping sounds could easily result from the sort of roughhousing Sandusky was notorious for. Again, nothing to be alarmed about.

Note that McQueary did not describe a criminal act. And Curley and Schultz shared much of the same knowledge and experience that Paterno had (described above). So McQueary's suspicion that Sandusky's action was criminally sexual was properly discounted as an understandable misunderstanding. And after having first formed a tentative opinion based on what Paterno said McQueary told him, McQueary in person gave them no reason to alter their view: this was simply another case, they supposed, of Sandusky's typical horsing around, this time in the shower.

In this section we examined what McQueary told Paterno, what Paterno and McQueary told Curley and Schultz, and what Curley and Schultz told Spanier, all in 2001, and discovered plausible reasons why they concluded that what McQueary saw was nothing more than Sandusky non-criminally horsing around in the shower. Next we turn to McQueary's 2011 story.

What McQueary said in 2011.

What follows are relevant portions of McQueary’s testimony broken out into three categories: actions, thoughts, and observations. For compactness—this reduces 12 pages of preliminary hearing testimony to just 3—most questions and answers have been combined, some testimony has been rearranged, and some testimony has been paraphrased, all to produce a continuous, chronological narrative. See my Appendix A for the underlying transcript.

McQueary’s 2011 testimony in narrative form		
What McQueary did	What McQueary thought	What McQueary observed
<p>Around 9:00 or 9:30 Friday evening, Feb 9, 2001, I went to the support staff locker room in the Lasch building to put a pair of sneakers in my locker. That locker room has a short entrance hall with doors at both ends. When I opened the first door</p>		
<p>I heard rhythmic slapping sounds, two or three slaps that you would hear skin on skin. [Later testimony:] Q. And the slapping, you said you heard two or three slapping sounds? Were they like (counsel makes slapping sound three times)? A. You got it.</p>		
<p>and I was already alarmed and alerted, to be frank, somewhat embarrassed, because it sounded to me like someone was in the showers. [He thinks he hears sexual intercourse.]</p>		
<p>I could hear the showers running.</p>		
<p>And I thought some activity was happening in the showers, but I really didn't want to seem to — didn't want to be part of. [Later testimony:] I had already made a mental note of the slapping. I heard the showers running. And, again, to be frank with you, I was — you know, visualizations come to your head of what that may be in the showers. So I was already embarrassed and slightly like, should I be here, I want to get out of here.</p>		
<p>I turned—my locker, upon opening that second door, is immediately to the right of that door. It's the very first locker in that row at that time. I turned to my locker, and as I turned and faced my locker, I looked over my right shoulder into the mirrors—at a 45-degree angle from the mirror, you can see into the shower—</p>		
<p>and shockingly and surprisingly <u>FIRST LOOK</u></p>		
<p>I saw Jerry with a boy in the shower. And it appeared that Jerry was directly behind the boy and the boy was up against a wall with his hands up against the wall. [Later testimony:] The boy</p>		

McQueary's 2011 testimony in narrative form

What McQueary did	What McQueary thought	What McQueary observed
		<p>was up against the wall, facing the wall, his hands maybe shoulder height on the wall. And Jerry was directly behind him in a very, very, very close position with Jerry's hands wrapped around his waist or midsection. I couldn't see his actual hands, but his arms were wrapped around. [Later testimony:] I saw Jerry behind a boy with the boy positioned against the wall and at very, very, very close proximity with Jerry's arms around him. [Later testimony:] I could see Jerry's whole backside.</p>
	<p>I didn't know what to think. On that first — on that first look through the mirror, I'm not sure what my — I didn't know what to think. I wasn't even sure I was seeing what I was seeing. I wasn't sure what to think or do.</p>	
<p>That glance or that look may have [taken] a second or two. I turned back to my locker and,</p>	<p style="text-align: center;">in a very hurriedly and hastened state and shocked</p>	
<p>opened my locker, swung the door open, put the shoes in, and then stepped to the right of my locker</p>	<p style="text-align: center;">to be frank with you, to make sure I saw what I think I saw with my own eyes without the reflection in the mirror</p>	
<p>So I stepped a little bit to my right to look directly into the shower room. <u>SECOND LOOK</u></p>	<p>And it appeared upon looking the second time, I said to myself, they're in a very sexual oriented—a very sexual position. I believed Jerry with sexually molesting him and having some type of intercourse with him based on the positioning.</p>	
	<p>I did not see insertion nor was there any verbiage or protests, screaming or yelling [Later testimony:] I did not see insertion or penetration and I didn't hear protests or any verbiage so I can't sit here and say that I know 100 percent sure that there was intercourse, but that's what I said to myself and that's truly what I believed was happening. [Later testimony:] it looked like there was intercourse going on</p>	
	<p>When I looked this second time, the position of the individuals was the same as it had been at the first look. The boys feet were on the floor. The boy was in an upright position, not bent over. His hands [=arms?] extended straight at roughly shoulder height. There was very little</p>	

McQueary's 2011 testimony in narrative form

What McQueary did

What McQueary thought

What McQueary observed

body movement, but I would say there was slow movement, certainly not hard or fast movement but a little movement. All that I heard [at this time] was the showers running. There were no slapping sounds. Nobody said anything. Nobody made any kind of noise at all. [Later testimony:] This time I did not see Jerry's whole back side, but kind of about a quartering away angle. And his body obstructed a lot of the boy. I saw a lot of the boy but not all of the boy.

At the conclusion of seeing this the second time, I believed Jerry was molesting the boy. Having some type of intercourse with him. [Later testimony:] And though their bodies blocked my view of Jerry's hands, and though I saw no obviously related movement, I thought he was fondling the boy's genitals.

Each of the first two glances [=looks] lasted maybe one or two seconds each.

After the second glance, I stepped back.

I didn't want to see it anymore, to be frank with you, I wanted to close my locker up. . .

. . . which I did. I slammed the locker door shut and then took 2 or 3 brisk steps toward the showers, getting closer than before, to within maybe 6 feet of the showers this time, and looked in again. [Later testimony:] When I slammed the locker door shut I was not looking at them.

There were four or five seconds between the second and third look.

THIRD LOOK

At that time when I looked in, they had separated. They had both turned so their bodies were totally facing me and looking at me. And they were 4 or 5 feet apart. [Later testimony:] Sandusky and the boy were still naked. I can't say whether Sandusky had an erection or not. I don't know. I did not—again, I don't look and stare down there. Indeed, at no point during this evening did I see whether or not Sandusky had an erect penis. Furthermore, at no point during this night did I see a look of pain on the boy's face.

I did not go into the showers. And I did not say anything to either one of them. I know they saw me. They looked directly into my eyes, both of them. Neither one of them said anything to me (they looked directly at me, and I looked at them; the expression on Mr. Sandusky's face was somewhat blank, just kind of a blank expression).

Seeing that they were separated, I thought it was best to leave the locker room.

They were still in the shower room, there were still 4 or 5 feet in between them, and they were

McQueary's 2011 testimony in narrative form		
What McQueary did	What McQueary thought	What McQueary observed
		<p>still naked when. . .</p> <p>. . .I left the locker room.</p> <p>At this point I was not feeling very good. To be frank with you, I can't describe what I was feeling or thinking. Shocked, horrified and, to be frank with you, probably not thinking straight, you know. I was distraught.</p>

A summary of what McQueary saw.

All McQueary *saw* was Sandusky hugging a boy while both were in the shower, and naked, of course. That's it! That's all of it! Well, OK, he also saw them standing apart, naked, in the shower. All of this is and should be legal. None of it is sexual assault. None of it is child abuse.

As for the two or three rhythmic sounds McQueary heard, he seems to agree that they were like non-sexual slapping sounds a lawyer made by slapping his own body in open court. Sounds such as these might easily be made during the kind of playful activity typical of Sandusky.

But the sounds produced apprehension in McQueary. They reminded him of sexual intercourse. And he explicitly says he was predisposed to see sexual intercourse:

I had already made a mental note of the slapping. I heard the showers running. And, again, to be frank with you, I was — you know, visualizations come to your head of what that may be in the showers. So I was already embarrassed and slightly like, should I be here, I want to get out of here.

So it can hardly come as a surprise that he interpreted Sandusky hugging the boy as sexual intercourse.

Of course one can imagine that Sandusky *might* have been abusing the child as McQueary was entering the locker room. But we can say the same of any adult who is alone with a child. And

we can imagine that Sandusky *might* have been abusing the child while he was hugging him. But we can say the same of any adult who hugs a child.

McQueary's report is exactly the kind of report that brings to the fore the wisdom of that part of Pennsylvania's reporting statute which says that a person required to report suspected child abuse is required to report if and only if he *himself* suspects child abuse. A person is not required to report merely because someone else suspects child abuse. McQueary suspected that he had witnessed a crime. But what he described is not a crime and is not immoral. And Paterno, Curley, Schultz, and Spanier all show that they realized that what was reported to them was neither criminal nor immoral. Furthermore, nothing in McQueary's description of the action suggested the child was injured or endangered: the only action was a hug, and McQueary said the boy did not protest, scream, or yell. And since there was neither victim nor child in distress, there was also no legal or moral need to identify and care for the child.

What actually happened in 2001.

1. Dr. Jonathan Dranov.

Dr. Jonathan Dranov was called to the elder McQueary's home the night of the shower incident. From the trial transcript the following points may be gleaned.

- McQueary heard what he described as "sex sounds" while entering the locker room, but would not describe to Dranov exactly what that meant. (In particular, McQueary never explicitly alleged a criminal act, nor did he say he saw an action which might be construed as a criminal act.)
- At some point a boy stuck his head out the shower room entrance and stared at McQueary and the two made eye contact. The boy did not seem startled or frightened. Then an adult arm reach around his waist and pull him back out of view.
- A little later, McQueary saw Sandusky leave the shower in a towel.

- Dranov several times asked McQueary, “What did you see?” And each time McQueary would return to the sounds he heard and get upset.

The accounts of Dranov and McQueary, if taken separately, present very different views of what happened. But the two accounts are not contradictory in their main points, and can be harmonized. But before presenting a harmonization, it is useful to discuss the layout of the support staff locker room and its shower area.

2. The support staff locker room.

The layout of the support staff locker room is shown in Figure 1 below. This layout is based on photographs of the locker room, but the photographs did not show the urinal area or the back part of the toilet stall. This layout is also based in part on a phone conversation with someone who has used the locker room. This layout is probably correct except in details unimportant to the discussion here. The shower room has five showerheads.

Referring, now, to Figure 1 below, note that it only requires a small number of steps to go from just outside the inner door to location **1**, and that the whole interior of the shower room is visible from location **1**. Note, too, that the outer door is not adjacent to the shower room.

Now anyone who molests as many boys as many times over as many years as Sandusky is accused of doing (and many people think he molested many more boys over even more years) is necessarily *cautious* and *patient*. Let us consider how such a man would evaluate the suitability of this shower room as a location for molesting a child. For a child molester, safety is of paramount importance. He must have ample warning whenever a third party is about to be present so that he will have enough time to stop molesting and start behaving in an apparently innocent manner. Ideally, there will be a place of concealment so that even if the visitor approaches close to where he and the boy are, the visitor will not be able to see them. But this shower room, because it has no shower stalls, offers no such place of concealment. So this shower room is not a hopeful candidate. Another problem is that the outer door is not adjacent

the shower room, which means it may be hard to hear it opened when in the shower room. And there are only a few steps from the inner door to location 1. If both entrance doors can be opened quietly, a third party could easily enter and be at location 1 before the molester heard him or saw him. So this shower room is a hazardous location for a child molester, not a place a child molester with at least normal intelligence, caution, and patience would look upon with favor.

On the other hand, one might argue, McQueary testified that he heard sounds from inside the shower room when he was entering the locker room. And Dranov's testimony, too, makes it likely that a person in the shower room can detect when someone enters the locker room normally. Perhaps opening the outer door normally, walking through the entrance hall normally, and opening the inner door normally makes enough noise that people who are taking a shower can hear it. If so, is that sufficient warning to make a child molester consider this shower room a safe place to molest a child? On the plus side, if one were at the end of the shower room closest to the entrance hall, one would have a few seconds to stop molesting and resume showering from the time the outer door was opened. That might be enough time to stop and pretend to be innocently showering. But what does the child molester do if the person who enters normally heads for the toilet, notices the molester and the boy, gets suspicious, and takes a close look. If the molester has an erection, or the boy has obvious signs of being molested, there is no place to hide these things. Turning toward the wall might work, but it might not. And what if the third party has just finished a workout while lightly dressed, quickly disrobes, and enters the shower room intent on taking a shower. This could all happen too fast for comfort. And let us remember again that a visitor who enters the locker room quietly can get all the way to location 1 without being noticed by the child molester. So if you were a child molester, would you *ever* molest a child in this shower room? If I were a child molester, I would not. This shower room simply does not offer enough cover. And survival is the name of the game. That seemingly safe end of the shower room nearest the entrance hall might beguile a careless man, but it is such seeming safety that is what makes this shower room so hazardous, a hazard that a child molester of reasonable intelligence and caution would surely recognize and surely avoid. This shower

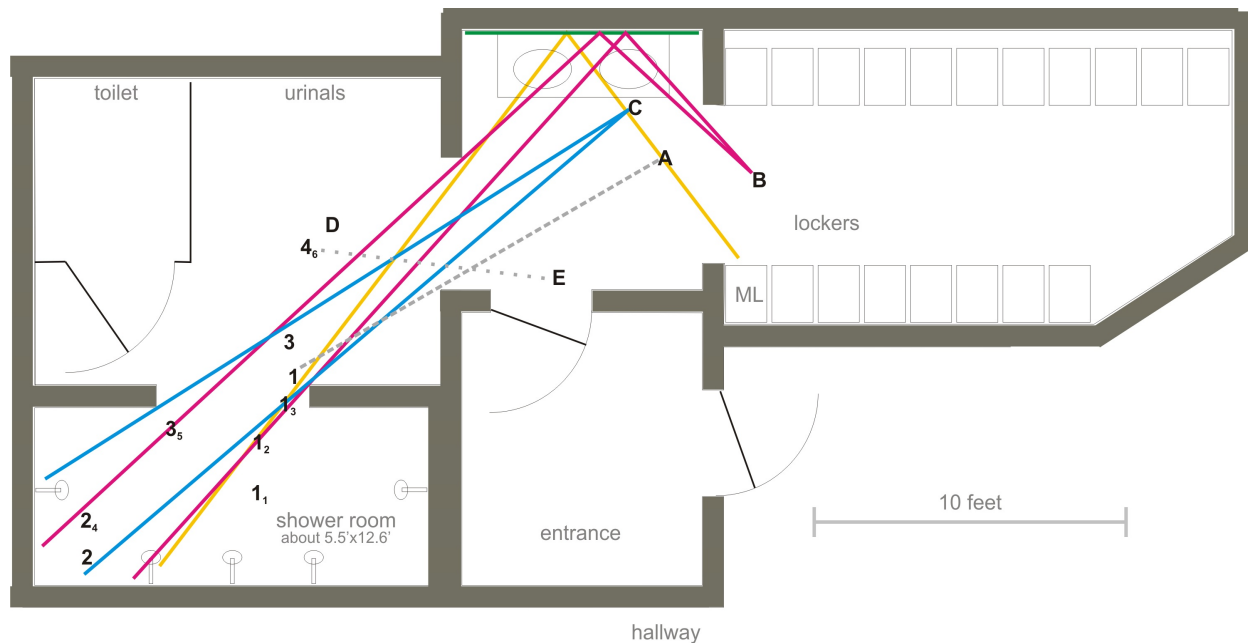


Figure 1. Support staff locker room.

room is so hazardous to a child molester that I doubt any molestation has ever occurred there, and I doubt that any molestation ever will occur there.

3. Shower room layout and a plausible scenario.

Figure 1 shows five positions of McQueary inside the locker room, A–E, six positions of Sandusky, 1₁–4₆, and four positions of the boy, 1–4. McQueary’s locker is at ML. All these positions are based on the testimony of McQueary and Dranov. Here is a plausible sequence of events. *Speculation is in Italics:*

1. McQueary, alarmed by sounds he has just heard which he thinks are the sounds of sexual intercourse, enters the locker room and quickly reaches position A. At the same time, *Sandusky and the boy* hear McQueary enter the locker room. The boy, being curious about who has just entered, moves to position 1. While passing position A, McQueary looks toward the shower area in the mirror and sees a boy stick his head out the entrance to the shower room. *McQueary then turns and looks directly at the boy; the two make eye contact. Meanwhile, Sandusky, initially out of McQueary’s view at position 1₁, also curious, moves to position 1₂ and sees McQueary in*

the mirror. McQueary, because he is now looking directly at the boy, does not see Sandusky. Sandusky recognizes McQueary¹ and notices that McQueary appears to be in an ill humor. Unsure of what this ill humor might portend, and being concerned for the boy. Sandusky moves to position 1₃, reaches his arm around the boy, and pulls him out of view. For his part, McQueary sees an adult arm reach around the boy and pull him back out of view.

2. *McQueary, even more alarmed, goes to his locker at position B. Meanwhile, the boy, not having interpreted McQueary's visage as threatening, and still wanting to see him, struggles in Sandusky's grasp, with the result that he and Sandusky get turned around and the boy ends up facing the wall at position 2 with Sandusky at 2₄ giving him a father-like hug intended to be calming, protective, reassuring, and doing this knowing all the while that McQueary can see him in the mirror.*

3. *McQueary at position B looks in the mirror and sees Sandusky hugging the boy at position 2.*

4. *A few seconds later, McQueary steps to position C and looks again and sees Sandusky still hugging the boy at position 2.*

5. *McQueary returns to his locker at position B, finishes up there, then slams the locker door shut. Meanwhile, Sandusky having concluded that McQueary poses no threat, and being aware that McQueary might misinterpret the hug, and indeed, the whole situation, lets go of the boy and moves to position 3₅ near the shower room entrance so that McQueary will have an opportunity to inspect him and the boy, and to see in particular that he, Sandusky, does not have an erection.² The boy moves out of the shower room to position 3 so that he can see McQueary, probably hoping to say hello and talk a bit.*

¹ Normally Sandusky would have said "hello," I suppose. If Sandusky did say "hello," but received no reply, this would have added to any concern caused by McQueary's apparent hostile mood. For his part, McQueary recalls no such greeting or any other conversation.

² Another possibility is that Sandusky, having decided McQueary was probably not a threat to the boy, let him go so that he might see McQueary, but moved to the shower room entrance just in case. I doubt Sandusky feared that McQueary would intentionally harm the boy, only that he might harm him unintentionally while venting some anger or frustration. As for myself, I have no reason to think that McQueary is given to violence. But I have been around enough football players long enough to know that some of them do get violent off the field at times, they are all used to violence—football is controlled violence—and they are strong. So caution is reasonable.

6. McQueary moves to position **D** to take a closer look, and finds Sandusky and boy standing apart at positions **3₅** and **3**, facing him. McQueary makes eye contact with them, but is too shy to look and see whether Sandusky has an erection.
7. McQueary looks away, then turns toward the door to leave. Meanwhile, Sandusky exits the shower and puts on a towel. When McQueary reaches position **E**, he sees Sandusky in a towel, outside the shower room, heading toward position **4₆**.
8. McQueary leaves the locker room.

At the Sandusky trial, McQueary denied that he saw the boy poke his head out from the shower room and look at him. And the most natural understanding of a particular series of questions and answers in McQueary's testimony at the preliminary hearing is that when McQueary left the locker room, Sandusky and the boy were still in the shower area, naked, and standing several feet apart. So should we reject Dranov's testimony as a fiction? I think not. McQueary by his own admission was *greatly* upset by what he saw in the locker room. And McQueary's father confirms this, describing his son as fearful, and his voice trembling. Dranov also described McQueary as upset, and obsessed with the sounds he heard. And Paterno testified that McQueary was still upset the next day. So it is fair to say that McQueary was traumatized by the incident. It is therefore quite possible that McQueary genuinely does not now remember seeing the boy peer out at him, Sandusky's arm draw the boy out of view, and Sandusky leave the shower room in a towel.

4. So did Sandusky molest the boy, or not?

As was explained in a prior section, McQueary never reported actually *seeing* any criminal activity. But just because McQueary did not see criminal activity does not mean none occurred. So I now address the question of whether Sandusky did in fact molest the boy. The evidence supports the following reasoning and conclusions:

1. The boy knew when McQueary entered the locker room. Sandusky probably did, too, but if not, the boy's action alerted him to McQueary's presence. At the moment McQueary entered, it

is not known where in the shower room Sandusky and the boy were at. But at some point, probably soon after McQueary entered, the boy, being curious to know who had come in—Hey, someone just came in. Is it a coach?—looked to find out—Wow! It’s Mike McQueary!—and the boy and McQueary made eye contact. Then McQueary saw an adult arm wrap around the boy and pull him out of view. McQueary continued on to his locker. While McQueary was going to his locker, Sandusky and the boy moved as described above, ending up at location **2**, a location visible to McQueary. And while at that location, Sandusky gave the boy a hug, knowing full well that McQueary was present and in a location where he could see the hug. Now long-practicing child molesters do not sexually molest children when they know a witness is present. So we know of a certainty that Sandusky did not molest the boy while McQueary was in the locker room.

2. We do not know where Sandusky and the boy were when McQueary entered the locker room, or what they were doing. But Sandusky did not behave in a manner one would expect a child molester to behave if he had just been molesting a child: he did not keep out of sight and resume showering, he gave the boy a hug in McQueary’s presence, and showed a full frontal view of his naked body to McQueary. So it is unlikely that Sandusky was molesting the child while McQueary was entering the locker room, and it is therefore likely that the sounds McQueary heard were created by innocent activity.

To summarize, it is doubtful that Sandusky was molesting the boy before McQueary entered the locker room, and it is a sure thing that Sandusky did not molest him while McQueary was in the locker room.

5. More on what Paterno knew.

McQueary probably did not tell Paterno the information Dranov provides. But Paterno surely knew all the locker rooms in the Lasch building. So we can add the following to Paterno’s knowledge and experience:

- Paterno knew the layout of the support staff locker room and its shower room.

- Child molesters do not knowingly molest children in the presence of others.
- Child molesters need to be cautious and patient in order to survive.

Stepping back into Paterno's shoes, and considering the facts McQueary presented in the light of this additional knowledge and experience, and continuing the numbering where we left off above,

9. Paterno would know that since child molesters do not knowingly molest children in the presence of others, it is highly unlikely any child molester of at least normal caution and patience would molest a child in the showers of the support staff locker room unless he could hear or otherwise detect when someone was entering the locker room in time to take action to protect himself, such as ceasing any ongoing abuse and pretending to shower. In other words, a child molester of at least normal intelligence and caution will first "case the joint," and determine whether, while the showers are running, he can detect someone entering the locker room. If he cannot hear someone entering soon enough to take evasive action, he will *never* molest a child there. On the other hand, if he determines that he can hear someone entering soon enough to take evasive action, and if he then molests a child there, and if a third party happens to enter the locker room while he is molesting the child, he will have the needed time and will take evasive action, and the third party will not see child abuse. So Paterno would know that no child molester of at least normal patience and caution ever has been or ever will be surprised in the act of abusing a child in that shower room by someone entering the locker room in a normal manner. So McQueary did not see child abuse.

10. Paterno would also know that in addition to ample warning, a child molester would want a place to hide after a visitor was in the locker room lest he need to conceal an erection, lest his victim shows signs of molestation that need to be kept out of sight, or lest the visitor strike up a conversation with the child and the child betray his predicament. And Paterno knew that this shower room offers no such hiding place. So Paterno would know that it is highly unlikely that any child molester would be willing to molest a child in this shower room, and therefore highly unlikely that McQueary saw child abuse.

11. If McQueary told Paterno that Sandusky showed himself in full frontal view, Paterno no doubt also realized that *if* Sandusky had just a few seconds earlier been engaged in some sort of sexual intercourse, he would probably still have an erection, or show signs of a very recent erection, and would probably not present himself for inspection as Sandusky did. So Paterno would reckon it unlikely that Sandusky had been engaged in any sort of sexual intercourse.

To recapitulate items 9, 10, and 11, Sandusky did none of the things real child molesters do: cease, disguise, and hide.

Having considered the facts McQueary told him in the light of this additional knowledge, we can say that Paterno *should* have been *certain* that Sandusky did *not* abuse the boy in McQueary's presence. Paterno might not have been told about Sandusky presenting himself in full frontal view, but Paterno did have considerations numbered 1 through 8 above to guide him and could therefore reasonably conclude that it was unlikely that abuse occurred before McQueary entered the locker room. And Paterno did behave as if these were his views on the matter.

6. Paterno's reaction to McQueary.

McQueary recalls Paterno's reaction to his report about Sandusky as follows: "***[Paterno] was shocked and saddened, kind of slumped back in his chair. He said, Well, I'm sorry you had to see that. It's terrible. And he said, I need to think and tell some people about what you saw and I'll let you know what — what we'll do next.***" But what was Paterno thinking when he said this? Well, we know that for good and sufficient reason he did not suspect Sandusky of child abuse. So I propose the following meld of thought and word: Paterno was ***shocked and saddened [that Sandusky had done again something like what he had done in 1998], [and] kind of slumped back in his chair. He said, Well, I'm sorry you had to see that. It's terrible. And he said, I need to think[,] and tell some people about what you saw[,] and I'll let you know what — what we'll do next [in order to keep Sandusky from repeating this sort of legal but inappropriate thing].***

And perhaps inside himself, Paterno was smiling wistfully at his young assistant's enviable naïveté.

Paterno knew immediately that McQueary was mistaken in his interpretation of what he saw, but for some reason Paterno did not take this opportunity to explain the caution of child molesters, and why it is obvious that Sandusky did not molest the boy. Perhaps a decade later he wished he had explained these things. Anyway, Paterno probably concluded from the sounds McQueary reported that Sandusky had been horsing around in the shower. And innocent horsing around is what he told Curley and Schultz. And that is what Curley and Schultz told Spanier. And in fact, based on the evidence currently available, it is virtually certain that innocent horsing around and a comforting hug are all that happened. There was no crime. There was no victim to identify and be concerned for. There was just a need to figure out how to dissuade Sandusky from showering with boys again, at least on campus, lest there be another misunderstanding. And Paterno thought it well to check with McQueary from time to time to make sure he was doing OK.

PART IV

The Freeh report

Freeh's exhibits and other raw evidence.

The following table includes both time-line items and raw evidence. The raw evidence includes emails and other documents provided in the Freeh Report that are related to the 2001 shower incident reported by McQueary. The emails have been stripped of all but the main message, and any embedded messages have been presented as separate emails. Emphasis, and text in square brackets, are added. Page numbers refer to the Freeh Report unless otherwise noted.

My commentary is in [square brackets] in blue type in this sans serif typeface.

Exhibit 5C (table item G) is key to understanding the thinking of Schultz and others.

Table 1: Time line and raw data, with commentary.	
A 2001-02-09 Friday	
	McQueary sees Sandusky and boy in shower at Lasch Building (page 66).
B 2001-02-10 Saturday	
	McQueary calls Paterno in the morning, sees Paterno later the same day.
C 2001-02-11 Sunday	
	Paterno meets with Curley (and maybe Schultz)
D 2001-02-11 Sunday	from Exhibit 5A
	Schultz consults with attorney Wendell V. Courtney on the legal requirements for reporting suspected child abuse, as the following excerpt from the attorney's time log shows:

Table 1: Time line and raw data, with commentary.

02-11-01

4000-450061 PSU - General - Finance/Business - Central

2.90[hours]

Conference with G Schultz re reporting of suspected child abuse; Legal research re same;
Conference with G Schultz

[Based on the paragraphs from Freeh's report quoted immediately below, it appears there was a conference call as part of this consultation, which suggests more than two people on the phone. Be that as it may, attorney Courtney says (see below) he spoke with Schultz and Curley ("you and Tim"), and Spanier may have spoken with Courtney at the same time. The words "suspected child abuse" (see above) are Courtney's; they do not show that Schultz, Curley, or Spanier suspected child abuse. Of course it is plausible to suppose that they wondered whether it had occurred, and called Courtney on that account. But it is just as plausible to suppose that they did not think abuse had occurred—Paterno did not think it had occurred, so why would they—but wondered whether they had to report anyway because McQueary suspected abuse. We may suppose that Courtney explained the things set forth in PART I above.

Page 69 says:

On Sunday, February 11, 2001, Schultz had a **conference call** about the "reporting of suspected child abuse" with Penn State's then outside legal counsel, Wendell Courtney [table item D]. Courtney conducted legal research on this issue and had **another conference [call?]** that day with Schultz about the matter. Courtney charged 2.9 hours of time to Penn State for his legal work. Courtney's work on the 2001 matter is confirmed in an email Courtney sent to Schultz in 2011 when Penn State received subpoenas for testimony by Schultz and others concerning the criminal investigation of Sandusky.

Nearly 10 years later, on January 10, 2011, Courtney emailed Schultz and said, "*Gary - Cynthia Baldwin called me today to ask what I remembered about JS issue I **spoke with you and Tim** about circa eight years ago.** I told her what I remembered. She did not offer why she was asking, nor did I ask her. Nor did I disclose that you and I chatted

Table 1: Time line and raw data, with commentary.

about this." The initials "JS" in Courtney's 2011 email appear to indicate Jerry Sandusky.

* Italics are Freeh's.

Page 71 says:

When then-Penn State General Counsel Cynthia Baldwin first heard that the Attorney General's office planned to subpoena Schultz, Paterno, and Curley to appear before the Grand Jury, she called Spanier to inform him of the news. Baldwin's notes from this call on December 28, 2010 reflect that Baldwin informed Spanier of the situation. Baldwin's notes of the call reflect that **Spanier said he "[m]ay have consulted w/Wendell when Tim, Gary & Graham spoke" when he first heard of the 2001 incident.**

]

E 2001-02-12 14:30 Monday Exhibit 2J (excerpts) and Pages 70–71

Spanier meets with Curley and Schultz. Here is his remembrance of the meeting.

... Curley and Schultz shared that they had received a report that a member of the athletic department staff had reported something to Joe Paterno, and that Joe had passed that report on to Tim and Gary.

The report was that Jerry Sandusky was seen in an athletic locker room facility showering with one of his Second Mile youth, after a workout, and that they were "horsing around" (or "engaged in horseplay"). It was reported that the staff member was not sure what he saw because it was around a corner and indirect.

I recall asking two questions:

"Are you sure that is how it was described to you, as horsing around?" Both replied "yes."

"Are you sure that that is all that was reported?" Both replied "yes."

We then agreed that **we were uncomfortable** with such a situation, that **it was inappropriate**, and that **we did not want it to happen again**. I asked that Tim meet with Sandusky to tell him that [1] he must never again bring youth into the showers. We further agreed that [2] we should inform the Second Mile president that we were directing Jerry accordingly and furthermore that we did not wish Second Mile youth to be **in our showers**.

Notes:

Table 1: Time line and raw data, with commentary.

There was no mention of anything abusive, sexual, or criminal.

At no time was it said who had made the report to Joe Paterno. (I never heard Mike McQueary's name associated with this episode until November 7, 2011, when I read it in a newspaper story.)

The hour of the day was not mentioned.

The specific building and locker room were not mentioned.

The age of the child was not mentioned.

[Spanier's plan of action, numbered [1] and [2] above (plan 0 in Table 2) did not need to include contacting the DPW because no crime was reported to him.

"Horsing around" and "engaged in horseplay" are consistent with Cynthia Baldwin's notes of a Jan 3, 2012 meeting with Paterno. The detail "around a corner and indirect" is not. This detail, meaning across the room and through a mirror, is one of the few explicit details of what McQueary told Paterno that have survived. Paterno told this detail to Curley, and Curley told it to Spanier. The great significance of this small detail is explained in PART III above.

Spanier's remembrance shows that neither Schultz nor Curley thought that what Sandusky had done was a crime, and that Spanier also did not think it was a crime.]

F 2001-02-12 16:57 from Exhibit 5D Monday

email FROM Harmon TO Schultz

Regarding the incident in 1998 involving the former coach, I checked and the incident is documented in our imaged archives [sic].

G 2001-02-12 from Exhibit 5C Monday

[This handwritten note on Schultz's personal stationery is called a "confidential note" on page 23. ***This exhibit is key to understanding the thinking of Schultz and others.*** TMC = Curley; JVP = Paterno, JS = Sandusky, DPW = Department of Public Welfare. Highlighting and

Table 1: Time line and raw data, with commentary.

underlining added.]

Confidential, 2/12/01

Talked w[ith] TMC

reviewed 1998 history

- agreed TMC will discuss w[ith] JVP & advise we think TMC should meet w[ith] JS on Friday.

*- **unless** he “confesses” to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned w[ith] child welfare.*

- TMC will keep me posted.

[This note is dated the day after Schultz and Curley met with Paterno, and a week or more before he and Curley spoke with McQueary. Schultz and Curley agreed that (1) Curley will discuss the matter with Paterno and advise [=inform] him that Curley and Schultz both think Curly should meet with Sandusky four days later, and (2) if and only if Sandusky proves uncooperative, indicate that they feel a DPW review is appropriate. **Note that no later than the day after meeting with Paterno, both Schultz and Curley both considered a “DPW review” optional.** The fact that they considered contacting the DPW optional is evidence that no later than the day after meeting with Paterno, both Schultz and Curley did not suspect a crime had occurred, for if either had suspected a crime, then by law they could not have considered contacting the DPW optional, and Freeh presents no evidence that Schultz or Curley intended to disregard the law.* Indeed, the very fact that Schultz and Curley consulted with attorney Courtney suggests their desire to abide by the law. Note also that despite not suspecting a

Table 1: Time line and raw data, with commentary.

crime, Schultz and Curley thought that a "DPW review" could be appropriate in a case where no crime occurred, and that the threat of a DPW review might itself be a useful tool to discourage Sandusky from repeating his legal but inappropriate behavior.

* Freeh does claim on page 16 that these men decided to disregard the law, but presents no direct evidence of this. Instead, he infers it, claiming it is a reasonable conclusion from the evidence. But I show that the evidence he relies on does not support his conclusion.]

H

From page 71:

By February 12, 2001, Schultz and/or Curley had:

1. (i) given Spanier a "heads up" concerning a "unique" situation involving Sandusky in the showers with a child; [See notes to Exhibit 5A, table item E]
2. (ii) met with Paterno, who reported to them the "same information" McQueary had given to Paterno; [Curley and Schultz preliminary hearing transcript]
3. (iii) discussed the "reporting of suspected child abuse" with Penn State's then outside legal counsel and also with Spanier, [Exhibit 5A, table item D]
4. (iv) reviewed the history of the 1998 Sandusky incident; [Exhibit 5C (table item G)]
5. (v) checked to see if the 1998 police report on Sandusky was documented in University police files; [Exhibit 5D, table item F]
6. (vi) agreed that Curley would discuss with Paterno the idea about approaching Sandusky **to see if** he "confesses to having a problem;" [Exhibit 5C, table item G—this use of "to see if..." is not supported by this evidence: the exhibit expresses no purpose for a discussion with Paterno.]
7. (vii) researched the Board membership of the Second Mile.³¹⁰ [Per page 71, this was an Internet search done "on February 12, 2001, at about 11:10 a.m."³⁰³ Endnotes 303 and 310 both read "Schultz confidential file notes (5-1-12)." That date is May 1, 2012, and is perhaps the date Freeh found or logged the item. Anyway, it seems the Internet search was not completely successful since Exhibit 5E (table item N) indicates that 13 days later, Schultz did not know who the chairman of the Second Mile board was.]

I

About 9 days elapse between the previous and the following items.

Table 1: Time line and raw data, with commentary.

J 2001-02-21 (Wednesday) or some other nearby day

McQueary meets with Curley and Schultz.

K 2001-02-22 (Thursday) per page 72

email FROM Schultz TO Spanier, Curley

Graham, Tim and I will meet at 2:00 p.m. on Sunday in Tim's office.

L 2001-02-23 (Friday) per page 72

Spanier acknowledged the 2:00 p.m. meeting for Sunday in an email to Schultz and Curley on February 23, 2001. [I did not find the text of this email in Freeh's report.]

M 2001-02-25 (Sunday) per page 72

Meeting in Tim Curley's office of Spanier, Curley, and Schultz.

[Per page 73, Spanier does not remember Schultz attending this meeting.

Per Exhibit 2J, in this meeting, Curley expressed concern to Spanier that he was worried about what to do if Sandusky resisted their directive.]

N 2001-02-25 from Exhibit 5E Sunday

[Freeh says this was written by Schultz. It is a handwritten note on a blank sheet of paper.]

2/25/01

③ ◦ *Tell chair* of Board of Second Mile*

② ◦ *Report to Dept of Welfare.*

Table 1: Time line and raw data, with commentary.

① ◦ *Tell J.S. to avoid bringing children alone into Lasch Bldg*

* *who's the chair??*

[This seems to be a list of options or talking points. Schultz's inclusion of contacting the Department of Welfare on this list is no proof that he suspected a crime had occurred; see my comments on Schultz's 2001-02-12 note (table item G). I speculate that the circled numbers were added during or after discussion of the three proposed actions. But there are other reasonable possibilities. Perhaps Schultz wrote the list without numbers, and then after thinking about the items, placed them in order of his preference, or in the order he planned to mention them in the meeting. Note that in email the next day, table item O, the order of proposed actions has changed.]

O 2001-02-26 08:57 from Exhibit 5I Monday

[This email has the same message as the next email in this list,

but the sending time of this copy is 5 hours earlier to the minute. How did that happen?]

email FROM Schultz TO Curley

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.

[This email is the same as that of item P, below. See notes there.]

P 2001-02-26 13:57 from Exhibit 5F Monday

[This email has the same message as the previous email in this list,

but the sending time of this copy is 5 hours later to the minute. How did that happen?]

email FROM Schultz TO Curley

Table 1: Time line and raw data, with commentary.

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.

[Note the reversal of items numbered 2 and 3 as compared to Exhibit 5E (table item N) above. Schultz's inclusion of contacting the Department of Welfare on this list is no proof that he suspected a crime had occurred. See my comments on Schultz's 2001-02-12 note (table item G). This list of items is Table 2, plan 4. As it turned out, this was not the final plan.]

Q 2001-02-27 20:10 from Exhibit 2F=5G Tuesday

email FROM Curley TO Spanier and Schultz (the TO list is per page 24)

*I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday- I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and and [sic—double “and”] maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. **If not, we do not have a choice and will inform the two groups.** Additionally, I will let him know that his guests are not permitted to use our facilities.*

I need some help on this one. What do you think about this approach ?

[This email suggests that talking with Sandusky had dropped off the list of things being

Table 1: Time line and raw data, with commentary.

considered, leaving only talking to the Second Mile and the Dept. of Welfare as options. But it seems Paterno did not think talking with Sandusky should be dropped off the list, and after discussions with Paterno, Curley agreed that talking with Sandusky should be among the things done. Furthermore, Curley now thought talking with Sandusky, and perhaps talking with the Second Mile might be all that was necessary to get Sandusky to stop doing his legal but inappropriate showering with boys, and that reporting to the Dept. of Welfare should be an option of last resort.

Note that in Curley's new plan, informing the Second Mile and informing the Dept. of Welfare are both optional.

Freeh considers this email pivotal. He thinks that Paterno believed a crime had been committed but talked Curley out of reporting it to child protective services in order to avoid bad publicity. But the evidence does not support this conclusion. At most this email proves that Paterno thought talking to Sandusky should be done. It does not prove that Paterno thought any of the other options should not be done. Now virtually everyone knows that one does not have to report legal activity to the Dept. of Welfare, and as is shown in PART III, it is doubtful that Paterno thought Sandusky had committed a crime. So if Paterno is among those referred to in the phrase "what we agreed were the next steps," then at some point Paterno thought reporting to the Dept. of Welfare would be useful even though not required by law. Perhaps Paterno did urge abandoning the recent consensus position and reverting to the original position held by Schultz and Curley that reporting to the Department of Welfare would only be done if Sandusky proved uncooperative. And if that is so, we should admire Paterno for it. Unnecessarily reporting someone to child protective services can cause an innocent person a lot of trouble, and waste government resources, too. Wanting to avoid all that is a good thing, not a bad thing.

Freeh might reply that Sandusky's conviction proves his guilt, so reporting to child protective services was necessary (and therefore those who did not report are bad people). But the evidence available in 2001 supported not reporting (and therefore those who did not report are honorable people). And for what it is worth, as is shown in PART III, we know beyond reasonable doubt that Sandusky did not abuse the boy.]

R 2001-02-27 22:18 from Exhibit 2F=5G

Table 1: Time line and raw data, with commentary.

email FROM Spanier TO Curley and Schultz (the TO list is per page 24) (underlining added)

Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.

[Spanier provided the following explanation in an undated document some years later (see exhibit 2J in the Freeh Report)]

...

Tim Curley sent me a follow up email that has recently been shared with the news media. My use of the word "humane" refers specifically and only to my thought that it was humane of Tim to wish to inform Sandusky first and to allow him to accompany Tim to the meeting with the president of the Second Mile. Moreover, it would be humane to offer counseling to Sandusky if he didn't understand why this was inappropriate and unacceptable to us. My comment that we could be vulnerable for not reporting it further relates specifically and only to Tim's concern about the possibility that Jerry would not accept our directive and repeat the practice. Were that the outcome of his discussion I would have worried that we did not enlist more help in enforcing such a directive. I suggested that we could visit that question down the road, meaning after Curley informed Sandusky of our directive and learning of his willingness to comply and after talking with Second Mile executives who had responsibility for the Second Mile youth.

...

Spanier's explanation of his statement, ". . . we then become vulnerable for not having reported it" is a bit unwieldy, I think. Here is a "translation":

I was a bit worried that even after speaking to Sandusky and the Second Mile, he might shower with boys again. If he had done that, I would have regretted not asking for DPW help at the same time as contacting Sandusky and the Second Mile. But I was willing to take the

Table 1: Time line and raw data, with commentary.

risk since the option of requesting DPW help is always available.

Freeh's interpretation of Spanier's vulnerability statement, found on pages 72ff, is that Spanier believed a crime had occurred, but decided to ignore the law requiring him to report it to child protective services (and make a Clery Act report, too) because he feared it would result in bad publicity. But Freeh presents no evidence that Spanier ever suspected, or even should have suspected, that the incident reported by McQueary was a crime. Spanier's knowledge of the incident came to him through Schultz and Curley. Since neither of them believed a crime had occurred, it is unlikely they made Spanier think a crime had occurred.

The significance of the word "then" in the email message.

Spanier said in his email that if Sandusky showers with a boy again, "we then become vulnerable for not having reported it." The word "then" can mean "at that time" or "on that account."

At that time.

If Spanier's "then" means "at that time," then Spanier said that if Sandusky showers with a boy again, they become vulnerable for not having reported it at that time (that is, at the time he showers with a boy again). Now if Spanier did not suspect sexual assault, he would not intend this "vulnerability statement" to mean they become vulnerable for failure to report to authorities, because he surely knew that one does not have to report suspicion of a crime one does not suspect. On the other hand, if Spanier did suspect sexual assault, he knew that he would be vulnerable for failure to report whether or not Sandusky ever showered with another boy. So it makes no sense for him to say that they would only be vulnerable for failure to report if and when Sandusky repeated his action. So whether Spanier suspected sexual assault or not, if Spanier's "then" means "at that time," then it is unlikely that Spanier was referring to criminal vulnerability for failure to report suspected child abuse.

On that account.

If Spanier's "then" means "on that account," then Spanier said that if Sandusky showers with a boy again, they become vulnerable for not having reported it on that account. As before, if

Table 1: Time line and raw data, with commentary.

Spanier did not suspect Sandusky, this vulnerability cannot mean criminally vulnerable for failure to report suspected child abuse. But if Spanier did suspect child abuse, he knew he was required to report whether Sandusky showered with a boy again or not, so he knew he would not become vulnerable if and only if Sandusky showered with a boy again. So in this case, too, whether Spanier suspected Sandusky or not, it is unlikely that he was referring to vulnerability for failure to report suspected child abuse.

Conclusion on the word “then.”

It is incredible to believe that if Spanier did suspect sexual abuse at the time he wrote his email that he would suggest that the legal requirement to report would only arise if some future event happened, or would only begin at the time some future event happened. And it is also incredible to believe that if Spanier did not suspect sexual abuse that he would consider failure to report a legal vulnerability. So whether Spanier suspected sexual assault or not, it is unreasonable to believe that Spanier’s “vulnerability statement” refers to a legal obligation to report suspected child abuse to authorities.]

S 2001-02-28 14:13 from Exhibit 2F=5G

email FROM Schultz TO Spanier, Curley

Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization [=DPW].

[Schultz does not suspect a crime, and will only contact the DPW as an aid to dissuading Sandusky from showering with kids, and only if needed. The fact that these men were willing to contact the DPW at any future time is hard to reconcile with Freeh’s claim that they were covering up a crime.]

T 2001-02-28 20:19 from Exhibit 5H

Table 1: Time line and raw data, with commentary.

email FROM Curley TO Spanier

Graham: I know you are going out of town. When will you be returning? I may need to touch base with you regarding the basketball situation towards the end of next week. We will play next Thursday and pending the outcome of the next two games I will need to make a recommendation to you next Friday. I am planning to meet with the person next Monday on the other subject. Have a great trip!! You sure deserve a break!!!

U 2001-02-28 21:18 from exhibit 5H

email FROM Spanier TO Curley

Tim: I'll be in Australia, and it might be difficult to reach me--a 15 hour time difference. But call if you need me--Carolyn has my phone numbers. I will try to check email from time to time, but who knows how easy that will be. I will return late Saturday night (but that involves starting my return sometime on Friday, US time), so you might try calling me at home on Sunday afternoon if we haven't communicated earlier via email. If you need to start in one direction without me, do so. I think we are on the same wavelength and I will support you.

[It is not clear that this email has anything to do with the Sandusky matter. Basketball seems a more likely subject of the last two sentences.]

V 2001-03-01 07:34 from exhibit 5H

email FROM Curley TO Schultz

Gary: I will be sure to keep in touch with you on the basketball situation.

[It is not clear what this email has to do with the Sandusky matter. Freeh presents no

Table 1: Time line and raw data, with commentary.

evidence that “the basketball situation” is a code phrase. Against “the basketball situation” being a code phrase is email of 2001-02-28 20:19 (from Exhibit 5H, table item T).]

W 2001-03-01 16:06 from Exhibit 5H

email FROM Schultz TO Curley

OK, Tim. You can reach me anytime thru my office.

[It is not clear that this email has anything to do with the Sandusky matter.]

X 2001-03-07 08:54 from Exhibit 5I

FROM Joan Coble, Administrative Assistant of Schultz TO Curley

Tim - Have you updated Gary [=Schultz] lately? Before he left for FL, he asked me to ck. w/you re this [“this”= quoted email about Sandusky, elided here but shown above: the message of 2001-02-26 13:57, Exhibit 5F, table item P].

Pls. know that he is doing e-mail, but will not be reading until Sun., 3/11. He is spending a few days with Dave Schuckers and you may either phone him on his cellphone at 777-7393 or @ Schuckers at 941/388-3034. Pls. know that the Schuckers live in a Condominium & you may have to go through some referrals to get to speak w/them, so be patient if you go that route.

Table 2: Proposed plans of action.

Large letters indicate Table 1 items. Note that plan 7 = plan 8.

O Mon 2001-02-12 14:30 page 70	Spanier says. . . Exhibit 2J	E meet with Sandusky	inform the Second Mile	BPW <u>not</u> mentioned
--	---------------------------------	--------------------------------	------------------------	--------------------------

<i>Plan O may go after plan 1.</i>				
1 Mon 2001-02-12 Exhibit 5C (Table 1, item 6)	Schultz memo to self; G he & Curley agree to:	(1) meet with Sandusky	if (1) does not work, then (2) suggest need for DPW review	if (2) does not work, then (3) contact DPW (this is implied)
Wednesday 2001-02-21 or some other nearby day — McQueary meets with Curley and Schultz.				
Thursday 2001-02-22 per page 72 — email FROM Schultz TO Spanier, Curley: <i>Graham, Tim and I will meet at 2:00 p.m. on Sunday in Tim's office.</i>				
Friday 2001-02-23 per page 72 — Spanier acknowledged the 2:00 p.m. meeting in an email to Schultz and Curley on February 23, 2001.				
Sunday 2001-02-25 per page 72 — Meeting in Tim Curley's office of Spanier, Curley, and Schultz. [Per page 73, Schultz might have been absent.]				
2 Sun 2001-02-25 Exhibit 5E before discussion?	Schultz handwritten N note on blank paper	◦ Tell chair of Board of Second Mile	◦ Report to Dept of Welfare.	◦ talk with Sandusky.
3 Sun 2001-02-25 Exhibit 5E after discussion?	Schultz handwritten N note on blank paper	① ◦ talk with Sandusky.	② ◦ Report to Dept of Welfare.	③ ◦ Tell chair of Board of Second Mile
4 Mon 2001-02-26 08:57 Exhibit 5I & 13:57 Exhibit 5F	email FROM Schultz OP TO Curley	(1) talk with Sandusky	(2) contact Second Mile	(3) contact DPW
5 Mon 2001-02-26 Consensus. . .	a discussion implied Q by Exhibit 2F=5G	do <u>not</u> meet with Sandusky	contact the Second Mile	contact DPW (optional ?)
6 Mon or Tue 02-26 or 27 Paterno suggests. . .	a discussion implied Q by Exhibit 2F=5G	meet with Sandusky	We do not know what Paterno suggested to Curley with regard to contacting Second Mile and DPW.	
7 Tue 2001-02-27 20:10 Exhibit 2F=5G	email FROM Curley Q TO Spanier and Schultz	(1) meet with Sandusky	if (1) does not work, then (2) inform Second Mile	if (2) does not work, then (3) inform DPW
8 Tue 2001-02-27 22:18 Exhibit 2F=5G	email FROM Spanier R TO Curley and Schultz	(1) meet with Sandusky	if (1) does not work, then (2) inform Second Mile	if (2) does not work, then (3) inform DPW
9 Wed 2001-02-28 14:13 Exhibit 2F=5G	email FROM Schultz S TO Spanier, Curley	definitely meet with Sandusky	definitely inform Second Mile	optionally inform DPW

As can be seen, the plan went through several versions. The last one listed is the one that was implemented. And since Sandusky was cooperative, the DPW was not contacted.

Freeh's discussion of certain evidence, commentary added.

On pages 66–79 Freeh discusses evidence dealing with McQueary's report first to Paterno, and later to Curley and Schultz, who reported it to Spanier, and the response of Paterno, Curley, Schultz, and Spanier to those reports. The most efficient way to comment on his discussion, and

the fairest to Freeh, is to reproduce the entire section from his report and insert comments close to the text being commented on. Freeh's page numbers are *below* the text for their respective pages. Freeh's page breaks do not correspond to my page breaks. Superscript numbers refer to endnotes in Freeh's report. These endnotes are not included here. Superscript letters are in red type and are placed in parentheses to make them a bit more visible. They refer to footnotes that are included here at the bottom of Freeh's respective pages. My bracketed text that is analysis or commentary is in blue sans serif type. In some cases, to make it easy locate small details that receive comment, parts of Freeh's text are highlighted.

Freeh's discussion of certain evidence, commentary added

II. McQueary's Observations of Sandusky - 2001

The November 2011 Grand Jury presentment described an incident, observed by Penn State assistant football coach Michael McQueary, of a "sexual nature" between Sandusky and a boy in the Lasch Building that allegedly took place in March 2002. During this investigation, the Special Investigative Counsel [=Freeh] found evidence that this incident actually occurred on or about [Friday,] February 9, 2001 and promptly reported this information to the Pennsylvania Attorney General's Office.²⁵¹

McQueary testified at a December 2011 Grand Jury hearing, and again on June 12, 2012 at Sandusky's criminal trial, about what he saw. At the time of the incident, McQueary was a graduate assistant with the football program and had gone to the support staff locker room in the Lasch Building around 9:00 or 9:30 p.m. on a Friday night.²⁵² Upon opening the locker room door, McQueary heard "rhythmic slapping sounds" from the shower.²⁵³ McQueary looked into the shower through a mirror and saw Sandusky with a "prepubescent" 10- or 12-year-old boy.²⁵⁴ McQueary saw Sandusky "directly behind" the boy with his arms around the boy's waist or midsection.²⁵⁵ The boy had his hands against the wall, and the two were in "a very sexual position."²⁵⁶ McQueary believed Sandusky was "sexually molesting" the boy and "having some type of intercourse with him" although he "did not see insertion nor was there any verbiage or protest, screaming or yelling."²⁵⁷

Freeh's discussion of certain evidence, commentary added

McQueary testified that he slammed his locker shut and moved toward the shower.²⁵⁸ He said Sandusky and the boy separated [McQueary said "had separated." McQueary did not see the separation take place.] and looked directly at McQueary

66

without saying a word.²⁵⁹ Seeing the two had separated, McQueary said he "thought it was best to leave the locker room."²⁶⁰ McQueary went to his office and called his father^(s) for advice.²⁶¹ He then went to his father's house to discuss the matter further.²⁶² The two decided McQueary should tell Head Football Coach Joseph V. Paterno ("Paterno"), who was McQueary's immediate superior, about the incident.²⁶³

McQueary testified that he called Paterno at home around 7:30 or 8:00 a.m. the next morning [i.e. early Saturday morning] and told him that he needed to meet with him.²⁶⁴ McQueary recalled Paterno said he did not have a job for McQueary,^(y) so "if that's what it's about, don't bother coming over."²⁶⁵ McQueary told him the matter was "something much more serious"²⁶⁶ and Paterno agreed to a meeting. McQueary went to Paterno's home to talk, and according to his Grand Jury and trial testimony, he told Paterno he saw Sandusky and "a young boy in the shower and that it was way over the lines."²⁶⁷ Recalling the activity as "extremely sexual in nature," McQueary described the "rough positioning" of Sandusky and the boy "but not in very much detail" and without using the terms "sodomy" or "anal intercourse."²⁶⁸

Paterno told the Grand Jury in 2011 that he recalled having this discussion with McQueary on a Saturday morning²⁶⁹ and that McQueary told him he saw Sandusky "fondling, whatever you might call it — I'm not sure what the term would be — a young boy" in the showers at the Lasch Building.²⁷⁰ Paterno explained, "[o]bviously, he was doing something with the youngster. It was a sexual nature. I'm not sure exactly what it was. I didn't push Mike to describe exactly what it was because he was very upset."²⁷¹

McQueary testified that he reported what he saw to Paterno because "he's the head coach and he needs

Freeh's discussion of certain evidence, commentary added

to know if things happen inside that program and inside that

x John McQueary and his supervisor (a medical doctor [Dr. Jonathan Dranov]) heard Mike McQueary's initial report of the Lasch Building events the evening it happened. Preliminary Hearing Trans. (12-16-11), 134. John McQueary advised his son to report the matter to Paterno, and neither John McQueary nor his boss advised him to immediately call the police. Id. John McQueary later had a conversation with Schultz about what his son saw, and how Schultz handled the situation. Id. The conversation may have come up in discussions John McQueary had with Schultz in mid-May 2001 about a past due amount on a lease for a medical business where John McQueary worked. See Control Number 00675188.

y McQueary was hired as a permanent assistant football coach in 2004. The Special Investigative Counsel [=Freeh] found no information to suggest that McQueary's selection for that job was related to his witnessing Sandusky assault a boy in the shower room at the Lasch Building. Three witnesses stated that McQueary was very well-qualified for the position. [-] Interview (3-8-2012); [-] Interview (3-12-2012); [-] Interview (3-1-2012).

67

building."²⁷² He said that Paterno's response was that he [Paterno] needed to "tell some people about what you saw" and would let McQueary know what would happen next.²⁷³ After Sandusky's arrest, Paterno told a reporter that he told McQueary, "I said you did what you had to do. It's my job now to figure out what we want to do."²⁷⁴

No record or communication indicates that McQueary or Paterno made any effort to determine the identity of the child in the shower or whether the child had been harmed. [See PART III. Paterno knew that no crime had been committed. Furthermore, McQueary had not reported an injury to the boy, and there was no evidence that the child was in danger. So why should Paterno have made an effort to determine the identity of the child?]

III. University Leaders' Response to McQueary's Observations

A. February 11,2001 [Sunday]: Paterno Reports Sandusky Incident to Schultz and Curley

Freeh's discussion of certain evidence, commentary added

Paterno also testified to the Grand Jury that he "ordinarily would have called people right away, but it was a Saturday morning and I didn't want to interfere with their weekends." Paterno thought he spoke to Curley "early the next week" or "within the week."²⁷⁵ Paterno had a telephone call with Curley and said, "[h]ey, we got a problem, and I explained the problem to him."²⁷⁶ When asked if the "information that [he] passed along was substantially the same information that [McQueary]" had given him, Paterno said "yes."²⁷⁷ [Paterno testified "I knew some kind of inappropriate action was being taken by Jerry Sandusky with a youngster." It seems the state's attorney construed Paterno's meaning as criminally inappropriate. But as explained in PART III, Paterno meant it as non-criminally inappropriate. So it is unfortunate that the state's attorney did not explore this further. Perhaps Paterno's meaning might then have been understood.]

Curley testified to the same Grand Jury that Paterno called him on a Sunday and asked him and Schultz to come to Paterno's home²⁷⁸ where Paterno related that an assistant coach saw "two people" in the shower of the football building locker room.²⁷⁹ Curley recalled that Paterno said the assistant saw the people through a mirror, "was uncomfortable with the activity in the shower area," and had reported the issue to Paterno.²⁸⁰ [Curley's statement regarding Paterno and the mirror is a particularly important piece of information. See the discussion of the mirror in PART III.]

Schultz testified to the same Grand Jury in 2011 that he attended the meeting with Paterno and Curley and that it occurred in Schultz's office or "possibly" at Paterno's house.²⁸¹ Schultz told the Grand Jury that Paterno said "someone" had seen Sandusky and "some unnamed boy" engaging in "some behavior in the football locker room that was disturbing." He testified, "I believe the impression I got was it was inappropriate and he wanted to bring that to Tim Curley and my attention."²⁸² Schultz did not recall Paterno's precise words, and said Paterno described the events "in a very general way."²⁸³ Schultz thought the conduct might involve "wrestling around activity" and Sandusky "might have grabbed the young boy's genitals or something of that

sort."²⁸⁴ Schultz said the "allegations came across as not that serious. It didn't appear at that time,

Freeh's discussion of certain evidence, commentary added

based on what was reported, to be that serious, that a crime had occurred. We had no indication a crime had occurred."²⁸⁵

B. February 11, 2001 [Sunday]: Schultz Discusses "Reporting of Suspected Child Abuse" with University's Outside Legal Counsel

On Sunday, February 11, 2001, Schultz had a conference call about the "reporting of suspected child abuse" with Penn State's then outside legal counsel, Wendell Courtney.^(z) [The words "reporting of suspected child abuse" are Courtney's. See Table 1, item D discussion.] Courtney conducted legal research on this issue and had another conference [?call] that day with Schultz about the matter.²⁸⁶ Courtney charged 2.9 hours of time to Penn State for his legal work. Courtney's work on the 2001 matter is confirmed in an email Courtney sent to Schultz in 2011 when Penn State received subpoenas for testimony by Schultz and others concerning the criminal investigation of Sandusky.^(aa)

Nearly 10 years later, on January 10, 2011, Courtney emailed Schultz and said, "*Gary - Cynthia Baldwin called me today to ask what I remembered about JS issue I spoke with you and Tim about circa eight years ago* [emphasis added (by Freeh)]. I told her what I remembered. She did not offer why she was asking, nor did I ask her. Nor did I disclose that you and I chatted about this."²⁸⁷ The initials "JS" in Courtney's 2011 email appear to indicate Jerry Sandusky.

Courtney served as Penn State's outside legal counsel for 28 years and was a partner at a law firm that performed legal work for the University for nearly 50 years. Based on the advice of counsel, Courtney declined to be interviewed by the Special Investigative Counsel [=Freeh]. Thus, the Special Investigative Counsel [=Freeh] was unable to learn Courtney's explanation about the legal work he performed on February 11, 2001.

C. February 12, 2001 [Monday]: Initial Response of Spanier, Schultz and Curley to Sandusky Incident

After the Commonwealth brought criminal charges against Schultz in November 2011, Schultz's

Freeh's discussion of certain evidence, commentary added

assistant removed some of the Sandusky files from Schultz's Penn State office and delivered them to Schultz. The assistant failed to disclose in two interviews with the Special Investigative Counsel [=Freeh] that the Sandusky files had been removed.²⁸⁸

z Exhibit 5-A (McQuaide Blasko documents). [Table 1, item D.]

aa Exhibit5-B (Control Number 11118161). [Email from Schultz to First Administrative Group, Jan 10, 2011]

69

Only in May 2012 did the existence of these important files come to light so that the documents could be retrieved.²⁸⁹

Schultz's handwritten notes, which he marked as "confidential," reflect a Monday, February 12, 2001 meeting with Curley to discuss the Sandusky allegations. According to Schultz's notes, Curley and Schultz talked and first "[r]eviewed 1998 history."^(bb) The notes state that Schultz and Curley "[a]greed [Curley] will discuss w JVP & advise we think [Curley] should meet w JS on Friday. Unless he 'confesses' to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned w child welfare."²⁹⁰ The initials "JVP" in Schultz's notes appear to indicate Joseph V. Paterno. The initials "JS" in Schultz's notes appear to indicate Jerry Sandusky. The initials "TMC" appear to indicate Curley. [Freeh misses the significance of the word "Unless." See discussion at Table 1, item G.]

In an interview with the Special Investigative Counsel [=Freeh], Spanier said that he met with Schultz and Curley to discuss Sandusky around 2:30 p.m. on [Monday] February 12, 2001.²⁹¹ Spanier said the men gave him a "heads up" that a member of the Athletic Department staff had reported to Paterno that Sandusky was in an athletic locker room facility showering with one of his Second Mile youth after a workout. Sandusky and the youth, according to Spanier, were "horsing around" or "engaged in horseplay."²⁹² Spanier said the staff member "was not sure what he saw because it was around a corner

Freeh's discussion of certain evidence, commentary added

and indirect."²⁹³ Spanier said this meeting was "unique" and that the subject matter of a University employee in a shower with a child had never come up before.²⁹⁴ Spanier also said that he did not ask, nor did Schultz or Curley define, what was meant by "horsing around" or "horseplay."²⁹⁵

Spanier said he asked two questions: (I) "Are you sure that it was described to you as horsing around?" and (ii) "Are you sure that that is all that was reported?"²⁹⁶ According to Spanier, both Schultz and Curley said "yes" to both questions. Spanier said the men agreed that they were "uncomfortable" with such a situation, that it was inappropriate, and that they did not want it to happen again.²⁹⁷ Spanier says he asked Curley to meet with Sandusky and tell him that he must never again bring youth into the showers. Spanier said the men also agreed to inform the Second Mile that this direction was given to Sandusky and "we did not wish Second Mile youth to be in our showers."²⁹⁸ Spanier said there was no mention of anything abusive or sexual, and he

bb Exhibit 5-C (Schultz documents). [Table 1, item G].

70

was not aware of the hour of day, the specific building involved, the age of the child, or any other prior shower incident.²⁹⁹ Spanier also said he did not ask for such details.

When then-Penn State General Counsel Cynthia Baldwin first heard that the Attorney General's office planned to subpoena Schultz, Paterno, and Curley to appear before the Grand Jury, she called Spanier to inform him of the news.³⁰⁰ Baldwin's notes from this call on December 28, 2010 reflect that Baldwin informed Spanier of the situation.³⁰¹ Baldwin's notes of the call reflect that Spanier said he "[m]ay have consulted w/Wendell when Tim, Gary & Graham spoke" when he first heard of the 2001 incident.³⁰²

On February 12, 2001, at about 11:10 a.m., Schultz researched the internet about the Board members of the Second Mile, the charitable organization Sandusky founded.³⁰³ On February 12, 2001, Schultz also asked Penn State University Police Chief Tom Harmon if a police file still existed for the 1998 event.³⁰⁴ At 9:56 p.m. [[Exhibit 5D \(Table 1, item F\) says 4:57 pm](#)], Harmon emailed Schultz to report,

Freeh's discussion of certain evidence, commentary added

"[r]egarding the incident in 1998 involving the former coach, I checked and the incident is documented in our imaged a[r]chives."^(cc)

By February 12, 2001, Schultz and/or Curley had [see Table 1, item H]: (i) given Spanier a "heads up" concerning a "unique" situation involving Sandusky in the showers with a child;³⁰⁵ (ii) met with Paterno, who reported to them the "same information" McQueary had given to Paterno; (iii) discussed the "reporting of suspected child abuse" with Penn State's then outside legal counsel and also with Spanier,³⁰⁶ (iv) reviewed the history of the 1998 Sandusky incident;³⁰⁷ (v) checked to see if the 1998 police report on Sandusky was documented in University police files;³⁰⁸ (vi) agreed that Curley would discuss with Paterno the idea about approaching Sandusky **to see if** he "confesses to having a problem;"³⁰⁹ and, (vii) researched the Board membership of the Second Mile.³¹⁰ There is no indication that Spanier, Schultz, Paterno, Curley or any other leader at Penn State made any effort to determine the identity of the child in the shower or whether the child had been harmed. [Why should they seek to identify the child? Freeh did not show that anyone in 2001 believed, or even had reason to believe, that a crime had been committed or a child harmed or endangered. Also, the purpose of approaching Sandusky was not "to see if he 'confesses. . .'" but to dissuade him from again showering with boys in Penn State facilities. See Table 1, item G.]

D. Schultz and Curley Meet with McQueary - February 2001

Schultz and Curley did not meet with McQueary to hear directly from him as to what he observed in the Lasch Building shower before taking these actions. [Paterno did not believe a crime had been committed—actually, he knew beyond a reasonable doubt that a crime had not been committed—and did not tell Curley and Schultz a crime had been committed. So they acted, as executives are wont to do, on limited information and past experience. And everything they did was reasonable. Among the things they did is schedule a meeting with McQueary just to be sure the report they got from Paterno was accurate. It was: McQueary gave them no reason to change their view that what Sandusky did was just non-criminal horsing around.] McQueary

cc Exhibit 5-D (Control Number 00675162). [Table 1, item F.]

Freeh's discussion of certain evidence, commentary added

71

testified at the Grand Jury that he first heard from Curley when Curley called to arrange a meeting to discuss what McQueary had reported to Paterno on a Saturday morning, about "nine or 10" days earlier.³¹¹ Curley could not recall how many days it was after hearing from Paterno that he met with McQueary to get the information directly from him, but he thought it was within a week.³¹²

McQueary also testified to the Grand Jury that he met with Schultz and Curley either the same day he received Curley's call or the next day. McQueary said he told the men he saw Sandusky in the shower with a young boy, with Sandusky's arms wrapped around the boy.³¹³ McQueary said he told the men that the situation was "extremely sexual" and that McQueary "thought that some kind of intercourse was going on."³¹⁴ Curley testified to the Grand Jury that McQueary told him he had heard people in the shower who were "horsing around, that they were playful, and that it just did not feel appropriate."³¹⁵

Schultz told the same Grand Jury that he did not recall specifically what McQueary reported, but his impression was that there was some physical conduct, some horsing around, some wrestling that resulted in contact with a boy's genitals in the context of wrestling.³¹⁶ Schultz testified that he did not understand the incident to have involved sexual conduct or intercourse.³¹⁷

E. February 25, 2001: Spanier, Schultz and Curley Meet Again to Discuss Sandusky Incident

On Thursday, February 22, 2001, Schultz sent an email to Spanier and Curley, stating, "Graham, Tim and I will meet at 2:00 p.m. on Sunday in Tim's office."³¹⁸ Spanier acknowledged the 2:00 p.m. meeting in an email to Schultz and Curley on February 23, 2001.³¹⁹ The February 25 meeting was arranged 12 days after McQueary notified Paterno about seeing Sandusky in the Lasch Building sexually abusing a young boy. McQueary testified before the Grand Jury that he met with Curley and Schultz about "nine or 10" days after the Saturday morning discussion with Paterno.³²⁰ [As explained above in PART III, McQueary did not see Sandusky sexually abusing a boy. Paterno knew this at the time McQueary reported the incident to him on February 10, and Curley, Schultz, and Spanier knew

Freeh's discussion of certain evidence, commentary added

this the next day, February 11.]

Among documents that Schultz held confidentially in his office and that had been withheld from the Special Investigative Counsel [=Freeh], were handwritten notes for a meeting on "2/25/01." The notes do not identify who was present for the meeting, but

72

indicate: "3) Tell chair* of Board of Second Mile 2) Report to Dept of Welfare. 1) Tell JS to avoid bringing children alone into Lasch Bldg * who's the chair??"^(dd) [The way this is written, one might think Freeh is saying Schultz wrongfully withheld this information. Be that as it may, Freeh does not say who withheld these documents, whether they had a right to withhold them, and whether the documents were eventually provided voluntarily. More about this seems to be at the bottom of Freeh's page 69 (see above), but the issues raised here are not answered there.]

Spanier's hardcopy calendar of [Sunday] February 25, 2001 indicates a 2:00 p.m. appointment in "TMC office."³²¹ Spanier told the Special Investigative Counsel [=Freeh] that the February 25 meeting was with only Curley.³²² He denied [perhaps he did not remember] that Schultz was present.³²³ [Freeh does not seem to present evidence that proves Schultz was actually present.] He also denied [perhaps he did not remember] that any mention was made of the Department of Public Welfare.³²⁴ [Freeh does not seem to present evidence that proves the DPW was actually mentioned.] He stated that Curley was worried about how to handle things if he informed Sandusky that he was forbidden to bring Second Mile youth to Penn State facilities and Sandusky disagreed.³²⁵ Spanier explained that he was concerned with Sandusky because the situation "doesn't look good, I was concerned with what people will think, the visibility and the public relations aspects of it. I was not concerned with criminality. There was no suggestion of anything about abuse or sexual contact."³²⁶ [Spanier's concern with appearances was appropriate and honorable. His opinion that there had been no sexual abuse was reasonable in 2001 and is still reasonable today as explained in PART III.]

The next day, on February 26, 2001, Schultz sent an email to Curley confirming the plan from the prior

Freeh's discussion of certain evidence, commentary added

day's meeting. Schultz wrote: "Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept. of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know."^(ee) [Freeh is a bit careless in his bookkeeping regarding the plans. The plan in Schultz's Feb 26 email is Table 2, plan 4. The plan from the prior days meeting is probably Table 2, plan 3. These plans differ in the order in which the three elements are listed. Element order may not have mattered, of course, but if it did, it is notable that plan 3 placed contacting the DPW ahead of contacting the Second Mile, and plan 4 reverses the order. Also, use by Freeh of the word "confirming" is questionable since from Exhibit 2F=5G (Table 1, item Q) we know that the plan in Schultz's email (Table 2, plan 4) was not a firm plan. It was changed either that same day or early in the following day to Table 2, plan 5, which is: 1) do NOT talk with Sandusky, 2) DO contact Second Mile, and 3) DO (or MAYBE?) contact DPW. Freeh's analysis entirely ignores this plan.]

The February 26, 2001 email and related emails that follow among Curley, Schultz and Spanier over the next two days are unique from the hundreds of thousands of other emails reviewed by the Special Investigative Counsel [=Freeh]. These messages are the rare documents where proper names and identifying information are replaced with generic references. Spanier told the Special Investigative Counsel [=Freeh] that Curley communicated in "code" in sensitive emails because the Athletic Department was notorious for leaks.³²⁷ When Curley communicated about other sensitive issues involving Sandusky, however, he did not use "code" words. For example, emails written between February 25 and February 28, 2001, refer to Sandusky as the "subject,"³²⁸ the "person involved,"³²⁹ or "the person."³³⁰ The emails refer to the Second Mile as "his organization;" and to the Department of Public Welfare as "the other organization"³³¹ and the "other one."³³² This contrasts with emails written in 1998, concerning the police investigation, in which Curley and Schultz frequently referred to

dd Exhibit 5-E (Schultz documents) [Table 1, item N].

ee Exhibit 5-F (Control Number 00677433). [Table 1, item O (=P except for time of sending)]

Freeh's discussion of certain evidence, commentary added

Sandusky as "Jerry."³³³ This also contrasts with emails written in 1999, concerning Sandusky's retirement, where Curley, Schultz and Spanier frequently referred to Sandusky as "Jerry."³³⁴

[I suppose Freeh would have us think that referring to Sandusky indirectly is an indication of some sort of guilt on their part. But there is a simple and plausible reason that is not nefarious. In 1998 and 1999, Sandusky was a Penn State employee. In 2001 he was not.]

On March 22, 2011, Spanier met with members of the Pennsylvania Attorney General's Office accompanied by Baldwin.³³⁵ The General Counsel's notes of that meeting reflect Spanier's statement that Schultz and Curley met with Spanier [met when? on Monday Feb 12 at 2:30 p.m. per pages 70–71?] to explain that an employee had seen Sandusky "horsing around" in a shower with a child and thought they should bring the issue to Spanier's attention.³³⁶ The notes also indicate that Spanier said to Schultz and Curley that if "nothing more detailed was reported, Tim should tell JS that we request that he not bring children into shower again. Since JS no longer employed that we advise chair of Board of Second Mile of what we heard."³³⁷ [Spanier's plan is Table 2, plan 0. ¶ This paragraph seems out of position here. It seems it would fit better with the Feb 12 items on Freeh pages 70–71, and, indeed, it duplicates some of what is at the bottom of Freeh page 70. But if this reports the meeting of Feb 25, it would seem to belong with item on Freeh pages 72–73.]

F. February 27-28,2001: Curley Proposes Revised Response to the Sandusky Incident

On Tuesday, February 27, 2001, Curley emailed Schultz and Spanier:

I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday— I am uncomfortable with what we agreed were **the next steps** [=plan 5]. I am having trouble with **going to everyone, but the person involved** [=plan5]. I think I would be more comfortable [plan 7.1a=] meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, [plan 7.2=] we feel a responsibility at some point

Freeh's discussion of certain evidence, commentary added

soon to inform his organization and [sic (this is Freeh's sic)] [plan 7.3=] maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, [plan 7.1b=] I will let him know that his guests are not permitted to use our facilities. I need some help on this one. What do you think about this approach? ^(ff) ^(gg)

[I have highlighted the plan Curley was concerned about after talking with Paterno. This plan (Table 2, plan 5) goes entirely unnoticed by Freeh, yet it is this plan, not the plan Schultz's Feb 26 email contains (plan 4), that Curley was concerned about. It is not entirely clear what Paterno suggested as an alternative to plan 5. Paterno's suggestion, inferred from what Curley says, is plan 6. After thinking about what Paterno said, Curley suggested plan 7 in Table 2.]

^{ff} Exhibit 5-G (Control Number 00679428). [Table 1, item Q].

^{gg} The Special Investigative Counsel [=Freeh] discovered these emails after Joe Paterno died. When the Special Investigative Counsel [=Freeh] questioned Paterno's representatives about the emails, they stated that because they did not have the benefit of the emails before Paterno's death, they were unable to inquire with Paterno about the emails.

74

Several people told the Special Investigative Counsel [=Freeh] that Curley is a State College native with a long family history at Penn State, including his father and brothers who worked at Penn State.³³⁸ A senior Penn State official referred to Curley as Paterno's "errand boy."³³⁹ Athletic Department staff said Paterno's words carried a lot of weight with Curley, who would run big decisions by Paterno.³⁴⁰ Others interviewed described Curley as "loyal to a fault" to University management and the chain of command, someone who followed instructions regardless of the consequences, and someone who avoided confrontation.³⁴¹ [I suppose that Freeh wants us to conclude from these characterizations of Curley that he did not have a mind of his own so far as his relationship with Paterno was concerned, and that everything in Curley's email quoted above that Curley says are his own ideas are really not his at all, but are actually Paterno's ideas. It is unbecoming of Freeh to take these cheap shots at Curley. There is nothing illogical in simply supposing that Curley was persuaded by Paterno's moral argument, which apparently was that talking to everyone else but Sandusky would be unfair, as indeed it would be since this was not a criminal matter.]

Freeh's discussion of certain evidence, commentary added

Also on Tuesday, February 27, 2001, at 10:18 p.m., Spanier responded to Curley's proposal for dealing with Sandusky. Spanier emailed Curley and Schultz:

Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable **for not having reported it**. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.³⁴²

[The "step further" is talking with Sandusky, something not included in plan 5, the plan being supplanted. Perhaps Spanier considered the anticipated conversation with Sandusky "all the more difficult" because the plan being approved, plan 7 = plan 8, did not definitely include going either to the Second Mile or the DPW, the very two elements that comprised plan 5 being replaced. So Curley would be trying to convince Sandusky without backup options already determined. And Curley had a few days earlier worried about what should be done if Sandusky resisted the restrictions being placed on him (see Table 1, item M). The words "reported it" are discussed below.]

A **reasonable conclusion** from Spanier's email statement that "[t]he only downside for us is if the message isn't 'heard' and acted upon, and we then become vulnerable for not having reported it" is that Spanier, Schultz and Curley were agreeing not to report Sandusky's activity. [This is not a reasonable conclusion. Spanier was not agreeing to never report; he was agreeing with Curley's proposal which included (a) delaying (perhaps forever) reporting to the Second Mile and (b) reporting to the DPW if and only if it became useful to do so. With regard to the DPW, since they did not suspect a crime, they had no obligation to report. But they did consider reporting to DPW as an optional tool to encourage acceptable behavior if milder measures failed. Schultz did not entirely agree with Curley's plan, as is evident from his email in Exhibit 2F=5G (Table 1, item S) in which he insists on informing the Second Mile, an option that Curley's suggested plan left optional because of the words "...feeling a responsibility at some point...".]

It also is reasonable to conclude from this email statement that the men decided not to report to a law enforcement or child protection authority **because** they already had agreed to "report" the incident to Second Mile. [There are several things wrong with this statement. (1) Freeh has presented no

Freeh's discussion of certain evidence, commentary added

evidence that anyone ever considered reporting the incident to law enforcement. (2) The final plan included contacting the DPW if Sandusky repeated his action. Of the several other plans considered, only one, Spanier's, plan 0, definitely did not include the possibility of reporting to the DPW, and this plan was quickly forgotten. (3) This "because" is an unsupported inference. Freeh has presented no evidence that anyone decided not to report to the police or the DPW because they agreed to inform the Second Mile. Furthermore, Freeh has presented evidence that none of these men ever suspected Sandusky had committed child abuse, and therefore none of these men ever thought they had a duty to report child abuse to authorities. And by law, none of them did have this duty.] Spanier's oral and written statements to the Special Investigative Counsel [=Freeh] **do not address this "reported it" reference**. Spanier told the Special Investigative Counsel [=Freeh] that the comment related "specifically and only to [Curley's] concern about the possibility that [Sandusky] would not accept our directive and repeat the practice. Were that the outcome of his discussion I would have worried that we did not enlist more help in enforcing such a directive."³⁴³ **[Actually, Spanier did address his "reported it" reference as part of his explanation of his use of the word "vulnerable." See Table 1, item R discussion.]**

Spanier said that his use of the word "humane" refers "specifically and only to my thought that it was humane of [Curley] to wish to inform Sandusky first and allow him to accompany [Curley] to the meeting with the president of the Second Mile.

75

Moreover, it would be humane to offer counseling to Sandusky if he didn't understand why this was inappropriate and unacceptable to us."³⁴⁴ **[And indeed, it would be humane.]**

On Wednesday, February 28, 2001, at 7:12 p.m., Schultz responded to Curley's proposal for dealing with Sandusky. Schultz wrote to Curley and Spanier:

Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other

Freeh's discussion of certain evidence, commentary added

organization.^(hh)

[Here, Schultz is proposing plan 9 in Table 2. This is the plan finally implemented.]

The "other organization" mentioned by Schultz appears to be a reference to the Department of Public Welfare. Again, at no time did Spanier, Schultz, Paterno or Curley try to identify the child in the shower or whether the child had suffered harm. [They did not suspect the child was a victim, so why should they have done these things?] By advising Sandusky, rather than the authorities, that they knew about the February 9, 2001 assault, they exposed this victim to additional harm because only Sandusky knew the child victim's identity at the time. [Freeh uses "assault," "victim," and "harm" because he assumes that Sandusky is guilty, something not suspected by Paterno, Curley, Schultz, or Spanier in 2001. And as shown in PART III, Sandusky did not assault the boy in 2001, and Paterno seems to have known Sandusky was innocent as soon as he heard McQueary.]

On February 28, 2001, Curley emailed Schultz and Spanier, explaining in part that he was "planning to meet with the person next Monday on the other subject."⁽ⁱⁱ⁾ Spanier replied the same day, telling Curley, "[i]f you need to start in one direction without me, do so. I think we are on the same wavelength and I will support you."³⁴⁵ [Spanier's reply seems to refer to basketball, not Sandusky. See Table 1, items T and U.]

IV. Curley Meets with Sandusky - March 2001

Curley testified to the Grand Jury that he met twice with Sandusky, as Sandusky did not "initially" admit to being in the shower with a boy.³⁴⁶ According to Curley's testimony, Sandusky later returned to admit he had been present.³⁴⁷ Curley said he told Sandusky:

[a]bout the information that we received, that we were uncomfortable with the information and that I was going to take the information and report it to the executive director of the Second Mile and that I did not want him in the future to be in our athletic facilities with any young people.³⁴⁸

Freeh's discussion of certain evidence, commentary added

[This misrepresents Sandusky's words and actions as reported by Curley. Curley said that initially, Sandusky did not think he had been there on the date in question. He later returned and said he had been there on that date. Curley could not remember whether or not Sandusky said he had been there with a boy. ¶ Freeh's use of "admit" is unfortunate, even prejudicial, because the term is so often used when people agree that they have done something wrong, and Sandusky has not admitted to any criminal activity.]

hh Exhibit 5-G (Control Number 00679428). [Table 1, item S.]

ii Exhibit 5-H (Control Number 00676529). [Table 1, item T.]

76

While Sandusky declined an interview with the Special Investigative Counsel [=Freeh], Sandusky's counsel stated in a telephone call with the Special Investigative Counsel [=Freeh] that Sandusky generally agreed with Curley's version of the 2002 incident, which Sandusky thought took place in 2001.³⁴⁹ [Sandusky's remembered correctly.] Sandusky's counsel said Curley told Sandusky that they had heard Sandusky had been in the shower with a young child, and someone felt this was inappropriate.³⁵⁰ According to Sandusky's counsel, Curley never used the word sex or intercourse in the discussion.³⁵¹ Counsel said Sandusky offered to give the child's name to Curley, but Curley did not accept this invitation.³⁵² Counsel also said Curley told Sandusky he did not want Sandusky to bring children to the shower any more.³⁵³ Sandusky's counsel said no one accused Sandusky of abusing kids.³⁵⁴ [It is no doubt true that no one accused Sandusky of abusing kids. All things Sandusky was known to have done in the shower in 1998 and 2001 are, without more, legal.]

On March 7, 2001, Schultz's assistant wrote to Curley, asking if he had updated Schultz on the actions set out in Schultz's February 26, 2001 email.^(j) Before he left for vacation, Schultz had left directions for his assistant to check on this issue.³⁵⁵ Curley reported to the assistant that he had updated Schultz.³⁵⁶

Freeh's discussion of certain evidence, commentary added

Schultz testified before the Grand Jury that he had the “impression that Tim did follow through and make sure Jerry understood that he was no longer permitted to bring Second Mile children into the football facility.”³⁵⁷ Penn State's General Counsel's notes from a March 2011 conversation with Spanier, reflect that Spanier said he “[b]umped into Tim Curley and Tim advised” that he had a conversation with Sandusky not to bring children into the shower again.³⁵⁸

Spanier told the Special Investigative Counsel [=Freeh] that a “few days after the brief Sunday interaction, [he] saw [Curley] and he reported that both of the discussions had taken place, that those discussions had gone well and our directive accepted, and that the matter was closed.”³⁵⁹ Spanier did not know whether Sandusky ever received counseling.³⁶⁰

Paterno gave the following explanation to a reporter for the Washington Post as to why he did not more aggressively pursue the information that McQueary provided. “I didn't know exactly how to handle it and I was afraid to do something that might jeopardize what the University procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It

jj Exhibit 5-I (Control Number 00674655). [Table 1, item X.]

77

didn't work out that way.” Paterno added, “In hindsight, I wish I had done more” and regretted that he had not.³⁶¹ [Based on the evidence available to him in 2001, Paterno should have known that Sandusky did not abuse the boy McQueary saw with Sandusky, and, indeed, Paterno acted at the time as if he knew this. But Paterno probably had come to doubt Sandusky's innocence by the time the Washington Post interviewed him, so of course he wished he had done more. As explained in PART III, the evidence currently available, including the trial transcript, makes Sandusky's innocence in 2001 partly definite and partly probable.]

Freeh's discussion of certain evidence, commentary added

V. March 19, 2001: Curley Meets with Second Mile Leadership

Curley testified at the Grand Jury that he met “the executive director of the Second Mile. I shared the information that we had with him.” The Special Investigative Counsel [=Freeh] found no written records concerning this meeting.

The Second Mile executive director declined to be interviewed. Counsel for the Second Mile told the Special Investigative Counsel [=Freeh], however, that the executive director told him that the executive director had a calendar entry for a meeting with Curley on March 19, 2001.³⁶² He also told counsel [=Freeh] that during the executive director's meeting with Curley that Curley related that an unidentified person saw Sandusky in the locker room shower on campus with a boy and felt uncomfortable with the situation,³⁶³ and that Curley had discussed **the issue** with Sandusky and concluded that nothing **inappropriate** occurred.³⁶⁴ [By “inappropriate” Freeh surely means criminal. Curley certainly thought Sandusky’s actions were inappropriate: that was the whole rationale for talking with Sandusky. But Curley did not think Sandusky’s actions were criminal. Use of “inappropriate” to sometimes mean “criminally inappropriate” and sometimes to mean “non-criminally inappropriate” creates misunderstanding. The same problem exists in the use of the word “sexual.”] According to Counsel for the Second Mile, Curley told the executive director, that “to avoid **publicity issues**,” the University would not permit Sandusky to bring kids on campus.³⁶⁵ Curley also told the executive director that he was telling Second Mile so that the executive director could emphasize **the issue** to Sandusky.³⁶⁶ [Such concern for “publicity issues” is honorable. The last use of “the issue” probably corresponds to a previous use of “the issue” and not to “publicity issues.”]

The executive director later advised two Second Mile Trustees of the meeting, and they concluded the matter was a “non-incident for the Second Mile and there was no need to do anything further.”³⁶⁷ He also talked to Sandusky, who admitted showering with boys but nothing more.³⁶⁸ The executive director passed on Curley's advice on the prohibition against bringing kids on campus, and Sandusky responded that it applied only to the locker rooms.³⁶⁹ The executive director urged him to get the issue clarified.³⁷⁰

Freeh's discussion of certain evidence, commentary added

VI. University Officials Do Not Notify the Board of the Sandusky Incident

The Penn State Board of Trustees ("Board" or "Trustees") met on March 15 and 16, 2001. Nothing in the Board records or interviews of Trustees indicate any contemporaneous discussions of the 2001 Sandusky incident and investigation during the meeting. The Board did not have a process or committee structure at that time for

78

receiving regular reports from University officials about matters of potential risk to the University, such as **the allegation against Sandusky**. [What allegation? McQueary's report? In 2001, McQueary did not describe a crime, and his report was not sufficient to raise in his hearers suspicion of a crime. And in his 2011 preliminary hearing testimony, McQueary described no inherently criminal actions. Nevertheless, McQueary suspected that some sort of intercourse he did not see was going on. And one of the defense lawyers at the preliminary hearing also managed to drag out of McQueary that although he did not see it, he suspected Sandusky was fondling the boy's genitals. Furthermore, we now know that it is likely that McQueary left out important details of what he witnessed, details that make it extremely doubtful that the crimes McQueary suspected actually happened.]

On July 24, 2001, Schultz met with leaders of the Second Mile and agreed to sell a parcel to the Second Mile for \$168,500.³⁷¹ The University had bought the property in 1999 for \$168,500.³⁷² On September 21, 2001, less than eight months after the Sandusky incident, the Board approved the sale of a parcel of land to the Second Mile.³⁷³ Nothing in the Board's records or interviews of Trustees indicate any contemporaneous discussions of the 2001 Sandusky incident and investigation, the **propriety** of a continuing relationship between Penn State and the Second Mile, or the risks created by a public association with Sandusky when the land transaction was discussed. Schultz, who oversaw the transaction, did not make any disclosure of the Sandusky incident during the Board's review of the land deal. In fact, Schultz approved a press release, issued September 21, 2001 announcing the land sale in which he praised Sandusky for his work with Second Mile.³⁷⁴ [On what basis would propriety be questioned? Sandusky may have been a little unusual, but he was good man so far as anyone at

Freeh's discussion of certain evidence, commentary added

Penn State knew.]

79

An analysis of Freeh's Findings.

Having examined evidence that Freeh presents, we are now able to evaluate Freeh's Findings. In the following, superscript numbers, highlighting, and text in square brackets are added.

Findings, press release pages 4–5, commentary added

In critical written correspondence that we uncovered on March 20th of this year, we [meaning Freeh] see evidence of their [meaning Spanier, Schultz, and Curley] **proposed plan** of action in February 2001 that included reporting allegations about Sandusky to the authorities. [1. "Proposed plan (singular)"? There were several plans considered, and almost all of them included contacting the DPW if Sandusky showered with a boy again.] After Mr. Curley consulted with Mr. Paterno, however, they changed the plan and decided not to make a report to the authorities. [2. This is misleading. Schultz, on the day after first talking with Paterno, wrote a tentative plan of action (Exhibit 5C (Table 1, item G) (Table 2, plan 1)) in which contacting the DPW was optional. Over the next several days the plan went through several mutations. On Tuesday Feb 27, at 8:10 p.m. Curley wrote email to Spanier and Schultz (Exhibit 2F=5G (Table 1, item Q)) in which he reveals that the current plan at that time, Table 2, plan 5, was (1) do NOT talk with Sandusky, (2) DO talk with Second Mile, and (3) maybe conditionally, maybe definitely, we do not know which, DO talk with DPW. But after talking with Paterno, Curley agreed that it would not be fair to talk with everyone but Sandusky, and Curley suggested that the plan should be plan 7: (1) DO talk with Sandusky, (2) MAYBE talk with Second Mile, and (3) MAYBE talk with DPW. Schultz was not comfortable with maybe not talking with Second Mile, and the final plan, plan 9, ended up (1) DO talk with Sandusky, (2) DO talk with Second Mile, and (3) MAYBE talk with DPW, this third item being Schultz's original idea with regard to the DPW. Freeh thinks the change in plans suggested by Paterno and Curley was nefarious, but he is wrong. Paterno, Curley,

Findings, press release pages 4–5, commentary added

Schultz, and Spanier, for good and sufficient reason, never suspected Sandusky of a crime. So by law they had no obligation to make a report to authorities, and were free to seek help from the DPW or not as they thought best.] Their failure to protect the February 9, 2001 child victim, or make attempts to identify him, created a dangerous situation for other unknown, unsuspecting young boys who were lured to the Penn State campus and football games by Sandusky and victimized repeatedly by him. [3. This is unfair. Even if Sandusky is a child molester (and that is doubtful) no Penn State official in 2001 knew it. In 2001 there were no suspected victims.]

Further, they exposed this child to additional harm by alerting Sandusky, who was the only one who knew the child’s identity, about what McQueary saw in the shower on the night of February 9, 2001. [This, too, is unfair, and for the same reason.]

The stated reasons by Messrs. Spanier, Schultz, Paterno and Curley for not taking action to identify the victim and for not reporting Sandusky to the police or Child Welfare are:

(1) Through counsel, Messrs. Curley and Schultz have stated that the “humane” thing to do in 2001 was to carefully and responsibly assess the best way to handle vague but troubling allegations. [4. Seeing that this was not a criminal matter, it was the humane thing to do.]

(2) Mr. Paterno said that “I didn’t know exactly how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It didn’t work out that way.” [5. By the time Paterno said this he had probably come to doubt Sandusky’s innocence regarding 2001. But Paterno’s 2001 decision was the right decision at that time. And based on the currently available evidence, Sandusky is innocent with regard to 2001, at least, and Paterno made the right decision.]

(3) Mr. Spanier told the Special Investigative Counsel [=Freeh] that he was never told by anyone that the February 2001 incident in the shower involved the sexual abuse of a child but only “horsing around.” He further stated that he never asked what “horsing around” by Sandusky entailed. [6. Freeh’s evidence supports Spanier’s assertion. The people who informed Spanier did not suspect a crime.]

Findings, press release pages 4–5, commentary added

Taking into account the available witness statements and evidence, it is **more reasonable to conclude** that, in order to avoid the consequences of bad publicity, the most powerful leaders at Penn State University – Messrs. Spanier, Schultz, Paterno and Curley – repeatedly **concealed** critical facts relating to Sandusky’s **child abuse** from the authorities, the Board of Trustees, Penn State community, and the public at large. Although concern to treat the child abuser humanely was expressly stated, no such sentiments were ever expressed by them for Sandusky’s victims. [7. **Freeh’s conclusion is not at all reasonable. There is no evidence that these men concealed child abuse. One does not conceal child abuse when one does not suspect child abuse. The evidence does indeed show that at least Spanier was, and rightly so, concerned about Penn State’s public image. That was one of his jobs.**]

The evidence shows that these four men also knew about a 1998 criminal investigation of Sandusky relating to suspected sexual misconduct with a young boy in a Penn State football locker room shower. [8. **The phrase “suspected sexual misconduct” overstates the case. The investigation was conducted because certain people wondered whether sexual misconduct had occurred. There is a difference between suspecting and wondering. The difference may be subtle, but it is real and significant. The use of “criminal” is also unfortunate. This sentence would have been true to the facts and non-pejorative if it had said, “The evidence shows that these four men also knew about a 1998 police and DPW investigation of Sandusky conducted because some people wondered whether sexual misconduct had occurred. . . . The investigation found no misconduct.”]** Again, they showed no concern about that victim. [9. **The authorities did not consider the boy a victim in 1998. Why, then, should these four men have done so?**] The evidence shows that Mr. Paterno was made aware of the 1998 investigation of Sandusky, followed it closely, but failed to take any action, even though Sandusky had been a key member of his coaching staff for almost 30 years, and had an office just steps away from Mr. Paterno’s. At the very least, Mr. Paterno could have alerted the entire football staff, in order to prevent Sandusky from bringing another child into the Lasch Building. Messrs. Spanier, Schultz, Paterno and Curley also failed to alert the Board of Trustees about the 1998 investigation or take any further action against Mr. Sandusky. None of them even spoke to Sandusky about his conduct. In short, nothing was done and Sandusky was

Findings, press release pages 4–5, commentary added

allowed to continue with impunity. [10. Now let us get this straight. Despite an extensive investigation which found no criminal activity, Freeh would have Paterno suspect Sandusky of being a child molester. On what grounds? Are we henceforth to treat people who are investigated and cleared as probably guilty anyway? To do that is to brand someone without just cause, increase the damage rumor mongers can inflict, make it easier to blackmail people, and do other mischief to no few innocent people. Don't like your boss? Start a rumor that he is a child molester. An anonymous tip should start the ball rolling. Want an employee to quit? Start a rumor. If Freeh be our guide, once accused, forever guilty: there is no way to be rid of the taint of accusation.]

Based on the evidence, the only known, intervening factor between the **decision** made on February 25, 2001 by Messrs. Spanier, Curley and Schultz to report the incident to the Department of Public Welfare, and then **agreeing not to do so** on February 27th, was Mr. Paterno's February 26th conversation with Mr. Curley. [As was explained in Reply 2, and before that in a note to Freeh's page 73, Freeh has the history of the plans wrong. The February 25th plan is plan 3 in Table 2. That plan has more the look of a set of talking points than a definite plan. And that plan, if it was indeed agreed upon, was abandoned for plan 4 in email from Schultz to Curley dated the next day, February 26th. And in plan 4, contacting the DPW was optional. Next, either on the 26th or the 27th, plan 4 was abandoned for plan 5 in which contacting the DPW may or may not have been optional, but Sandusky would not be contacted. Also on the 26th or 27th, Curley talked with Paterno who argued that it would be wrong to talk with others but not with Sandusky. Curley agreed, and on the 27th suggested plan 7=8 in which contacting the DPW was optional. The final plan, plan 9, also retained contacting the DPW as an option. So there was never an agreement to not contact DPW; that was always kept as a possibility to be used if needed.] We never had the opportunity to talk with Mr. Paterno, but he did say what he told McQueary on February 10, 2001 when McQueary reported what he saw Sandusky doing in the shower the night before: "You did what you had to do. It is my job now to figure out what we want to do." **Why would anyone have to figure out what had to be done in these circumstances?** We also know that he delayed reporting Sandusky's sexual conduct because Mr. Paterno did not "want to interfere" with people's weekend. To his credit, Mr. Paterno stated on November 9, 2011, "With the benefit of hindsight, I wish I had done more." [11. Yes! Why would anyone have to figure out what to do in

Findings, press release pages 4–5, commentary added

these circumstances? Well, it is apparent that Paterno did not share McQueary’s alarm, did not treat the situation as urgent, and did not seem concerned for the child. All this is consistent with the view that Paterno did not think McQueary had witnessed a crime. Clearly Paterno did want Sandusky to never repeat his action. But how to prevent repetition? That required some figuring out. Sandusky had rights based on his retirement agreement. And he was justifiably well known and well respected. So it was a delicate matter that required careful handling. And given what was known at the time, what was figured out was a good and honorable solution. Of course with the benefit of hindsight, we all wish we had done some things differently.]

Their callous and shocking disregard for child victims was underscored by the Grand Jury, which noted in its November 4, 2011 presentment that there was no “attempt to investigate, to identify Victim 2 or to protect that child or others from similar conduct, except as related to preventing its reoccurrence on University property.” [12. Perhaps if Paterno, Curley, Schultz, and Spanier had by 2001 been privy to what the grand jurors had heard by 2011, they, too, might have suspected that alleged victims 2 and 6 were in fact victims, even though a careful analysis of the grand jury presentment makes their victimization doubtful, and no evidence in the Curley and Spanier preliminary hearing or in the Freeh report makes their victimization appear any more likely. And as explained above in the analysis of the available evidence, Paterno and the others never suspected and never should have suspected either of these children was a victim. So saying they were callous, and showed disregard for child victims is a vacuous charge.]

None of these four men took any responsible action after February 2001 other than Mr. Curley informing the Second Mile that Mr. Sandusky had showered with a boy. Even though they all knew about the 1998 incident, the best they could muster to protect Sandusky’s victims was to ask Sandusky not to bring his “guests” into the Penn State facilities. [I refer the reader to replies 12, 10, 9, 8, et al.]

Findings, Freeh report pages 14–17, commentary added

The most saddening finding by the Special Investigative Counsel [=Freeh] is the

Findings, Freeh report pages 14–17, commentary added

total and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky's child victims. As the Grand Jury similarly noted in its presentment, there was no "attempt to investigate, to identify Victim 2, or to protect that child or any others from similar conduct except as related to preventing its re-occurrence on University property." [I refer the reader to replies 1–12 above.]

Four of the most powerful people at The Pennsylvania State University -President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Schultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno -¹ failed to protect against a child sexual predator harming children for over a decade. These men² concealed Sandusky's activities from the Board of Trustees, the University community and authorities. They³ exhibited a striking lack of empathy for Sandusky's victims by⁴ failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001. Further, they⁵ exposed this child to additional harm by alerting Sandusky, who was the only one who knew the child's identity, of what McQueary saw in the shower on the night of February 9, 2001. [13. I refer the reader to replies 1–12 above. I add, with regard to "concealment" of this matter from the Board of Trustees, that in Spanier's view, the Sandusky matter was trivial compared to attending to the more pressing matters related to the university's primary functions. He had no reason to believe and did not believe, and Freeh has not shown, that Sandusky's actions were criminal or that children were at risk. And the recent jury verdict does not settle the matter, either. So far as anyone knew at the time, Sandusky's behavior amounted to no more than a potential public relations problem, which was, to the best of anyone's knowledge at the time, handled well. If the board of trustees is henceforth to be informed of every legal but inappropriate action by everyone associated with the university, the board will be busy with a lot of triviality. Or are we henceforth to require of university presidents that they be able to discern which of today's apparent trivialities will turn out years hence to be non-trivial?]

These individuals . . .⁶ empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's

Findings, Freeh report pages 14–17, commentary added

prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims. Some coaches, administrators and football program staff members⁷ ignored the red flags of Sandusky's behaviors and no one warned the public about him. [14. There were no red flags visible in 2001. None of the then-available evidence, considered carefully in the light of the knowledge and experience Paterno, Curley, Schultz, and Spanier had, was sufficient to make any of these men sure, or pretty sure, that Sandusky was a child molester. To the contrary, the evidence then available suggested that Sandusky's habit of showering with boys was harmless, and that McQueary's alarm was due to misunderstanding. And as explained in PART III, the evidence currently available shows that it is a sure thing that no child abuse occurred in McQueary's presence, and it is unlikely that it was going on before he entered the locker room. Paterno did not have Dranov's testimony, but as also explained in PART III, he did not need Dranov's testimony to know beyond reasonable doubt that McQueary did not witness child abuse, and that it was unlikely that abuse had occurred before he entered the locker room. Even so, Paterno and the others rightly decided that since Sandusky's harmless behavior had caused someone (McQueary) alarm who chanced to walk in on it, it was a bad idea for it to continue in university showers. Note that none of the seven faults Freeh alleges against Spanier, Schultz, Curley, and Paterno, numbered 1. . . 7 above, is supported by the evidence.]

. . .

Spanier, Schultz, Paterno and Curley gave the following reasons for taking no action to identify the February 9, 2001 child victim and for not reporting Sandusky to the authorities:

- Through counsel, Curley and Schultz stated that the "humane" thing to do in 2001 was to carefully and responsibly assess the best way to handle vague but troubling allegations. According to their counsel these men were good people trying to do their best to make the right decisions. [15. Analysis of Freeh's evidence shows these men acted honorably.]
- Paterno told a reporter that "I didn't know exactly how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It

Findings, Freeh report pages 14–17, commentary added

didn't work out that way." [16. Analysis of Freeh's evidence shows that Paterno's 2001 decision was and remains honorable.]

- Spanier said, in his interview with the Special Investigative Counsel [=Freeh], that he never heard a report from anyone that Sandusky was engaged in any sexual abuse of children. [←17. This sentence agrees with Freeh's evidence. The truth of the following sentence cannot be determined.] He also said that if he had known or suspected that Sandusky was abusing children, he would have been the first to intervene.

Taking into account the available witness statements and evidence, the Special Investigative Counsel [=Freeh] finds that it is more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University - Spanier, Schultz, Paterno and Curley - repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large. [18. Freeh's conclusion is not reasonable. As I said more briefly above regarding this charge, reply 7, the evidence does not support Freeh's conclusion that Spanier, Schultz, Curley, and Paterno concealed child abuse. One does not conceal child abuse when one does not suspect child abuse. Spanier was rightly concerned about what Sandusky's legal but inappropriate showering with boys might do to Penn State's public image. Being concerned was one of his jobs. But Freeh has presented no evidence that anyone knowingly concealed criminal activity. Freeh has also presented no evidence that anyone showed bad judgment in dealing with Sandusky. To the contrary, the evidence shows that these university leaders showed good judgment and behaved admirably.]

The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities. The investigation also revealed:

- A striking lack of empathy for child abuse victims by the most senior leaders of the University. [I refer the reader to reply 13 made above.]
- . . .
- A decision by Spanier, Schultz, Paterno and Curley to allow Sandusky

Findings, Freeh report pages 14–17, commentary added

to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy, with future "visibility" at Penn State and ways "to continue to work with young people through Penn State," essentially granting him license to bring boys to campus facilities for "grooming" as targets for his assaults. Sandusky retained unlimited access to University facilities until November 2011. [19. Freeh's evidence does not provide any reason that in 1999, Spanier, Schultz, Curley, or Paterno ought to have suspected Sandusky of child abuse. To the contrary, Freeh's evidence shows that they should not have suspected him. And Freeh provides no evidence that they did suspect him. So this allegation against these men is unfounded.]

...

PART V

Allegations against Sandusky

Sandusky's guilt is doubtful.

³

<u>Alleged Victim</u>	<u>Allegation Type (my view)</u>	<u>Dates of Alleged Assaults</u>	<u>Alleged Frequency</u>	<u>Age Then</u>	<u>Age In 2012</u>
7	Inappropriate	Sep 95 - Dec 96	2+	9 to 11	27
4	Crime	Oct 96 - Dec 00	50+	12 to 17	29
10	Crime	Sep 97 - Jul 99	many	10 to 12	25
BK	Inappropriate	1998	?	11?	25?
6*	Inappropriate	May 3, 1998	1	11	25
3	Crime	Jul 99 - Dec 01	many	12 to 14	25
8	Crime	Nov 2000	1	11? to 13?	24?
2*	Crime	Feb 9, 2001	1	?	?
5	Crime	Aug 2001	1	12 or 13	24
FA	Inappropriate	?2005 - ?2008	?	?	?
1	Crime	Jun 05 - Sep 08	25+	11 to 15	19
9	Crime	Jul 05 - Dec 08	many	12 to 15	19

* Spanier, Schultz, Curley, and Paterno learned of these incidents soon after they occurred.

Alleged victims 7, 4, and 10 were allegedly abused before the 1998 incident of alleged victim 6 which was so extensively investigated by police. That investigation did not discover these other alleged victims, and it cleared Sandusky with regard to alleged victims 6 and BK. Freeh presents no evidence that anyone at Penn State had any knowledge of things alleged by alleged victims 7, 4, or 10.

Alleged victims 7, 4, 10, 3, and 8 were not known to police in Feb 2001 when McQueary observed alleged victim 2. We can be confident of this because there was no prosecution or publicly known investigation related to Sandusky and these alleged victims. And we have no information from Freeh or any other source that before the grand jury presentment was published, anyone at Penn State knew anything about the crimes now alleged by these alleged victims.

³ This data comes from two amended information documents dated May 18, 2012 and an amended bill of particulars of the same date, all filed with the Sandusky trial court.

After Feb 2001 there are three more alleged victims: 5, 1, and 9. There is no public record of any investigation, let alone prosecution, of any of the crimes alleged by these alleged victims prior to the current investigation and prosecution. And again, we have no information from Freeh or any other source that anyone at Penn State knew anything about these alleged crimes.

Allegations against Sandusky.

When evaluating the allegations against Sandusky, it is well to remember a few facts.

- ***Getting on the bus.*** Some years ago a city installed cameras on a city bus and staged a collision. Immediately after the collision, several bystanders got on the bus and claimed they had been on the bus when the collision occurred and that they had been injured in the collision, all in hopes of receiving a monetary settlement.
- ***Recovered memory.*** Some years back, many people, through the prompting of counselors, claimed to recover memories of child abuse years earlier by their parents or others. It was mostly or entirely bogus, of course, but prosecutors believed it anyway, and succeeded in putting no few innocent people in jail based on such evidence.
- ***Big-dollar judgments.*** It has become common of late for adults to claim they were abused as children by persons working within large organizations, sue the organization, and win large judgments.

Now let us consider the grand jury's allegations against Sandusky.

The allegations regarding alleged victims 7, BK, 6, and FA are of inappropriate but non-criminal activity. One can only consider these allegations to be crimes if one presumes criminal intent, and it would be immoral and illegal to do that before we establish that Sandusky is guilty of child abuse for other activities.

The allegations regarding alleged victims 4 and 10 are of child abuse, not merely inappropriate but legal activity. These two alleged victims are now adults, and, indeed, have been adults for some years. As noticed above, in these two cases, the alleged abuses occurred prior to or at the same time as the extensive police investigation of Sandusky in 1998, and the investigation did not learn of these alleged victims. One reasonable conclusion, so long as we are not privy to the police investigation, is that the police

investigation produced no credible evidence of abuse of alleged victims 4 and 10 or anyone else. So how did the grand jury learn of these two persons, now adults, who allege abuse more than ten years ago? And why were these persons apparently silent for all the intervening years? The presentment does not say. But we do know that the grand jury investigated Sandusky for some years. During that time it is almost certain that the basic nature of the investigation became widely known among people currently or previously associated with The Second Mile. So there are a number of plausible reasons for these alleged victims to come forward now. Maybe they are "getting on the bus," hoping for a big-dollar judgment in a planned lawsuit. Or maybe they have recovered memory of abuse that never happened. Or maybe they were actually abused. We do not know, and the presentments do not clear it up for us. But the failure of these alleged victims to come forward earlier does not favor their veracity. And they may have a significant reason to lie: money.

Alleged victims 3 and 5 were allegedly assaulted after alleged victim 6, so the 1998 investigation could not have encountered them. But each is now about 24 or 25 years old, and each only came forward after being an adult for some years. So like alleged victims 4 and 10, these alleged victims, too, might be looking for money, have false recovered memories, or be telling the truth. And all alleged victims who are accusing Sandusky might be seeking revenge for some real or imagined non-sexual wrong suffered back when they were at the Second Mile. Sandusky was known to show a lot of tough love.

The alleged abuse of alleged victim 8 was witnessed, we are told, by someone who now suffers from dementia, and neither he nor persons he spoke to at the time reported the incident to authorities. This means that the only evidence now available is hearsay unless the alleged victim is found and will testify. But if he is found or comes forward, all the problems just discussed relating to alleged victims 4, 10, 3, and 5 will be problems for alleged victim 8.

The allegations regarding alleged victim 2 were made by McQueary, and are discussed at length above. What McQueary says he actually observed (as opposed to what he thought was going on but did not see) is not in itself a crime. And McQueary's suspicions do not make it a crime. So unless Sandusky can be shown to be guilty of sexual assault in some other case, all we have here is non-criminal inappropriate behavior.

Alleged victims 1 and 9 are both now about 19 years old and both allege they were assaulted numerous times over several years beginning when they were 11 or 12 years old respectively, and ending when they were 15. As with other alleged victims who claim they were assaulted many times, during the years when they were allegedly being abused time after time during their continual voluntary meetings with Sandusky, it seems they never told their respective parents, never dialed 911, never told a teacher or adult neighbor, and never asked a friend to call 911 on their behalf.

Alleged victim 9 was about 18 years old when he first contacted police, a contact he made only after learning of the first indictment of Sandusky. That means he remained silent for at least 3 years after the last alleged assault, and for about 6 years after the first alleged assault. Now we are not talking about a 6-year-old, here. We are talking about a teenager. Perish the thought that a teenager should talk with a parent about a problem! Or pick up the phone and dial 911! Or tell some adult acquaintance! But could he not make an anonymous tip? Or just say "No"? It seems alleged victim 9 could do none of these things at the time he was allegedly being assaulted, or for years afterward. And this long silence, not only in his early teenage years, but especially in his later teenage years, does not argue in favor of veracity.

Much of what was said of alleged victim 9 can be said of all alleged victims who allege they were abused many times over several years, including alleged victim 1. Alleged victim 1 is given first place in the grand jury presentment, and he will, after a fashion, be given first place here, too.

The grand jury allegations against Sandusky regarding alleged victim 1 are indecent fondling and oral sex. I suspect that many of the activities called indecent fondling, inappropriate as they are, probably would not be considered crimes if they were not accompanied by the charge of oral sex or other criminal genital contact. Proving oral sex or criminal genital contact, however, is likely to be a "he said, he said" contest seeing that the grand jury does not claim for any of the third-party witnesses it cites in relation to alleged victim 1 that they saw or were able to see any of the alleged criminal genital contact, much less oral sex. These witnesses can only testify to close contact that can reasonably be considered inappropriate in some cases, but non-criminal in all cases.

"He said, he said" is likely to be at the center of all the charges against Sandusky except in the cases of alleged victims 2 and 8 where the only evidence consists of third party allegations. But as already explained, these third-party witnesses are compromised in one way or another.

A closer look at what the presentment says regarding alleged victim 1.⁴

I begin with three statements from the presentment (emphasis added):

Victim 1 stopped taking Sandusky's phone calls and had his mother tell Sandusky he was not home when Sandusky called. This termination of contact with Sandusky occurred in the spring of 2008, when Victim 1 was a freshman in high school.

...

Steven Turchetta testified that he was an assistant principal and the head football coach at the high school attended by Victim 1. He testified that Sandusky was a volunteer assistant football coach. ... In the 2008 season, Sandusky was a full-time volunteer coach

...

Turchetta became aware of Victim 1's allegations regarding sexual assault by Sandusky when the boy's mother called the school to report it. Sandusky was barred from the school district attended by Victim 1 from that day forward and the matter was reported to authorities as mandated by law.

Notice first that alleged victim 1 cut off contact with Sandusky in the spring of 2008 while he was a freshman in high school; this included not taking calls from Sandusky.⁵ Next notice that Sandusky was a full-time volunteer coach in the 2008 football season, which I believe starts in the fall of 2008. If this is correct, then Sandusky was barred from the school district, not in the spring of 2008, when the alleged

⁴ This section and the next are edited versions of an analysis I published on the Internet in December, 2011.

⁵ There is a seeming contradiction between what the presentment says and what the May 18, 2012 amended bill of particulars says. The bill of particulars says the alleged abuse continued until September 2008. The presentment says the boy cut off all contact in the spring of 2008. This contradiction is further muddled by a press release from the Pennsylvania Attorney General's office which says (emphasis added) "The grand jury noted that Sandusky was barred from the school district attended by the victim in 2009, after the boy's mother reported allegations of sexual assault to the school. That matter was promptly reported to authorities, as required by Pennsylvania law - a report that marked the start of an extensive investigation by Pennsylvania State Police and the Attorney General's Office."

So on exactly what date did the mother report, and on exactly what date was Sandusky barred?

victim cut off contact, but some months later. This suggests that the boy's mother called the school to report alleged sexual assault no earlier than the fall of 2008, and perhaps as late as the spring or summer of 2009. We may suspect the summer of 2009 because the presentment seems to tell us that calls from the Sandusky home phone and cell phone were made to the alleged victims home phone as late as July 2009. (More on the calls below.) It therefore appears that the boy's mother did not report alleged sexual assault for at least six months after her son cut off contact, and perhaps not for as much as fifteen months or more.

Why the delay?

If Sandusky is guilty, one could reasonably suppose that it took mom many months to figure out why her son no longer wanted to have contact with Sandusky. And when she did at last find out, she reported it. This is plausible.

But if Sandusky is innocent, there seem to be two possibilities. One possibility is that both mother and son are behaving honorably, but mom misunderstands what went on between her son and Sandusky. It took mom months to find out why her son cut off contact, and when she did find out, she thought that what was described was sexual assault when in fact it was only innocent but probably inappropriate behavior. I find this explanation hard to believe primarily because I cannot imagine what innocent activities could be confused with oral sex.

The other possibility, if Sandusky is innocent, is that either mother or son or both are behaving dishonorably. In this case, perhaps the son made false accusations against Sandusky to his mom, and the mom is behaving honorably in response to false information. The presentment provides information that might explain such an action by the son. The presentment says:

Office of Attorney General Narcotics Agent Anthony Sassano testified concerning phone records that establish 61 phone calls from Sandusky's home phone to Victim I's home phone between January 2008 and July 2009. In that same time, there were 57 calls from Sandusky's cell phone to Victim I's home phone. There were four calls made from Victim I's home phone to Sandusky's cell phone and

one call from Victim 1's mother's cell phone to Sandusky's cell phone. There were no calls made to Sandusky's home phone by Victim 1 during that time period.

That makes a total of 118 calls in 19 months to the son's home, which averages to about one call every five days. (About 15 of the 19 months were after contact was cut off; who made the calls and the purpose of the calls are not stated.) The presentment does not tell us whether the calls were spaced out evenly, but if they were, or even if not, perhaps the son wanted the calls to stop, and wanted to punish Sandusky for annoying him for such a long time after Sandusky surely knew the boy did not care to continue contact. So the son decided to accomplish both goals by claiming he had been sexually abused. This is plausible. (The son also had another, older grievance, the one which caused him to cut off contact in the first place. According to the presentment, Sandusky could be demanding, and not all the kids appreciated it.)

Or perhaps mom, after finding out something of what went on, or the son, or both saw an opportunity to convert innocent but inappropriate behavior into a big payday through a lawsuit. This, too, is plausible.

It is sad, but people have been making false accusations of sexual misconduct for thousands of years. Potiphar's wife falsely accused Joseph (Genesis 39). Much more recently, an article by Chris L. Jenkins in the Washington Post reports a now-retracted 2007 accusations of rape by a then 14-year-old girl that resulted in her then 15-year-old boyfriend going to jail, where he still sits.⁶ To these may be added the already-mentioned false accusations of child abuse in the recovered memory craze. And an Internet search for "false accusations of child abuse" finds information that shows that false accusations are not rare.

Turning now to the remainder of what the presentment says with regard to alleged victim 1, there are two accounts of one weight room incident, one account by alleged victim 1, the other by coach Joseph Miller. They differ in minor details, but both accounts could be construed as exactly what Sandusky said they were: innocent wrestling. But why, then, would Sandusky jump up so suddenly⁷ when the other coach

⁶ This sentence describes the situation late in 2011. I do not know the situation today.

⁷ Contrary to what the presentment says, according to reports of the trial, coach Miller said Sandusky, who was on the wrestling mat with the boy, did not stand up when Miller came in, but just "pretty quickly" propped
(continued...)

walked in? Perhaps Sandusky remembered the 1998 investigation and, innocent though he was then, and in the weight room, too, he did not want to endure another investigation. Note that the boy did not complain or ask for help while coach Miller was present.

The presentment says "[assistant principle and head football coach Steven] Turchetta testified that Sandusky would be 'clingy' and even 'needy' when a young man broke off the relationship he had established with him and called the behavior 'suspicious.'" But this behavior can easily be understood as nothing more than Sandusky grieving over lost innocent contact with someone dear to him. Sandusky likes kids, and enjoys their company. He mentors them. And it seems in some cases he develops a father-like concern for them. (Alleged victim 1 perhaps falls into this category, considering the long-continued calls after the boy cut off contact.) Seeing that many adults develop non-sexual affection for other people's children, enjoy their company, and grieve when a child no longer cares to continue contact, we need not conclude that the behavior Turchetta describes is sinister.

We may suppose that Sandusky took many kids to games and other places, and gave gifts to many different kids, and had many kids stay over at his house, one or a few at a time. For millennia people who are well off have done this sort of thing for those less fortunate when they cared about them. Such behavior does not imply child abuse.

The testimony of F.A. is that Sandusky touched both him and alleged victim 1 in ways I consider inappropriate. But such touching is not criminal unless there is criminal intent. And criminal intent is a thing to be proved, not assumed.

The presentment provides no third-party eyewitnesses of sexual assault of alleged victim 1. So as said above, we are down to "he said, he said," so far as the evidence provided in the presentment is concerned. And this alleged victim has reasons to lie.

How an innocent Sandusky could draw so many accusations.

⁷(...continued)
himself up.

If we suppose that Sandusky's tough love and inappropriate but legal behavior were displayed toward many of the kids he tried to help, then there is a plausible scenario which would account for all the accusations leveled against him, both in the grand jury presentments, and by people coming forward now.

The following scenario is based mostly on the limited information in the presentments, so one can only say that it is plausible so long as no contradictory information comes out. We need not concern ourselves in this scenario with those alleged victims of merely inappropriate but non-criminal behavior. If we suppose Sandusky innocent, as we should until proven otherwise, we may construe all merely inappropriate behavior in Sandusky's favor when assessing his probable behavior in other cases.

A plausible scenario:

First, as suggested above, alleged victim 1, already unhappy with Sandusky for some non-sexual reason which caused him to cut off contact, eventually became so annoyed by Sandusky's continuing calls that he decided to punish him: he claimed child abuse. This soon resulted in a grand jury investigation, which included taking testimony from Penn State personnel. By this means the grand jury learned of the 1998 police investigation, the 2000 incident testified to by the janitors, and the 2001 accusation by McQueary. The grand jury took its time, fishing for more witnesses, and as word leaked out about what it was doing, a few of the boys Sandusky tried to help, now grown up, and remembering that Sandusky had pushed them harder than they cared to be pushed, or in some other non-sexual way had offended them, and remembering, and perhaps annoyed by, his inappropriate behavior, realized they could make a lot of money if they accused him of child abuse, and then brought a lawsuit against Penn State, The Second Mile, or both.

As for those who are coming forward now, plausible explanations that leave Sandusky innocent include: they, too, plan to sue; or, they have a grudge against Sandusky for something non-sexual that happened when he mentored them; or they suppose that merely inappropriate activity is actually criminal activity; or they have "recovered" false memories.

As regards alleged victim 2, nothing McQueary says he actually saw is a criminal act. He just suspects that criminal activity he could not see was going on. But it is certain that Sandusky knew when

McQueary entered the locker room, so it is certain that the boy was not molested while McQueary was present. And as explained in PART III, since McQueary observed Sandusky do things that real child molesters would never do if someone walked in on them while they were molesting a boy, it is unlikely the boy was being molested before McQueary entered the locker room.

There are additional reasons to doubt that alleged victim 2 was molested. The boy gave no sign of distress or pain or embarrassment. And Sandusky made no attempt to conceal himself or his activity, and even presented himself for inspection. Some might reply that the boy blew Sandusky's cover, so to speak, when he poked his head out to see who had entered the room, and therefore Sandusky had no choice but to show himself. But that is not true. Taking a shower with a boy is legal, and though he was discrete about it, it was no secret that Sandusky did take a shower with a boy from time to time, even when he knew others were around and might, and sometimes did, enter the locker rooms while he was showering. He even walked hand-in-hand down the hall after taking a shower, making no attempt to hide this.

There may be some who suppose that Dranov's testimony is false, and that what really happened is that McQueary surprised Sandusky while he was hugging—and molesting—the boy. But this is absurd. McQueary's entry into the locker room was not surreptitious. And any seasoned child molester thinking to molest a boy in that shower room would for reasons of self-preservation not be anywhere in the shower room that could be seen through the mirror or seen directly by someone standing in the area between the sinks and the inner door. In other words, he would choose a location that gave him time to react in case someone entered the locker room. He would choose the end of the shower room that shares a wall with the entrance hall. And as soon as the presence of a visitor was detected—no seasoned child molester would molest a child in any space where entry of a third party could not be detected in time to react—the molester would cease molesting and resume showering. So we may establish it as a law of nature that no child molester ever has been or ever will be surprised in the act of molestation in the shower room of the Lasch building support staff locker room by someone entering the locker room in a normal manner.

Well, almost a law of nature. One can imagine that even a seasoned child molester might occasionally get careless.

But since we do not have preternatural knowledge of the event, we are confined to assessing the odds of guilt versus innocence. In the present case, innocence is consistent with all the facts including McQueary's suspicion—McQueary misconstrued what he heard as he was entering the locker room, and thus primed to see sexual intercourse, mistook a father-like hug for what he expected to see. But guilt flies in the face of all but suspicion. So back in 2001, although one could not have said with metaphysical certainty that Sandusky did not molest alleged victim 2—proving innocence is almost never possible—one could have said that it is virtually certain, certain beyond reasonable doubt, that Sandusky did not molest the boy. And what can we say today? Today we can say that even if Sandusky is a child molester, something that is by no means sure, it is doubtful that he molested the boy before McQueary entered the locker room, and it is virtually certain he did not do so while McQueary was present. In other words, the odds greatly favor innocence. Guilt still flies in the face of all but suspicion.

The 2000 incident involving alleged victim 8 was alleged to the grand jury to have happened in the assistant coaches locker room showers, where, based on the grand jury presentment, it seems those who testified there imagined that that shower room had shower stalls, or at least some sort of curtain over the entrance to the shower room (but if a curtain, one that did not come down closer than about 18 inches off the floor.) (Curiously, at Sandusky's trial, the janitor claimed the incident occurred in a different locker room, namely, the support staff locker room, the locker room diagramed in Figure 1. He is thus on record of having claimed it occurred in two different places. Furthermore, as best I can determine from various sources, neither of these shower rooms has shower stalls.) The evidence currently available (excluding the trial transcript) leaves us with an uncomfortable degree of ignorance about the alleged event, ignorance that is in addition to not knowing which locker room is the scene of the alleged crime. Supposing the assistant coaches' locker room is the "true" scene of the alleged crime, where in the shower room did this alleged abuse occur, inside a stall—were there stalls then?—or outside? If outside, was it toward the front of the shower room or toward the back? If inside a stall, which stall, and was the curtain—were there curtains, or a curtain?—closed, or not? Answers to these and other questions would be good to know, and our currently-available evidence does not answer any of them. And, of course, the trial transcript does not enlighten us because it switches venue on us. But questions similar to some of the above can be asked of the new venue. Where exactly in the one open shower room did the alleged abuse occur? Indeed, did it even happen in the shower room? And where was Janitor A located when he observed the alleged abuse? At the trial, Janitor B said he heard Janitor A cleaning the toilet and urinals.

These are just a few feet away from the shower room entrance, and in plain sight from the shower room. It is impossible to believe that Sandusky did not both hear and see Janitor A while he was cleaning. Are we to believe that Sandusky abused a boy knowing an observer was present? That is incredible. So how and when did Janitor A enter the locker room without being detected? All these vital-to-know questions are unanswerable. Nevertheless, let us try to answer this question: Why, if Sandusky is innocent, would the janitors allege child abuse of alleged victim 8? The presentment actually provides a clue as to why they might have done so. Perhaps the janitor who claimed to see child abuse was offended by previously observing such behavior as Sandusky first showering with a boy and then walking with him hand-in-hand down the hallway. Perhaps this elderly gentleman believed, though he never actually saw it, that Sandusky was abusing boys, and decided to put a stop to it. So he lied. But after lying about Sandusky to his coworkers, lies accompanied by an impressive act—the janitor doth protest too much, methinks—it occurred to them that they might lose their jobs if they reported the matter, so they decided not to report. I realize this explanation of the janitors' actions is almost entirely speculation. But not total speculation. Why believe that a man of such age and experience would be so greatly shaken if he witnessed a sample of humanity's unsavory sexual activities? Is it conceivable that he was greatly shaken? Yes. Is it likely? Not so much.

There is also the problem that since the alleged witness suffers dementia, one may not ask him whether he actually witnessed the things the other janitors say he told them. So, did the other janitors make up the story and put it in alleged witness's mouth after he could no longer deny it? The trial transcript makes this a real possibility. And why might they have done that? Well, perhaps it is they, not the alleged witness, who suspected Sandusky, and it is they, not the alleged witness, who determined to stop the behavior they suspected. So maybe it is they who lied, if, indeed, any janitor lied.

And who can answer the questions raised above, all questions a trier of fact needs to know? The answer is, no one. So a fair trial of the charges respecting alleged victim 8 is impossible, and it would be well for the state to admit that it cannot fairly prove the accused guilty of the charges related to this alleged victim, and ask that the conviction on these charges be set aside and the charges dismissed. See Appendix B. Trial testimony shows that Sandusky is innocent in the case of alleged victim 8.

CONCLUSION

Conclusions from the foregoing analysis of the Freeh report.

Based on the currently-available evidence, including Freeh's evidence:

- The evidence alleged against Sandusky, so far as it is currently available, is doubtful, so one may reasonably doubt that Sandusky is guilty of any of the crimes alleged against him. When the trial transcript becomes available, this assessment may change.
- It is virtually certain that McQueary did not see Sandusky molest the boy, and it is doubtful that he was molesting the boy before McQueary entered the locker room.
- It is probable that McQueary's preliminary hearing testimony did not include everything of importance that he saw; in particular, he probably has forgotten the details Dranov provides.
- None of the things McQueary said he saw Sandusky do is a crime in itself, he merely suspects that criminal activity was going on that he did not see.
- McQueary testified that the sounds that alarmed him were similar to a man non-sexually slapping his body in open court, so the sounds could have been caused by any number of innocent things, and McQueary's identification of the sounds as sexual intercourse cannot be relied on.
- Neither Paterno, nor Curley, nor Schultz, nor Spanier had any facts or combination of facts which, when considered carefully in the light of their respective knowledge and experience, made them, or ought to have made them, sure, or pretty sure, that Sandusky had abused a child. They should not have suspected Sandusky of a crime.
- Paterno, Curley, Schultz, and Spanier never did suspect Sandusky of a crime.
- Since for good and sufficient reason these men did not suspect Sandusky of child abuse, they had no legal obligation to report Sandusky to child protective services or for Clery Act purposes.
- Freeh has presented no evidence that these men covered up any crimes. And in fact, neither the 1998 nor the 2001 incident was criminal, so in fact there was nothing to cover up.
- So far as these four men knew and should have known, there were no victims of crime to identify and be concerned about. And in fact, there were no victims in the 1998 and 2001 incidents.

- None of the evidence shows that these four men behaved immorally or illegally. To the contrary, it shows these men behaved properly, both morally and legally, in their handling of the 2001 report by McQueary.

It is obvious from currently-available evidence that Sandusky did not abuse the boys involved in the 1998, 2000, and 2001 incidents. And the evidence currently available is of sufficiently poor quality with respect to the other alleged victims that one may doubt that Sandusky is guilty of any of the crimes alleged against him. Perhaps when I have completed a careful analysis of the entire trial transcript, these conclusions will change. But whether Sandusky is a child molester or not, Freeh's evidence provides a useful supplement to what was known before about the behavior of Paterno, Curley, Schultz, and Spanier. And it shows that they behaved honorably.

— end of main document —

APPENDICES

Appendix A. Raw testimony.

McQueary testimony on December 16, 2011, selections
<p>...</p> <p>Question. Where did you go initially upon entering?</p> <p><i>MikeMcQ. To the support staff locker room.</i></p> <p>Question. And what did you do?</p> <p><i>MikeMcQ. That locker room has two doors to it. I open the first door and began entry into the locker room.</i></p> <p>Question. Can you describe what happened there?</p> <p><i>MikeMcQ. Yes. When I opened that first door, I heard rhythmic slapping sounds, two or three slaps that you would hear skin on skin. [I] began to go into the second door, and I was already alarmed and alerted, to be frank, somewhat embarrassed, because it sounded to me like someone was in the showers.</i></p> <p><i>I could hear the showers running. And I thought some activity was happening in the showers, but I really didn't want to seem to - didn't want to be part of.</i></p> <p><i>I turned - my locker, upon opening that second door, is immediately to the right of that door. It's the very first locker in that row at that time. I turned to my locker, and as I turned and faced my locker, I looked over my right shoulder into the mirrors.</i></p> <p><i>At a 45-degree angle from the mirror, you can see into the shower.</i></p> <p>Question. Let me stop you right there.</p> <p><i>MikeMcQ. Okay.</i></p> <p>Question. Approximately what time in the evening with this?</p> <p><i>MikeMcQ. I would guesstimate nine or 9:30, 9 PM or 9:30 PM.</i></p> <p>...</p> <p>Question. Now, if I could take you back to you indicated that you were - you heard these rhythmic slapping sounds. Then you looked into them - looked into a mirror?</p> <p><i>MikeMcQ. Yes.</i></p> <p>Question. Could you describe exactly what transpired at that point?</p>

McQueary testimony on December 16, 2011, selections

*MikeMcQ. [I] Looked in the mirror and **shockingly and surprisingly** saw Jerry with a boy in the shower. And it appeared that Jerry was directly behind the boy and the boy was up against a wall with his hands up against the wall. Again, that glance or that look may have been a second or two.*

*I turned back to my locker and, **in a very hurriedly and hastened state and shocked**, opened my locker, swung the door open, put the shoes in, and then stepped to the right of my locker, to be frank with you, to make sure I saw what I think I saw with my own eyes without the reflection in the mirror.*

So I stepped a little bit to my right to look directly into the shower room.

Question. You earlier in describing this referred to Jerry. Who is Jerry?

MikeMcQ. Jerry is coach Sandusky.

Question. And you indicated upon this first glance, you indicated that there was another individual in the shower with Jerry Sandusky?

MikeMcQ. Yes.

Question. And you describe a particular position that you observed him in. Could you describe that again, please?

MikeMcQ. Yes. The boy was up against the wall, facing the wall, his hands maybe shoulder height on the wall. And Jerry was directly behind him in a very, very, very close position with Jerry's hands wrapped around his waist or midsection. I couldn't see his actual hands, but his arms were wrapped around.

And it appeared upon looking the second time, I said to myself, they're in a very sexual oriented - a very sexual position.

Question. What did you believe they were doing?

MikeMcQ. I believed Jerry with sexually molesting him and having some type of intercourse with him.

Question. And that was based on what you observed in terms of the positioning?

MikeMcQ. Yes, based on the positioning. I did not see insertion nor was there any verbiage or protests, screaming or yelling, so I can't sit here and say that I know 100 percent sure that there was intercourse, but that's what I said to myself and that's truly what I believed was happening.

McQueary testimony on December 16, 2011, selections

Question. *That's what you believed was occurring?*

MikeMcQ. Yes.

...

Question. You indicated that there was a second time that you looked into the shower?

MikeMcQ. Yes.

Question. Is that correct?

MikeMcQ. Yes.

Question. *Describe - after looking in the second time, did the position of the individuals change at all?*

MikeMcQ. No.

Question. *So what you observed at first - your first look, when you looked a second time, that was continuing?*

MikeMcQ. Yes.

Question. *Was there - did there appear to be any movement of either Mr. Sandusky, body movement on either Mr. Sandusky or the boy?*

MikeMcQ. Very little, but I would say slow movement, certainly not hard or fast movement but a little movement.

Question. *The rhythmic slapping sounds that you described herein initially when you walked in before looking into the shower, did you continue to hear those upon your visual observation of what was occurring in the shower?*

MikeMcQ. No. All that I heard was the showers running.

Question. *You indicated that you didn't hear him - I believe the term you used was you didn't hear any verbiage?*

MikeMcQ. No.

Question. *Did you at any point during this incident hear Jerry Sandusky say anything?*

MikeMcQ. No, absolutely not.

Question. *At any point did you hear this young boy say anything?*

MikeMcQ. No.

Question. *Did you hear the young boy make any kind of noise at all?*

MikeMcQ. No, none.

Question. *Did you here Jerry Sandusky make any kind of noise at all?*

McQueary testimony on December 16, 2011, selections

MikeMcQ. No.

Question. At the conclusion of seeing this the second time, could you explain to the Court what did you believe you were witnessing?

MikeMcQ. Jerry molesting the boy.

Question. In what fashion when you say molesting the boy?

MikeMcQ. Having some type of intercourse with him. That's what I believe I saw.

Question. What - how long - I know this is a difficult thing to approximate. How long a period of time do you think you were - you actually were looking at what was going on?

MikeMcQ. Each - the first two glances were, what I call glances, maybe one or two seconds.

Question. And what happened after - described how what you observed on this second look, how did that come to an end, what did you do?

MikeMcQ. I stepped back, didn't want to see it anymore, to be frank with you, wanted to close my locker up, which I did. I slammed the locker door shut and at that time took a more brisk forward movement toward the shower and looked in again.

Question. What happened at that point?

MikeMcQ. At that time when I looked in, they had separated.

Question. When you say looked in, how close are you to the area where you would actually be stepping into the shower?

MikeMcQ. On the third look, on the third time I see?

Question. Correct.

MikeMcQ. I would say from the showers I am 2 to 3 yards, maybe 6 feet.

Question. And how far - would that have been closer on this third time than you were on the other two instances when you were - that would have been closer to your locker?

MikeMcQ. Yes.

Question. About how much - how many steps would you say your taking in order to get closer?

MikeMcQ. 2 to 3 steps.

Question. When you indicate that they had separated, describe what you mean.

MikeMcQ. They had both turned so their bodies were totally facing me and looking at me. And they were 4 or 5 feet apart.

Question. This is the third time -

McQueary testimony on December 16, 2011, selections

MikeMcQ. Yes, sir.

Question. - that you actually moved closer towards the shower?

MikeMcQ. Yes.

Question. Did you go into the shower at all?

MikeMcQ. No, I did not.

Question. Did you say anything to either one of them?

MikeMcQ. No, I did not.

Question. Do you believe based on what you observed that either one or both of these individuals saw you or recognize that you were there?

MikeMcQ. I know they saw me.

Question. And how do you know that?

MikeMcQ. They looked directly into my eyes, both of them.

Question. Did either one of them say anything to you?

MikeMcQ. No.

Question. What did you do at that point?

MikeMcQ. Seeing that they were separated, I thought it was best to leave the locker room, and I left the locker room.

Question. Can you characterize for the Court what was your - how were you feeling at that point?

MikeMcQ. Not very good. To be frank with you, I can't describe what I was feeling or thinking. Shocked, horrified and, to be frank with you, probably not thinking straight, you know. I was distraught.

...

Question. You indicated that there was no question in your mind that you observed a sexual act?

MikeMcQ. No question.

Question. Between Jerry Sandusky and a young boy?

MikeMcQ. That's right.

Question. And at any time during the act that you witnessed, did you see either one of them with any clothing on in the shower?

MikeMcQ. No, never.

...

McQueary testimony on December 16, 2011, selections

CROSS EXAMINATION

BY MS. ROBERTO:

...

Q All right. And after hearing the showers running, did you at that point look and see a reflection in the mirror?

McQ *I had already made a mental note of the slapping. I heard the showers running. And, again, to be frank with you, I was — you know, visualizations come to your head of what that may be in the showers. So I was already embarrassed and slightly like, should I be here, I want to get out of here.*

Q Did you, when you had those thought —

McQ *Uh-huh.*

Q — and the embarrassment, do anything, say anything to let the people in the shower, if you thought there were people in there, know that you were there?

McQ *No. I looked in the mirror to see what was going on.*

Q Okay. And you were curious to what was going on, is that fair to say?

McQ *Sure, absolutely. That's fair.*

Q Okay. All right. And so you looked in the mirror and that — what exactly did you see when you looked in the mirror?

McQ *Jerry behind a boy with the boy positioned against the wall and at very, very, very close proximity with Jerry's arms around him.*

...

Q When you saw that reflection in the mirror, did you do anything to get the attention of those two people in the shower?

McQ *No.*

Q And you were shocked when you saw that, were you not?

McQ *I didn't know what to think. On that first — on that first look through the mirror, I'm not sure what my — I didn't know what to think. I wasn't even sure I was seeing what I was seeing.*

Q Well, did you think of saying, hey, yo, I'm here in the shower; hey, it's Mike McQueary,

McQueary testimony on December 16, 2011, selections

I'm here?

McQ *No. Again, I wasn't sure what to think or do.*

Q But you can say for certain you did nothing to alert those in the shower that you were there?

McQ *That's right. I did nothing.*

Q And then you did what after you went to your — your locker?

McQ *Turned back to my locker.*

Q Um-hmm.

McQ *Put the shoes in and took another — I wanted to look again with my own eyes without the reflection in the mirror to make sure the angles or the reflection wasn't lying to me. I wanted to be sure what I saw.*

Q And you looked again?

McQ *Yes.*

Q You peered just your — you didn't walk into the shower?

McQ *No.*

Q Okay. And you saw the same thing?

McQ *Yes.*

Q Okay. At that point, Mr. McQueary, did you alert those two individuals in the shower to your presence?

McQ *I did not alert them with my voice but I — as I said before, I slammed that locker door shut and that made a noise.*

Q And did — well, when you slammed the locker door shut, were you looking at them at the same time?

McQ *No.*

Q Okay. No. So you don't know whether they heard that locker door shut?

McQ *I don't know that for sure, no.*

Q Right. But you did know the second time that you saw these two figures in the shower that something, according to you, was shocking going on?

McQ *Yes.*

Q Okay. But you didn't stop it, right?

McQ *At that time, no.*

McQueary testimony on December 16, 2011, selections

Q Okay. Then how many minutes or how many seconds elapsed from the time you peered the second time into the — the second time you looked into the shower to looking in the shower the third time?

McQ How many seconds elapsed?

Q Yes.

McQ Between those two looks?

Q Yes.

McQ Four or five seconds.

Q How many seconds or how long were you in the shower locker room area from the time you walked in through the first door to the time you left?

McQ No longer than a minute. I would say 45 seconds.

Q Okay, 45 seconds. So you look in the shower the third time, and you said you saw that the two figures had stopped what they had been doing before, they were in a different position?

McQ Yes, ma'am.

Q Okay. Did you at that point say anything to Mr. Sandusky?

McQ No, nothing.

Q You didn't confront him at all about his behavior and what you saw?

McQ No, ma'am.

Q And you looked at them and they looked at you, you said there was eye contact, right?

McQ They looked directly at me, yes, and I looked at them.

...

Q What was the expression on Mr. Sandusky's face when he saw you?

McQ Somewhat blank, just kind of a blank expression.

...

[Elided are question asking whether McQueary had said "anal sodomy," "anal sex," and "anal intercourse."
McQueary said no to all these.]

Q Right. And you didn't use those words because you weren't sure that that is what was happening in the shower, right?

MikeMcQ Ma'am, I'm sure I saw what I saw in the shower. I'm sure of that. I did not see insertion or penetration and I didn't hear protests or any verbiage, but I do know for

McQueary testimony on December 16, 2011, selections

*sure what I saw and the positions they were in that — and it was very clear that **it looked like there was intercourse going on, ma'am.***

Q But you could not say for sure that that's what you saw?

MikeMcQ I've testified that I cannot tell you 1,000 percent sure that that's what was going on.

Q Well, let's just say 100 percent sure.

MikeMcQ Okay, 100 percent sure.

Q Okay. You can't say that?

MikeMcQ No.

Q When you looked into the shower —

MikeMcQ Yes, ma'am.

Q — through the mirror, did you see Mr. Sandusky's genitals touching the boy?

MikeMcQ No, absolutely not.

Q When you looked the second time into the shower, did you see Mr. Sandusky's genitals touching the boy?

MikeMcQ No, his body was blocking that area of his body, to be frank with you.

Q Okay. Was any part of Mr. Sandusky's body, did you see up against the boy touching the boy?

MikeMcQ Yes. They were as close as you can be, yes.

...

Q Did you ever use the word fondling [when speaking to Paterno]?

McQ I'm sure I did to help describe what I was seeing. I'm sure I did use the word fondling, yes, ma'am.

Q Okay. Did you see any type of fondling with Mr. Sandusky's hands on the boy?

McQ No. I've already stated that when I saw his arms wrapped around the boy, that I could not see his hands. The bodies were blocking —

Q Okay.

McQ — his hands so I cannot say that I saw Mr. Sandusky's hands on a boy's genitals, no, ma'am.

Q So you can't — how would you describe fondling? I'm sort of confused here.

McQ Fondling is touching someone in a sexual way. I don't know if that's the exact

McQueary testimony on December 16, 2011, selections

definition, but that's what my definition is.

Q Okay. *So that's what you thought you saw?*

McQ Yes, ma'am.

...

CROSS EXAMINATION BY

BY MR. FARRELL:

Question. Uh-huh. *Where the boys feet on the floor at that time?*

McQ. Yes.

Question. *And was the boy bent over or standing up?*

McQ. In an upright position.

Question. *Meaning not bent over?*

McQ. Not bent over, no, sir.

Question. *So the hands extended straight from the shoulders?*

McQ. Roughly that height, yes.

...

Question. *At no time this night did you hear anything, did you hear the boy say anything, right?*

McQ. I heard slapping and I did not hear any verbiage at all in any way.

Question. *From either fellow?*

McQ. From either person.

Question. *And the slapping, you said you heard 2 or 3 slapping sounds?*

McQ. To my memory, 2 or 3 rhythmic slapping sounds, yes, sir.

Question. *So like (counsel makes slapping sound three times)?*

McQ. You got it.

Question. *And you heard that once and then not again?*

McQ. Right, right.

Question. *The third time you looked at Mr. Sandusky and the boy, they were both facing you?*

McQ. Yes, sir.

...

Question. Uh-huh. *As the boy and Mr. Sandusky stood looking at you, they were both still naked?*

McQueary testimony on December 16, 2011, selections

McQ. Naked, yes, sir.

Question. Did Mr. Sandusky have an erection?

McQ. I can't tell you that, sir. I don't know. I did not - again, I don't look and stare down there.

Question. At any point during this evening, did you see whether or not Mr. Sandusky had an erect penis?

McQ. No, I did not.

Question. At any point during this night, did you see a look of pain on the boy's face?

McQ. Pain?

Question. Yes.

McQ. No.

...

Question. When you went up to the second floor after the third time, you say you saw Mr. Sandusky and the boy, you left the boy with Mr. Sandusky, did you not?

McQ. Yes, they were separated and he was still with Mr. Sandusky when I left that locker room, yes.

Question. When you say separated, they were still side-by-side, right?

McQ. No, not side-by-side. To me side-by-side is 6 inches or closer. They were 4 or 5 feet in between them.

Question. Still in the shower?

McQ. But in the shower room together, yes.

Question. Naked?

McQ. Yes, sir.

Question. And that's how you left the boy?

McQ. Yes.

Question. And did not call the police?

McQ. I did not call the police.

...

Curley grand jury testimony, January 12, 2011, selections, annotated.

[As explained in PART III, the state's attorney almost always uses "sexual" to mean criminally sexual. Curley also uses "sexual" to mean criminally sexual. Curley used "inappropriate" to mean non-criminally inappropriate.]

...

Curley: [Paterno said McQueary] heard and saw, I guess, two people in the shower, in the shower area. And my recollection was that he could see that through a mirror, that there was a mirror that he could see that through, and that the individual was uncomfortable with the activity in the shower area . . . and at that point he felt it was something he should report to Coach Paterno.

Question. . . what exactly did [McQueary] tell you he had seen Jerry Sandusky doing. . . ?

Curley. I can't recall the specific conversation with Mike and exactly how he said it. My recollection was that Mike could hear there were people in — they were in the shower area, that they were horsing around, that they were playful, and that it just did not feel appropriate.

Question. Are you saying that Mike McQueary did not tell you specifically that there was anal intercourse occurring between Jerry Sandusky and this child?

Curley. Absolutely not! That?! He did not tell me that!

[The transcript punctuates this as "Absolutely not, that he did not tell me that." McQueary confirms that he did not say anal intercourse.]

...

Question. Was there any indication to you of what type of conduct was occurring? How would you characterize what McQueary told you about what the conduct was?

Curley. Again, I can't remember specifically how Mike described it. My recollection was that they were kind of wrestling, there was body contact, and they were horsing around.

Question. Did he indicate to you that they were naked?

Curley. No. I assume they were, but no.

Question. Did he indicate to you that there was sexual conduct?

Curley. No.

Question. Of any kind?

Curley. No.

Curley grand jury testimony, January 12, 2011, selections, annotated.

Question. **But he was clearly uncomfortable with what he had seen?**

Curley. Correct.

...

Question. Did you take specific action with regard to Jerry Sandusky? At this point he's not an employee you indicated. What did you tell him with regard to his being on university property?

Curley. Yes. When I met with Jerry, because I was uncomfortable with the information we received, I indicated to him that in addition to reporting it to the executive director of The Second Mile, that I did not want him using our athletic facilities for workout purposes and bringing any young people with him. He was not to use our facilities with young people.

...

Question. Did you, yourself, ever report this incident to the university police?

Curley. No ma'am.

Question. **Were you aware that the report that Mike McQueary made could be considered a crime by Jerry Sandusky?**

Curley. I didn't think that it was a crime at the time.

...

Question. So the decision not to report it to the police was your decision?

Curley. Yes. I didn't see any reason because I didn't, at that time, think it was a crime.

...

Question. At the time of the incident in 2002, were you aware of any other incidents involving alleged sexually inappropriate misconduct by Mr. Sandusky anywhere, on university property or otherwise?

[This question does not ask what the questioner probably intended. See discussion in answer.]

Curley. No, ma'am. [The 1998 incident Curley learned about in 1998 (and remembered in 2001) was in 1998 determined by competent authority to be non-sexual, and there is no evidence that Curley knew of any of the allegations against Sandusky that have recently been made. Freeh on page 39 of his report refers to a 1998 "report by a young boy's mother of a possible sexual assault," but in his discussion of this matter on pages 42ff, he does not describe or quote any official complaint at all, and does not provide any as an exhibit. Various authorities did, however, think "possible sexual assault" worth investigating since they did an extensive investigate to see whether sexually inappropriate misconduct had occurred. Their investigation found no evidence that it had. Freeh thinks the investigation flawed. But even if it was flawed, Curley could not know that. In any event, Freeh presents no evidence that anyone in 1998 alleged sexually inappropriate misconduct against

Curley grand jury testimony, January 12, 2011, selections, annotated.

Sandusky—suspicion is not allegation—so Curley's answer seems to be correct.]

Question. Since this has come to light, have you become aware of other allegations of inappropriate sexual conduct by Jerry Sandusky on University property or elsewhere?

Curley. Other than what was mentioned this morning[?]

Question. Specifically a 1998 report, did you know anything about that in 2002? [This question is flawed since there were no 1998 allegations of inappropriate sexual conduct.]

Curley. No, ma'am. [Curley knew nothing of a 1998 report against Sandusky by anyone of sexual misconduct, but he answers the flawed question accurately. See note to a previous answer.]

...

Question. If there was an incident involving a coach and an allegation of criminal conduct on campus, would that be brought to your attention, would you think, as the athletic director?

Curley. I would think, but I don't know.

Question. But the 1998 incident was never brought to your attention? [Flawed question because in context, "the 1998 incident" refers to an incident in which inappropriate sexual conduct was alleged, and this conduct was not alleged against Sandusky in 1998.]

Curley. No, ma'am, not that I recall. [See notes to similar answers above.]

Question. Have you ever heard — anything other than what you heard from Mike McQueary, have you ever heard anything at all regarding inappropriate conduct between Jerry Sandusky and young men either on or off campus?

Curley. No. [Curley is correct. In context, the meaning of "inappropriate conduct" is criminal sexual conduct, and there were no known allegations against Sandusky of criminal conduct in 1998 or any other year prior to publication of the grand jury presentment.]

...

Question. Did you ask Jerry Sandusky who the boy was that was with him in the shower?

Curley. I did not.

Question. Did you attempt to find out who that young man was?

Curley. I did not.

Question. Obviously, you're a person of more than reasonable intelligence who's running a Division 1 football program, not only the football program, but the entire athletic program. **Did it not occur to you that there was something sexual going on in this incident based on what was referred to you by**

Curley grand jury testimony, January 12, 2011, selections, annotated.

Mike McQueary?

Curley. I was not aware of anything sexual. So I didn't feel that it warranted that and I felt my actions were appropriate. But I was not aware that there was sexual activity. [Curley is correct. There is no evidence that McQueary described a sexual act to Paterno, Curley or Schultz. He characterized what he saw as sexual, but did not explain to them how.]

Question. *If you didn't think this was sexual in nature or criminal in nature*, then why did you take the action of barring Sandusky for bringing youths onto the university property?

Curley. Because I didn't think it was appropriate that he would be using our facilities, having young people in there in the evening, and that you're in a shower area horsing around with a young person.

Question. *Did that concern extend to what he might be doing to those youths off university property* if you didn't report this to somebody?

Curley. No, not at the time, it didn't. [Curley did not see this a criminal issue, just a propriety issue.]

...

Question. Was there a specific conversation about whether or not to go to law enforcement authorities about this?

Curley. At the time I don't recall that because, again, I didn't feel — at least I didn't feel personally that any criminal activity had occurred. So my thought was that because a young person was there, that I needed to take it to The Second Mile.

Question. But you made this determination without talking to the young person who was there or any other investigative measures. There were no other investigative steps made to determine whether or not there was anything sexual about this conduct? [There was nothing criminal. See PART III.]

Curley. Again, I don't remember any reports to me that it was sexual in nature. It was inappropriate behavior. So I didn't feel that that was necessary[,] and felt that it was important. Whether I knew it at the time or not, I don't know, but I thought it was probably a Second Mile person. You know, it was a young person. So I thought it was appropriate to give the information to The Second Mile or to the executive director of The Second Mile.

Question. *If it was your understanding it was not sexual and you had no information that would lead you to believe it was sexual* or even that it involved a Second Mile minor, why would you take the

Curley grand jury testimony, January 12, 2011, selections, annotated.

rather extraordinary step of going to the executive director of a nonprofit that is not part of the university and informing them of this incident?

Curley. Because I think that Mike felt he was uncomfortable with the behavior. And based on what I heard that was reported to me, I just didn't feel it was appropriate that Jerry would be in a shower area with a young person. Whether it was horsing around or however you want to describe it, I just didn't think that would be appropriate and shouldn't occur.

Question. Mr. McQueary was uncomfortable because there was a child who was not a student and not an employee of the university on university property. Is that what you're saying?

Curley. My recollection was that he was uncomfortable they were in the shower and it was just the two of them and that they were horsing around and inappropriate conduct. It was inappropriate conduct. I think he felt that this just didn't feel right.

Question. Well, sir, listening to the words you just used, I think a reasonable person would immediately jump to, there could be a sexual nature to this. You have a grown male with a child naked in the shower horsing around. What is it that specifically alarmed Mr. McQueary? What did you take away from that meeting? [The person asking this question knew of many allegations against Sandusky, and therefore could reasonably suspect that the 2001 incident was criminally sexual in nature. But Curley knew of no such allegations at that time, but did know of a similar incident in 1998 in which competent authorities, despite much investigation, discovered no inappropriate sexual conduct by Sandusky. So Curley had no reason to suspect Sandusky of criminal activity.]

Curley. I took away that he didn't feel comfortable with the activity that was happening and it wasn't appropriate that we had an adult and young child or a person in the shower area and that it was a situation that — and that's what alarmed him.

...

Schultz grand jury testimony, January 12, 2011, selections, annotated.

Date, January 12, 2011, 12:02 PM.

Question. I'd like to direct your attention to a time around spring break of 2002 as it's been reported to us. Do you recall being called and requested to attend a meeting with Coach Paterno to report an unusual incident?

Schultz. I do recall such a meeting.

Schultz grand jury testimony, January 12, 2011, selections, annotated.

Question. Would you please tell the grand jurors what you remember, everything that you can remember about that incident and the time that it occurred?

*Schultz. Yes. I believe the meeting occurred in my office. It included the athletic director, Tim Curley, and Coach Paterno. Coach Paterno wanted the meeting. It was essentially called at his request. He indicated that someone observed **some behavior in the football locker room [by Jerry Sandusky] that was disturbing. I believe the impression I got was it was inappropriate and he wanted to bring that to Tim Curley and my attention.***

...

Question. The incident that was reported to you by Coach Paterno, were the words disturbing and inappropriate — were those Paterno's words?

Schultz. I don't remember his precise words. I'm using words now, when I tell you, that was the impression that I had. I don't recall his exact words.

...

Question. You said that you did not have — did you ever meet directly with Mike McQueary?

Schultz. Yes.

Question. When?

Schultz. I don't recall the exact circumstances. In fact, it was this morning when you asked me a question that I first recalled that there was such a meeting.

[The prosecutor interviewed Schultz earlier on the day of this testimony.]

Question. You don't recall where it took place?

Schultz. I think it occurred in my office, I believe.

Question. At that time, did McQueary relate to you what he had observed in the locker room?

Schultz. No. My recollection was McQueary and Joe both only described what was observed in a very general way. There was no details.

Question. Did you, nevertheless, form an impression about what type of conduct this might have been that occurred in the locker room?

Schultz. Well, I had the impression that it was inappropriate. Telling you what kind of thing I had in my mind without being clear, without him telling me, but, you know, I had the feeling that there was perhaps some kind of wrestling around activity and maybe Jerry might have grabbed the young boys genitals or something of that sort is kind of the impression that

Schultz grand jury testimony, January 12, 2011, selections, annotated.

I had.

Question. *Would you consider that to be inappropriate sexual conduct?*

Schultz. Oh, absolutely. Well, I don't know the definition of sexual, but that's certainly inappropriate for somebody to do.

Question. *It would give you pause or concern if an adult male and under age males were in the shower and that adult male grabbed the genitals of the younger male?*

Schultz. Yes.

Question. Do you not recall anything more specific than that that Mike McQueary reported to you?

Schultz. I do not recall, no.

Question. Did you consult with Tim Curley as to what would be done as a result of this 2002 report?

Schultz. I believe Tim and I had — yes, we had a conversation at that time.

Question. Whose recommendations — what was done, first of all?

Schultz. Well, my recollection was — and I'm not so sure it's — I'm not as confident, but I think we decided it would be appropriate to just say to Jerry that you shouldn't be bringing The Second Mile kids onto campus in the football building. So I believe Tim communicated to Jerry that that type of thing should not be occurring in the future. I also have a recollection that we asked the child protective agency to look into the matter. [In this last

statement, Schultz's memory apparently totally fails him. Freeh's evidence shows that no later than the day after learning of the matter from Paterno, Schultz considered reporting the matter to child protective services, not because he thought Sandusky had committed a crime, but as an optional tool to help persuade Sandusky to stop showering with children if Sandusky did not yield to gentle persuasion. ON THE OTHER HAND, on page 85 we find this email from former university outside counsel Wendell Courtney to then-Penn State General Counsel Cynthia Baldwin sent Dec 28, 2010 regarding the 2001 incident:

We don't have any file on the matter you and I discussed yesterday, and my recollection of events is as I stated yesterday. However, I also recall that someone (I don't think this was me, since if it was I would have written documentation of contact) contacted Children and Youth Services to advise of the situation so that they could do whatever they thought was appropriate under the circumstances, while being apprised of what PSU actions were, i.e., advising JS to no longer bring kids to PSU's football locker rooms.

This suggests that child protective services was called in 2001. So, was child protective services called in 2001, or not? Maybe Schultz's memory is correct after all. Or maybe both Schultz and Courtney remembered it wrong.]

Schultz grand jury testimony, January 12, 2011, selections, annotated.

...

Question. Now, I don't want to necessarily get away from 2002, but you're referring now to an incident that was reported in 1998 involving Mr. Sandusky and one or two young boys on the campus of the university; is that correct?

Schultz. I believe it was in '98, yes.

Question. And that incident was reported to the university police, correct?

Schultz. My recollection is that the mother contacted university police with regard to her son and that that started a police investigation.

...

Question. Do you know if any criminal charges arose from the 1998 report?

Schultz. To the best of my knowledge, there were none.

Question. What did you understand the 1998 incident, in a general way, to allege?

Schultz. Again, I thought that it had some basis of inappropriate behavior, but without any specifics at all.

Question. At the time of finding out in 2002 about the allegations of the inappropriate conduct in the shower by Sandusky, you were aware of the 1998 allegations —

Schultz. That's correct.

Question. — of the same nature involving Sandusky?

Schultz. An allegation, yes.

...

Question. Did Tim Curley report back to you about his contact with Jerry Sandusky regarding the incident in 2002?

Schultz. I can't say for sure. I had the impression that Tim did follow through and make sure Jerry understood that he was no longer permitted to bring Second Mile children into the football facility.

Question. Did you, yourself, ever attempt to determine the identity or age of the boy in the shower in the 2002 incident?

Schultz. **No.**

Question. Do you know if anyone in the university under your auspices then when you were senior vice president attempted to learn that information?

Schultz grand jury testimony, January 12, 2011, selections, annotated.

Schultz. No.

Question. Knowing that there was an incident in 1998 involving a boy or boys and the incident in 2002, did you not feel it was appropriate to further investigate the incident to determine if something truly sexually inappropriate had occurred on campus?

Schultz. Yes. Again, '98 was investigated. There was an allegation. I have no idea what the conclusion of that investigation was, whether there was any merit to the allegation or not. I did have the impression that it concluded without any charges being filed. The incident in 2002, again, I recall that it was also turned over to that same agency for investigation and it's appropriate for them to do that, not for me to determine the name of the boy. I wasn't doing an investigation.

Question. Do you remember whether the district attorney was consulted at all in the 1998 investigation?

Schultz. I believe the district attorney was in 1998. I think, again, my recollection — this is a long time ago. But my recollection was that between the university police chief and the District Attorney and perhaps university legal counsel and myself, the decision was made to use a child protection agency as the appropriate investigative agency.

Question. Who was the university legal counsel when the decision was made?

Schultz. His name was Wendell Courtney.

Question. He was with the firm McQuaide Blasko?

Schultz. That's correct.

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

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

Question. You indicated that you consulted with Tim Curley. Did you agree with his recommendations as to how this should be handled?

Schultz grand jury testimony, January 12, 2011, selections, annotated.

Schultz. I don't know if it was a recommendation but, yes, we reached agreement. I can't remember if I recommended, he recommended or who recommended, but at the conclusion of the discussion, there was agreement. There was no disagreement.

Question. Did you, yourself, directly consult with Graham Spanier, the president of the university, concerning the 2002 incident?

Schultz. I believe so. It was a routine way of kind of handling business, that I would have had a conversation with the president about such a matter, yes.

Question. Did the president of the university expressed concern about this incident at the time it was reported to him?

Schultz. Very similar to mine and Tim's, yes. We took it seriously.

Question. Did President Spanier appear to approve of the way in which you and Athletic Director Curley handled this?

Schultz. Yes. Again, my recollection was that there was agreement.

Question. Do you know if President Spanier was aware of the 1998 incident at the time of the 2002 incident?

Schultz. I believe so, yes.

Question. Why do you believe so? Did you tell him or was it discussed?

Schultz. Again, I don't remember the specifics of the conversation I had with him, but it would have been a routine kind of way of handling things, that I would have kept him informed about the '98 as well as the 2002 reports.

Question. You knew, of course, that the incident in 1998 was alleged to have taken place very similarly in the Lasch Building in the shower with the young boy or more than one young boy?

Schultz. I honestly don't recall that [in] '98 I knew anything about the details of what the allegation was from the mother. I do recall there was a mother with a young boy who reported some inappropriate behavior of Jerry Sandusky. But I don't recall it being reported in the Lasch Building or anything of that sort.

Question. Reports on that were something that you could have had access to as the director, the police being under your purview of the University; is that correct? [Thomas Harmon was director of Campus Police, not Schultz. Harmon reported to Schultz for administrative matters.]

Schultz. I probably would have been able to, but it was my practice that I didn't ask the

Schultz grand jury testimony, January 12, 2011, selections, annotated.

police for police reports. [See note to next answer.]

Question. In 2002, when you became aware of this allegation in the shower, did you then seek out the 1998 report to find out what it was that Sandusky specifically was alleged to have done?

Schultz. No, I did not. Honestly, I don't know what the procedures are. I assume that that report was with the child protection agency and not Penn State University Police. I thought the police turned it over and that investigation was then handled independently. [Freeh's evidence shows that Schultz's memory apparently again fails him. Per Freeh's evidence, in 2001, Schultz asked Harmon whether police documentation on the 1998 incident was still available, and Harmon said it was (Exhibit 5D (Table 1, item F)). It is not clear whether Schultz read the documentation after learning that it was available, but Schultz's "confidential note" (Exhibit 5C (Table 1, item G)) has the words "reviewed 1998 history," so he might have looked it over. But not necessarily, since he might have had other ways of reviewing the history.]

...

Question. You knew the University police were involved in 1998 investigation, right?

Schultz. Yes.

Question. But you didn't attempt to find out whether they had anything that would substantiate or cause you to come to some conclusions regarding the 2002 incident and whether or not it might have actually occurred? That didn't occur to you, to check into the 1998 incident more firmer? [Schultz already said he knew of a 1998 incident, so what is the "it" that the Commonwealth's attorney thinks "might have actually occurred"?]

Schultz. No.

Question. And you didn't attempt to find out anything about the identity of the youth that was in the shower in 2002?

Schultz. No.

...

Question. One more thing I just want to be clear on. When you met with Mike McQueary, was it or was it not your impression that he was reporting inappropriate sexual conduct, your impression —

Schultz. Yes.

Question. Inappropriate sexual conduct by Jerry Sandusky?

Schultz. You know, I don't know what sexual conduct's definition to be, but I told you that my impression was — you know, Jerry was the kind of guy that he regularly kind of like

Schultz grand jury testimony, January 12, 2011, selections, annotated.

physically wrestled people. He would punch you in the arm. He would slap you on the back. He would grab you and get you in a headlock, etc. That was a fairly common clowning around thing. I had the impression that maybe something like that was going on in the locker room and perhaps in the course of that, that somebody might have grabbed the genitals, the Jerry might have grabbed the genitals of the young boy. I had no impression that it was anything more serious than that. That was my impression at the time.

Question. Didn't you previously tell us in our interview that you had the impression — I have it written down — that this was inappropriate sexual conduct?

Schultz. Again, depending on what you call — I mean, grabbing the genitals of the boy is what I had in mind. Now, is that sexual? Yes.

Question. We can all agree that an adult male under no circumstances other than a doctor should be grabbing the genitals of a young boy? [Actually, the law does not agree, as a careful reading of the definition of "indecent contact" and of §§ 3126 and 3125 will reveal. Nor should the law agree, seeing there are legitimate reasons for non-physicians, including persons not currently specified in the statutes, to do so.]

Schultz. I agree completely with that.

Question. And that it doesn't happen accidentally?

Schultz. Rather than just agreeing to I thought it was sexual conduct or misconduct, I'm explaining what I really thought might have gone on. You know, you can define that as you want. I'm telling you what I thought was going on.

Question. Would you agree with me that if it had have been sodomy, that is, anal sex, that would clearly be inappropriate sexual conduct?

Schultz. No doubt.

Question. By Mr. Fina.

Sir, I just want to be real clear on this. *It was your impression after you talked to McQueary that this was about some physical conduct, some horsing around, some wrestling that resulted in contact with the boys genitals in the context of wrestling. That was your impression of what McQueary was reporting to you?*

Schultz. I don't recall what McQueary specifically reported, but I can tell you that I, after going through whatever we went through in 2003 [sic-1998], had the impression that that

Schultz grand jury testimony, January 12, 2011, selections, annotated.

was probably the kind of thing that had taken place.

Question. Nothing else? No further sexual conduct?

Schultz. No, I had no basis —

Question. No intercourse?

Schultz. I had no basis of anything else, and I only formed the impression that I had based on kind of what I observed of Jerry and the kind of horsing around that he does.

Question. No, no. Please follow my questioning. I'm not asking you what impression you had of your observation of Mr. Sandusky over the years. I'm asking you of your impression, what you learned from Mr. McQueary, what he observed in the shower.

Schultz. I don't recall himself telling us what he observed specifically.

Question. What generally did he report?

Schultz. I believe that he said that he saw something that he felt was inappropriate between Jerry and a boy.

Question. And from his saying along the line of something inappropriate, you took, oh, they must have been wrestling and maybe he touched the kid's groin?

Schultz. I could imagine that might have taken place, yes.

Question. Was McQueary upset? Was he emotional about this?

Schultz. No, I don't recall him being upset.

Question. He was calm; he was collected?

Schultz. Yes.

Question. Nobody, not you, nor Curly, nor anybody else went back to McQueary and asked for specifics or at the time asked for specifics?

Schultz. No. Again, I recalled that we asked this agency to do the investigation and I would let them follow-up. [Schultz's memory apparently still fails him badly regarding this apparently false memory of an investigation in 2001 by child protective services.]

Question. The agency that you were never interviewed by, correct?

Schultz. That's correct.

Question. Are you aware of anybody at the university who was interviewed by any agency about this incident?

Schultz. About 2002, I don't.

Schultz grand jury testimony, January 12, 2011, selections, annotated.

Question. How is it that this agency, this whatever it was, would even know who to talk to, to talk to McQueary or to talk to you or to talk to whoever? Who was supposed to relay this information?

Schultz. I don't recall. I don't recall who contacted the agency. I'm telling you, to the best of my recollection, I believe that the agency was asked to follow-up on the investigation.

Question. At no time did you contact any law enforcement entities or individuals?

Schultz. I had the impression that that agency had some law enforcement authority.

Question. The agency that you can't identify?

Schultz. Well, the child protection agency, the same one that I think handled the '98 investigation.

Question. Sir, it might surprise you to know that the '98 investigation was handled by your police department and there's a —

Schultz. In its entirety?

Question. There's a 95-page police report on that incident.

Schultz. In its entirety?

Question. Correct. [Well actually, "Correct" is incorrect. The police did not handle the investigation in its entirety. According to grand jury presentment page 18, and Freeh report page 43, the DPW participated.]

Schultz. Wow. I thought that it was turned over to the child protection agency for investigation.

Question. Did it ever occur to anybody that the police might need to be contacted, and either campus police or this entity known as the Pennsylvania State Police?

Schultz. I don't recall that we talked about it being turned over to the police.

Question. That was never part of the discussions between you and Curly or you and Spanier or you and anybody else?

Schultz. No.

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

Schultz. No.

Question. Would that be standard? Would that be the way the university operates when an allegation is made against a current employee or a very famous prior employee, that nothing be put in writing?

Schultz. The allegations came across as not that serious. It didn't appear at that time, based

Schultz grand jury testimony, January 12, 2011, selections, annotated.

on what was reported, to be that serious, that a crime had occurred. We had no indication a crime had occurred.

Question. Do you recollect going to Joe Paterno's house on a Sunday to be informed of this?

Schultz. No.

Question. No, that you don't recollect? No, that it did not happen?

Schultz. No, I don't recollect it. Again, I thought I was informed in a meeting that Joe and Tim and I had at my office. Now, could it have happened at Joe's house? Possibly.

Question. Would that be unusual, to be called to Joe Paterno's house on a Sunday to discuss something that wasn't even criminal or sexual?

Schultz. Well, it wasn't an everyday thing, but Tim and I and others would meet with Joe weekends, Sundays and so on. But, yeah, it would be an important matter if we were meeting with Joe on a Sunday.

Question. By Ms. Eshbach.

In terms of university policy at the time that you were the senior vice president, how would a matter of inappropriate conduct by an employee be handled, something along the lines of perhaps a theft, criminal conduct?

Schultz. If there was an allegation of a criminal act, it would be turned over to the university police for handling. On occasion, depending on the nature of it, university internal audit might get involved initially to do some background work just to confirm an allegation.

Question. If there had been inappropriate or criminal conduct by a student, would that go to the provost side of things or would that come to your side of things?

Schultz. Well, if it was a criminal act, it would be investigated by the police, yes.

Question. How about an incident of criminal conduct involving a student athlete? How would that be handled?

Schultz. If it was criminal, it would be the police. If it's not, there's an office of student conduct.

Question. How about, again, inappropriate conduct of any employee of the university?

Schultz. If there was an allegation of some criminal conduct, it would be handled by the

Schultz grand jury testimony, January 12, 2011, selections, annotated.

police.

Question. And, finally, a person in the status of Mr. Sandusky who had access to the university even though he was no longer an employee?

Schultz. Same.

Question. *You're saying that this incident wasn't referred to the university police for investigation because you didn't think it was criminal?*

Schultz. There was no indication that it was.

Question. Can you give me an example of what you would consider to be inappropriate conduct that wasn't criminal? We did a lot of talking about what's inappropriate, what's criminal, not criminal. Give me an example of conduct — for example, a university professor does something to a student and the student reports it. I assume that would go to the university police, right?

Schultz. No, not necessarily. You asked for an example. Not all inappropriate conduct is criminal. Cursing at a student in class, if you're faculty member losing your temper, perhaps might not be criminal, but it's not appropriate for a faculty member to do such a thing.

Question. *How about an adult individual being naked in the shower with a young boy and touching that young boy? Clearly inappropriate, right? [The law does not and should not agree. See PART I.]*

Schultz. Yes, I would say.

Question. *But not criminal in your mind, not potentially criminal? [Is there anything that is not potentially criminal?]*

Schultz. I didn't get the impression that there was something like that going on.

Question. I thought you said that *you thought perhaps he had grabbed his genitals?*

Schultz. Well, you know, whether he — I don't know. I mean, I wasn't told what was really going on. But if he did, if that was what it was, he shouldn't do that. That's inappropriate. I don't know if it's criminal. If it's in the context of wrestling or something like that, I don't know.

...

Question. When you retired, were you aware of any other allegations of sexual conduct by Jerry Sandusky against any other young boys not in 1998 and not in 2002, but any subsequent to that?

Schultz. No. [Schultz is correct. See discussion of similar questions and answers in Curley's

Schultz grand jury testimony, January 12, 2011, selections, annotated.

testimony.]

Question. You knew of nothing?

Schultz. Nothing.

...

Question. As far as you know, the university took no steps to prevent something like this from happening again?

Schultz. Well, with regard to Jerry, I think we did, yeah.

Question. How about other individuals?

Schultz. I don't know exactly how to answer that. I can imagine instances where adult men would perhaps be in the shower with young boys.

Question. In a group?

Schultz. Perhaps.

Question. But not alone?

Schultz. Perhaps or maybe not. I don't know. I mean, our recreation buildings, for example, separate from the football building, which has some restrictions, are pretty much open.

Question. Again, that would be a circumstance where there would be likely a number of persons present?

Schultz. Could be, yeah.

Question. But the Lasch Building was not a public building?

Schultz. No. But, you know, it's a building that generally is active. It's used with all the individuals on the team, the coaches, all the support staff and so on. Football is a 12-month-a-year program. It's less open than a public recreation facility would be, but I don't want to characterize it as a place that's only used like on a limited basis. It's used regularly.

Question. Would you agree with me that on a Friday night before the start of spring break, there probably wouldn't be very many people in that building?

Schultz. Probably, yes.

Question. And a former staff member would understand that, would know that kids [=students] would be gone? [But that would not guarantee that the building would be empty. Staff, family members of staff, and perhaps nearby-living student athletes might decide to make use of the spring break to use the facility in relative

Schultz grand jury testimony, January 12, 2011, selections, annotated.
<p>privacy, including in the evening.]</p> <p style="text-align: center;"><i>Schultz. Probably, yes, sure.</i></p> <p>Question. That's it.</p> <p style="text-align: center;">Testimony concluded at 12:50 2 PM.</p>

Appendix B. Alleged victim 8.

This appendix has three sections: 1. Janitor B’s trial testimony, 2. Janitor B's actions, and 3. Analysis of Janitor B’s actions.

1. Janitor B’s trial testimony, June 13, 2012.

Janitor B trial testimony, June 13, 2012
<p>[Transcript page and line numbers are indicated thus: [page.line], such as [222.19], indicating, in this case, that the text that immediately <i>follows</i> “[222.19]” begins on line 19 of page 222. Janitor B testified on June 13, 2012. I have replaced the actual names of the janitors with “Janitor A,” “Janitor B,” and “Janitor C.”]</p> <p style="text-align: center;">DIRECT EXAMINATION</p> <p>BY MR. McGETTIGAN:</p> <p>...[222.19]</p> <p>Q. Janitor B, where are you working at now?</p> <p>A. <i>Penn State University.</i></p> <p>Q. Okay. And were you working there back in the fall of 2000?</p> <p>A. <i>Yes, I was.</i></p> <p>Q. Can you tell the folks here what your [223.1] job was in the fall of 2000?</p> <p>A. <i>Yes. At that time I was a — they call it a grade nine janitor. What my job was — I worked in the football building, Lasch Building. I would clean the showers at night, take out the garbage, shampoo, you know, all the carpets when they needed shampooed, clean the</i></p>

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Janitor B trial testimony, June 13, 2012

12 *windows. I was throughout, like, all night — different times in the night. That's what my*
13 *job was.*

14 Q. And did you work some nighttime hours in, like, 8:00 o'clock at night until the early morning
15 sometimes?

16 A. *Yes. At the football building they change their shifts three times a year because of*
17 *football, of course. But when this incident occurred we were on, I believe, it was 7:00 to*
18 *3:00 in the morning.*

19 Q. Okay. And do you know Janitor C?

20 A. *Yes.*

21 Q. Was he working that night, too?

22 A. *Yes, he was there that night.*

23 Q. Okay. And did you know Janitor A?

24 A. *Yes, I did. [224.1]*

25 Q. Was he working there that night?

26 A. *Yes, he was.*

27 Q. Okay. How long had you been working at Penn State back in the fall of 2000?

28 A. *Janitor A?*

29 Q. You?

30 A. *Oh, I'm sorry.*

31 Q. How long had you been there?

32 A. *I was just there a little over a year.*

33 Q. Okay. You have been there since though?

34 A. *Yes.*

35 Q. Okay. And how long had Janitor A been there? Do you know what Janitor A's status was as
36 an employee?

37 A. *Yes. Janitor A was a part-time worker. They call it wage payroll, and he was there*
38 *— I think he was retired or just about ready to retire. So it was just supplement income until*
39 *he reached retirement age.*

40 Q. Okay. Now, back there in the fall of 2000, did you know the defendant, Jerry Sandusky, by
41 sight? Did you know him to see?

Janitor B trial testimony, June 13, 2012

42 A. *Yes.*

43 Q. Okay. And now, was the staff shower room the first shower that you cleaned in the night or
44 was there another one that you cleaned [225.1] first?

45 A. *I would always start in the players' locker room first. So I would do it and then go
46 to the staff and then the coaches. They were all on the first floor.*

47 Q. Okay. Now, what kind of equipment do you use to clean the shower with? Just chemicals and
48 stuff?

49 A. *Like a garden hose and then they had a chemical bottle that screwed on the hose.
50 You would go in and spray the walls, wait 10 to 15 minutes, and then just spray it off.*

51 Q. Now, can you tell the ladies and gentlemen of the jury what happened that night as you were
52 getting ready to clean the staff shower, locker, toilet area? Can you do that?

53 A. *Okay. I came down the hall with my cleaning stuff. I had a cart. I had my cleaning
54 stuff on the cart with the hose. I would always go in and hook up the hose, go in and there
55 was a hose hookup under the sink. So that's what I did first.*

56 *When I entered the room I could hear the showers running which that really thrown
57 me off because a lot of times players or coaches would [226.1] leave the showers run after
58 they had already showered. And when I hooked the hose up, I could hear Janitor A in the
59 toilet area cleaning. So I didn't think much of that.*

60 *So I hooked the hose up. Started walking over towards the shower, and I just about
61 went in the shower, and I could see two sets of legs in there. So I dropped my hose and just
62 backed out. Went back outside in the hall area. And continued to mix my chemicals to
63 clean.*

64 ...[226.24]

65 Q. What did you see? What kind of legs did you see?[227.1]

66 A. *Well, to me it looked like there was one set of hairy legs and one set of skinny legs.*

67 Q. Okay. And you — how quickly after you saw that did you leave the locker area?

68 A. *Pardon me?*

69 Q. How soon after you saw those pairs of legs did you leave the locker area? Right away? Take a
70 while or you tell me?

71 A. *Yeah, I just dropped the hose and went out into the hall.*

Janitor B trial testimony, June 13, 2012

- 72 Q. Okay.
- 73 A. *Because I figured how long does it take to take a shower? I was going to wait until*
- 74 *whoever was in there come out and then I would finish my cleaning.*
- 75 Q. How far from the [outer] door to that locker/shower area were you with your chemicals and
- 76 stuff?
- 77 A. *It was only maybe two feet where you exit.*
- 78 Q. Did anybody go in while you were standing there?
- 79 A. *No, nobody.*
- 80 Q. Okay. Did anybody come out while you were standing there? [228.1]
- 81 A. *Yes.*
- 82 Q. Who came out?
- 83 A. *Jerry Sandusky and a small boy. ["Small boy" seems a common usage even though*
- 84 *the boy stood almost to Sandusky's shoulders according to Janitor B. Does this indicate*
- 85 *word-choice advice from the prosecutor who uses "little boy"?)*
- 86 Q. Okay. Did you see them come out —
- 87 A. *Yes.*
- 88 Q. — with your eyes?
- 89 A. *Right. I said, "good evening, coach." If I ever see him, I call him coach.*
- 90 Q. Okay. And did you see which way the defendant, Sandusky, and the little boy went?
- 91 A. *Yes. They exited the door and then took a right, went out the long hallway towards*
- 92 *double doors where the stairs go up to coaches' offices and that [= and such].*
- 93 Q. Did you watch them walk down the hallway?
- 94 A. *Yes, I did.*
- 95 Q. What, if any, physical contact did you see when, between the two, when they were walking
- 96 down the hallway?
- 97 A. *About three-quarters of the way down, Jerry took the boy's hand and as they walked*
- 98 *out through the doors, and of course, the doors closed and then, of course, I never — I*
- 99 *didn't see them again. [229.1]*
- 100 Q. Did you notice anything [about] their appearance as they walked out of the shower area?
- 101 A. *Yeah, both of their hair — it was wet and they were carrying gym bags at the time,*

Janitor B trial testimony, June 13, 2012

102 *yes.*

103 [No questions about the expression on Sandusky's face or the boy's face. Why not? Were they in good spirits?
104 Were they troubled? Did Sandusky behave as if they had just been caught molesting the boy? Did the boy
105 appear embarrassed? Janitor B could take notice of Janitor A's visage and demeanor, as we see immediately
106 below, so why not that of Sandusky and the boy?]

107 Q. Okay. Now, after that, did you see Janitor A?

108 A. *Yes, shortly after. I finished the chemicals and I grabbed my bottle and I started in*
109 *the door and Janitor A was coming out. There's double doors there before you go in to the*
110 *locker and I met Janitor A in between the two doors, between the hall [outside the first door]*
111 *and [the doorway of the second door] where you entered the locker area. And I could see he*
112 *was upset. His face was white. His hands was trembling. I thought it was a medical*
113 *condition. I said, "Janitor A, what's wrong?" And this is how he said it to me. He said,*
114 *"[Janitor B nickname]," — that's my nickname. He said, "[Janitor B nickname], I just*
115 *witnessed something in there I'll never forget the rest of my life." I said, "What are you*
116 *talking about, Janitor A." He said <<that man that just left, he had this — the boy up*
117 *against the shower wall licking on his privates.>> I said, "Are you sure that man that just*
118 *left?" He said, "I'm sure." I said, "You know who that is?" I said, "That's Jerry*
119 *Sandusky." He didn't know [230.1] who he was[,] but he knows what he seen that night.*

120 [How would Janitor B know that Janitor A "knows what he seen that night"?)

121 Q. Okay. And now how long were you standing there with Janitor A before you went someplace
122 else, if you did?

123 A. *Probably like five minutes at the most.*

124 Q. Now, where did you go right after that?

125 A. *Well, I told — I asked Janitor A if he wanted to call somebody or, you know, and he*
126 *said he didn't. He was afraid I guess and so I calmed him down. We went down the hall.*
127 *There was a meeting room off to the right and then the other guys came down from upstairs*
128 *and took — because Janitor A was so shook up, you know, I called for other people to —*

129 Q. When you were down there in that meeting room, was Janitor A still white, shaken, and upset?

130 A. *Yes, he was crying and shaking.*

131 Q. Did he say anything down there?

Janitor B trial testimony, June 13, 2012

132 *A. Pardon me?*

133 Q. Did he say anything down at that meeting room about what he [had] seen? Did he talk to you
134 or to Janitor C?

135 *A. Yes. He told the other guys the same story then.*

136 Q. What did he say? [231.1]

137 *A. He said that he told Jay and them, he said that, you know, he seen Sandusky holding*
138 *that boy up licking on his privates. [What does "holding the boy up" mean? Off the floor?]*

139 Q. Okay. Did he say anything in addition to that that included a different description? I know
140 you don't want to use the language.

141 *A. Yes. Yeah, he said he was sucking on his dick is what he said.*

142 Q. Was he still shaking and white when he was saying that?

143 *A. Pardon me?*

144 Q. Was he still shaking and white when he said that?

145 *A. Yes, he was. We thought he was going to have a heart attack. We kept people with*
146 *him all night throughout the night and made sure, you know, he was all right. [Really?]*

147 Q. Okay.

148 *A. And everybody kind of just — I had to go — you know, we had to finish our jobs, of*
149 *course, but it was hard to concentrate after that.*

150 Q. Now, did you see the defendant later that night, that is Mr. Sandusky?

151 *A. Yes. It was between probably 10:00 and [232.1] 11:30 I was out cleaning the*
152 *windows towards the coaches' office. There's a balcony there. I could see out into the*
153 *parking log, and I seen Jerry Sandusky drive real slow by. That's when I — yeah, it was*
154 *about 10:00, 10:30, 11:30.*

155 Q. Once or more than once? Once or more than once?

156 *A. I seen him that time and then almost at quitting time which was like — quitting time*
157 *was three. So it was 2:00, 2:30 I was taking the garbage out. We stage it out there for the*
158 *people in the morning to throw it in the dumpster. I seen him one more time drive real slow.*
159 *He never got out of the car or nothing. I didn't see — he didn't have the boy with him then.*
160 *[Strange that when the janitor can see the parking lot, there is Sandusky. If true, Sandusky*
161 *was probably in the lot more than two time. But is it true?]*

Janitor B trial testimony, June 13, 2012

162 Q. Do you know how long after that Janitor A — did Janitor A continue to work at the university
163 for long after that, or do you know?

164 A. *My —*

165 Q. No, did Janitor A, was he still working there for [a] long time after that?

166 A. *Afterwards? I'm not sure. They keep wage payrolls, like, 20 weeks, I believe, 21*
167 *[233.1] weeks. So it wasn't much longer than after the incident.*

168 Q. Did you ever go and tell anyone what Janitor A said he saw?

169 A. *No, he never did.*

170 Q. Did anyone else that you know ever go and tell anybody else what he saw?

171 A. *No, not that I recall.*

172 Q. Okay. Did you see the defendant in there after that?

173 A. *Yes.*

174 Q. Did you ever say anything to him?

175 A. *No.*

176 Q. Did you see him alone or with children or both after than?

177 A. *Before, yes. But afterwards, no. [This janitor did not work in the Lasch building for long*
178 *after the alleged incident, so it is hardly surprising he did not see Sandusky afterward. See 236.25ff.]*

179 Q. Thanks so much.

180 MR. McGETTIGAN: I have nothing further, Your Honor.

181 CROSS-EXAMINATION

182 BY MR. AMENDOLA:

183 ...[235.6]

184 Q. ... [D]o you remember when you first spoke to the police about this situation that you are
185 testifying today about?

186 A. *Before I went to the grand jury? Well, the first time I spoke to the police is when it*
187 *came out in the Centre Daily Times the story about the grad student which I didn't know at*
188 *the time. I made the phone call to them because it sounded identical to the incident that*
189 *happened when I was working there.*

190 Q. If I told you that you spoke with troopers — state troopers in March of 2011 —

191 A. *Okay.*

Janitor B trial testimony, June 13, 2012

- 192 Q. — would that be something that you would think was within reason?
- 193 A. *Yes.*
- 194 ...[236.21]
- 195 Q. ...[The] first time you talked to the police, was that in 2011?
- 196 A. *Right. Yes, it was.*
- 197 Q. Okay. Do you recall if you were working [237.1] in the Lasch Building in 1998, 1999?
- 198 A. *'98 I wasn't but '99 I was.*
- 199 Q. And then after '99 when you worked at the Lasch Building, how long did you work there?
- 200 A. *I believe I worked there two football seasons.*
- 201 Q. Three or four months?
- 202 A. *No, it was years.*
- 203 Q. Years?
- 204 A. *Yes.*
- 205 Q. When you went there in 1999, you were there for a number of years?
- 206 A. *Yeah, two years.*
- 207 Q. Can you tell us the specific room that you were in — the bathroom, the locker room when right
- 208 before you saw or you heard what Janitor A told you? Was that the assistant coaches' locker room?
- 209 Was that the assistant coaches' locker room? [\[Is there a mistake in the transcript here: asking about the](#)
- 210 [assistant coaches' locker room twice? Was one of the two questions asking about the support staff locker room?](#)
- 211 [Or was the question repeated because Janitor B was hard of hearing?\]](#)
- 212 A. *The staff.*
- 213 Q. Staff?
- 214 A. *Yeah.*
- 215 Q. Is there — how many locker rooms are there in that building?
- 216 A. *I believe there's three. There's — [238.1] well, there's the players'. That's the main*
- 217 *locker room. You got the coaches' locker room and then the staff locker room.*
- 218 Q. Now, is the staff locker room, is that called the support locker room? Staff, support, is that
- 219 synonymous?
- 220 A. *Yeah, support.* [\[support is staff; staff is not coaches\]](#)
- 221 Q. And there's an assistant coaches' locker room?

Janitor B trial testimony, June 13, 2012

222

A. Yes.

223

Q. Which locker room was this where you were cleaning?

224

A. The staff.

225

Q. Staff. That was the staff locker room. Now, how many ways in and out of that locker room are there?

226

A. Just one. The one that they were in.

227

Q. When you went in, when you first went in and saw people in the shower, I guess you couldn't actually see them. Can you describe — I think you said — your testimony was you saw legs?

229

230

A. Legs, yes.

231

Q. Is that because there was a curtain?

232

A. There's no curtain in there.

233

Q. So it's open?

234

A. Right.

235

Q. Did you see bodies? Did you see full bodies of the people in the shower?

236

A. No. What it is, you go in and there's just a small wall to the left side and it kind of shields the people in there. But the rest of it from there is all open and whenever I got to that place, that little wall, that is when I seen the legs and then I backed out.

237

238

239

Q. So you just saw the bottom part of the people in the shower?

240

A. Yeah, the bottom up to their knees, yeah, because I had my head down carrying the hose and then I backed out.

241

242

...[239.24]

243

A. I would say, yeah, it was a small child — not small but. [The child was not a "little child."] [240.1]

244

245

Q. But somebody younger than an adult?

246

A. Right. Somebody younger than the one with the hair on [his legs].

247

...[240.11]

248

Q. Do you recall talking to the grand jury — testifying before the grand jury?

249

A. Yes.

250

...[240.18]

251

A. . . . That was over a year ago now.

Janitor B trial testimony, June 13, 2012

252 Q. I'm going to read you a question that was asked by the Attorney General staff from the grand
253 jury hearing, and then — I'm going to read you the question and I'll read you the answer.

254 <<SO THIS PARTICULAR NIGHT, JANITOR A HE WAS ALREADY IN THE COACHES' BOX AND MAYBE
255 THE [241.1] COACHES' LOCKER ROOM>> — but maybe what I have to do is gone back to the full
256 question and put it in its proper context.

257 QUESTION: WOULD YOU PLEASE TELL THE LADIES AND GENTLEMEN OF THE GRAND JURY
258 EVERYTHING YOU CAN REMEMBER ABOUT THE INCIDENT?

259 *AND THEN YOUR ANSWER: OKAY. THIS NIGHT, HERE IT WAS IN 2000, THE FALL OF 2000,*
260 *DURING FOOTBALL SEASON AND FOOTBALL PLAYERS WERE AWAY. IT WAS BEFORE A HOME GAME. [Did*
261 *he mean an away game?] USUALLY THEY LEFT THURSDAY OR FRIDAY NIGHT BEFORE THE GAMES. IF I*
262 *RECALL RIGHT, I BELIEVE THEY WERE GOING TO PLAY OHIO STATE THAT WEEKEND. SO THE BUILDING*
263 *WAS EMPTY. IT JUST HAD FIVE GUYS AND THE JANITORS AND THAT. MY JOB WAS TO CLEAN THE*
264 *SHOWERS. JANITOR A — THEY WERE — THEY CALL THEM GRAY TENTS. THEY GO IN AND PULL THE*
265 *GARBAGE AND CLEAN UP THE LOCKER ROOM. THEY CLEANED THE TOILETS, THE URINALS. MY JOB WAS*
266 *TO GO IN AND DO THE SHOWERS AFTER THEY WERE DONE. SO THIS PARTICULAR NIGHT, JANITOR A, HE*
267 *WAS ALREADY IN THE COACHES' — THE ASSISTANT COACHES' LOCKER ROOM. I WENT IN TO HOOK UP*
268 *THE HOSE. THE HOSE — THE HOOKUP TO THE HOSE, IT IS UNDER THE SINK IN THE LOCKER ROOM. I*
269 *WENT OVER AND HOOKED MY HOSE UP. [242.1] I HEARD THE SHOWERS RUNNING. A LOT OF TIMES THE*
270 *COACHES OR THE PLAYER WOULD LEAVE THE SHOWERS ON. I DIDN'T THINK TOO MUCH OF IT. I WAS*
271 *GOING TO GO IN THE SHOWER TO, YOU KNOW, START CLEANING. I WENT IN, LIKE, THERE WAS A LITTLE*
272 *LEDGE HERE. I COULD SEE FOUR LEGS OR FOUR SETS OF LEGS — EXCUSE ME. I COULD SEE FOUR SETS*
273 *OF LEGS IN THERE. SO I JUST TURNED AROUND AND CAME BACK OUT OF THERE. I WAS GOING TO WAIT*
274 *UNTIL WHOEVER WAS SHOWERING IN THERE, UNTIL THEY WERE DONE SHOWERING, AND I WOULD GO*
275 *BACK IN AND CLEAN.*

276 Now, that was your answer and what it says there — and I'll ask you if this is what you meant.
277 I could see four sets of legs in there. Now, four sets of legs would imply —

278 A. *No, no.*

279 Q. — two times four. I believe your testimony is you saw four legs?

280 A. *I seen four legs.*

281 Q. I understand that. Just kind of a technical thing.

Janitor B trial testimony, June 13, 2012

282 *A. Okay. Yep.*

283 Q. The next question to you was, from the Attorney General staff: Let me clear something up for
284 you. When you say four sets of legs or [243.1] four separate people or two people, four legs?

285 And your answer was: Just two people.

286 *A. Okay.*

287 Q. And then the question was: Two people, a total of four legs?

288 Now, nowhere in there does it mention hairy legs. Is there a reason why you didn't mention
289 that two of the legs were hairy?

290 *A. No.*

291 Q. How long after you saw the legs in the shower — Janitor B, how much time passed between
292 then and when you went back into that room to clean up the room?

293 *A. Probably about five minutes.*

294 Q. Well again, I'm going to draw your attention to the grand jury testimony that you gave, and
295 this would have been on May 19th, 2011.

296 THE QUESTION WAS JUST A GENERAL ONE FROM THE ATTORNEY GENERAL STAFF: OKAY.

297 *AND THEN YOU CONTINUED WITH YOUR ANSWER: SO I WENT BACK OUT IN THE HALL. I NOTICED*
298 *JANITOR A. HE WAS ALREADY IN THERE. HE WAS IN CLEANING THE TOILETS IN THE STALLS. I THINK*
299 *THERE WERE THREE OR FOUR [TOILET] STALLS THERE. SO I WENT OUTSIDE TO WAIT. I STARTED*
300 *GETTING MY CLEANING STUFF DONE. SO I [244.1] WAITED, YOU KNOW, APPROXIMATELY TEN MINUTES*
301 *OR SO. I WAS STANDING IN THE HALL. WHILE I WAS STANDING THERE, JERRY SANDUSKY CAME OUT*
302 *FOLLOWED BY THE BOY. SO AS THEY PASSED ME, I SAID, "GOOD EVENING." THEY ACKNOWLEDGED ME.*
303 *THERE IS A REAL LONG HALLWAY IN THE LASCH BUILDING. AS THEY WALKED AWAY FROM ME, I JUST*
304 *NOTICED THAT JERRY TOOK HIS HAND AND THEY WERE WALKING DOWN THE HALL TOGETHER HOLDING*
305 *HANDS. SO I WENT BACK IN, AND I FINISHED CLEANING THE SHOWER. AND I CAME BACK OUT [of the*
306 *shower area, apparently]. I UNHOOKED MY HOSE AND [WAS] WINDING THE HOSE UP[,] AND THEN JANITOR*
307 *A CAME UP, AND I COULD TELL HE WAS UPSET.*

308 Would you say that that was your testimony? Would you say that that testimony is more
309 accurate than the five minutes or so that you're talking about today? Because in this testimony you
310 said that you waited about ten minutes?

311 *A. Right. I was five minutes off probably so.*

Janitor B trial testimony, June 13, 2012

312 Q. So the testimony before the grand jury was incorrect? It wasn't ten minutes?

313 A. *I can't remember.*

314 Q. Then according to your testimony I just [245.1] read to you, you went back into the room and
315 you cleaned up. Do you recall that testimony?

316 A. *Right.*

317 Q. How long would that have taken you to clean up?

318 A. *Five, ten minutes.*

319 Q. So another five or ten minutes?

320 A. *(Witness nods head up and down.)*

321 Q. So using your testimony that I have just read to you from the grand jury and your testimony
322 today, we would have been talking anywhere from 10 to potentially 20 minutes between the time that
323 you saw the legs in the shower and the time that you first spoke with Janitor A?

324 A. *No, it wasn't that long. It was shortly after.*

325 Q. So you're saying —

326 A. *It was shortly after they had left. That's when I met Janitor A. That couldn't have*
327 *been no more than five minutes.* [Janitor B told the grand jury (see above) that he went back in and
328 finished cleaning the shower room before he spoke with Janitor A, but at trial he said he did not clean
329 the shower room before he spoke with Janitor A, but there was a delay, as he says here, of “no more than
330 five minutes” between the time Sandusky left the locker room and the time Janitor B spoke with Janitor
331 A.]

332 Q. That's why I'm trying to understand this. Your testimony is you saw the legs in the shower,
333 correct?

334 A. *Right. [246.1]*

335 Q. And you went back out and waited for whoever was getting a shower to finish?

336 A. *Right. They were in maybe five minutes or so.*

337 Q. Even though you told the grand jury it was approximately ten minutes?

338 A. *I was just trying to remember ten years ago.*

339 MR. McGETTIGAN: Objection. I don't believe he's accurately stating the grand jury testimony,
340 frankly.

341 THE COURT: I think he just read it. We'll rely on the jury's recollection. I think we can move on to

Janitor B trial testimony, June 13, 2012

342 the next question.

343 MR. AMENDOLA:

344 Q. So your testimony today is it was shorter than ten minutes waiting for the people in the shower

345 —

346 A. *Correct.*

347 Q. — to get done?

348 A. *Correct.*

349 Q. And the cleaning up that you did in the shower didn't take ten minutes. It took five minutes?

350 [247.1]

351 A. *Right.*

352 Q. And then afterwards you spoke with Janitor A?

353 A. *Pardon me?*

354 Q. Afterwards you spoke with Janitor A?

355 A. *No. I spoke to him before I went back in. I was starting to go back in and that's*
356 *when I met Janitor A.*

357 Q. Was anyone else with you when Janitor A first spoke with you?

358 A. *No. Because he worked alone in that area.*

359 Q. How much later was it that Janitor C was involved in the conversation with you and with
360 Janitor A?

361 A. *I can't recall.*

362 Q. Give us an approximation? Minutes? Hours?

363 A. *I would say 15 minutes to a half hour.*

364 Q. So about 15 minutes before Janitor C was involved?

365 A. *Yes.*

366 Q. To your knowledge, that's when Janitor A mentioned it to him or you mentioned it to Janitor
367 C? [248.1]

368 A. *Right.*

369 Q. Thank you.

370 A. *You're welcome.*

371 MR. AMENDOLA: That's all I have.

Janitor B trial testimony, June 13, 2012

372 MR. McGETTIGAN: May I have a one moment, Your Honor?

373 THE COURT: Yes.

374 MR. McGETTIGAN: May I inquire of counsel, I'm looking for something that he seemed to indicate
375 was in the grand jury testimony. I haven't found it.

376 **REDIRECT EXAMINATION**

377 BY MR. McGETTIGAN:

378 Q. I neglected to ask, may I, on my earlier questions. Did you note the size of the little boy? Can
379 you tell how tall the little boy was that you saw walking out with the defendant when he at some point
380 held his hand? And I'll ask you to use yourself or me, how high on the defendant did he come up?
381 Waist high, middle of the torso?

382 **A. I would say almost to his shoulder.**

383 ...[249.21]

384 Q. Okay. And then the [grand jury] question was: Okay.

385 And you said: SO I WENT BACK OUT IN THE HALL. I NOTICED JANITOR A [inside the locker
386 room]. HE WAS ALREADY IN THERE. HE WAS IN CLEANING THE TOILET STALLS. I THINK THERE WERE
387 THREE OR FOUR STALLS IN THERE. SO I [250.1] WENT OUTSIDE TO WAIT. I STARTED GETTING MY
388 CLEANING STUFF DONE. SO I WAITED, YOU KNOW, APPROXIMATELY TEN MINUTES OR SO.

389 So the ten minutes you are talking about was when you were waiting before Mr. Sandusky
390 came out of the shower?

391 **A. Right.**

392 Q. Not before you saw Janitor A after Mr. Sandusky —

393 **A. Right.**

394 Q. — left the shower?

395 **A. That's how it was.**

396 Q. Okay. Thank you very much.

397 MR. McGETTIGAN: Have nothing further, Your Honor.

398 MR. AMENDOLA: Nothing, Your Honor.

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

400 **THE WITNESS: Thank you.**

2. Janitor B's story (excerpts from his testimony).

Direct examination, lines 51 – 120.

Q. Now, can you tell the ladies and gentlemen of the jury what happened that night as you were getting ready to clean the staff shower, locker, toilet area? Can you do that?

A. Okay. I came down the hall with my cleaning stuff. I had a cart. I had my cleaning stuff on the cart with the hose. I would always go in and hook up the hose, go in and there was a hose hookup under the sink. So that's what I did first.

When I entered the room I could hear the showers running. . .[226.1]. . . . And when I hooked the hose up, I could hear Janitor A in the toilet area cleaning. . . .

So I hooked the hose up. Started walking over towards the shower, and I just about went in the shower, and I could see two sets of legs in there. So I dropped my hose and just backed out. Went back outside in the hall area. And continued to mix my chemicals to clean.

...[227.24]

Q. Okay. Did anybody come out while you were standing there? [228.1]

A. Yes.

Q. Who came out?

A. Jerry Sandusky and a small boy. [This "small boy" stood almost to Sandusky's shoulders according to this same Janitor B.]

Q. Okay. Did you see them come out —

A. Yes.

Q. — with your eyes?

A. Right. I said, "good evening, coach." If I ever see him, I call him coach.

Q. Okay. And did you see which way the defendant, Sandusky, and the little boy went?

A. Yes. They exited the door and then took a right, went out the long hallway towards double doors where the stairs go up to coaches' offices and that [= and such].

Q. Did you watch them walk down the hallway?

A. Yes, I did.

Q. What, if any, physical contact did you see when, between the two, when they were walking down the hallway?

A. *About three-quarters of the way down, Jerry took the boy's hand and as they walked out through the doors, and of course, the doors closed and then, of course, I never — I didn't see them again. [229.1]*

Q. Did you notice anything [about] their appearance as they walked out of the shower area?

A. *Yeah, both of their hair — it was wet and they were carrying gym bags at the time, yes.*

Q. Okay. Now, after that, did you see Janitor A?

A. *Yes, shortly after. I finished the chemicals and I grabbed my bottle and I started in the door and Janitor A was coming out. There's double doors there before you go in to the locker and I met Janitor A in between the two doors, between the hall [outside the first door] and [the doorway of the second door] where you entered the locker area. And I could see he was upset. His face was white. His hands was trembling. I thought it was a medical condition. I said, "Janitor A, what's wrong?" And this is how he said it to me. He said, "[Janitor B nickname]," — that's my nickname. He said, "[Janitor B nickname], I just witnessed something in there I'll never forget the rest of my life." I said, "What are you talking about, Janitor A." He said <<that man that just left, he had this — the boy up against the shower wall licking on his privates.>> I said, "Are you sure that man that just left?" He said, "I'm sure." I said, "You know who that is?" I said, "That's Jerry Sandusky." He didn't know [230.1] who he was[,] but he knows what he seen that night. [How would Janitor B know that Janitor A "knows what he seen that night"?]*

Cross examination, lines 228–241.

Q. When you went in, when you first went in and saw people in the shower, I guess you couldn't actually see them. Can you describe — I think you said — your testimony was you saw legs?

A. *Legs, yes.*

Q. Is that because there was a curtain?

A. *There's no curtain in there.* [referring to the support staff locker room showers.]

Q. So it's open?

A. *Right.*

Q. Did you see bodies? Did you see full bodies of the people in the shower?

A. *No. What it is, you go in and there's just a small wall to the left side and it kind of shields the people in there. But the rest of it from there is all open and whenever I got to that place, that little wall, that is when I seen the legs and then I backed out.*

Q. So you just saw the bottom part of the people in the shower?

A. *Yeah, the bottom up to their knees, yeah, because I had my head down carrying the hose and then I backed out.*

Lines 301–303.

Q. How long after you saw the legs in the shower — Janitor B, how much time passed between then and when you went back into that room to clean up the room?

A. *Probably about five minutes.*

3. Analysis of Janitor B's story.

In Figure 2 below, **B₁** **B₂** **B₃** and **B₄** are four locations of Janitor B. **A₁** and **A₂** are two locations of Janitor A. The location in the shower room of Sandusky is not shown because Janitor B's testimony allows that Janitor B might have seen Sandusky and the boy just about anywhere in the shower room, this because of the direction Janitor B said he was looking, that is, down at the floor. I have arbitrarily located Janitor A inside the one and only toilet stall while Janitor B was in the locker room the first time. But he could have been cleaning the urinals at that time since all Janitor B said regarding the location of Janitor A is "*And when I hooked the hose up, I could hear Janitor A in the toilet area cleaning.*"

Now janitors who clean toilets and urinals typically have equipment that would be clearly visible to Sandusky and the boy. The toilet and urinals in this locker room are, as can be seen from Figure 2, just a few feet from the entrance to the shower room. So Janitor A would have been

clearly visible from inside the shower room as he went about his task of cleaning the toilet and urinals. And not only could Janitor A be seen by Sandusky, he could be heard: Janitor B said that when he entered the locker room the first time he could hear Janitor A cleaning in that area. So it is incredible to believe that Sandusky and the boy were unaware of Janitor A's presence.

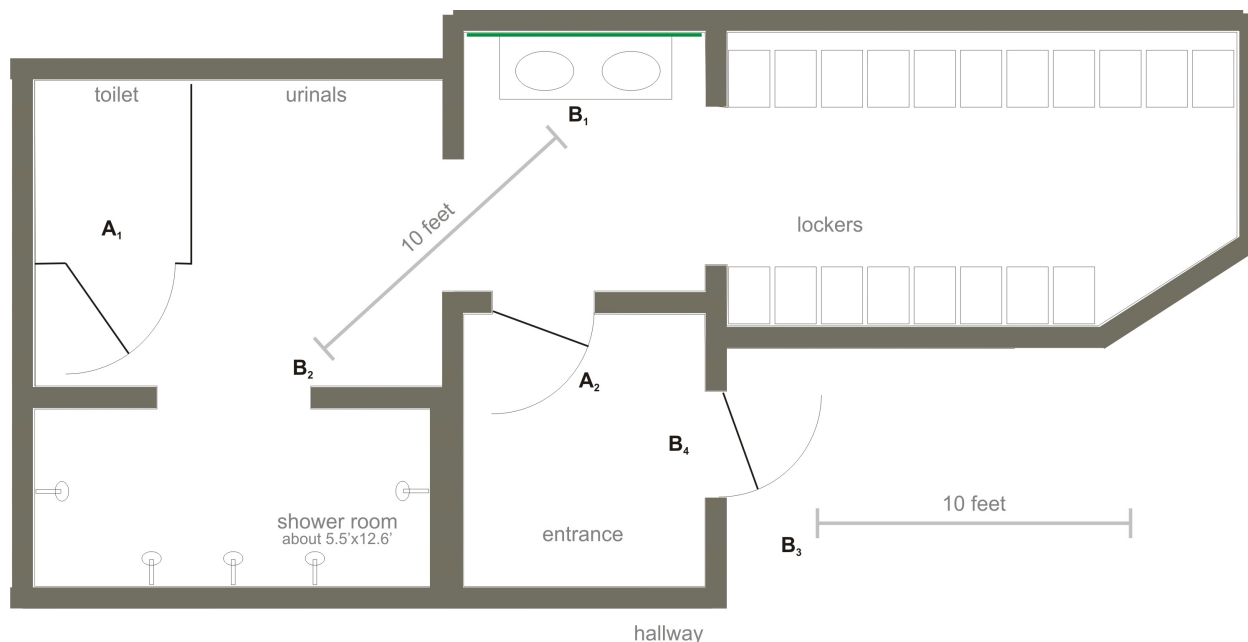


Figure 2. Support staff locker room.

Now it is beyond belief that Sandusky would abuse a boy knowing that a witness was present. So we may immediately conclude that the alleged crime did not happen.

But wait. For the sake of argument, let us suppose that Sandusky thought that the janitor who had been cleaning toilets was also the janitor who dropped the hose and went out into the hall, and that Sandusky thought he was momentarily alone with the boy. Is it reasonable to suppose that he took this opportunity to abuse the boy? Well, Janitor B said that when he met Janitor A in the entrance hall, Janitor A said he had "*just* witnessed" child abuse by the man who had "*just* left." This seems to allege that abuse occurred in the time between when Janitor B entered the locker room to clean the shower and the time Sandusky and the boy exited the shower. How

long a time is that? Janitor B said at trial that from the time he saw legs in the shower room to the time he met Janitor A in the entrance hall was about 5 minutes. During those few minutes, Sandusky and the boy completed their shower, dried off enough to dress, got dressed, left the locker room, and walked down a long hallway. That would consume most or all of five minutes. And that does not leave much time for child abuse, if it leaves any time at all. True, this analysis of the amount of time available does not prove abuse did not happen, but it does make it doubtful.

But the supposition made above for the sake of argument is suspect. Sandusky had been at Penn State for many years and doubtless knew that two janitors normally cleaned the locker rooms, not one. So it is not likely that he would suppose that the janitor who dropped the hose was the same janitor who cleaned the toilet and urinals. Nor is it likely that he would suppose that this particular evening was one of those rare times when one janitor was doing double duty. Of course it is conceivable that Sandusky thought that the first janitor had finished his work and left the locker room for good, so he only had the shower-cleaning janitor to worry about. But as explained in PART III above, this shower room, and indeed, this whole locker room has no safe locations in which to abuse a child, and it is unlikely child abuse has ever occurred in this locker room, or ever will. Of course one can imagine that this particular evening Sandusky was an exception to the rule, but the odds of that are pretty low, so low that we can say beyond reasonable doubt that the alleged abuse did not happen.

Knowing to the limit that we can know, then, that the alleged crime did not occur, let us look at Janitor B's testimony and see if we can find clues within what he says that betray probable falsehood. Falsehood could arise from two sources. (1) Janitor A's accusation could be false, and (2) Janitor B's testimony could be false.

If Janitor A's accusation was actually made, but was false, there are two explanations that come to mind: he mistook legal activity for illegal, or he lied. The first option, mistaking legal activity for illegal, is pretty hard to believe considering the graphic description of the crime in Janitor B's

testimony. So this leaves us with option 2, Janitor A lied. And as I explained in PART V above, there is a reason to believe that he lied.

As for Janitor B, only three reasons why his testimony could be false come to mind: either he misunderstood an actual report by Janitor A, or he intentionally altered an actual report by Janitor A, or he manufactured a report and put it in Janitor A's mouth. Option 1, misunderstanding, seems unlikely considering the graphic nature of what Janitor B says Janitor A said. And altering a benign report into a criminal report is, in a sense, a manufactured report. So if Janitor B is lying, it is probably because he has manufactured the report and put it into the mouth of Janitor A. Let us see, therefore, whether there is anything in Janitor B's testimony that would suggest he manufactured the accusation he claims Janitor A made to him.

On May 19th, 2011, a little over a year before he testified at trial, Janitor B testified before a grand jury. Excerpts from that testimony were read into the record at trial. These excerpts are found in transcript lines 252 – 310 above. They provide at least three reasons to suspect that Janitor B has manufactured the alleged crime he says Janitor A reported to him.

1. Janitor B told the grand jury in 2011 that the crime occurred in the *coaches'* locker room, but he testified at the trial in 2012 that the abuse occurred in a different locker room, namely, the *support staff* locker room. The shower room in the coaches' locker room apparently has shower stalls, apparently with shower curtains, which makes it hard to explain how Janitor A might have seen abuse. By changing his story to place the alleged abuse in the support staff locker room, where the shower room has no stalls or curtains, this problem goes away. (But it raises a new problem for Janitor B's story that has already been explained above, a problem Janitor B probably did not anticipate: in the 2012 story, Sandusky can see and hear that a third party, Janitor A, is present, and that makes abuse incredible.)

2. Janitor B told the grand jury in 2011 that after Sandusky and the boy left the locker room and walked down the hall, he went back into the locker room and cleaned the shower room, and it

was only when he was done cleaning the shower room and while he was packing up his equipment that Janitor A came up to him and accused Sandusky. But at trial in 2012 he said Janitor A met him and accused Sandusky before he so much as started cleaning the shower room. Now in the 2011 story, the abuse allegedly occurred in the coaches' locker room which has three or four toilets plus urinals. By contrast, the 2012 story occurs in the support staff locker room which has only one toilet and a few urinals. So in 2011, in the larger locker room, Janitor A needed to be in the locker room quite a bit longer to do his cleaning than he needed in 2012. So Janitor B may have reasoned that if he tells the jury in 2012 the same story that he told the grand jury in 2011, namely that he went back in and finished cleaning the shower and then Janitor A came up to him and accused Sandusky, the defense lawyer or the jurors might wonder why it took Janitor A so long to clean this small locker room—why was he still there? So if Janitor B has fabricated his story, then to prevent this obvious problem from arising as to why Janitor A was still around, Janitor B simply changed his story and said Janitor A accused Sandusky before Janitor B cleaned the shower. (But this change produced an unanticipated problems already noticed above: in the 2012 story there is so little time available for Sandusky to abuse the boy that it makes abuse unlikely.)

3. Yet another clue that Janitor B fabricated the accusation against Sandusky is that he told the grand jury in 2011 that he could not see more than the lower legs of Sandusky and the boy because his view was *blocked*, this according to the grand jury presentment, which says, “He could only see two pairs of feet; the upper bodies were blocked.” (Since none of the shower rooms has shower stalls, it would be interesting to know what the blockage was.) But to the trial jury in 2012 he said he could only see legs because he was *bent over* while he was carrying the cleaning hose toward the shower room. By this change he is able to retain his claim that he only saw legs. (But whereas the 2011 story as to why he only saw legs is inherently credible, supposing there was indeed something in 2001 in the assistant coaches locker room shower that blocked upper bodies but not lower legs—did Janitor B (wrongly) think there were shower stalls in that shower room?—the 2012 story is inherently suspect.)

But perhaps the most telling of all clues that Janitor B's testimony is probably false, and, indeed, is probably a complete fabrication, is this marvelous statement beginning at line 117 (the first four sentences recount conversation between Janitor B and Janitor A in 2000; the last sentence was addressed to the jury in 2012):

I said, "Are you sure that man that just left?" He said, "I'm sure." I said, "You know who that is?" I said, "That's Jerry Sandusky." He didn't know who he was[,] but he knows what he seen that night.

Now one has to ask, how might Janitor B be able to confidently say to the jury concerning Janitor A, "he knows what he seen that night"? Is this merely a comment expressing how credible he supposed Janitor A to be? Or is it, instead, an inadvertent revelation that words purported to be those of Janitor A are not Janitor A's words at all, but are actually Janitor B's words put into Janitor A's mouth long after Janitor A developed dementia and could no longer confirm or deny words alleged to be his.

So did Janitor B fabricate the whole story about alleged victim 8? If he did, he had help from other janitors who, though they did not testify at the trial, did over a decade after the event, according to the prosecutor, say that back in 2000, Janitor A did in their presence accuse Sandusky of child abuse.

As explained elsewhere more than once in this analysis, we can do no more than assess relative probabilities. It is highly unlikely that Sandusky abused a boy knowing a janitor was present. And it is also improbable that he would abuse a boy during a time he knew to be of uncertain but probably short duration: the time when a janitor left the locker room clearly intending to be back soon. And there are obvious problems with Janitor B's testimony. So it is far more reasonable to suppose that Janitor A lied or Janitor B fabricated the story than to believe that Sandusky abused alleged victim 8 in the support staff locker room.

It is a reasonable conclusion, therefore, and this is a conclusion that is beyond reasonable doubt, that the allegation of child abuse of alleged victim 8 is a false allegation.

Appendix Y. A note on McQueary's trial testimony.

This appendix is expected to be temporary. Eventually I expect to work its content into the main body of this analysis.

Unlike in his previous testimony, McQueary explicitly said at trial that he believes Sandusky was engaged in anal intercourse. But anal intercourse is incredible based on McQueary's testimony. McQueary testified at the preliminary hearing that the boy's feet were on the floor. So in order for Sandusky to engage in anal intercourse with a boy a foot shorter than himself whose feet were on the floor, he would have to crouch down so that his hips were more than six inches lower than when standing normally, and the angle of entrance to an anus is such that Sandusky would have had to thrust upward in order to penetrate it. The amount of crouching required to perform this feat is so great that it would be very obvious, so obvious that it is virtually certain that if Sandusky had been crouching down enough to perform anal intercourse, McQueary would have noticed it and would have testified that he saw Sandusky crouched down. But he did not say this at the preliminary hearing and did not say this at the trial. So probably Sandusky was not crouched down. And not crouched down means not engaged in anal intercourse. And if McQueary has said or begins to say that Sandusky was crouched down, we have reason to doubt that such a memory is accurate for reasons explained in PART III above.

— end of appendices —