

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

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

VS :

GERALD A. SANDUSKY :

TRANSCRIPT OF PROCEEDINGS
(Jury Trial)
(Day 8)

BEFORE: John M. Cleland, Senior Judge

DATE: June 21, 2012

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

APPEARANCES:

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

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

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

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INDEX TO THE WITNESSES

DIRECT CROSS REDIRECT RECROSS

COMMONWEALTH:

(None)

DEFENDANT:

(None)

INDEX TO THE EXHIBITS

ADMITTED

COMMONWEALTH:

(None)

DEFENDANT:

(None)

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

2 (Whereupon, the following discussion was
3 held in chambers:)

4 THE COURT: We'll note for the record
5 that I'm with counsel in chambers before closing
6 arguments and the charge to the jury.

7 Counsel have agreed that the Court will
8 charge the jury on the law before they make
9 closing arguments which will permit counsel to
10 focus their arguments on facts rather than
11 predicting what the legal instructions will be.

12 I have distributed my draft charge to
13 counsel yesterday afternoon. They have had now
14 almost 24 hours to review it and offer comments.

15 Counsel for the defense has asked that
16 the charge be amended to add language involving
17 impeachment for prior conviction as bearing on
18 credibility. That will be granted.

19 Counsel for the defense has asked that a
20 false in one, false in all charge be added. I
21 believe that is covered in the general
22 credibility charge that I will offer.

23 And counsel has asked for -- the defense
24 has asked that a language will involve bad
25 reputation be used for the jury in considering

1 impeachment. That will be added as well.

2 The defense has requested a charge on
3 failure to make prompt complaint in certain
4 sexual offenses. That will be denied because in
5 my view the research is such that in cases
6 involving child sexual abuse delayed reporting is
7 not unusual and, therefore, is not an accurate
8 indicia of honesty and may be misleading.

9 Counsel for the defense has also asked
10 that the jury be instructed on counts 36 through
11 40 involving Victim 8 that they may only convict
12 if they are satisfied that the hearsay statements
13 of the janitor, Mr. Calhoun, are corroborated by
14 other direct evidence. I had previously ruled
15 that such evidence does exist in the record and
16 may be considered by the jury. That would not
17 preclude, however, the jury from concluding that
18 they do not believe the other direct evidence
19 and, if that were the case, they could justify a
20 finding of not guilty and, therefore, I will
21 offer the jury that instruction to state that
22 they may only convict if -- to the effect that
23 they may only convict if they also believe that
24 there's other direct evidence supporting
25 Mr. Calhoun's statement.

1 Counsel have agreed to reserve
2 objections to each other's closing arguments
3 unless they're patently egregious.

4 I have been requested by the
5 Commonwealth to add a circumstantial evidence
6 charge. I will decline to do that at present.
7 However, depending on how the arguments develop,
8 may do that at a later time if it's appropriate
9 to do so to provide guidance to the jury.

10 Counsel have agreed that the transcript
11 of the Costas interview may be used by either
12 side during closing arguments. The form of that
13 transcript will be the testimony as actually
14 played in open court minus the question and
15 answer which was repeated -- strike that. Minus
16 one set of the question and answer that was
17 repeated.

18 MR. AMENDOLA: Erroneous.

19 THE COURT: Erroneously, as a result of
20 the slicing error.

21 MR. McGETTIGAN: I'm not reading it
22 twice. It's not like I'm going to read it twice.

23 THE COURT: Is there anything else,
24 Mr. Fina, that you want to place on the record?

25 MR. FINA: No, Your Honor.

1 MR. ROMINGER: Mr. Amendola had raised
2 the idea that defendant's character or reputation
3 evidence alone would be enough to raise a
4 reasonable doubt and it didn't have to be waived
5 with all other evidence in the case. We would
6 add that you propose good character made by
7 itself raises a reasonable doubt and require a
8 verdict of not guilty in and of itself, and then
9 you could weigh and consider the evidence of
10 other character but still reach a verdict on
11 character evidence alone.

12 THE COURT: The motion is denied. The
13 language will be given in the form of the
14 standard jury instructions.

15 MR. ROMINGER: On counts 36 through 40,
16 No. 8, the Bill of Particulars specified that it
17 took place on November 20th through November 27,
18 2000. We believe the Commonwealth's bound to
19 prove --

20 THE COURT: I have already ruled on that
21 and a written order was filed of record. So the
22 objection is reserved and it's ruled on.

23 MR. ROMINGER: Ask that the jury be
24 instructed on that issue.

25 THE COURT: That's denied.

1 MR. ROMINGER: Nothing else.

2 THE COURT: Off the record.

3 (Whereupon, a discussion was held off
4 the record.)

5 (End of discussion in chambers.)

6 THE COURT: We'll be in session. You
7 may be seated. Bring the jury in.

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

10 THE COURT: If would you like to move
11 into that seat, you can feel comfortable doing
12 that.

13 I will remind everyone present this
14 morning that under the revised decorum order that
15 is now online, no one will be permitted to leave
16 the courtroom during the closing charge during
17 the arguments of either attorney or be permitted
18 to enter once those arguments have begun.

19 Under the Rules of Court promulgated in
20 Pennsylvania, you are not permitted to take notes
21 during my charge to you, although you are
22 permitted to take notes during the attorneys'
23 closing arguments, and we'll give you your
24 notebooks back during the recess.

25 But I will be giving you some aids that

1 will assist you when you do your deliberations.
2 You will have, for example, a list by child with
3 each crime alleged to have been committed against
4 each child. You will have a work sheet of each
5 crime with the list of questions which you must
6 answer before you can enter a verdict with regard
7 to that crime. And, of course, you'll have a
8 verdict slip which by count number identifies the
9 crime and indicates whether you should find the
10 defendant guilty -- whether you have found the
11 defendant guilty or not guilty. So you'll have
12 some written aids to assist you even though you
13 can't take notes about what I'm about to say to
14 you.

15 So try to consider what I am saying to
16 you as a whole and any questions that you have,
17 you'll have an opportunity to put in writing and
18 I'll address later to you, if need be, once you
19 have begun your deliberations.

20 So the purpose of my comments now is to
21 give you instructions on the law that you must
22 apply and then we're going to take a 20-minute
23 recess. Counsel for the defense will present his
24 closing arguments. We'll take another 20-minute
25 recess. Counsel for the Commonwealth will

1 present their closing argument. At that point
2 I'll give you some final instructions, and then
3 you will begin your deliberations which I
4 anticipate will be sometime between 12:00 o'clock
5 and 1:00.

6 My instructions to you begin with two
7 fundamental principles of our system of criminal
8 law.

9 The first fundamental principle is that
10 your verdict must arise from your own independent
11 conscientious review of the facts and the
12 application of the law, the application of your
13 own good common sense, the recognition of the
14 oath that you took as jurors to try this case
15 fairly, impartially, and honorably because we all
16 rely on your integrity and your good judgment.

17 The second fundamental principle is that
18 under our system of criminal law the defendant is
19 presumed to be innocent. The mere fact that he's
20 been arrested, that he's been accused of a crime
21 is not any evidence against him. He is assumed
22 to be innocent throughout this trial and unless
23 and until you conclude, based on a careful and
24 impartial consideration of the evidence, that the
25 Commonwealth has proved to your satisfaction that

1 he is guilty beyond a reasonable doubt.

2 It's not the defendant's burden to prove
3 he's not guilty. It is the Commonwealth that
4 always has the burden of proving that he is
5 guilty by establishing each and every element or
6 fact sufficient to support the crime charged and
7 that he has been proven guilty beyond a
8 reasonable doubt.

9 The defendant, under our system of law,
10 is not required to present any evidence or to
11 prove anything in his own defense. The
12 Commonwealth has the burden of proving the
13 defendant's guilt. Therefore, if the
14 Commonwealth fails to meet its burden, then your
15 verdict must be not guilty. On the other hand,
16 if the Commonwealth does prove beyond a
17 reasonable doubt the defendant is guilty, then
18 that must be your verdict as well.

19 Now, although the Commonwealth has the
20 burden of proving the defendant is guilty, it
21 does not have the burden of proving its case to
22 the point of eliminating all doubt or to a
23 mathematical certainty because we make few
24 decisions in life that are free from all doubt.

25 So what is a reasonable doubt?

1 A reasonable doubt is defined in the law
2 as a doubt that would cause a reasonably careful
3 and sensible person to hesitate before acting
4 upon a matter of importance in his or her own
5 affairs. A reasonable doubt must fairly arise
6 out of the evidence that was presented or out of
7 the lack of evidence presented with regard to
8 some specific element of the crime.

9 A reasonable doubt is a real doubt, a
10 reasoned doubt. It's not an imagined doubt or a
11 doubt based on speculation or a doubt
12 manufactured to avoid carrying out what you might
13 deem to be an otherwise unpleasant
14 responsibility.

15 Therefore, it is not enough that the
16 Commonwealth's evidence merely casts doubt on the
17 innocence of the defendant or that it leaves you
18 believing simply that he is probably guilty.
19 Rather, to find the defendant guilty beyond a
20 reasonable doubt, you must be convinced of his
21 guilt to the same degree you would be convinced
22 about a matter of importance in your own life in
23 which you would act with confidence and without
24 restraint or without hesitation.

25 So to summarize, you may not find the

1 defendant guilty based on a mere suspicion of
2 guilt. The Commonwealth has the burden of
3 proving the defendant is guilty beyond a
4 reasonable doubt. If it meets that burden, then
5 the defendant is no longer presumed innocent and
6 you should find him guilty. On the other hand,
7 if the Commonwealth does not meet this burden,
8 then you must find him not guilty.

9 Now, I will submit that at some point in
10 your deliberations you'll have to confront the
11 question: When does otherwise innocent conduct
12 become criminal? Perhaps I can offer some
13 guidance that might be useful.

14 Let us begin with the obvious
15 proposition that it is not necessarily a crime
16 for an adult to touch a child. It's not a crime,
17 for example, for a downhill skiing racing coach
18 to take hold of a child's leg to demonstrate how
19 to properly position it over a ski or for a
20 wrestling coach, in very close contact with an
21 athlete, to demonstrate a wrestling move or for a
22 teacher to put a comforting arm around a crying
23 child.

24 Now, it is obviously a crime, as I will
25 explain to you, for a man to have oral sex with a

1 boy or for the man to have the boy perform oral
2 sex on him. And if you believe that testimony
3 that it happened in this case, then you may find
4 the defendant guilty.

5 But other forms of physical contact are
6 more problematic. It's not necessarily a crime,
7 for example, for a man to take a shower with a
8 boy. It's not necessarily crime for a man to
9 wash a boy's hair or to lather his back or
10 shoulders or to engage in back rubbing or back
11 cracking.

12 If you believe the defendant does those
13 things -- did those things, it does not
14 necessarily mean that you must find the defendant
15 guilty. You may believe he exercised poor
16 judgment, but poor judgment does not in and of
17 itself amount to criminality.

18 Similarly, an adult's behavior is not a
19 crime simply because the behavior of the adult
20 makes the child feel uncomfortable. A child's
21 reaction may be evidence for you to consider in
22 deciding whether a crime has been committed but
23 it's not determinative. What makes this kind of
24 ambiguous contact a crime is the intent with
25 which it is done. You must distinguish an

1 expression of familiar or family affection from
2 an act of lust. A display of innocent affection
3 is not a crime, but what appears to be otherwise
4 innocent conduct when performed with a sexual
5 motive, when performed with the intent to
6 sexually arouse an adult and to satisfy an adult's
7 sexual desires at the expense of a child, that is
8 a crime.

9 The test of criminality is not what the
10 child felt, either then or now, it's about what
11 he testified happened to him. The critical issue
12 is not whether the child felt uncomfortable
13 because it is not inconceivable that a child like
14 an adult could be made to feel uncomfortable by
15 an innocent act or to made to feel uncomfortable
16 by an act that was insensitive perhaps but not
17 criminal.

18 So the issue is not what the child felt.
19 The issue is what the defendant intended. It is
20 the defendant's intent, not the child's reaction,
21 that determines if a crime was committed. Of
22 course, how a child reacted is not irrelevant to
23 the extent it assists you in assessing the
24 defendant's attempt, you may consider.

25 If you decide that the defendant engaged

1 in the various behaviors that have been described
2 during the trial, then you must decide which
3 acts, if any, he did with the intention to
4 satisfy his own sexual desires. Any behavior
5 motivated by sexual desire was a crime. If he
6 did not act out of sexual desire, then he
7 committed no crime even if he did display poor
8 judgment.

9 Your job is to consider all of the
10 evidence presented in this case and regarding
11 each charge presented and decide whether the
12 defendant engaged in the conduct alleged and, if
13 so, whether he did that with a criminal intent.

14 In assessing the evidence, you may
15 consider that the testimony of any child alleging
16 criminal conduct standing alone, if you believe
17 it, is sufficient proof upon which you may find
18 the defendant guilty. The testimony of a victim
19 in a case such as this does not need to be
20 corroborated by other evidence in order to
21 sustain a conviction.

22 Now, as judges of the facts, you are
23 also the judges of credibility of the witnesses
24 and of their testimony. This means that you must
25 judge the truthfulness and the accuracy of each

1 witness's testimony and decide whether to believe
2 all of it, part of it, or none of it. So, how
3 you may ask do you go about doing that? Well,
4 there are many factors that you may or should
5 consider when judging credibility and deciding
6 whether or not to believe a witness's testimony.

7 You might consider, for example, was the
8 witness able to see or hear or know the things
9 about which he or she testified?

10 How well could the witness remember and
11 describe the things about which he or she
12 testified?

13 Did the witness testify in a manner that
14 was convincing to you?

15 How did the witness look and act and
16 speak while testifying?

17 Was the witness's testimony uncertain,
18 confused, self-contradictory, argumentative,
19 evasive?

20 Has the witness ever been convicted of a
21 crime involving dishonesty?

22 What is the witness's reputation for
23 testifying -- or for truthfulness in the
24 community among those who know the witness?

25 How well does the testimony of the

1 witness square with other evidence in the case,
2 including the testimony of other witnesses? Was
3 it contradicted or supported by the other
4 testimony in evidence which you believe to be
5 true?

6 Did the witness have any interest in the
7 outcome of the case, anything to gain or lose by
8 the outcome of the case? Any bias, any
9 prejudice, or any other motive that might affect
10 his or her testimony?

11 If you believe that a witness testified
12 falsely about an important issue, then you may
13 keep that in mind in deciding whether to believe
14 the remainder of the witness's testimony.

15 A person who testifies falsely about one
16 thing may have testified falsely about other
17 things but that is not necessarily so but that's
18 among the factors that you can consider.

19 And, finally, after thinking about all
20 the testimony and considering some or all of the
21 factors that I had mentioned to you, you draw on
22 your own experience, your own common sense, and
23 you alone, as the sole judges of the facts,
24 should give the testimony of each witness such
25 credibility as you think that it deserves.

1 Now, you recall that I permitted
2 Dr. Atkins and Dr. O'Brien to testify as an
3 expert witnesses. An expert witness is a person
4 who has special knowledge about a subject that
5 that witness has acquired as a result of
6 education, training, and experience.

7 Because an expert has that special or
8 out of the ordinary knowledge or skill, he may be
9 able to offer you specialized information or
10 explanations and opinions that will help you
11 decide this case. While other witnesses testify
12 about facts, experts can express opinions. But
13 you as the sole jurors of the credibility of
14 witnesses and weight of the testimony decide
15 whether or not you want to believe or accept the
16 testimony even of a witness which I and counsel
17 referred to as an expert.

18 When you are determining the credibility
19 and weight of the expert's testimony and opinion,
20 you should consider all the factors that I
21 described earlier that are relevant in evaluating
22 the testimony of any witness. You might also
23 consider other things bearing on the credibility
24 and weight of the witness including their
25 training, education, experience, ability,

1 background, any bias or interest.

2 You might also consider the source and
3 reliability of the information on which the
4 expert based his opinion.

5 Now, the testimony and opinions of
6 Dr. Atkins and Dr. O'Brien seemed to conflict
7 with each other. If you decide that the conflict
8 is more than superficial, that the conflict is
9 real and irreconcilable, you may decide what
10 parts, if any, of the contradictory testimony and
11 opinions you choose to believe.

12 In doing this you should consider the
13 relative credibility of the experts and his
14 testimony and opinions and, of course, as I
15 mentioned, you are free to disregard the
16 expert -- the testimony of either or both
17 experts.

18 As I noted, Dr. Atkins and Dr. O'Brien
19 seemed to express conflicting opinions. Whether
20 those opinions conflicted is up to you. But
21 they -- but they expressed opinions regarding
22 their diagnosis of Mr. Sandusky. I want to be
23 sure that I have a clear understanding of the
24 purpose of that evidence and how you may consider
25 its effect and apply it during your

1 deliberations.

2 First, I repeat that you're not required
3 to accept the testimony of a witness simply
4 because he's been qualified as an expert. It's
5 up to you to assess the credibility of the expert
6 and decide whether the testimony is worthy of
7 belief.

8 Second, Dr. Atkins testified that
9 Mr. Sandusky has a histrionic personality
10 disorder. The purpose of that evidence was to
11 offer an explanation about why he sent letters to
12 Brett Houtz. The Commonwealth has characterized
13 these as love letters and the defense presented
14 Dr. Atkins to offer his contrary opinion that
15 they might also be considered as manifestations
16 of Mr. Sandusky's personality disorder rather
17 than as love letters.

18 Third, if you believe Mr. Sandusky
19 committed any of the various sexual acts for
20 which he has been charged, you may not use the
21 testimony of Dr. Atkins to justify those acts or
22 to excuse those acts or to conclude that
23 Mr. Sandusky did not have the necessary intent to
24 commit the acts and, therefore, find him not
25 guilty.

1 So even if you believe Mr. Sandusky
2 suffers from a histrionic personality disorder,
3 that is not a defense to any of the crimes
4 charged. The evidence was not presented for that
5 purpose and may not be used by you for that
6 purpose.

7 In a case where the defendant offers
8 mental illness as a defense to criminal charges,
9 he must first admit that he committed the
10 offenses and then offer the mental illness as a
11 defense. That did not happen in this case.
12 Mr. Sandusky has not admitted he committed the
13 offenses charged and, therefore, he cannot offer
14 mental illness as a defense.

15 So I specifically instruct you that even
16 if you believe Mr. Sandusky has been properly
17 diagnosed as having a histrionic personality
18 disorder, you may consider that evidence only to
19 help you to evaluate the purpose and content of
20 his letters to Brett Houtz. Any such diagnosis
21 is not a defense to the charges brought against
22 him. The diagnosis was only offered and may only
23 be considered as an alternative explanation of
24 why he sent the letters that had been introduced
25 into evidence.

1 Now, the defense has offered evidence
2 tending to prove that the defendant is of good
3 character. I'm speaking of the defense witnesses
4 who testified that the defendant has a good
5 reputation in the community for being law
6 abiding, peaceable, nonviolent individual.

7 The law recognizes that a person of good
8 character is not likely to commit a crime which
9 is contrary to that person's nature. Evidence of
10 good character may by itself raise a reasonable
11 doubt of guilt and require a verdict of not
12 guilty.

13 So you must weigh and consider the
14 evidence of good character along with the other
15 evidence in the case and if on the evidence you
16 have a reasonable doubt of the defendant's guilt,
17 you may find him not guilty. However, if on all
18 the evidence you are not satisfied beyond a
19 reasonable doubt he is guilty, you should find --
20 that he is guilty, you should find him guilty.
21 But in making that determination, you may
22 consider evidence of good character which you
23 believe to be true.

24 The defendant has been charged with
25 violating several separate sections of the Crime

1 Codes encompassing some 48 counts involving ten
2 alleged victims. Not all charges are applicable
3 to all victims and as I mentioned for your
4 convenience, we will provide a list of victims by
5 name with the charges involving that child. Each
6 crime consists of a number of facts or elements
7 which you must find to have been proven to be
8 true beyond a reasonable doubt before you may
9 find the defendant guilty of that particular
10 crime.

11 Each count, each crime alleged stands
12 independently and should be separately
13 considered. You may find the defendant guilty on
14 all counts, not guilty on all counts, or guilty
15 on some counts and not guilty on other counts.

16 So I'll deal with each charge separately
17 and state for you the necessary elements or facts
18 which must be found to be true beyond a
19 reasonable doubt before you may return a guilty
20 verdict.

21 If during your deliberations you have a
22 question or feel that you need further assistance
23 or instructions from me, to clarify the elements
24 of the crime or the definition, you can simply
25 write your question on a sheet of paper, give it

1 to the tipstaff who will be standing outside the
2 door, who will give it to me, and then I'll take
3 appropriate action.

4 You will note that on the verdict slip
5 that is being sent out to you certain counts are
6 missing, specifically 16, 18, 19, and 33. That's
7 not a mistake. Those counts are not being
8 submitted for your consideration.

9 So what are the various charges
10 specifically? I dealt with them superficially in
11 the official charge to you when we opened the
12 case. Now I'll deal with them in a little more
13 detail. Again, you'll be getting these in a more
14 written helpful form. So don't think that you
15 have to memorize this as I go through some of
16 this complex language.

17 Involuntary deviate sexual intercourse
18 with a child over 12 and under 16.

19 A person commits involuntary deviate
20 sexual intercourse when a person engages in
21 sexual intercourse with a child who is over 12
22 but under 16 and the defendant is four or more
23 years older than the child. Under our Crimes
24 Code such an offense can be committed by a male
25 upon a male child.

1 To find the defendant guilty of this
2 type of involuntary deviate sexual intercourse,
3 you must be satisfied beyond a reasonable doubt
4 that the defendant had deviate sexual intercourse
5 with a child, that the child was older than 12
6 but under the age of 16, and that the defendant
7 was four or more years older than the child and
8 that the defendant and the child were not married
9 to each other, which is, of course, not disputed.
10 But it is a statutory element of the crime which
11 I must explain to you.

12 Deviate sexual intercourse has a
13 particular and precise meaning in our criminal
14 law. Deviate is a legal term which should not be
15 confused with deviant which often has a negative
16 connotation. For the purposes of this case,
17 deviate sexual intercourse occurs if a man's
18 penis penetrates the mouth or anus of a child.
19 For all forms of deviate sexual intercourse, the
20 slightest degree of penetration of the mouth or
21 anus is sufficient and no emission of semen is
22 required.

23 Although the crime is captioned
24 involuntary deviate sexual intercourse, it is
25 immaterial to this charge whether or not the

1 child objected or resisted or even whether the
2 child consented because when a child is under 16
3 and the defendant is at least four years older,
4 consent of a child is not a defense.

5 The second category of crimes is
6 indecent assault of a child.

7 The defendant has been charged with
8 indecent assault of a child. To find the
9 defendant guilty of this offense, you must find
10 the following elements have been proven beyond a
11 reasonable doubt:

12 First, that the child had -- first, that
13 the defendant had indecent contact with the child
14 or caused the child to have indecent contact with
15 him.

16 Second, that the child at the time was
17 less than 13 years of age.

18 Third, unlawful contact with a minor.

19 The defendant has been charged with
20 unlawful contact of a minor. To find the
21 defendant guilty of this offense, you must find
22 that each of the following elements has been
23 proven beyond a reasonable doubt:

24 First, that the defendant was
25 intentionally in contact the minor.

1 Second, that that contact was for the
2 purpose of engaging in an unlawful act,
3 specifically to commit sexual offenses which will
4 be described in more detail on the verdict slip.

5 Third, that either the defendant or the
6 child being contacted was within the Commonwealth
7 of Pennsylvania at the time.

8 Contact is defined as any direct or
9 indirect contact or communication by any means,
10 method, or device including contact or
11 communication in person or through an agent or
12 agency, through any print medium, the mail as a
13 common carrier or communication carrier, any
14 electronic communication system, and any
15 telecommunications, wire, computer, or radio
16 communication device or system. Very broad
17 definition of contact and the minor is defined as
18 an individual under the age of 18.

19 The next category is corruption of
20 minors.

21 The defendant has been charged with
22 corrupting a minor. To find the defendant guilty
23 of this offense, you must find that each of the
24 following elements has been proven beyond a
25 reasonable doubt:

1 First, that the child -- excuse me.

2 First, that the defendant was 18 years of age or
3 older at the time of the incident giving rise to
4 the charge.

5 Second, that the child was under 18
6 years of age at the time.

7 And, third, that the defendant corrupted
8 or tended to corrupt the morals of the child by
9 engaging in sexual contact with the child.

10 The next crime is endangering the
11 welfare of child.

12 The defendant has been charged with
13 endangering the welfare of a child as a course of
14 conduct. To find the defendant guilty of this
15 offense, you must find that each of the following
16 four elements has been proven beyond a reasonable
17 doubt:

18 First, that the defendant engaged in a
19 course of conduct of endangering the welfare of a
20 child by violating a duty of care, protection, or
21 support.

22 Second, that the defendant endangered
23 the welfare of a child knowingly. A person's
24 conduct is knowing when he or she is aware that
25 it is practically certain that his conduct will

1 cause a particular result.

2 Third, that the defendant was at the
3 time a parent, guardian, or person supervising
4 the welfare of the child.

5 And, fourth, that the child was under
6 the age of 18 years at the time the child was
7 endangered.

8 With regard to some counts of this
9 offense, you will be asked to conclude whether or
10 not the conduct was in a course of conduct or was
11 an isolated or singular act.

12 And, finally, attempted indecent assault
13 on a child less than 16 years of age when the
14 adult is four or more years older.

15 The defendant is charged with attempted
16 indecent assault of a child under 16 years of age
17 when the defendant is four or more years older
18 than a child. A person may be found guilty of
19 attempting to commit a crime even if the crime is
20 not actually committed. To be guilty of attempt,
21 the defendant must, first, have the intent to
22 commit the crime and, second, the defendant must
23 take a substantial step toward committing the
24 crime.

25 So regarding intent, a person cannot be

1 guilty of an attempt to commit a crime unless he
2 has a firm intent to commit a crime. If he's not
3 actually made up his mind or if he's uncertain or
4 wavering, he lacks the intent required.

5 Regarding the substantial step, he must
6 have intent and then he must take a substantial
7 step. A person cannot be guilty of an attempt to
8 commit a crime merely for thinking about
9 committing a crime. He must actually do
10 something that is a substantial step, a major
11 step toward the commission of the crime which
12 firmly corroborates your belief that he had the
13 intent to commit the crime even if he did not
14 complete it. An act can be a substantial step
15 even though additional steps would have been
16 taken -- would have been required to complete the
17 crime.

18 So what is the crime attempted? I had
19 previously describe it to you. It is indecent
20 assault on a child under 16 when the defendant is
21 four or more years older. That crime is defined
22 as the defendant had indecent contact with the
23 child or caused the child to have indecent
24 contact with him; that the child was under 16;
25 that the defendant was four or more years older;

1 and that the defendant and the child were not
2 married.

3 Indecent contact means that the
4 defendant must bring about a touching of the
5 sexual or other intimate parts of the body of one
6 of them by the other and that the defendant must
7 bring about that contact for the purpose of
8 arousing or gratifying his own sexual desires.
9 Such contact may be indecent even though the
10 clothing of the defendant or the victim prevents
11 their flesh from directly touching. Again,
12 consent of the child is not a defense and it is,
13 therefore, irrelevant whether the child consented
14 or even protested.

15 One more point, and then we're nearly
16 done with this phase. This relates to Counts 36
17 through 40. You recall that is the testimony
18 regarding Victim 8. The statements, the
19 testimony regarding the janitors in the shower
20 room and the hearsay statements of Mr. Calhoun
21 who was unable to testify but was related to you
22 by Mr. Petrosky.

23 The statement of Mr. Calhoun, as related
24 to you by Mr. Petrosky, is not sufficient
25 standing alone to sustain a conviction. You must

1 be satisfied that there is other evidence that
2 supports that a crime had been committed besides
3 Mr. Calhoun's hearsay statement. Now, you may
4 consider that statement but you must also be
5 satisfied that there is other evidence, either
6 direct or circumstantial, which satisfies you
7 that a crime has been committed.

8 So there's no misunderstanding,
9 circumstantial evidence is entitled to no lesser
10 weight than direct evidence. Circumstantial
11 evidence can support a verdict of guilt on any
12 count.

13 The example that I commonly use is, you
14 go to bed at night. There's a fresh layer of
15 snow in your yard. You get up in the morning.
16 You see deer tracks in the yard in the snow. You
17 did not see the deer there. You were asleep.
18 You saw the tracks. That's circumstantial
19 evidence that a deer was present in your yard
20 during the night. You're entitled to rely on
21 that. It's just as valid evidence as if you had
22 been awake during the night and seen it. That's
23 circumstantial evidence. You are entitled to
24 rely on that in reaching your verdicts.

25 Now, that concludes my initial

1 instructions to you concerning the law that you
2 should apply.

3 At this point we're going to take a
4 20-minute recess. Allow you to stretch, clear
5 your minds and when we return Mr. Amendola will
6 make his closing argument for the defense. That
7 will take somewhere between an hour, hour and a
8 half. Then we'll take a 20-minute recess.
9 Mr. McGettigan will offer his closing for the
10 Commonwealth. I'll have some brief concluding
11 remarks, and then you will retire to deliberate.

12 We'll remain seated then while the jury
13 is taken out.

14 (Whereupon, the jury was escorted out
15 from the courtroom.)

16 THE COURT: Counsel, we'll do this
17 step -- we'll be in session please.

18 Counsel, we'll do this by step-by-step.
19 Any additions, corrections, exceptions to the
20 charge as provided that have not already been
21 placed on the record before court?

22 MR. ROMINGER: Your Honor, defense would
23 like to request that you charge additionally that
24 a pecuniary interest in the case can be
25 considered in credibility.

1 THE COURT: I think that's covered.
2 Anything further?

3 MR. McGETTIGAN: No, Your Honor?

4 MR. ROMINGER: No, Your Honor.

5 THE COURT: You're certainly free to
6 argue that but I'm not going to make that
7 specific.

8 MR. ROMINGER: Everything we did in
9 chambers is preserved for the record?

10 THE COURT: Yes, all exceptions
11 previously made are preserved on the record.

12 MR. ROMINGER: Thank you, Your Honor.

13 THE COURT: Thank you.

14 We'll be in recess until five minutes
15 after 10:00.

16 (Whereupon, a recess was taken.)

17 THE COURT: You may be seated. Bring
18 the jury in please.

19 (Whereupon, the jury was escorted into
20 the courtroom.)

21 THE COURT: Ladies and gentlemen, you
22 are now about to hear the closing arguments of
23 counsel. These are not part of the evidence and
24 you should not consider them as evidence and if
25 counsel should inadvertently state their own

1 personal opinion about what the evidence shows or
2 does not show, you should disregard that because
3 it's not their opinion that counts. It's yours.

4 However, in deciding the case, you
5 should consider the evidence in light of the
6 various reasons and arguments that each lawyer
7 presents. It is the professional responsibility
8 of each lawyer and as an advocate for the side
9 that that lawyer represents to discuss the
10 evidence in a manner favorable to that side.

11 So you should be guided by the lawyers'
12 arguments to the extent they are supported by the
13 evidence which you believe to be true and
14 consistent with your own reason and common sense.
15 But you are not required to accept the arguments
16 of either lawyer because ultimately it's for you,
17 and you alone, to decide the evidence -- to
18 decide this case based on the evidence that was
19 presented and consistent with my earlier
20 instructions.

21 Mr. Amendola.

22 MR. AMENDOLA: Thank you, Your Honor.

23 Good morning, ladies and gentlemen, Your
24 Honor, Mr. McGettigan, Mr. Fina.

25 It's that time of the case where the

1 attorneys for both sides have an opportunity to
2 comment on their views of what the evidence has
3 done, where they think the case is at this
4 posture.

5 Just before you folks go out and make
6 some tough decisions, you may remember I said in
7 my opening statement that this was a daunting
8 task. How could -- how could eight individuals
9 and other individuals, like Mike McQueary and the
10 janitor who you heard from last week, how could
11 they all come into court and say these awful
12 things happened if they didn't happen?

13 How could ten different sets of charges
14 involving ten different sets of people be untrue?

15 On November 5th of last year,
16 Mr. Sandusky's world came to an end. His wife's
17 world came to an end. His children's world came
18 to an end. Everything they ever fought for,
19 everything they ever believed in was challenged,
20 challenged by a group of young men who would come
21 forward and made allegations that Mr. Sandusky,
22 over a period of years, had sexually assaulted
23 them in one fashion or another.

24 The media, the victim, lawyers, as you
25 heard in this case, chased them to represent

1 them. And Mr. Sandusky says, how do I fight this
2 because I'm innocent? How do I fight this?

3 We even heard evidence of a media
4 contacting the mother of one of the alleged
5 victims saying here's information. Contact the
6 police in this case. How do you fight that? How
7 did Mr. Sandusky fight that?

8 Over a 14-year period, from 1994 to
9 2008, allegations, hundreds of times these kids
10 say he did this to me. He did that to me. And
11 yet -- and yet other than a couple of occasions
12 one of which involves an individual who couldn't
13 even appear in court because of mental health
14 issues, other than but for a couple of occasions,
15 there is absolutely no direct evidence other than
16 what came from the mouths of those individuals
17 who testified in court, the eight young men,
18 about these allegations.

19 There's no physical evidence, not one
20 piece of physical evidence. In two of the cases
21 the Commonwealth brought, we don't even have
22 victims -- not a victim in two of the cases.

23 We found out in this trial that a lot of
24 these kids knew each other. For example -- if
25 you would please put that up on the screen for

1 me? And can you make that a little bigger
2 because I don't know if the jurors can see. The
3 years are going to be important.

4 Can everyone read the years?

5 They can't. Can you make it a little
6 bit bigger?

7 Any trouble. Can you read those years?

8 We know now, for example, that Sabastian
9 Paden at the bottom of that screen and Aaron
10 Fisher at the top of that screen were involved
11 allegedly in inappropriate contact with
12 Mr. Sandusky during the same time period -- very
13 same time period.

14 We know, for example, that Zach Konstas,
15 Michal Kajak, and Dustin Struble, if you look at
16 that chart, they all knew each other and
17 supposedly were involved with Mr. Sandusky at the
18 same time.

19 We know that Brett Houtz and
20 Mr. Simcisko and Ryan Rittmeyer all knew each
21 other and were involved with Mr. Sandusky at the
22 same time.

23 Mr. Sandusky, if you believed their
24 testimony, was a very busy man. How in the world
25 did he work? How did he promote his family?

1 I'm going to start at the beginning
2 because here's where this started, folks. Not
3 one of those people came forward until this case
4 broke, not one. The only one, the one who
5 started this was Aaron Fisher. Until Aaron
6 Fisher came out and then it was even months after
7 that that anybody else came out, nobody had ever
8 made a complaint against Mr. Sandusky, not one
9 person.

10 In the hundreds of thousands of kids
11 that he had interacted with, not one -- not one,
12 not one counselor, not one teacher, not one
13 parent ever said he did something. But Aaron
14 Fisher in November of 2008 because he didn't want
15 to go with Mr. Sandusky -- you heard Mr. Fravel
16 say and that was Josh Fravel who was a neighbor
17 of Aaron Fisher's family, including Dawn Daniels,
18 Aaron's mom, he told you he heard an argument
19 between Aaron Fisher and his mother, Dawn. She
20 wanted him to go with Mr. Sandusky.

21 He didn't say I don't want to go because
22 I'm afraid. What Josh Fravel said was that Aaron
23 didn't want to go because he wanted to go hang
24 out with his friends. Typical 15, 16-year old?
25 Of course, it is.

1 So what Aaron did, I submit, never
2 anticipated the colossal chain of events that
3 would ensue, he said to his mother, well
4 Mr. Sandusky fondled me. That was the very first
5 allegation. Mr. Sandusky fondled me, not
6 performed oral sex on me. Not performed anal sex
7 on me or asked me to do it to him. He fondled me
8 above the clothing.

9 What was Dawn Daniels' reaction if you
10 believe the testimony of Josh Fravel? By the
11 way, before I go forward, when I recollect the
12 facts to be in this case, what I recollect from
13 the testimony of folks -- I think there's over 50
14 witnesses -- doesn't matter. If your
15 recollection of the facts is different from mine,
16 and for that matter different than
17 Mr. McGettigan's, it's your recollection of the
18 facts that count.

19 I know you have all been taking notes
20 and that's great. It's not my recollection.
21 It's not Mr. McGettigan's recollection. You are
22 the finders of fact. The judge gave you the law.
23 You will apply the facts to the law.

24 But Josh Fravel says, mom comes out and
25 says, oh, we're going to make money. We're going

1 to be okay. I'm going to own Mr. Sandusky's
2 house. Is that a reaction that you would have if
3 you found out that your son had been molested by
4 somebody?

5 And he went to say later, we had other
6 conversations with him subsequent to that in
7 which she said, I'm going -- I'm going to own a
8 house in the country and have a white fence and
9 have room for the dogs and so on. Is that the
10 reaction of a mother whose child was abused?
11 Would that be your reaction as a parent?

12 That started the chain reaction. CYS
13 got involved. What did Jessica Dershem from CYS
14 tell you when she testified? When we first spoke
15 with Aaron, he said Mr. Sandusky fondled me above
16 the clothes. Fondled me above the clothes. But,
17 you see, in our system, folks, that's not good
18 enough because everyone assumes the worse.
19 Everyone assumes there's something else.

20 You heard Jessica Dershem say, I thought
21 there was more. Our psychologist Mike Gillum, I
22 think his name was -- and again, it's your
23 recollection, not mine that counts. Mike Gillum,
24 he knew there was more. He said, there's going
25 to be more and then kept prompting Aaron. Kept

1 meeting with Aaron. Tell us more. We know more
2 happened.

3 Now, keep that in context with mom is
4 already talking about owning Mr. Sandusky's
5 house. Going to have a house in the country.
6 They're never going to have to work, and Aaron
7 said, when this is over, I am going to have a
8 nice car.

9 Is that the reaction of a kid who was
10 molested? Is that the reaction of a mother whose
11 kid was molested? Over time, did you see
12 Mr. Sandusky? He's not a lawyer. I have told
13 him number of times. I told him he used stupid
14 judgment. He wanted to fight that. He wanted to
15 fight that.

16 He said, Joe, that's not true. That's
17 how I got involved in the case back in 2008,
18 2009. He said, I didn't do that. I'm innocent.
19 And he wanted to fight it. I told him as an
20 attorney, CYS does its own thing. They're
21 probably going to find that you did this. Leave
22 it alone. He said, no. I want to fight this.
23 And he tried. And he was fighting that
24 allegation.

25 Until three days before a hearing, he

1 was informed through me that there were new
2 allegations that now Aaron was saying, well, he
3 performed oral sex. I performed oral sex on him.
4 Very serious allegations.

5 At that time I pulled the plug and said,
6 it's obviously going further than we thought it
7 was.

8 After multiple interviews -- you
9 remember Jessica Dershem saying she got the state
10 police involved. And something very archaic
11 about what she said to us. Your recollection is
12 what counts, not mine. She said when Trooper
13 Cavanaugh -- I believe it was Trooper Cavanaugh
14 came in and I wanted to videotape and audio tape
15 this interview and Trooper Cavanaugh said, we
16 don't do that. And she asked why? What could be
17 better than interviewing -- having it taped,
18 having it videotaped for later use because
19 defense lawyers get ahold of that stuff and
20 defense lawyers cause problems.

21 That's what she said Trooper Cavanaugh
22 said, if you recall that. It's not my
23 recollection it's yours. That's important later.
24 That's important later because of what you heard
25 earlier this week.

1 The system decided Mr. Sandusky was
2 guilty and the system set out to convict him. I
3 have done investigative work. I was a
4 prosecutor. When I investigated a case, I saw
5 where the facts took me. I didn't start out with
6 a premise and Mr. Sandusky did these terrible
7 things. There's got to be more people and set
8 out to prove that.

9 So the case went forward and at some
10 point, I believe it was June 16th of 2009, the
11 Attorney General's Office convened the grand jury
12 preceding to try to find other victims. The
13 problem was after maybe a year, year and a half,
14 they only had two victims, the young man Zach
15 Konstas in 1998 and Aaron Fisher.

16 You may recall the 1998 case -- and
17 we'll talk about a that a little bit later -- was
18 investigated thoroughly and determined that there
19 was not enough evidence -- not sufficient
20 evidence to prosecute but the case went forward.

21 Then the case went public and after the
22 case went public through the media, other people
23 came forward. But again, you have to understand
24 the sequence of events. It's important that you
25 recall what these people said on the stand

1 because you now know that this Mr. Houtz and
2 Mr. Simcisko not only knew each other from The
3 Second Mile along with Mr. Rittmeyer but they
4 actually even lived together during a period of
5 time in Bellefonte. When I say together, in
6 proximity, same apartment complex.

7 Is it possible -- is it possible, Aaron
8 Fisher said, I believe -- and again it's your
9 recollection -- that he would stay over at
10 Mr. Sandusky's house, 125, 120 times between 2005
11 and 2008 or in that area. Again, it's your
12 recollection. At the same time that Sabastian
13 Paden said he stayed at Mr. and Mrs. Sandusky's
14 house. He stayed every weekend at the exact same
15 time.

16 How is it -- how is it -- well, we asked
17 each of them. How often did you see other
18 people? Mr. Paden, my recollection is, said,
19 very seldom. Once in a while I saw other kids
20 but very seldom did I see anybody else. Is that
21 possible? Does that make sense?

22 Let's say somehow it makes sense.
23 Dottie Sandusky, who adopted six kids, was in
24 that house constantly. You all bring your common
25 sense into court. Could all this sex be going

1 on, could all this activity being going on and
2 the kids not even be aware of it, of each other
3 during the same time frame? Mrs. Sandusky not be
4 aware, never walking in on them? Never catching
5 something unusual? You have to use your common
6 sense, folks.

7 What I am suggesting, however, is it
8 doesn't add up. And Mr. Paden, he tells you
9 Jerry Sandusky, a grown man, had anal sex with
10 him. Folks, I'm not a doctor. I'm not a nurse.
11 I'm not an EMT but if Mr. Sandusky had anal sex
12 with that child, that child, is it conceivable
13 there be would be a medical problems? Is it
14 conceivable there would be absolutely no -- any
15 type of evidence of anal sex?

16 You heard his mom say, well, he
17 complained of stomach pains. Well, I submit to
18 you that's not where a pain would be coming from
19 if, in fact, Mr. Sandusky, a grown man, had anal
20 sex with that child. It doesn't add up. It
21 makes no sense, absolutely no sense.

22 Brett Houtz, he was Accuser No. 4. He
23 told us Mr. Sandusky did all these terrible
24 things to him over a period of time. Again, if
25 you look at the time frame, he's in the time

1 frame of Mr. Simcisko and I believe
2 Mr. Rittmeyer. I'm not looking at the board
3 right now.

4 Folks, what he told you -- in the late
5 summer of 1998, he began a close relationship
6 with Mr. Sandusky. I believe -- and, again, it's
7 your recollection of the facts. I believe he
8 said he played basketball and racquetball with
9 Mr. Sandusky two to three times a week from late
10 August to the end of that year, 1998, and it was
11 right after school which would be mid to late
12 afternoon and then they would get showers and
13 things would happen.

14 Here's the problem. You heard it from
15 Dick Anderson, a fellow coach who was coaching
16 with Mr. Sandusky at Penn State. What did Dick
17 Anderson tell us? Well, sure, he's a good friend
18 with Jerry Sandusky and he used to work with
19 Jerry Sandusky but for anyone to think that Dick
20 Anderson would come into court under oath and
21 tell you about the schedule of a coach at Penn
22 State during preseason in August, during football
23 season in the fall and tell you they were 17-hour
24 days, starting at 7:00 in the morning and
25 finishing up at 10:00 or 11:00 at night on an off

1 day. You heard this right away from Mike
2 McQueary, too. He said on an off day, he worked
3 12 hours. That's an off day. That's an off day,
4 12 hours. Where in world -- how in the world did
5 Mr. Sandusky find time? If you believed Brett
6 Houtz's story, how in the world did Jerry
7 Sandusky find time to go play racquetball or
8 basketball two or three times a week with Brett
9 Houtz and then fool around with him in the
10 shower? It doesn't make sense.

11 And then you heard Brett say, well,
12 yeah, he took me to the Alamo Bowl and he took me
13 to the Outback Bowl. Well, we know at the
14 Outback Bowl, they stayed with Mrs. Sandusky.
15 They stayed with, I believe the testimony from
16 Mrs. Sandusky was -- again, it's your
17 recollection. Their son, Matt, was with them
18 that year, and I think that year she said they
19 had two, Jason. The next year at the Alamo Bowl
20 he said he stayed there with Mr. and
21 Mrs. Sandusky. this is Brett, my recollection.
22 Yours is the one who counts. And Brett said on
23 one occasion Mr. Sandusky came into the room,
24 went in the bathroom as he was about to get a
25 shower and basically said if you don't perform

1 oral sex on me, you're going home to Snow Shoe.
2 Well, that's great, if we believe it.

3 But I heard Mrs. Sandusky tell a very
4 different story then. My recollection of what
5 she said was, she came into the room and Jerry
6 was arguing with Brett because Brett didn't want
7 to go to a banquet that Jerry and Mrs. Sandusky
8 paid 50 bucks for him to go to and Jerry was
9 upset. That's what Mrs. Sandusky told us. Very
10 different than what you heard from Brett.

11 But, again, looking over at the overall
12 picture, you heard testimony from Megan Rash.
13 Megan Rash said to you -- and I believe she said
14 she was in the Army for ten years something, not
15 ten years, maybe six years, whatever it was. But
16 she said to you she had known Brett since they
17 were kids. Brett was a good friend of her
18 brother's and she said his reputation for being
19 dishonest, his reputation for not being truthful
20 was awful. He was not a truthful person. That
21 was the reputation. Again, it's your
22 recollection that counts, not mine.

23 You put all this together and you say,
24 okay, how do we handle this? How do we handle
25 this?

1 But by the way, there's another
2 interesting feature with all this. Jerry now is
3 68 years old. Someone accused him of being 69
4 the other day and he corrected that in a hurry.
5 Sixty-eight years old. The earliest allegations
6 that they have, with all the publicity -- this
7 has gone international, folks. This isn't Centre
8 County. This isn't Pennsylvania. This isn't
9 eastern United States. This is international.
10 All of these alleged charges only go back to the
11 mid-1990s?

12 So out of the blue after all these years
13 when Jerry Sandusky is in his mid-fifties he
14 decides to become a pedophile. Does that make
15 any sense to anybody? Does that make any sense
16 at 55?

17 He was involved with kids from the time
18 he was a kid. You heard Mrs. Sandusky talk about
19 his background. He grew up with his parents as
20 an only child. They ran a rec center in
21 Washington, PA, and they loved kids and the kids
22 were there, I believe she said, six days a week
23 and Jerry treated them as extended family, much
24 like he did with these kids -- all of these kids,
25 not just the accusers.

1 Does it make sense? You have to decide
2 that. I can't decide that. The Commonwealth
3 can't decide that. Mr. Sandusky out of the blue
4 in the mid-90s becomes a pedophile, starts
5 abusing kids. No prior history. No prior
6 allegations. Does it make sense? I submit it
7 doesn't.

8 Ryan Rittmeyer. You may recall that
9 Sabastian Paden and Ryan Rittmeyer, they came
10 forward after Mr. Sandusky was arrested. They're
11 the only two who said they didn't have attorneys,
12 but I suggest to you -- out of all of them, I
13 suggest to you that the fact they didn't have
14 attorneys when they came into court could well be
15 attributed to the fact that when Mr. Sandusky was
16 arrested, I went public immediately and said
17 these kids may be out for financial gain and
18 maybe they had the wherewithal to figure out, you
19 know, maybe we oughtn't get an attorney yet until
20 this thing is resolved. But all the other kids
21 who had come forward before, I believe -- and,
22 again, it's your recollection -- I believe they
23 had attorneys.

24 Isn't it coincidental by the way --
25 isn't it amazing as they sit here today, the

1 attorneys are in court. They have been in court
2 since it started. They're all doing this out of
3 the goodness of their heart. Have any of you had
4 dealings with attorneys? It happens. Don't
5 worry about it. A bill? I'm not going to send
6 you one. Kid after kid saying we signed
7 something but we don't know what it is. But we
8 got an idea what it was because Mr. Andreozzi
9 told us what it was. Contingency fee agreement.
10 That means a lawyer doesn't get paid unless
11 there's a judgment against somebody.

12 And these lawyers aren't local lawyers,
13 except for Andy Shubin is local. Andy represents
14 two of the kids. These lawyers come from
15 Philadelphia. These lawyers come from Baltimore,
16 Maryland.

17 Financial motive? You have to decide
18 that. You have to decide if these kids and these
19 lawyers who sat in this courtroom now for two
20 weeks without being paid a penny are doing it out
21 of the goodness of their hearts and whether they
22 have a financial interest in the outcome of this
23 case, a verdict of guilty. Doesn't make any
24 sense.

25 Everyone says, well, okay. They can

1 have lawyers. I understand that but Mr. Sandusky
2 can still be guilty. So the financial part of it
3 doesn't make sense. We can buy that. We can
4 understand that there's a financial interest. We
5 can understand these kids now want to be
6 compensated. We can understand the lawyers want
7 to make millions of dollars but it still doesn't
8 mean Mr. Sandusky did this.

9 What's the explanation? Well, you know,
10 folks, we said from the beginning that we
11 believed that the Commonwealth kept searching and
12 searching for victims. The longer it took, the
13 more desperate it got and when they found -- by
14 the way, how did they find them? How did they
15 find these people?

16 I don't see the book here but Jerry
17 wrote the book *Touched*. I think you heard the
18 testimony from Agent Sassano. I'm sorry. I
19 mispronounced your name. Sassano. He told you
20 we got them out of Jerry's book. So now not only
21 do we have a pedophile who isn't a pedophile
22 until his mid-fifties, but he writes a book and
23 he puts the victims in the book. That's smart.
24 That's the answer. Is that how they started
25 tracking down kids?

1 Okay. Let's assume that's how they got
2 them. Let's assume they went out, they talked to
3 these kids, and the kids said, oh my God, yes,
4 Jerry did abuse me. That could be. That could
5 be.

6 Folks, you have to use your common
7 sense. Jerry Sandusky took these kids
8 everywhere. Is that what a pedophile does? Does
9 he try to hide his acts? Does he try to cover
10 his trail? Does he parade the kids around?
11 Brett Houtz stayed at Toftrees, went to the bowl
12 games with him and his wife. Took them to
13 practices. Took them to football games. Took
14 them on trips. Is that what someone who's
15 committing these horrible crimes does? You're my
16 victims. Talk to whoever you want. It doesn't
17 make sense. It just doesn't make sense.

18 So how do we explain this because,
19 again, we're still faced with ten episodes.
20 We're still faced with eight accusers who came
21 into court.

22 Well, we struck it rich because we
23 believe -- we always believed -- that there was
24 some sort of push when the first accuser, Aaron
25 Fisher, came forward, some push -- this is a

1 public figure who's well-known not only in
2 Pennsylvania but throughout the United States as
3 one of the best defensive coordinators in college
4 football history. So let's see if we get more
5 kids. Let's see if we go forward.

6 Now, when they got to the kids, as you
7 heard from the stand, many, if not most of the
8 cases where there was egregious activity, oral
9 sex, anal sex, and so on, initially these kids
10 said no, nothing happened or very little
11 happened. Aaron Fisher said it was fondling
12 above the clothes, not even touching the privates
13 above the clothes. I think Brett Houtz initially
14 said, I'm getting a lawyer. I'm not even going
15 to talk to you, Corporal Leiter, until I have a
16 lawyer when Corporal Leiter knocked on his door.
17 Sabastian Paden, for example, initially said
18 nothing happened.

19 Now, they all had reasons why they did
20 and the Commonwealth will say, well, it was
21 embarrassing. It was horrific type of activity
22 and they just didn't want to talk to about it.
23 That's one explanation. But the other
24 explanation is if the police kept going back to
25 question them to say there's more to that. We

1 don't think you're telling us the truth. Well,
2 how many times do you have to be told that before
3 you get it? How many times do you have to be
4 told that we think that this happened and that
5 happened? And maybe that's okay, too.

6 But what happened is that Corporal
7 Leiter, Corporal Rossman screwed up. In
8 interviewing Brett Houser -- Brett Houtz. Excuse
9 me. In interviewing him, after an initial part
10 of the interview that he wasn't saying the
11 horrific things that Jerry supposedly had done to
12 him, he asked for a break. He asked for a break.

13 Excuse me while I put my reading glasses
14 on. It's a product of age.

15 He asked for a break and the officer,
16 according to the transcript, it's Officer Rossman
17 says, sure. The time is now 12:21. We're going
18 to put this recording on hold, and we'll resume
19 in a few minutes. They thought they stopped the
20 recording. They thought they were no longer
21 being recorded.

22 And then what happens? They have a
23 plaintiff's attorney, looking for money, in the
24 room and you heard Corporal Leiter say that
25 doesn't happen very often. I dare say what he

1 was really saying is -- folks, this really,
2 really is unusual to have, not a defense attorney
3 whose client is being interviewed by the police
4 for a crime, but a potential complaining witness,
5 a victim with his civil attorney who was planning
6 a lawsuit against the world.

7 What goes on now that the tape is off?
8 Because, remember, the tape is off as far as they
9 knew.

10 This is Corporal Leiter after being
11 asked by Andreozzi, do you have a witness -- in
12 regards to other cases? We have two that have
13 seen him. We can't find the one victim but he
14 may be in there. Andreozzi says, oh, you're
15 kidding. The time frame matches up? Can we at
16 some point in time say to him, referring to
17 Houtz, listen, we have interviewed other kids and
18 other kids have told us there was intercourse and
19 that they admitted it, you know. Is there
20 anything else that you want to tell us?

21 Corporal Leiter says, yep, we do that
22 with all the other kids -- all the other kids.
23 Say, listen, this is what we found so far. You
24 fit the same pattern of all the other ones.

25 This is what Corporal Leiter is telling

1 Andreozzi he's going to tell Brett. This is the
2 way he operates. We know the progression. We
3 know the other kids we have dealt with have told
4 us this happened. Any sense of leading there?
5 Any sense of planning to kind of lead this kid
6 down the provost path to saying what he said?

7 On page 42 Corporal Leiter says, yeah,
8 it's all the things that kids 12-year old are
9 just reaching puberty. Once they get a little
10 bit more mature, I don't want that any more,
11 referring to Jerry, and he's going to go onto
12 somebody else.

13 So what Corporal Leiter is planning
14 right there is telling Andreozzi that the pattern
15 is that when Jerry Sandusky's kids get to be 12
16 years old and reach puberty, he goes off to get
17 new kids, some younger kid. We know that's not
18 true if you believe Sabastian Paden because
19 Sabastian said, according to my recollection, the
20 sex continued right up until he was 16, well
21 beyond puberty he said. So it doesn't make any
22 sense.

23 Leiter says to Andreozzi, well, how did
24 he find you? How did Brett find you? His father
25 found me on my Internet site. I'm sure he wasn't

1 advertising wills and real estate closings.

2 And then Leiter says, when Brett
3 returns, before we start again, I just want to
4 let you know you're not the first victim we've
5 spoken to. We've interviewed probably, I am
6 going to say nine. Brett says, I know. You told
7 me that before, which obviously means he's
8 already been told that.

9 But then Corporal Leiter goes on to say,
10 we have interviewed about nine. Again, I call
11 them kids. I apologize. Nine adults we have
12 interviewed and you're doing well. It's amazing.
13 If this would have been a book, you would be
14 repeating word-for-word pretty much what a lot of
15 people already told us. It's very similar. A
16 lot of the things you've told us is very similar
17 to what we've heard from the others, and we know
18 from listening to the other young adults talk to
19 us and tell us what has taken place that there's
20 a pretty well-defined progression in the way he
21 operated and still operates.

22 I guess to some degree and I often tie
23 in this progression, especially when it goes on
24 for an extended period of time, leads to more
25 than just the touching and the feeling. That's

1 when actual oral sex has taken place by both
2 parties. We have unfortunately found that
3 there's been what classifies as a rape has
4 occurred and I don't want you to feel that again,
5 as Trooper Rossman said, and again referring to
6 the other trooper who's telling him this stuff.
7 I don't want you to feel ashamed because you are
8 a victim in this whole thing. What happened
9 happened. He took advantage of you but when we
10 first started we talked and we needed to get
11 details of what took place so these types of
12 things that happened can be exposed to some
13 extent. We need for you to tell us this is what
14 happened. We need you to tell us.

15 We need you to tell us. You're all
16 smart. We picked you because you're bright
17 commonsensical people. We need you to tell us he
18 had oral sex with him. He did these terrible
19 things to you.

20 I don't want you to feel ashamed because
21 you're a victim in this whole thing. What
22 happened happened. Again, we're not going to
23 look at you any differently than the fact that
24 you're the victim of this crime, which is going
25 to be taken care of accordingly but we need you

1 to tell us as graphically as you can what took
2 place as we get through this whole procedure. I
3 want you to understand you're not alone. By no
4 means are you alone.

5 What is Corporal Leiter saying to him?
6 You have to come to that conclusion.

7 Here's the funny thing. This is
8 Corporal Rossman now saying, okay. We're going
9 to restart the recording. It's now 12:37.
10 Folks, they thought the tape was off. Jerry
11 Sandusky got lucky because no one would believe
12 that.

13 Remember I called Corporal Leiter and --
14 I think it was Corporal Rossman first and then
15 Corporal Leiter before we played the tape and I
16 asked them, did you tell each of these kids
17 anything about the other kids and what happened?
18 Oh, no, we didn't do that, huh-uh. That's not
19 our style. We don't act that way. We wanted
20 each of them to tell us their own story. That's
21 my recollection. Your recollection is the one
22 that counts. That's my recollection from that
23 stand. Both of those officers said that.

24 How do you defend against this? How
25 does that man defend against this?

1 Back on the tape and then all the other
2 stuff comes in.

3 Now, if they did it to him, it's like
4 the guy who gets caught for drunk driving. Oh,
5 the only time I drove drunk. Only time it ever
6 happened. Hell, they couldn't even keep
7 sequestration straight. You heard Corporal
8 Rossman called back in the stand and asked a
9 question specifically by Mr. Rominger. When he
10 asked him, have you and Corporal Leiter talked
11 about your testimony while you were out in the
12 hall after you were first called? Corporal
13 Rossman says, oh, no. Didn't talk about it. We
14 talked about the weather, talked about sports.
15 But then Corporal Leiter came back and do you
16 recall what he told you? Talked about my
17 testimony.

18 Folks, do we have to get hit in the head
19 with a brick to figure this out? This man's life
20 is at stake. Do we really have to say, well, we
21 believe officers. I believe officers. I grew up
22 with Officer Friendly but in this case, because
23 of the magnitude of that man's reputation and
24 because of what was at stake, they went after
25 him. I submit to you that they were going to get

1 him hell or high water, even if they had to coach
2 witnesses.

3 Now, let's say somehow you believe --
4 let's say somehow you believe that, oh, yeah,
5 they only did it this one time like the guy who
6 says I only drove drunk once. I only stole
7 something once.

8 David Hilton testified yesterday. What
9 did David Hilton tell you? I was The Second Mile
10 kid. They came to me. They asked me what
11 happened. I told them nothing happened. They
12 came back several more times. Kept asking the
13 same questions. I got uncomfortable.

14 And said one of the officers said to
15 him, if we find out you are lying, not that you
16 are a victim, not if we find out that you are a
17 victim. If we find out that you're lying, we're
18 going to arrest you.

19 Does that tell you where they're coming
20 from? Not that we think that you're a victim.
21 We want to help you. If we find out you're not
22 telling us Jerry did stuff to you and that's a
23 lie, we're going to arrest you.

24 That man's whole world came to an end on
25 November 5th -- not only his world.

1 Let's talk about the Gus Costas. I know
2 Gus Costas. He was a police officer. Excuse me.
3 Let's talk about the Bob Costas interview. The
4 Commonwealth made a big deal out of this. You're
5 going to get this in the jury room. This is a
6 transcript from what you saw on the tape with a
7 minor correction.

8 Paint the picture. November 5th this
9 man is charged with 40 counts of the most serious
10 types of offenses somebody can be charged with.
11 Within days -- within days Coach Paterno was
12 fired -- fired. His coach for 30-some years, his
13 mentor. The athletic director is charged with
14 perjury, Tim Curley, a good man. The former vice
15 president of financial services is charged with
16 perjury. Good man. Graham Spanier, the
17 president of the university, is fired.

18 We didn't bring these charges on
19 November 5th, one week before Coach Paterno was
20 to retire at the last home game. This was a
21 three-year investigation and as Corporal Leiter
22 said to Brett Houser (sic), this guy has been
23 doing this and we think he's going to do it
24 again. Why in the heck didn't they arrest him?
25 They could have arrested him after Aaron Fisher

1 in 2008 (sic), if they thought he was such a
2 monster.

3 The interviews that followed Jerry's
4 arrest on November 5th, the Attorney General, the
5 Assistant Attorney Generals, everybody involved
6 in this investigation, the agents, the officers,
7 the head of the Pennsylvania State Police. Jerry
8 is a monster. Such a monster, why didn't you
9 arrest him in 2008? Take him off the streets?

10 If you believe what happened to these
11 other kids after that, if you believe that, then
12 you have to believe there's responsibility
13 elsewhere. I submit that this stuff didn't
14 happen.

15 The reason they waited was because they
16 didn't feel comfortable charging him until they
17 had enough. The way they had enough, they
18 conducted interviews like I just explained to you
19 Corporal Leiter and Corporal Rossman conducted.

20 Well, let's get back to the Costas
21 interview. Think about this. He's arrested.
22 This is going global. This isn't restricted to
23 Pennsylvania. He has been painted as monster, a
24 predator. Administrators of Penn State and Coach
25 Paterno have been fired.

1 On November 14th, a Monday night, Jerry
2 agrees to an interview with Bob Costas. Jerry
3 has been in sports all his life. He knows who
4 Bob Costas is. He's a tough interview for any of
5 you who have ever been involved in sports or ever
6 watched the sports programs, when he interviews,
7 they're tough interviews.

8 Jerry decided he wanted to tell the
9 world he was innocent. Was he nervous? I'm
10 nervous right now with a courtroom filled with a
11 couple hundred people. This was national, and it
12 was advertised that he was going to talk.
13 Millions of people were listening. He didn't
14 have to talk. He didn't have to say a word.
15 That's his constitutional right. He agreed to
16 that interview knowing it his going to be tough.

17 The Commonwealth emphasized part of that
18 interview. Costas asked Jerry, are you sexually
19 attracted to young boys, under-aged boys? Jerry
20 responded, reflected upon it. Am I sexually
21 attracted to underage boys? Costas, yes. Jerry,
22 sexually attracted? I enjoy young people. I
23 love to be around them. I -- but, no, I'm not
24 sexually attracted to young boys. That was
25 complete answer to that question.

1 Imagine yourselves being in the position
2 on a phone with Bob Costas on national TV with
3 millions of people listening and being asked
4 these tough questions.

5 Let's see what else in the transcript
6 you're going to get was asked.

7 Mr. Sandusky, there's a 40-count
8 indictment, the grand jury report contains
9 specific detail. There are multiple accusers,
10 multiple eyewitnesses to various aspects of the
11 abused. A reasonable person says where there is
12 this much smoke, there must be plenty of fire.
13 What do you say?

14 Jerry Sandusky said, I say I'm innocent
15 of those charges.

16 Costas says, innocent? Completely
17 innocent? Falsely accused in every respect?

18 Jerry, well, I can say that, you know, I
19 had done some of those things. I have horsed
20 around with kids. I have showered after work
21 outs. I have hugged them. I have touched their
22 leg without the intent of sexual contact but --
23 so if you look at it that way there are things
24 that, yeah, you know, would be accurate.

25 He's being honest. He's say, yeah, I

1 have showered. I've grabbed their leg. I held
2 on their knee. You heard that by the testimony.

3 You never touched their genitals? Never
4 engaged in oral sex, Costas says.

5 Sandusky says, right.

6 Costas says, what about Mike McQueary,
7 the grad assistant in 2008 -- we'll talk about it
8 in a minute -- walked into the shower where he
9 said in specific detail that you were forcibly
10 raping a boy who appeared to be 10 or 11 years
11 old. That his hands were up against the shower
12 wall and he heard rhythmic slapping sounds and he
13 described that as a rape.

14 Jerry said, I would say that's false.

15 What would be his motive to lie, Costas
16 says. Jerry says, you would have to ask him.

17 Costas, what did happen in the shower
18 that night that Mike McQueary happened upon you
19 with a young boy?

20 Jerry, we were showering and horsing
21 around and he actually turned all the showers on.
22 This is in the shower stall at the, I guess,
23 Lasch Building, and was actually sliding across
24 the floor and we were, as I recall, possibly
25 snapping a towel and horseplay.

1 Costas, in 1998 a mother confronts you
2 about taking a shower with her son and
3 inappropriately touching him. Two detectives
4 eavesdrop on her conversations with you and you
5 admit that maybe your private parts touched her
6 son. What happened there?

7 Well, I can't exactly recall what was
8 said -- but this now was 13 years later. He's
9 being asked this out of the blue by Bob Costas.
10 What I did say if he felt that way, then I was
11 wrong. Honest answer, I'm saying if he felt that
12 way, not that I did this, but if he felt that
13 way, I was wrong.

14 During one of those conversations Costas
15 said, I understand you said I understand I was
16 wrong. I wish I could get forgiveness now
17 speaking with the mother. I know I won't get it
18 from you. I wish I were dead. I got falsely
19 accused and a lot of these actions have been
20 misinterpreted and doesn't look good, does it?

21 Sandusky says, I don't know. I didn't
22 say that to my recollection, that I wish I were
23 dead. I was hopeful we could reconcile things
24 and that's important.

25 Shortly after that in 2000, the janitor

1 said he saw you performing oral sex on a young
2 boy in the showers at the Penn State locker room
3 facility. Did that happen?

4 Jerry says, no. How could someone think
5 they saw something as strange and shocking as
6 that or saw something as strange and shocking as
7 that when it hadn't occurred?

8 And what would possibly be the
9 motivation to fabricate it?

10 Jerry says, quite honestly, you would
11 have to ask them.

12 It seems that if all these accusations
13 are false -- this is from Costas -- you are the
14 unluckiest and most persecuted man any of us ever
15 heard about.

16 Jerry says with a soft laugh, I don't
17 know what you want me to say. I don't think this
18 has been the best days of my life.

19 Costas asked, to your knowledge, did Joe
20 Paterno have any information regarding this
21 activity prior to 2002?

22 Jerry says, I can't totally answer that
23 question but my answer would be no.

24 Costas says, Joe Paterno ever at any
25 time speak to you directly about your behavior?

1 Jerry says, no.

2 Costas says, never?

3 Jerry says, no.

4 Costas says, he never asked you about
5 what you might have done? Never ask you if
6 needed help?

7 Jerry says, no.

8 Costas says, did he ask you if you
9 needed counseling?

10 Jerry says, no.

11 Costas, never expressed disapproval of
12 any kind?

13 Jerry says, no.

14 Costas says, how do you feel about what
15 happened to Penn State and Joe Paterno and the
16 Penn State football program and your part in it?

17 Sandusky says to Costas, well, how would
18 you think that I would feel about a university
19 that I attended, about people that I worked with,
20 about people that I care so much about? How do
21 you think I would feel about that? I feel
22 horrible.

23 Do you feel horrible? Do you feel
24 culpable?

25 I'm not sure I know what you mean.

1 Costas asked, do you feel guilty?

2 Sandusky asked again, guilty?

3 You'll notice when you read this Jerry
4 has a habit. Somebody asks him a question, he
5 asked a question back. It's not because he
6 doesn't know the answer. He wants to give it.
7 It's just his mannerism.

8 I don't think it's my fault, he said in
9 regard to the question do you feel it's your
10 fault. I've obviously played a part in this.

11 Costas, how would you define the part
12 you played? What are you willing to concede that
13 you have done that's wrong and you wish you
14 hadn't done it?

15 Jerry said to Costas, well, in
16 retrospect I shouldn't have showered with those
17 kids.

18 Costas says, that's it?

19 Jerry says, yes, that's it. That's what
20 hits me the most.

21 Costas says, are you a pedophile?

22 Jerry says, no.

23 Costas says, are you sexually attracted
24 to young boys -- and that's where that statement
25 comes up -- underage boys?

1 Jerry says, am I sexually attracted to
2 young boys? Again, asking him the question just
3 like he did previously.

4 Costas says, yes.

5 Jerry says, sexually attracted? I enjoy
6 young people. I love to be around them but, no,
7 I'm not sexually attracted to young people.

8 Folks, what more could that man say? He
9 went on national TV with a guy who probably was
10 every bit as tough as Mr. McGettigan and any
11 prosecutor could ask any tough questions. What
12 more could he say? Costas asked tough questions.
13 He gave tough answers. Denied he did this. Said
14 he was innocent.

15 He admitted what he did. He always
16 admitted he showered with the kids but, you know,
17 you heard from Dick Anderson. You heard from
18 Booker Brooks, both former Penn State coaches.
19 You heard what they said and I believe the
20 question was asked of Mr. Anderson first. Do you
21 shower with kids? Dick Anderson, yeah. It's not
22 uncommon. Shower with kids in the Penn State
23 facilities when they're around? I think he even
24 said some of Jerry's kids when Jerry was there
25 working out.

1 You take -- again, for everyone to
2 believe that Jerry Sandusky did these horrific
3 things, you have to believe he was the boldest --
4 the boldest perpetrator in history taking these
5 kids out, showering with them in front of other
6 coaches. But you heard other coaches say not
7 unusual. You heard Booker Brooks say not
8 unusual.

9 You heard Dick Anderson and Booker
10 Brooks both say go to the YMCA. Kids, grown-ups,
11 boys get showers. And the only reason I asked
12 that stupid question about did you have your
13 clothes on was just to make sure there was no
14 misunderstanding kids weren't in their bathing
15 suites or something, but they were showering in
16 the nude.

17 Maybe you and I don't do it. Maybe we
18 find that strange. But as the judge told you in
19 his instructions, showering with a young boy is
20 not a crime. It only becomes a crime if the
21 person showering with the young boy is doing
22 something with an intent to gratify himself
23 sexually or the other person. Again, it's the
24 judge's instructions that counts, not my
25 interpretation. So what the judge told you is

1 what counts.

2 Let's talk about Mike McQueary.

3 The Commonwealth would have us believe
4 in its presentment that was filed when
5 Mr. Sandusky was arrested on November 5th, and I
6 think the presentment -- I think the charges were
7 actually filed the day before, Friday, November
8 4th. When it came to Alleged Victim No. 2, the
9 paragraph I believe was on page 7 of the
10 presentment said, Mike McQueary walked into the
11 shower room and observed Jerry Sandusky having
12 anal sex with a young boy who looked to be 10, 11
13 years old, with the young boy's hands up against
14 the wall.

15 Now again, folks, Mike McQueary -- even
16 assuming that he said that, which I think history
17 shows us he did, Mike McQueary didn't say he
18 heard screaming. He didn't say he moaning. He
19 didn't say he heard any sort of moaning or
20 groaning from this young child with whom Jerry
21 Sandusky, a grown man, was supposedly having anal
22 intercourse, which for you to convict him on that
23 particular charge, as the Court told you,
24 requires penetration of Mr. Sandusky's penis into
25 this young boy's anus.

1 Use your common sense. Does that make
2 any sense? Any reports of young boys being
3 treated at hospitals? Any reason why this young
4 boy would appear in court and say that that's
5 what happened?

6 Then we go further. Michael instead of
7 stopping it, Michael instead of saying what the
8 heck is going on, you saw how big he is. Now,
9 yeah, Jerry Sandusky is a big guy, too, but I'll
10 tell you what. If they got in a fight, my money
11 is on Mike McQueary.

12 Mike McQueary didn't do one thing to
13 stop what he said he saw, not one thing. I have
14 reason for that. It's not because he necessarily
15 lied about what he saw because what he told us
16 later is he never saw anything. He couldn't say
17 there was penetration. In fact -- in fact, I
18 submit to you he saw something, he assumed
19 something was going on, as he said I heard
20 slapping sounds and I assumed they were sexual in
21 nature and everything else filled in. We all
22 have a habit of doing that. We all kind of
23 assume. You all know what they say about when
24 you assume.

25 Let's go beyond that. When he said

1 later he saw what he thought was sexual activity.
2 He saw what he thought was anal -- didn't say
3 anal. He said sexual intercourse. I think it
4 was sodomy. He doesn't stop it.

5 We got the Penn State police department
6 literally 30 seconds away. For those of you
7 familiar with Penn State, you got the Lasch
8 Building. You got the Eisenhower Deck where the
9 police department is. I mean, literally 15, 20
10 seconds the police could have been there. He has
11 a cell phone. 911. I just saw this. They get
12 the young boy. They get Jerry Sandusky. Case
13 over. They figure out what happened.

14 What did he do then? What did he do as
15 you recall? He called his dad.

16 Now, what becomes important is Mike goes
17 over to see his dad and Dr. Dranov comes over
18 because Mike's dad calls Dr. Dranov to come over.
19 We have a medical doctor. We have Michael's
20 father who was an administrator for a medical
21 office, a large medical office. Mandatory
22 reporters. Dr. Dranov. I think Mr. McQueary
23 was, too. Mandatory reporters of sexual
24 activity.

25 Michael relates to them what happened.

1 Do they say we have to call the police? Do they
2 say let's call 911? Do they say we have to check
3 with CYS? Do they say we have to do anything
4 other than -- what did they say? You know what
5 they said. Talk to Joe Paterno.

6 Mike talks to Joe Paterno the next day.
7 Does Joe Paterno say we got to call the police?
8 Penn State Police? Coach Paterno calls the Penn
9 State Police. They're there in five minutes at
10 best. Mike, you stay right here. I'm calling
11 Penn State Police. We're going to get to the
12 bottom of this.

13 What does Joe say, according to Mike?
14 I'll bring it up with Tim Curley, the athletic
15 director. There's a meeting. Tim Curley, Gary
16 Schultz. Mike tells them what he saw. Do they
17 call the police? Do they institute an
18 investigation? What do they do? They tell Jerry
19 Sandusky don't bring kids into the shower any
20 more.

21 Now, folks, you all have common sense.
22 You're all bright. Is that consistent with
23 someone saying you saw somebody having anal sex
24 with a kid. You know who the perpetrator is.
25 Five well-respected adults, five, not counting

1 even Mike McQueary. Dr. Dranov, John McQueary,
2 Coach Paterno, Gary Schultz, Tim Curley. Is it
3 possible in the realm of common sense and
4 reality, is it possible all five of them said
5 just tell them not to come in the shower? Don't
6 call the police. It's nothing serious.

7 Or is it consistent with I saw something
8 that made me feel uncomfortable. Jerry was in
9 the shower which he was. He never denied that.
10 He spoke to Tim Curley about it and then as a
11 result of that, he was told don't bring kids into
12 the shower any more and he didn't.

13 Does it make sense? You have to decide
14 that. Am I saying Mike McQueary is lying? No.
15 But what I'm saying is I think he assumed and as
16 I said, the old saying, you assume. You know
17 what happens. You make a...

18 Now, you heard from Hank Lesch from The
19 Second Mile.

20 I have to watch my time. I'll get in
21 trouble.

22 You heard from Hank Lesch who said this
23 information from The Second Mile indicates Mike
24 McQueary played golf for The Second Mile in 2001
25 in June which was four or five months after this

1 incident on February 1, 2001. He played golf in
2 2003.

3 Now, Mr. McGettigan on cross-examination
4 asked him, well, did you see him there? Can you
5 swear he was there? He says, no, of course, not.
6 But what he did say to you is but we sent a thank
7 you letter out for the 2003 golf tournament.
8 Well, does that mean he was there? Yeah, because
9 you got a thank you letter if you participated.

10 You heard Mike say you would have to
11 show me if I played golf at The Second Mile
12 tournament after that incident. Well, I say to
13 you we showed him. Is that consistent with his
14 telling us he saw what he saw? Would you support
15 a program where this man was perpetrating
16 horrific sexual acts on kids? Would you continue
17 to support that by playing in a tournament? Do
18 you think for a second everybody wanted to cover
19 this up? If you wanted to cover it up, what good
20 are you doing by letting it continue? How is
21 that helping anybody to allow a perpetrator to
22 continue to do these horrific things, if that's
23 what happened?

24 Does it make sense? You saw a parade of
25 character witnesses, many of those kids from The

1 Second Mile. You heard from Chad Rexrode -- and
2 before I forget because I'm running out of time.

3 Before I forget. Did Zach Konstas who's
4 Accuser No. 6 -- he's the one from 1998. He's
5 the one who was -- situation was investigated and
6 I think his lawyer is here today, too. He's the
7 one whose case was investigated in 1998. Penn
8 State Police and you heard from Ron Schreffler
9 and his opinion was he would have prosecuted.
10 That's fine.

11 Ray Gricar who you heard Ron Schreffler
12 say he was a professional, consummate prosecutor,
13 excellent prosecutor. You heard that from Ron
14 Schreffler. CYS investigated. Children and
15 Youth Services and they determined there was not
16 sufficient evidence to pursue that prosecution
17 but the Commonwealth chose to.

18 What did we find out from the stand when
19 Zach Konstas testified? What did he tell us?
20 After that happened, after it was investigated,
21 he continued a relationship with Mr. and Mrs.
22 Sandusky. He told you -- he told you. I asked
23 him but he told you. The Sanduskys helped him
24 finance a mission trip to Mexico. He'd come up
25 for weeks when he was home from college and they

1 let him use their car. He had dinner with them
2 last summer.

3 Does that make sense? What did he tell
4 you about when he started thinking this was
5 inappropriate? After all these years? I think
6 -- again your recollection counts, not mine. But
7 I think he's the one who also said he had sent
8 Mr. Sandusky text messages. Thanksgiving 2009, I
9 believe, Father's Day 2009. I'm so thankful you
10 are in my life. I am so thankful that God's put
11 you here, something to that effect. Whatever you
12 recall is what counts. Does that sound like a
13 victim? Does that -- why in the world would he
14 continue to have that kind of relationship with
15 Mr. Sandusky? Does it make any sense?

16 Or as he said, well, after I got a
17 lawyer, after I started talking -- meeting with
18 my lawyer who didn't get paid. They never sent a
19 bill. These things started seeming inappropriate
20 to me. Folks, you got to use your common sense.

21 Rittmeyer, Accuser No. 10. He said that
22 Mr. Sandusky tried to get him to perform oral sex
23 on him in a silver-colored convertible or
24 silver-colored car with a moon roof. Did you
25 hear me ask the other kids, a number of them, did

1 you ever -- and these kids, by the way, look at
2 the years. We're talking not a visit. We're
3 talking about several year periods. Did any of
4 them ever see Mr. Sandusky have a silver colored
5 vehicle of any kind, let alone a convertible or
6 something with a moon roof. They said, no,
7 that's not. Does that make any sense?

8 Mrs. Sandusky said she didn't even know
9 the kid. But going back to people like Aaron
10 Fisher and Sabastian Paden, you have to believe
11 that Mr. Sandusky was doing all this stuff at the
12 same time and yet somehow these kids -- he was
13 rotating these kids in and out of the house that
14 they couldn't even tell you that they were there
15 together except on maybe one or two occasions.
16 And, again your, recollection counts.

17 I believe Aaron Fisher said a hundred,
18 120 weekends he spent at the Sanduskys and I
19 think Paden said he was there every weekend for
20 four years starting on Friday night going through
21 Sunday. You have to believe that somehow
22 Mr. Sandusky with all the things he was doing,
23 much like in the case of Mr. Houtz who said Jerry
24 played basketball and racquetball with me two or
25 three times a week during football season when

1 you heard from Dick Anderson 17-hour days.

2 And you heard Dottie tell you that he
3 was home at night to have dinner with his kids.
4 Does it add up? Does it add up?

5 The janitor case. The Commonwealth is
6 asking you to convict Mr. Sandusky of very
7 serious crimes based upon the hearsay testimony
8 of another janitor who testified that a janitor
9 who now suffers from senility told him this is
10 what happened. This is what he saw. But do we
11 know what he saw? Do we know what his mental
12 health state was at that time? Do we know
13 anything about the janitor who was the basis of
14 this accusation having told the other janitor?

15 Do we have a victim? Did someone come
16 forward and say, hey, that was me. I'm the kid
17 in that shower. Do we have any of that? Does
18 that make any sense?

19 The Commonwealth is asking to convict
20 him of something that is so serious, involuntary
21 deviate sexual intercourse, without a victim,
22 without the person who says he saw based upon
23 what another janitor says he saw 11 years later
24 or 12 years later. This is the kind of case they
25 have. This is what we're looking at.

1 Now, what you're going to see when the
2 Commonwealth closes I'll tell you right now. I'm
3 not a gadget person. I'm old fashioned. I like
4 talking to you. Anybody can show pictures.
5 They're going to put all the kids up there.
6 There's going to tug on your heart strings. Look
7 at these kids. These kids came into court and
8 they said Jerry Sandusky did all these horrible
9 things. Going to get you into tears.

10 We all want to cry. You know why we
11 want to cry? Because nobody wins in this case.
12 This is awful no matter what happens. This is
13 awful if Jerry Sandusky did this, and I'll be the
14 first one to tell you if he did this, he should
15 rot in jail for the rest of his life. That's my
16 feeling.

17 But what if he didn't do it? What if
18 he's maintained his innocence and what if he
19 didn't do these things? His life is destroyed
20 and not only his life. We have a fired
21 university president. We have a dead coach. We
22 have an institution party, Schreffler. This is
23 awful. Regardless of the outcome, it's awful.
24 You folks have to decide guilt or innocence.

25 But don't be fooled. Don't get tied up

1 with the pictures. The Commonwealth is going to
2 say to you -- and I don't get the chance to come
3 back. I have missed -- I can't come back and
4 say, well, Mr. McGettigan said this and this is
5 my response because I have a lot of them but I
6 don't get that opportunity. So you have to fill
7 in the holes using your common sense.

8 Why would they come into court and be
9 embarrassed? Out there, the lawyers. Money. We
10 all know. What's the old saying? Money is the
11 root of all evil? Money.

12 But not only money, coaching. We have
13 established -- you know how rare it is for a
14 defense lawyer and his staff to be able to show
15 you what the officers did that they deny doing?
16 This never happens. Maybe that man has an angel
17 on his shoulder. Because all he ever wanted to
18 do is help kids. From the time he was a kid, he
19 helped thousands of kids. You heard those kids
20 yesterday.

21 You heard those kids from the stand say
22 he saved my life. He was the most important
23 person to me, and they grew up to be good kids.
24 Chad Rexrode and the other boys, David Hilton,
25 how he changed their lives. They would go out

1 like the other kids but you heard them say he
2 never abused us.

3 You heard from other kids. You heard
4 from Dr. Martin who said I lived with the man.
5 You saw the album he gave him with the poem in
6 the back. You know, I'm not even getting into
7 histrionics, folks. My guess is you have to have
8 -- the psychologist testified in front of us and
9 say, okay. What do we do with this? Chances are
10 you'll say, okay. Let's look at the evidence.
11 Figure out what happened.

12 But all these other people -- you heard
13 from people he goes to church. He'll take these
14 kids to church and buy them clothes so they could
15 go to church. The one kid said I never went to
16 church before.

17 He gave them money. I think one of the
18 kids yesterday -- I think was Hilton -- said he
19 gave me money. I lived in Chambersburg, wherever
20 he lived, maybe that was Rexrode. He gave me
21 money for a gym down there. He wasn't down
22 there. He said -- I think maybe Hilton said, he
23 sent me letters, much like the love letters they
24 referred to. They weren't love letters they were
25 Jerry being Jerry. He's touchy. He's feely.

1 He's sensitive. He loves kids.

2 Jerry asked me to read this to you
3 because this is something that he sent to a lot
4 of kids over the years. Something that he's
5 included in many of his writings.

6 It's titled Mother Teresa's *Anyway* poem.

7 People are often unreasonable,
8 illogical, and self-centered;

9 Forgive them anyway.

10 If you are kind, people may accuse you
11 of selfish, ulterior motives;

12 Be kind anyway.

13 If you are successful, you will win some
14 false friends and some true enemies;

15 Succeed anyway.

16 If you are honest and frank, people may
17 cheat you;

18 Be honest and frank anyway.

19 What you spend years building, someone
20 could destroy overnight;

21 Build anyway.

22 If you find serenity and happiness, they
23 may be jealous;

24 Be happy anyway.

25 The good you do today, people will often

1 forget tomorrow;

2 Do good anyway.

3 Give the world the best you have, and it
4 may never be enough;

5 Give the world the best you've got
6 anyway.

7 You see, in the final analysis, it is
8 between you and your God;

9 It was never between you and them
10 anyway.

11 Do you remember Brett Witmer testified?
12 He was the young guy who ran the youth center --
13 Youth Service Bureau up in Snow Shoe and he said
14 Jerry would come up and meet Brett Houtz. He
15 said the one day Jerry came up -- and again your
16 recollection counts. He said the one day Jerry
17 came up and he was supposed to pick up Brett.
18 Brett blew him off and Brett Witmer said Jerry
19 should have been mad. He was apologizing to
20 Jerry, and Jerry said something to the effect
21 don't worry about it. I'm not angry. These kids
22 have problems. These kids have issues. We have
23 to be there for them. Even when they do
24 something like this, it's not a big deal. That's
25 the Jerry Sandusky all these people over there

1 know. That's the Jerry Sandusky these hundreds
2 of thousands of kids who he's been associated
3 with know him by.

4 You know he wrote that book *Touched* and
5 it's a beautiful book if you ever get the chance
6 to read it. But I suggested to Jerry when this
7 is all over, the next book you ought to write is
8 *Slam* because that's what's happening. Everything
9 he's ever stood for, everything he's ever loved,
10 everything he's ever built is gone and not only
11 gone, his reputation is gone forever.

12 I want to thank you for listening. I
13 know you've paid attention. I know you've
14 promised you would. You're going to hear from
15 Mr. McGettigan. When you go out and deliberate,
16 ladies and gentlemen, I'm asking you, based upon
17 what we have established in this courtroom, with
18 the coaching which was denied by the police, with
19 the improbable testimony you have heard, I'm
20 asking you do return a verdict of not guilty as
21 to all of these charges. Mr. Sandusky will never
22 get his life back. It's impossible. But at
23 least he can start rebuilding it.

24 Thank you so much for your attention. I
25 know I spoke a little bit of time. I apologize

1 for that but there's so much to say. My heart is
2 heavy. I'm sure your hearts are heavy but thank
3 you very much for your attention.

4 THE COURT: We will remain seated while
5 the jury is taken out.

6 (Whereupon, the jury was escorted out of
7 the courtroom.)

8 THE COURT: We'll be in recess until
9 11:45.

10 (Whereupon, a recess was taken.)

11 (Whereupon, the following discussion was
12 held in chambers:)

13 THE COURT: We'll note for the record
14 that it's 11:40. We're in chambers pursuant to a
15 request from Mr. Fina, and I'm not sure of the
16 purpose. So go ahead.

17 MR. FINA: Your Honor, I just want to
18 put on the record some objections to the defense
19 closing and do them in sort of a list fashion.

20 We would object to the testimony about
21 what happened before the CYS hearing and
22 specifically defense counsel said Ryan Rittmeyer
23 testifying, frankly, rather extensively about
24 facts not in evidence about why Mr. Sandusky did
25 things or did not do things involving the CYS

1 investigation. None of that was of record.

2 Talked about his thought patterns and
3 the state of mind and all these things and his
4 reasons for not going forward with the hearing.
5 That's again facts not of record.

6 There were statements about after the
7 case -- quote -- went public, that other people
8 came forward and there's no record -- evidence of
9 that, the timing and when it went public and
10 those type of things.

11 The thing that really was concerning,
12 Judge, is the repeated statements about why the
13 defendant is only charged at 68 years old and the
14 charges only go back to 1994. Something along
15 the lines we have to use our common sense. We
16 have to believe that a man only becomes a
17 pedophile when he's in his mid-fifties. There's
18 nothing before the mid-1990s and this was
19 reiterated numerous times.

20 Judge, the statute of limitations on
21 these charges only go back to approximately -- I
22 think 1993 would be the earliest point at which
23 we could legally charge. I have no problem
24 representing to the Court that there are in fact
25 numerous victims from before 1993 and, regardless

1 of whether they're victims from before 1993, to
2 argue that somehow the Commonwealth's evidence is
3 deficient because it did not charge prior to the
4 period that the statute of limitations would
5 allow us to charge is just grossly inappropriate.

6 I would request either an instruction or
7 allowing Attorney McGettigan to state that simply
8 to the jury that there's this thing called the
9 statute of limitation and it controls periods of
10 time that the Commonwealth can charge people for
11 offenses.

12 There was also, Your Honor, extensive
13 references to attorneys here in court. They're
14 sitting out there today and an attorney was
15 named. None of this is of record. Those are
16 facts outside the record.

17 Your Honor, there was also a specific
18 references to Coach Paterno and his involvement
19 in this matter. None of that was of record other
20 than Mr. McQueary informed him of things but
21 there were specific objections made about
22 anything Coach Paterno thereafter did or said but
23 there was testimony on behalf of Coach Paterno.
24 There was also testimony -- I'm sorry -- rather
25 extensive argument about responsibility for Coach

1 Paterno being fired. There were references to
2 him dying as a result of these charges being
3 filed.

4 There were statements about Penn State
5 University's president suffering and being fired.
6 There were statements about Curley being charged
7 with perjury. All of this is outside the record
8 and inappropriate, Your Honor.

9 There was also a direct statement that
10 as a result of the charges a great university,
11 Penn State University, has been tarnished was the
12 word that was used.

13 There was argument -- statements, Your
14 Honor, about why Mr. Sandusky agreed to do the
15 interview of Bob Costas and then in the lengthy
16 discussion of that interview, there were just
17 repeated statements about Mr. Sandusky's state of
18 mind, why he said things. All of this is grossly
19 inappropriate we would aver, Your Honor, when the
20 defendant did not testify. He was testifying for
21 the defendant throughout the recitation of the
22 Costas interview.

23 I mean, one example was that, you know,
24 Jerry Sandusky, one of his mannerisms is that he
25 asks questions in response to questions.

1 There was argument about the
2 presentment, Your Honor. It was so detailed it
3 referred to actually paragraph -- paragraph 7 of
4 the presentment on McQueary. The presentment is
5 not of evidence. Was never part of this trial.
6 Never introduced to the jury.

7 More references to lawyers.

8 Finally, Your Honor, the poem at the end
9 which made references to God, not appropriate.
10 Just putting that on the record.

11 THE COURT: Okay.

12 I think that, you know, the practical --
13 I keep using the word practical but I'm trying
14 to be that. The practical fact is that these
15 events occurred in the context of a community
16 that we have to assume the community brings a
17 certain level of common sense and common
18 experience to their judgment. So I'm not
19 inclined to do anything to correct rhetorical
20 statements, particularly since I feel quite
21 confident Mr. McGettigan has a right to rebut
22 that with the exception of the -- any legal
23 misrepresentation or misrepresentation where one
24 misleading legal statement about the statute of
25 limitations. If you want to respond to that,

1 I'll give you a chance to respond to it first.

2 Do you object to --

3 MR. AMENDOLA: Well, what I didn't
4 know -- Frank, just told me -- that there were
5 things that went back beyond that. So I think in
6 fairness to the Commonwealth, if Mr. McGettigan
7 says something to the effect that there's statute
8 of limitations, without going into there are
9 other cases because, obviously, that's going to
10 create.

11 MR. McGETTIGAN: I wouldn't do that.
12 Your Honor, I understand that's -- we wanted to
13 make our record as practical remedies are not
14 really readily accessible at this juncture.

15 THE COURT: I would make a remedy about
16 the argument before 1993 unless you want to
17 address it yourself.

18 MR. McGETTIGAN: I will address it with
19 as much as circumspection and supplement that.
20 That would be --

21 THE COURT: All right.

22 MR. ROMINGER: Judge, I only have one
23 thing I want to say about that.

24 THE COURT: We're going to go and get
25 going.

1 (End of discussion in chambers.)

2 THE COURT: You may be seated. Would
3 you bring the jury in please?

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

6 THE COURT: Mr. McGettigan, go ahead.

7 MR. McGETTIGAN: Thank you, Your Honor.

8 May it please the Court, counsel,
9 Mr. Fina, ladies and gentlemen of the jury. Good
10 afternoon. Almost afternoon. I'm the person
11 that's keeping you from lunch.

12 Now, first of all, I thank you for your
13 kind attention during trial. I appreciate it. I
14 know some of you are copious note takers and that
15 will serve you.

16 I will tell you that I gave great
17 thought to what I would say when I stood before
18 you today and I thought I'd talk about each and
19 every single incident and detail in great length,
20 and I thought well if it's four or five hours,
21 you might stop me. So I am going to rely in
22 great part on your attention to the witnesses and
23 your note taking and the specific details of
24 these events.

25 I will, however, discuss some of the

1 ways in which I would like you to perceive and
2 recollect and think about the testimony of the
3 witnesses as I did in my opening. In fact, I'm
4 going to reference now my opening which you'll
5 recall I asked you at the time -- I told you at
6 that time that I would outline the evidence and I
7 told you that outline would be filled in with
8 testimony during the course of the trial and that
9 I would underline the evidence at the conclusion
10 of the trial. I'll try to do that as well.

11 But you also must understand that I am
12 permitted, and in this incidence it's required,
13 to respond to some of the things that defense
14 counsel said during his closing. The way I
15 thought about it as I was sitting there writing
16 -- you may have seen me sitting there writing as
17 counsel was talking -- was it reminded me of a
18 story, short story but I am going to tell it
19 anyway.

20 When I was a kid I came home and got in
21 a little trouble. I had been out for a while
22 where I shouldn't have been. And I came home,
23 and my father was waiting for me, and I'm lucky.
24 I had a father because many of the victims you
25 heard from did not. I had a father, and he was

1 waiting for me.

2 I walked in there. He asked me for my
3 explanation of where I was and what I had been
4 doing and why I was in trouble. I said -- and I
5 think I spoke to him for quite some length of
6 time almost, almost as long as Mr. Amendola's
7 closing took, an hour and 20 minutes. Told a
8 great long story when I was young.

9 My father sat back in his chair, pulled
10 his glasses down, and said, interesting if true.
11 That's what I was thinking when I was sitting
12 here listening to Mr. Amendola.

13 May we have this up there, please?

14 The first things I thought about is this
15 and that has the names Aaron Fisher and Sabastian
16 Paden on it. And you remember Mr. Amendola
17 reminded you that, oh, they both went to Second
18 Mile camp. He didn't point out they were
19 different weeks of the same year. They were
20 never in the same week in any year. Didn't
21 overlap there.

22 In any event, Mr. Amendola also said
23 that I would put pictures of witnesses up, and I
24 intend to do that. But not -- that's not the
25 first thing I'm going to do. The first thing I'm

1 going to do is remind you, as I remind you what I
2 said in my opening, I'm going to remind you of
3 some things that -- one thing that Mr. Amendola
4 said and then I'll remind you what I said.

5 May I have a picture of the slide,
6 please? Can you make that bigger? There we go.

7 The Commonwealth has overwhelming
8 evidence against Mr. Sandusky. I'm going to
9 stand right beside here.

10 If I can have the next slide, please.
11 Can you make that bigger?

12 Now, you remember what you say then?
13 When there's overwhelming evidence of guilt, the
14 defendant does a number of things:

15 He convincingly must -- like to shower
16 with little boys.

17 Denies what he can -- I had no sexual
18 intent.

19 Calls everyone a liar -- well, those
20 eight people must be lying and more.

21 Make counter charges -- they're in it
22 for the money.

23 And allege a conspiracy -- they're in it
24 together.

25 On June 11, 2012, I told you what you

1 would hear and you heard it. That last thing,
2 sexual offenses, almost you need for crimes in
3 which the victims are the accused. Is there
4 anything about that slide, anything that's on
5 there that is not clear and true? Overwhelming
6 evidence, reply to things they respond with, and
7 the last thing, the victims are accused.

8 Now, I would also like to address early
9 on, because Mr. Amendola made a great deal of
10 this and I was going to save it for later, the
11 conspiracy theory here. I think there's a
12 conspiracy alleged. It sounds like it. It
13 sounds like it again with the two troopers and
14 then expanded from there and it includes any
15 number of people, including perhaps Mr. McQueary.

16 And the great thing about conspiracy
17 theories, in fact conspiracy theories that bear
18 no weight, that are almost ludicrous on their
19 face, is you just let them go on and on until
20 their magical construction collapses of its own
21 weight. And that's kind of what you see here.

22 Because you have two troopers. I'm
23 going to speak up on behalf of the couple
24 troopers who weren't the best witnesses in the
25 world. I made a point of marking this. You know

1 that transcript of the tape that was running
2 there when they were taping, you heard a
3 16-minute portion during the time and that was
4 almost exclusively between an attorney looking
5 out for his client's interest and worried about
6 his client, I would submit, and the trooper.

7 Do you recall -- I think Brett went
8 outside to get a Sierra Mist. He and the other
9 trooper and he went out to do something that I'm
10 real familiar with. He went out to relax and
11 smoke a cigarette because he was going to have to
12 do something that was going to be wrenching to
13 him; that he tried to avoid; that he didn't want
14 to talk about. He went outside.

15 I think you heard that 16 minutes of
16 that conversation that went on. And I submit to
17 you other than lower voices and the fact that
18 counsel acted as if it was a big deal, there was
19 not a great deal of substance to that. Just
20 somebody trying to find out what was true and
21 somebody else trying to protect someone from
22 lying.

23 The most important thing -- and this is
24 why I speak up a little bit on behalf of Corporal
25 Leiter who obviously was really looking to make

1 something out of this case. That's why he's
2 retired now and heading to Florida. He was going
3 to become a national figure. He was doing his
4 job. The thing that I remember most about that
5 tape is the thing that's most important to an
6 investigator and interviewer, someone who's
7 talking to a kid or anybody that's been harmed.
8 You're not alone. You are not alone. He said
9 that. That was mean. Did you hear any of the
10 rest of that tape? The defense didn't want you
11 to hear the rest of that tape because to listen
12 to the rest of that tape would have been a
13 recitation of the litany of the practice that had
14 been inflicted upon Brett by that defendant.
15 That's what you heard and that's where the
16 conspiracy started.

17 Now, here's where it starts to fall
18 apart of its own weight. This is where it gets
19 interesting. First, it's two troopers. First of
20 all, two of Mr. Amendola's theories are on a
21 collision course. One is it's a vast conspiracy
22 and the other is it's victims who were talked
23 into saying something. I'm not sure which it is.
24 Whether they wanted to come forward and talked
25 into it by the overbearing nature of the

1 investigation. You must say this. Or were they
2 money grubbing? Were they out looking for
3 something? Those are in collision course.

4 Let's go on because Mr. Amendola didn't
5 mention what goes on after victims start to be
6 uncovered by thorough and reasonable
7 investigation. Because what goes on in a case
8 and what happened in this case, because you heard
9 testimony about it, is more became involved.
10 Then the attorney general became involved and a
11 grand jury investigation is opened and also
12 attorney general agents were involved. Okay.

13 So now the conspiracy must, by
14 necessity, become larger because they're all part
15 of it, too. They must all want something out of
16 it, too. And it's easy when you don't name them
17 to just say, oh, the system or those people or
18 they're part of the conspiracy. That's an easy
19 way of pointing fingers at people and making them
20 into a big group. We're going to get to that
21 just in a minute or two because after additional
22 troopers and agents of the Office of the Attorney
23 General and a grand jury -- the grand jury
24 composes of citizens like yourself, 23 people
25 sitting in a room listening to people say what

1 happened. But they are now part of the
2 conspiracy, too.

3 So we have troopers, agents, deputy
4 attorney general, grand jury. The rest are -- or
5 more are involved. But when you think about this
6 conspiracy, it involves time travel as well
7 because you have to go back from the grand jury
8 that began in 2009, you have to go back to '95,
9 to '98, 2000, 2001 because all those are dates of
10 events in which this defendant was involved and
11 Detective Schreffler who first came in contact
12 with the defendant when he warned him in the
13 shower with kids is not the right thing, all the
14 way back in the year 1998. So the conspiracy
15 theory now involved not only enough people to
16 populate this jury box, it involves time travel
17 as well.

18 And then we go beyond that, and I'm
19 going to tell you, ladies and gentlemen, this is
20 where I think a prosecutor is allowed to take a
21 little bit of offense because at a certain point
22 it involves Mr. Fina and myself. Because -- and
23 where it starts to unravel right before your very
24 eyes, remember David Hilton, the young man with
25 blonde hair, came in here just the other day? He

1 was the one who was strong-armed by everybody.

2 Now remember this. The last person to
3 ask questions of each of the victims in this case
4 was me. I did it before you. And I think it's
5 reasonable for you to assume that I had spoken to
6 them before. I think most of them said they had.
7 If they didn't, well, you know they did. I think
8 David Hilton gave an example of the overbearing
9 nature and the way I tried to strong-arm him into
10 saying something bad and try to pick on this
11 defendant and join the conspiracy.

12 What did he tell you? If I recollect
13 properly, he said, you know, we talked. Talked
14 about his family, deaf family. He didn't feel
15 like saying anything. Didn't want to talk about
16 anything. I reminded him then that his uncle had
17 called us and reminded him on the witness stand.
18 He said he had nothing to say. I said if you
19 ever want to talk to us, give us a call, come
20 back, and we can talk. So that's it. That's it.

21 But in Mr. Amendola construct, this
22 grand conspiracy theory, while Mr. Fina and I are
23 implicated, and there are only two possible
24 beliefs that he can try and force upon someone is
25 that we might be conspirators and therefore

1 corrupt. We're hoodwinks. We are all fools. We
2 are all tricks. I don't know which it is and
3 they're in conflict anyway.

4 I have to tell you, I guess his theory
5 is that Sabastian, who had no lawyer except me,
6 and he hasn't paid me yet. I am not going to
7 take any money. That I tricked him somehow or
8 else I hoodwinked him in saying these things,
9 hoodwinked him into talking about something which
10 you can see how unpleasant it was for him.
11 That's the conspiracy theory in a nutshell, and
12 it collapses of its own weight because it
13 requires everyone to either be a fool or corrupt
14 or in it together and just say it's a system or
15 the Commonwealth. Use those big words when you
16 are talking about real people, people who have
17 taken oaths, people who have tried to do things
18 the right way I would submit. That's not what
19 counts we'll have you believe and to what end?

20 To what end? What has been gained?
21 What would be gained? I don't think troopers get
22 raises for doing their job. I don't think Deputy
23 Attorney Generals, certainly not me, get them for
24 doing their job. I'm not going to deal with Bob
25 Costas.

1 In fact, let me tell you this is the
2 first time I have been told in a trial three
3 things about me. I sustained the Court's
4 objection once, if you recall. Somebody called
5 me cool. That's the first time in or out of
6 court. And I think what was the third one --
7 something else happened. A couple of firsts for
8 me. I'm pleased with that.

9 But now that's just what happens when
10 you have these conspiracies. They just -- they
11 fall apart and melt into nothing. Again,
12 Mr. Amendola would have you believe that there
13 was this great drive to punish or get this big
14 important person, Mr. Sandusky.

15 I submit he was important here and
16 well-known and that's one of the reasons there
17 was silence by many of his victims because they
18 were unsophisticated because he picked the right
19 kids, vulnerable kids. But among other people --
20 you know, in 2008, I am going to tell you
21 Mr. Amendola saw fit to tell you what he was
22 doing in 2008. Do you remember when he went to
23 CYS, to the Children and Youth Services and
24 talked with Jessica Dershem, you know, with his
25 client? So bad to have a lawyer. If he derived

1 these young men of having protection and having
2 lawyers but he wouldn't want to deprive his
3 client at CYS. Well, that was in November of
4 2008.

5 And me, I'm going to tell you, part of
6 this vast -- this grand conspiracy that existed
7 here in November of 2008, I was in the desert in
8 southern Iraq and in 2009, I didn't know the name
9 of Mr. Sandusky from a can of paint. So I'm late
10 in the day addition to the conspiracy, just like,
11 you know, there's time travel for Ron Schreffler
12 to be part of the conspiracy and Mike McQueary,
13 he must be part of the conspiracy, too, back in
14 2000, 2001.

15 Well, if you conclude there's a
16 conspiracy, well somebody bring in handcuffs for
17 me and Mr. Fina and everyone involved in this.
18 Bring us all along. Bring us all along and lock
19 up the lawyers and lock up some victims because
20 you always have to accuse the victims. You
21 always have to allege a conspiracy. That's what
22 you saw there.

23 Anyway, I usually try to be a bit
24 organized about things and I'm going to try now.
25 But I will jump around a little bit and I hope

1 you'll forgive me and I may make reference to my
2 notes. Because this is not a discussion and
3 argument that is susceptible to real close and
4 linear organization. It's not like sometimes --
5 I used to try a lot of murder cases. You start
6 from when the plan starts and you work your way
7 through until it ends. Here, there were so many
8 offenses, so many grievous and horrible things
9 over so many years that I'm trying to help you
10 address them and to think of them, as I did when
11 I started thinking of them, as the whole -- as
12 the whole. Okay.

13 May I have now -- you recall in my
14 opening I told you some of the things that caused
15 us to be here today instead of perhaps years ago
16 when Michael McQueary came forward, when Ron
17 Schreffler was involved or those janitors were
18 involved were these things. Humiliation and
19 shame and fear and what they equal is silence.
20 That's why we have been delayed. Justice has
21 been delayed but it's up to you to see that it's
22 not denied.

23 May I have the next one please?

24 And I'm not going to disappoint
25 Mr. Amendola. That's what this case is about.

1 Because I told you in my opening that you would
2 see young men but this case would be about what
3 happened to them as boys, and I asked you not to
4 forget when they were boys, not to forget what
5 the defendant did to them. So please remember
6 that.

7 I'm not wrenching your hearts strings
8 and I hope I'm not yelling at you. I'm not a
9 loud spoken person. I tried not to be during
10 this is case. I may talk a little too fast
11 sometimes but I'm not a loud spoken person, and I
12 don't want to tug at your heart strings. I want
13 to remind you of what the substance of this case
14 is about, because it's what happened to those
15 boys.

16 You know what? Not just those boys, to
17 others unknown to us, to others presently known
18 to God but not to us, but we know what the
19 defendant did to them because adults saw them and
20 adults told you about them.

21 May I have the next one please?

22 That's the person who did it, the
23 defendant, sitting right there. This case is
24 about him and what he did to them. It's not
25 about conspiracies. It's not about time travel

1 conspiracies. It's not about people seeking fame
2 or fortune or money.

3 Well, you know, one 17-year old or 16 or
4 however old he was at the time, he might have
5 liked a new Jeep. I think probably wanted a Jeep
6 the day before the defendant started abusing him.
7 He probably wants one the day after this trial
8 ends and the day after that because he's a
9 teenage boy. I wanted a new Jeep then.

10 What about Sabastian? He has no lawyer
11 except me. I may make him buy me a Coke when
12 this is over. Thank you.

13 Now, I would like to talk a little bit
14 about the witnesses and how these witnesses and
15 witnesses in general react to things. Because
16 one of the things that counsel didn't talk about
17 -- Mr. Amendola didn't talk about -- is witnesses
18 react in different ways on the witness stand.
19 And they do so for a variety of reasons.

20 The first one, probably most obvious,
21 may be nervousness or nerves. I'll tell you
22 what. I have been doing this for a long time.
23 I'm nervous every time I stand up in front of
24 people. It happens. And some of you may have
25 been nervous the first time you stood up here and

1 were all sworn in as jurors. It just happens.
2 There's nothing you can do about that.

3 But the way people feel inside and how
4 they testify is affected by two or three
5 different things. You can -- interchangeable.
6 And they are your perception of things. How
7 they -- how something feels to them or how they
8 understand it, how they take it in and their
9 perception, and then later their recollection.
10 That is, how good are they remembering what
11 happened, and, finally, articulation. That is,
12 how exact are they and how fast or how well can
13 they speak about what they experienced or
14 recollect. I tell you that so that you will
15 understand as you saw a spectrum -- a spectrum of
16 witnesses who had different capacities to appear
17 before you as witnesses.

18 All of those capacities come out in the
19 way they testified. And I'll give you -- you'll
20 see on broad range. You'll see expert witnesses,
21 Dr. Atkins and Dr. O'Brien, who obviously have a
22 great ability to absorb material. They're
23 professional people. They're educated. They
24 have a good ability to recollect what they have
25 done and as you can see from the way they recall

1 or testified, they're very articulate. They can
2 say things well. They can talk well before you.

3 At the other spectrum maybe but you'll
4 see -- you see younger people who come up and are
5 affected in different ways. Their recollective
6 capacities are not as great. Sometimes, because
7 of age even, their perception of things isn't
8 even that great.

9 I'll give you a good example of that.
10 Zach Konstas. He didn't know what was happening.
11 You know, he perceived a feeling but he didn't
12 perceive in an adult way what the defendant was
13 doing when he picked him up and squeezed him and
14 said he squeezed his guts out and hugged him in
15 the shower. So that's what happened there. He
16 didn't perceive so well.

17 Others had different capacities for
18 recollection which is sometimes people think it's
19 connected to intelligence, and it may be. But I
20 worked with a lawyer once who took a train --
21 went to the gas station near where he took the
22 train. Went in -- put some gas in his car. Went
23 in to get a cup of coffee. Came out. Got on the
24 train and went to work. Left his car there with
25 the gas pump in it. So people have different

1 capacities to recollect things.

2 They also have different facility in
3 speaking. I'll give you a good example of that
4 and it's not affected only by the person's innate
5 abilities but also by factors that are common to
6 all of us, fatigue, fear, nervousness,
7 unwillingness to confront a difficult task but
8 trying to do so anyway. You saw the most
9 difficult one -- two of the most difficult ones
10 were at the very beginning almost and the very
11 end of the trial, two of the youngest young men
12 here, Aaron and Sabastian.

13 Aaron had difficulty in speaking because
14 of the emotional response -- the tremendous
15 emotional response he had from his recollection
16 of the abuse that had been heaped upon him by the
17 defendant.

18 Sabastian, also in part that, but
19 another part, it was the end of the day. I don't
20 know if anyone has been sitting around for five,
21 five and a half hours waiting to testify,
22 anticipating being asked big questions by big
23 people and sitting in court and having somebody
24 yell at you and accuse you of different things
25 and then hour after hour after hour after hour

1 you wait and you saw as part of that on the
2 witness stand. Someone who just wants to -- can
3 I just be done with it? I just don't want to
4 tell you what happened and just leave. You have
5 to understand that. You have to have some
6 sympathy, some compassion for a person who is in
7 that flight. That's what happens.

8 So I want to tell you about that because
9 I asked you at the beginning of the trial to use
10 your insight, your perception and your
11 understanding of the way in which children behave
12 and children experience things so you would
13 understand what was going on. The fear, the
14 shame, the humiliation that equals silence that
15 came forth in court during the course of this
16 trial.

17 So think about that when you consider
18 the testimony of each of the witnesses. Of
19 course, it's easy for defense counsel to say, ah,
20 he was lying. You could tell he was lying. Oh,
21 yeah, the conspiracy but think about the
22 capacities and the abilities of each of the
23 witnesses as they try to tell you something that
24 they tried to bury; that they had, in fact,
25 buried and you recall what I said in the opening

1 as well, you know, the past is not even dead.
2 It's not even past. Well, I would submit that's
3 so true in this case as I told you then but it's
4 been buried. Not dead. Not past. It's here
5 today but it was buried, and it was uncovered
6 during the course of the testimony you heard.

7 Now, one of the other things I would
8 like you to think about when you consider the
9 testimony that you heard and the absolute --
10 absolute effort and candor that you heard from
11 these witnesses is how lawyers asks questions.
12 Because it's kind of interesting. You might have
13 heard objections during the course of the trial
14 sometimes to what's called leading. Leading
15 questions.

16 Now, a leading question is being a
17 question asked that suggests an answer. A lawyer
18 calls a witness who's supposed to do that for his
19 witness. So when I called, you know, a victim,
20 these young men, I have to ask them general
21 questions. I can't say did this happen to you
22 this way? They have to tell the story as best
23 they can. That's difficult.

24 Sometimes witnesses are just frozen and
25 they look at you like what am I supposed to say?

1 Once I asked a witness when he was born -- what
2 was the date of his birth was my question. He
3 looked straight at me with a jury in the jury box
4 and people in the audience and said what was your
5 date of birth? He said I was born and stopped.
6 So people get nervous and you see that.

7 Now, the difference is when someone is
8 cross-examining, a leading question can be asked
9 and you saw examples of that when I
10 cross-examined for instance Dr. Atkins because I
11 would suggest an answer because I knew what the
12 answer was and I wanted to hear him acknowledge
13 it. You may have remembered a couple of times I
14 said if you could answer yes or no, please do
15 that and then you can explain away. So I tried
16 to do that. That's a leading question and the
17 person who doesn't call the witness can do that.

18 The reason that's important in this case
19 is because defense counsel could lead all the
20 victims. He could try and get them to answer
21 questions by suggesting an answer or putting the
22 question in a way that tried to force them in a
23 corner and he did that. That's absolutely
24 permissible.

25 But as I sat and listened to it,

1 something occurred to me. I sat and listened to
2 the testifying on direct and try and talk about
3 these very difficult things that occurred. And
4 then I listened to them speak when they were
5 being cross-examined. I listened to the
6 questions and you have very good notes, I'm sure.
7 You may have noted the questions. Defense
8 counsel never -- almost never and maybe never
9 asked a question about the specific instance of
10 these crimes. That is, about the sexual events,
11 the abuse, the anal intercourse, the oral
12 intercourse, the indecent assaults, all the
13 things the defendant did. He never asked
14 specifically about that.

15 He asked about dates and places and car
16 colors and he asked one too many about car colors
17 because the car went from convertible to moon
18 roof. That's an example of what happens
19 sometimes. Because when you have witnesses who
20 are not professional witnesses -- Dr. Atkins
21 resisted being lead. You saw that. He didn't
22 want to answer. He wanted to give his
23 explanation before the answer.

24 And, you know, Dr. O'Brien, he could
25 answer even when led by defense counsel. But

1 with someone who's not a professional witness,
2 when they're led in a certain direction,
3 sometimes because they hadn't thought about it or
4 are nervous, you ask them three questions in a
5 row that sound okay and they just say yes. They
6 keep saying yes. Well, that's fine. That's what
7 happens when defense counsel asks questions.
8 They're led.

9 But the reason he didn't ask about the
10 specific instances about what this defendant did
11 in the basement, in the shower, in the sauna, in
12 the car, in those places, the reason he didn't
13 ask specific questions is because although you
14 can often lead a witness about things around the
15 corners because they're tired and they don't want
16 to listen. Sometimes you can't mislead them, and
17 that's when they fight back and you get more
18 detail and more truth than you'd ever get.

19 And you saw a bit of that with Brett
20 Fisher, the first witness. Because one of the
21 oldest of these victims and the most articulate.
22 He tried to lead him the wrong way. After that
23 he steered clear because you want to lead a
24 witness into talking about dates or screwing
25 something up that just wasn't really essential to

1 the core of what this defendant did. But he knew
2 if he tried to mislead about the core of things,
3 he would get more than he was asking for.

4 So that's one way lawyers ask questions.
5 I thought I would explain it to you and I hope
6 you found it interesting.

7 One of the other things -- and this is
8 just a little aside -- is that you may have
9 noticed that I -- when I asked questions, I
10 pretty much stayed here right in front of the
11 witness because I'm used to that and it's easy
12 and it's fine.

13 Counsel sometimes will stay over there
14 and I did another thing. When I would talk to a
15 witness, I would say, can you tell the ladies and
16 gentlemen of the jury? I tell the reason I do
17 that because witnesses who are nervous,
18 unaccustomed to speaking in the public, not used
19 to being witnesses, it's polite to look at the
20 person speaking to you. They stare at you with a
21 fixed gaze because they just don't know where
22 else to look. After a while it looks like
23 they're playing ping-pong with you. You say tell
24 the ladies and gentlemen of the jury because
25 that's who should hear.

1 That's what you saw Dr. O'Brien do.
2 He's an experienced witness as you may recall and
3 I think you will. He would look right at you
4 because you're the people who have to hear so.
5 No matter how many times you tell young witnesses
6 or even older witnesses tell the jury, sometimes
7 they just feel want to do what they feel
8 comfortable.

9 That's the same reason why defense
10 counsel on cross-examination would often stay
11 over there. Because as I told my witnesses, you
12 know what happens when someone is across the room
13 and asks you questions and you look at them, the
14 jury gets a great view of the side of your head.
15 So that's why you see people in one place and
16 another.

17 Sometimes Mr. Rominger would stand here
18 when it was his witness, be over there when it
19 was our witness. So that's just something you
20 could see. So if you didn't see a witness
21 looking at you all the time, you understand it's
22 a natural fear. They just -- I'm talking to
23 them. They want to talk to me. Even their
24 witness, like Mr. Lesch, for instance. He was
25 looking dead at me as he showed me all these

1 different pictures and documents.

2 In any event, some defense fact
3 witnesses which is next on my little list here
4 include Mr. Lesch. He was an interesting fact
5 witness. He had pictures of a golf tournament.
6 I'm going to take about two minutes to talk about
7 golf tournaments and photographs. I don't know
8 what that stuff proved. If you do, you can tell
9 me after the trial is over.

10 Mr. Anderson and Mr. Brooks, coaches. I
11 have to tell you I was a little bit surprised
12 when I asked Mr. Anderson. I guess he was
13 waiting for the question. Have you ever showered
14 with young boys? He said, yeah. I was somewhat
15 taken back. What can I tell you? That's what he
16 does. I guess defense was wait until he asks
17 that question and Mr. Anderson says, yes, I do
18 shower with young boys.

19 As we developed further what
20 Mr. Anderson's practice was, I don't think he
21 ever explained to us that it was his practice to
22 go and pick up young boys unrelated to him and
23 take them from their homes and for the first time
24 have them give a little workout and after ten
25 minutes of being in the weight room, take them

1 into the shower and give them a hug and pick them
2 up and squeeze them and squeeze their guts out
3 and tell them I love them. I don't think
4 Mr. Anderson said anything like that. But he
5 took the showers.

6 I think you see the feeling of
7 reluctance that came forward from former Coach
8 Brooks who said the same thing. I don't know.
9 He said -- did he say he showered with his
10 granddaughter? Is that what he said? But then
11 he, too, balked at the idea of showering with
12 young boys that he never met, as the defendant
13 admitted to many times.

14 That reminds me. I'm talking about
15 openings because we had a chance -- our court
16 reporter was kind enough for both Mr. Amendola
17 and myself to printout what we said in opening.
18 I read with great interest not mine as much as
19 Mr. Amendola's because at one point he talked
20 about the recreation center where the defendant
21 grew up. He said it had kids all over the place.
22 They did everything together. He said they
23 played together. They went to school together.
24 They showered together. I said that really kind
25 of sticks out a little bit, doesn't it?

1 I'm trying to think if someone asked me,
2 what did you do in the gang of guys you hung
3 around with when you were kids? I would have
4 said I played ball, went to school yard, hung out
5 at the candy store, got in trouble. Showered
6 together? I don't think that's something that
7 would immediately pop to mind.

8 I realize what Mr. Amendola is stuck
9 with doing. He had to accustom you to hearing
10 about this stuff during the course of trial from
11 testimony and then try to present it as realistic
12 and normal. So he threw it in the opening and
13 just threw it kind of in the middle. We played
14 together. We went to school together. We danced
15 and sung together and we showered together.
16 Well, there you have it. If you think that's
17 what he was doing, you think that's reasonable,
18 well, I got to tell you.

19 You also heard from Mr. Rexrode,
20 Mr. Hilton, and young doctor -- Doctor -- the
21 young doctor -- that young doctor. I couldn't
22 remember his name. You know what was interesting
23 about those three fellows? I would have loved to
24 seen them when they were 13. You saw a picture
25 of Mr. Rexrode, I think, when he was in his

1 little football uniform, and I showed you a
2 picture of -- what was the other fellow? Maybe
3 David Hilton -- when they were young. They bore
4 a remarkable kind of similarity in body type and
5 the age and appearance, didn't they?

6 It was interesting that the defendant
7 was always the one -- well Mr. Rexrode wrote him
8 a letter, I think, but how the defendant happened
9 to introduce himself to these young boys of
10 similar nature. Remember, I asked them. Little
11 blondies when he met them. You know, the defense
12 would have and that's why Mr. Rexrode was called.
13 I'll tell you. Did you notice his demeanor on
14 the witness stand, Mr. Rexrode, the fellow from
15 Chambersburg? When I asked him if he had
16 anything more to tell us, he said he had been to
17 the defendant's house 50 times.

18 Incidentally, that, too, is in conflict
19 with some of the other defense testimony because
20 according to Mr. Anderson, the defendant was so
21 busy that he never had time for anything. He
22 couldn't have time to molest people. He was too
23 busy being a coach. Well, I submit to you that's
24 ludicrous and not true.

25 But Mr. Rexrode told you how he wrote

1 letters to people and who's the one that drove
2 out and picked him up and ended up having him
3 stay at his house 50 times? The defendant. The
4 defendant.

5 David Hilton told you about the same
6 thing. You notice something else about each of
7 them, something that they shared in common with
8 the young men, who were boys who were victims in
9 this case, fatherless families, fatherless
10 families. The defendant would portray it as, oh,
11 I'm reaching out to those who need the most hope.
12 I would submit to you that's not even close. He
13 was praying on those that were most vulnerable:
14 Kid with the deaf parents, the kid with the
15 parents who didn't speak English, never knew
16 their fathers, foster homes, never knew their
17 father, praying on the vulnerable.

18 The other thing the defendant -- the
19 defense argument seemed to imply was look at all
20 the good he did. Look at -- does that give you a
21 dispensation from being a molester? Is that
22 supposed to insulate you from responsibility for
23 your crimes that you have done some good in life?

24 I'll tell you what. How much good do
25 you think was really done by this defendant?

1 Does it offset the harm? Does it free him? I'm
2 going to tell you something about -- people about
3 what Dr. O'Brien characterized as a psycho sexual
4 fixation, had a fixation on adolescent boys
5 because there's a couple things they would tell
6 you and they might even believe them or think
7 they might believe them. They love children.
8 Children respond positively to them. They would
9 never do anything that would cause harm to a
10 child or what they think is harm. They would
11 never make a child do anything the child doesn't
12 want to do. They have a special relationship
13 with children. They're always around them.

14 And the only reason other people
15 don't -- can't know about the things they do when
16 people aren't around, the only reason people
17 can't know what happens in basements, what
18 happens in saunas and showers and cars and pools
19 is because they wouldn't understand.

20 They wouldn't understand. That's what's
21 known as the denying pedophile. That's what you
22 see here. Love children. Never a source of harm
23 to a child. Want to be around them all the time.
24 Why not? They're a victim pool. They are a
25 victim pool.

1 In any event, one of the interesting
2 things you see about that when you think about
3 the defendant as what he is, what the evidence
4 has shown him to be as a denying pedophile is the
5 spectrum of what's called accommodating a child
6 to your touch, grooming, cultivating a child.

7 You saw in these cases -- it's
8 fascinating because you saw through a progression
9 of children at different times not necessarily
10 placing in the time their victimization occurred
11 but the extent of their victimization you can see
12 the full spectrum of predatory pedophile
13 behavior.

14 I'm going to give them to you right now.
15 The first touching, Zach. First time he goes to
16 the shower, hugs him, picks him up in the shower,
17 squeeze him. Zachary is so young he doesn't even
18 know what it is. But, you know, it's the first
19 time. He went home and told his mom. Your hair
20 is wet. I took a shower with Jerry. That's the
21 first touch, step one in the scheme of predatory
22 pedophile behavior.

23 Step two, Mike Kajak because Michal was
24 in the shower and it was beyond just the hugging,
25 touching. You recall he put Michal's hand --

1 that is the defendant put Michal's hand on his
2 genitals. That's the next step and the reason it
3 stopped there is Michal recoiled. Step two.

4 Step three, Justin and Jason. That is
5 extended touching of a sexual nature. You know,
6 get in bed behind the little boy, touching him on
7 the chest, rubbing him, putting your hand -- his
8 down to his bottom. That's -- you're moving
9 further along the scale of accustoming -- making
10 that child accustom to sexual touching.

11 Dustin was next. You saw what happened
12 there until what happened, he either aged out or
13 was replaced in this instance and felt discarded.
14 That's how unaware he was of what was going on.
15 He was discarded, called the defendant, hey, I
16 want those tickets. He was discarded for
17 somebody else.

18 And Jason where the touching went even
19 further to the point where I believe he said he
20 was causing him to having an erection. He was a
21 small child and embarrassed by it.

22 Moving further along the scale of
23 predatory pedophile behavior until Jason went to
24 foster care and was abandoned, that first touch,
25 extended touching, extended sexual touching,

1 extended sexual touching of a sexual nature
2 extended even beyond that until Jason is
3 abandoned. Do you remember him -- I got to tell
4 you. There's a kid who served his country in a
5 war. He came back and talked about -- can you
6 imagine how difficult that must have been? He
7 served his country in combat and came back and
8 talked about how he as a child that Jer, over
9 there, would call him and get him out and adopt
10 him. That's exactly how he's shrewd, predatory
11 pedophiles sees the weaknesses and vulnerability
12 and they start with what's already there and they
13 move and pray on that.

14 Then after that you saw Sabastian and
15 Aaron and Brett where the predatory sexual
16 behavior became full blown and included
17 intercourse, oral and anal intercourse. That's
18 what happened.

19 You also saw interestingly enough
20 bookended at the gates that this trial involves,
21 two things that the predatory pedophile also
22 engages in. What he thinks are relationships.
23 He thinks these are relationships and I -- you
24 may have seen me. I picked up my pen when the
25 Court talked about one of the instructions that

1 he was going to give at the expense of the
2 child -- at the expense of the child because
3 that's really what's going on here, too, as well.

4 The predatory pedophile in his mind --
5 and that's an expression the defendant sometimes
6 uses. In my mind I did nothing wrong. The
7 predatory pedophile also has a spectrum of
8 treatment of his victims and that in this case
9 you saw some of that as well. That is the
10 spectrum of treatment that you'll often see in
11 adult relationships of some people with sexual
12 partners. Some they get, you know, two adults
13 and a guy says I don't want to see you or the
14 girl says no. Then the guy the next time, they
15 go a little further with somebody else and then a
16 little further with someone else. Then he'll
17 have a relationship, you know, an extended
18 relationship -- what in their mind they believe
19 is a full-blown relationship with these sexual
20 components. They think it's a real relationship.

21 Aaron and Brett at the one end. Aaron
22 at the other end. Then you saw the other thing
23 that you see in adult relationships, someone who
24 is basically, you know, miss -- uses, misuses,
25 and abuses in a sexual way, a partner who they

1 think not -- little Ryan Rittmeyer because he was
2 fully violated as well but not in a relationship.

3 So, again, you see -- you saw in this
4 case, in the testimony you heard, you saw both
5 the spectrum of grooming behavior and you saw the
6 spectrum of relationships that the predatory
7 pedophile engages in. The person with the psycho
8 sexual disorder fixated on adolescent boys, you
9 saw that in this case so.

10 You heard from some additional
11 Commonwealth witnesses, too, and I point them out
12 to you. Ron Schreffler, also part of the vast
13 conspiracy, Jessica Dershem.

14 And Ms. Dershem is owed a vote of
15 appreciation because she took very, very detailed
16 and specific notes which have come back a bit to
17 haunt the defendant. Because can you imagine a
18 man in his -- I don't know sixties at the time
19 saying -- telling a 13-, 14-year old boy, 12-,
20 13-year old boy I feel used? That again is an
21 indication of what's going on and the mentality
22 of a person who thinks they have a relationship
23 and this sexual component is okay. It's just
24 part of it but we have a real relationship.

25 Ms. Dershem took very detailed and

1 extended notes about the things the defendant
2 did. He admitted having Aaron laying on top of
3 him for minutes at a time and crack his back, you
4 know. That's what you saw there. So that was
5 another one of the Commonwealth's witnesses,
6 Ms. Dershem.

7 Joe Wilson, he's part of the conspiracy,
8 too. Let's get him involved. We're now moving
9 up in numbers and a person who had high regard
10 and he was driving home he said that was kind of
11 weird. That's what the defendant relied on. You
12 know, his external appearances because pedophiles
13 do not operate, commit their crimes in public in
14 view of all. They operate in public when they
15 can and what better way to do it than when you
16 have access to a pool of vulnerable victims.

17 Not only that you have access, because
18 of his position in Second Mile, he could find
19 biographical data on all his victims. He could
20 find out where they live, their phone numbers,
21 find out their family situations. First of all,
22 find out from them, walk up and introduce
23 himself. I would like to hang out with you. You
24 know, let's do something together. We'll work
25 out.

1 And then he used in a way that -- you
2 know, there was a reference a little bit in
3 Mr. Amendola's closing, The Pennsylvania State
4 University, The Second Mile, I find that somewhat
5 unpleasant -- let me put it this way -- because
6 Pennsylvania State University, as I told you at
7 the beginning of this trial, is not on trial
8 here. Neither are The Second Mile. They're in
9 context here and I thought Mr. Amendola was
10 trying to bring them into it and trying to make
11 some of the consequences of what occurred here
12 laid at the feet of Penn State or investigation
13 of, God forbid, victims when the only consequence
14 that came throughout this case are the results of
15 the behavior of one man, this defendant.

16 You saw the stuff he used to do with
17 these kids. He would take them to football
18 games. He would give him gifts, presents, and
19 toys and give them Penn State shirts and he would
20 give them snowboards and things like that.

21 And you know what? It's a sad thing.
22 It's really a sad thing. When you think about --
23 part of the job that I have to do involves tasks
24 that are unkind. You know, they're cruel. They
25 could be considered cruel. You recall at the

1 beginning of this case in the opening, you know,
2 I asked you to forgive me for things that I was
3 going to do during the trial. I hope you have,
4 as I hope the young men who I had to question, I
5 hope they forgive me, too. But that's something
6 that had to be done.

7 Whether or not Mr. Amendola calls it a
8 conspiracy or not, because do you think for a
9 minute that those young men didn't know what was
10 going to happen? Maybe they didn't feel it as
11 viscerally, feel it inside as much as the abuse
12 that was heaped upon them, but they knew. They
13 knew they were going to be called liars. They
14 knew they were going to be called money grubbers.

15 Because I told them. Because it's a bad
16 practice to expect someone to tell you the truth
17 when you won't tell them the truth. I told them
18 what was going to happen. I'll live with that,
19 as will they. But I hope they forgive me, and I
20 hope you forgive me so.

21 I want to talk about Mr. McQueary for a
22 second. And Buck Petrosky as well. I think his
23 nickname -- was his nickname Buck? Ron Petrosky.
24 He said his nickname was Buck. Because there are
25 eight victims you heard from in this case, some

1 of them are here today. I might get paid for my
2 services from one of them if I have the
3 opportunity, but two are not and that's why I
4 have to talk about Mr. McQueary.

5 Because just as I had to speak up for
6 Corporal Leiter, I have to speak up a bit for
7 Mike McQueary, too. Because Mike McQueary grew
8 up in State College. I believe he told you that.
9 If he didn't, I'm sorry I'm adding to the record.
10 But he went to Penn State and was quarterback
11 and, you know, can you imagine anything more
12 great for a guy who grew up in the State College
13 to being quarterback for Penn State and then
14 coming back and coaching and how great that must
15 feel?

16 Can you imagine the shear shock that he
17 must have experienced when he saw a person he had
18 known for ten years as a coach. Now he's on --
19 the defendant was on the defensive side. So they
20 didn't interact much. He's probably just a
21 distant figure but still a coach. And that's why
22 I want to speak up for Mr. McQueary because, you
23 know what?

24 Mr. McQueary has been characterized, and
25 the defense wants to have it two or three

1 different ways. I think sometimes they seem to
2 be calling him a liar and sometimes they seem to
3 be saying he just misunderstood. But they want
4 to have it both ways. But whatever it is, it's
5 critical to Michael McQueary.

6 Michael McQueary, like a lot of people
7 here, like a lot of people in this case, like a
8 lot of people in life is not perfect and may
9 deserve some criticism, as do I. But I think
10 that you have to think about what happened to him
11 that night there when he saw what, to him, was
12 probably almost an alien observation. He
13 couldn't imagine this. And part of it was the
14 person he had known for years. Part of it was
15 the location. Part of it was a small child and
16 part of it probably was the fact that it was
17 homosexual activity, all of which was just so
18 strange to him that you can understand the shock
19 that he felt.

20 And obviously this, that he has been
21 criticized for not going to the police and the
22 only real mention I'll make during this case, you
23 know, he went home and he talked to his dad. I'm
24 never going to criticize someone for looking to
25 their father, to an elder for good advice before

1 you do so anything. You're trying to process
2 this shocking event. He went to his dad, and his
3 dad told him to go see, you know, Coach Paterno,
4 you know, and I think most people are familiar
5 with it. I think the defense pretty much said
6 it. Joe Paterno was the go-to guy. And he went
7 to the go-to guy to find out what to do. He
8 expected something to happen.

9 Mike himself is regimented -- the
10 football team is regimented. You go to the boss
11 and the boss takes care of things. Did he meet
12 the mark that night? Did he live up to the
13 standard that all of us wished or think or would
14 like to think that we would live up to, that we
15 would automatically do the right thing
16 instantaneously leap into action and take every
17 appropriate and right step? You can say that he
18 didn't.

19 But I'll say this for him in his
20 defense. He's met the mark on everyday since.
21 He accepted the criticism. He's come into court,
22 more than most, grand jury, other hearings. He's
23 met the mark. He stood up to the criticism. He
24 hasn't revised history. He's done -- he did what
25 he did and he says what he did.

1 So I would be happy if I failed to meet
2 the mark just once or twice in my life. And I
3 would be upset if a day in which I failed to meet
4 the standard which I set for myself or that
5 others had set for me were expected of him became
6 a big public spectacle. That would be a sad
7 thing. But, again, he's part of the conspiracy,
8 too. Because this conspiracy has cost him his
9 job. You know, his name has become widely
10 disseminated publicly. He'll probably have a
11 difficult time ever doing what he loved to do,
12 coach. But he stepped up, took the oath, and
13 told you what he saw and he told you repeatedly
14 and consistently. What does he get for it? He's
15 called a liar or a boob or, you know, a
16 miss-observer and I was just waiting -- I was
17 just waiting for Mr. Amendola to say that wasn't
18 sexual slapping sounds. That was snapping towels
19 that you must have heard, which leads us to
20 another question.

21 The defendant, he had wonderful
22 opportunities to speak out and make his case. He
23 did it in public. He spoke with Bob Costas.
24 That's the other thing that happened to me for
25 the first time. I had been told I'm almost as

1 good a questioner as Bob Costas, I think, or
2 close.

3 Well, he had the chance to talk to Bob
4 Costas and make his case. What were his answers?
5 What was his explanation? You would have to ask
6 him? Is that an answer? Why would somebody say
7 that to an interviewer, you would have to ask
8 him? He didn't say he knew why he did it. He
9 just said he saw you do it. Mike McQueary. The
10 janitors. Well, you would have to ask them.
11 That's an answer?

12 Mr. Amendola did I guess as good a job
13 as possible explaining -- he offered that his
14 client has a tendency to repeat questions after
15 they're asked. I would think that the automatic
16 response when someone asks you if you're, you
17 know, a criminal, a pedophile, a child molester,
18 or anything along those lines, your immediate
19 response would be, you're crazy, no. What? Are
20 you nuts?

21 Instead of, are you sexually attracted
22 to young boys? Let me think about that for a
23 second. Am I sexually attracted to young boys?
24 I would say, no, or whatever it is. But that's
25 Mr. Amendola's explanation that he automatically

1 repeats question. I wouldn't know. I only heard
2 him on TV. Only heard him on TV. So that's his
3 explanation there. He just enjoys young
4 children.

5 Buck Petrosky and the other missing
6 victim. You heard Buck Petrosky's testimony, and
7 I would submit to you that Buck Petrosky is
8 incapable of guile. He's a straightforward guy.
9 What he said he saw, I would submit to you he
10 saw. What he said he heard, he heard. What he
11 described to you, he described to you in words
12 that nobody could put in his mouth and nobody
13 could extract from them unless they're true.

14 He said Mr. Calhoun came out shaking
15 like a leaf, white, looked like they thought he
16 was having a heart attack. He said what he seen
17 this defendant done -- he seen this defendant do.

18 The Court instructed you, and will
19 instruct you further, that this is what's called
20 hearsay. And the reason you're allowed to hear
21 and consider it is because it's what's known as
22 an excited utterance. You know, an excited
23 utterance is allowed in when the person who's
24 making a statement, they're not in court but they
25 gave it under circumstances that are so agitated,

1 so exciting that they're presumed to be reliable,
2 you know, that event occurred. Like, you see a
3 car crash and you turn the corner and say, oh my
4 God, that car crashed just moments ago. That's
5 why you heard that hearsay statement, that
6 excited utterance.

7 The reason you can rely upon it and know
8 that it's true and know that it occurred is
9 because -- for a number of reasons. Number one,
10 it's extremely physically descriptive. You
11 recall the language. At first he said licking on
12 his privates and then he said, you know, he was
13 sucking on that poor boy -- you know, you heard
14 the words he said. Extremely descriptive and
15 reliable. For that and other reasons and in
16 addition to Mr. Calhoun, his physical demeanor,
17 his presence, everything like that.

18 But you also heard direct evidence of
19 the events that surrounded that event, that is,
20 Buck himself saw the pairs of legs in the shower.
21 Buck himself saw the defendant leave. Buck
22 himself saw the defendant take that little boy's
23 hand as they walked out. Buck himself later saw
24 not once, but twice, cruising through the parking
25 lot that defendant.

1 All these direct evidence surrounding
2 the events which give you incredible support for
3 the reliability of what Jim Calhoun saw this
4 defendant do because you know why the defendant
5 came back here not once, but twice. I forget the
6 times and your recollection counts. One was,
7 like, you know, 10 or 11 and the other was kind
8 of late, like 2:00 in the morning or something
9 like that. I don't really recall. You know why
10 he came back. He wanted to see if the whistle
11 was going to be blown on him. He wanted to see
12 what was going to happen because Jim Calhoun
13 didn't make any secret about what he saw.

14 There's an unfortunate thing. Again,
15 Buck came forward and testified for us but those
16 fellows got together and decided, well, hey, if
17 anybody wants to speak up, it's Jim Calhoun. We
18 didn't see anything. He's got to do it, and Jim
19 Calhoun was soon gone from the job, part-time
20 temporary job, and now gone beyond our reach
21 because his mind is no longer capable of
22 communicating with us. Does that cause you to
23 doubt what the defendant did back in 2000 I think
24 it was? 2000. No. Jim Calhoun's words were
25 clear through Buck Petrosky.

1 The defendant's explanation on
2 television, is there anything else that you
3 missed? Mr. Amendola read it with great
4 animation. I'm not sure if there was anything --
5 any other important information communicated
6 because he didn't provide you with something that
7 could have been enormously helpful to us, could
8 have solved many problems today. I think he's
9 talked about this, you know, the shower incident.
10 He didn't say and that's little Johnny, who I
11 know now ten years later who lives around the
12 corner. He forgot a name? He remembered the
13 incident clearly.

14 Why did he remember it? I mean, he
15 showered with a lot of boys. Why did he remember
16 this particular incident? He remembered it
17 because he had seen Mike McQueary and he knew
18 this day would come. He remembered it. He
19 remembered that day.

20 One thing he didn't which he could have
21 provided to Bob Costas, he could have provided it
22 to anybody at any time. He had the complete
23 capacity to exonerate himself at the time and
24 just say who was there because this is a day --
25 remember, Mike McQueary, why remember him and not

1 the little boy you're soaping and just being
2 innocently cleansing to? But he didn't provide
3 that name to anybody, ever, certainly not to Bob
4 Costas, no. He forgot that.

5 Now, the acts that you heard the
6 defendant engaged in, I would submit to you, you
7 have heard defined by the Court, and you have
8 heard described by the victims, indecent
9 assaults, attempted indecent assaults, corrupting
10 minors, involuntary deviate sexual intercourse,
11 anal intercourse, oral intercourse, all with
12 children. You will consider the testimony that
13 you have heard from the witnesses, listen to the
14 instructions the Court gives you, and determine,
15 I would submit, beyond a reasonable doubt that
16 the defendant's behavior response is appropriate
17 for conviction on each of those charges.

18 I will talk very briefly about some of
19 the victims. I told I wasn't going to go over
20 all their testimony. We don't have time.

21 Zach Konstas. That's an indecent
22 assault because, as the Court instructed you,
23 something that gratifies the lust of the
24 perpetrator at the expense of the child. You
25 know that's what he's doing.

1 Same thing with Michal Kajak, although
2 much more clearly so because he put his hand --
3 he put Michal's hand on his own genitals, clearly
4 the case there.

5 The same applies to Jason Simcisko and
6 to Dustin Struble, little boys he crawled into
7 bed with.

8 Involuntary deviate sexual intercourse
9 applies to Aaron, Brett, Sabastian, and the
10 little boy in the shower that Mike McQueary saw
11 or the janitor saw, excuse me, and Mike McQueary
12 saw, both of them, involuntary deviate sexual
13 intercourse.

14 Again, I would like to go in great
15 detail about the testimony you heard from Brett
16 and Aaron and Sabastian and Jason, but I can't.
17 I'm going to talk a little bit about them because
18 there's a term that's used. It's a common place
19 term in the law and sometimes in life. You see
20 indicia of reliability, indications that you're
21 seeing and hearing the truth when you hear
22 something.

23 I know that you were paying attention to
24 each and every one of these witnesses when they
25 testified. You saw a spectrum of responses, a

1 spectrum of responses. Because of their
2 nature -- because of the nature of the acts that
3 had been committed upon them and because the way
4 the courtroom process and the questioning process
5 affected them. But in each and every instance, I
6 would submit to you the indicia of reliability.

7 Michal Kajak. It's funny. Some
8 people -- Zachary is a little more affected now
9 thinking about it than he obviously was then.
10 But Michal Kajak I think if you recall his
11 testimony he was clearly affected by the way,
12 what he remembers of that incident. He said he
13 told nobody. Nobody. Didn't want to talk about.
14 It clearly affected him, you know.

15 And Ryan, a little more styled. But
16 then you think about Aaron and how it affected
17 him. You saw the first day, the second day of
18 trial and you saw how it affected him.

19 In each of the witnesses, if you
20 consider their testimony and consider in light of
21 the things that I asked you to think about in
22 terms of how you assess a witness's credibility,
23 you will see that credibility ring through
24 notwithstanding the conspiracy theories or the
25 arm-twisting or money grubbing that the defense

1 counsel alleges. All those things are there,
2 those indicia of responsibility.

3 I'm going to take a minute or two now
4 and just take a look and see if there's anything
5 that I forgot that Mr. Amendola spoke about that
6 I wanted to mention to you.

7 You don't mind waiting for a minute, do
8 you? Is that okay?

9 Oh, Mr. Amendola made a number of
10 remarks about he was told that his client was not
11 told not to take showers with kids. Well, that's
12 not entirely true. He was told not to bring kids
13 on campus any more, nowhere on the campus. He
14 was told not to take showers with kids in 1998.
15 It was later after Mike McQueary came forward he
16 was told don't even bring kids on campus any more
17 ever. That's it. Done.

18 Oh, and Dawn Daniels. He criticized
19 Ms. Daniels for -- he called her as a witness and
20 then criticized her for getting an attorney three
21 years after the investigation began and at the
22 time when her address had just become known to
23 the press. But now she's a money grubber. I
24 guess she wasn't for three years and all of a
25 sudden was. All this was after a grand jury

1 investigation, after everything the defendant had
2 done, that her son had become known and
3 investigated but now all of a sudden she's bad.

4 Same thing with Jason. Jason didn't
5 even know he needed a lawyer. He thought I was
6 his lawyer and somebody said you could use
7 another lawyer. So he's a money grubber, too.
8 The kid was abandoned by the defendant. He's now
9 a money grubber.

10 And you know what was interesting also?
11 The defense witness, Mrs. Sandusky, who
12 recollected knowing each of these boys but didn't
13 recollect, I don't think, how many times each of
14 them were there.

15 Now, a couple things that are really,
16 really useful and important in your consideration
17 of Mrs. Sandusky. Because I told you earlier in
18 my comments this but this business has cruelties
19 involved in it and, you know what? Defense can
20 through connection, through marriage, through
21 legal force, they can make Mrs. Sandusky get on
22 the witness stand and for whatever reason she can
23 say whatever she says. But they cannot make me
24 cruelly cross-examine her. I don't need to
25 add -- add to the quantum -- to the quantity of

1 cruelty involved in this case. I did have to do
2 my job and ask a few questions. But I needed to
3 add no more than that.

4 But I will submit to you that there was
5 one question that spoke volumes. The last
6 question I asked because after acknowledging
7 almost every one of those boys, except I don't
8 think she remembered Ryan, every one of them. I
9 asked her. Do you recall? Why would these boys
10 lie? Do you remember her answer? I don't know
11 why.

12 I didn't ask the next question but you
13 knew it was there and you know what the answer
14 would be. You know they're not lying and the
15 truthful answer would be I know they're not
16 lying. That's what you heard there.

17 Well, one or two other things and this
18 actually came out interestingly enough on
19 cross-examination of the mother of our last young
20 witness because Mr. Amendola, he remarked on it
21 again in his closing and I don't -- apparently he
22 wasn't listening to the witness's testimony
23 because he made a big deal about an adult male
24 having anal intercourse and no injuries
25 occurring.

1 You remember the testimony that you
2 heard late that afternoon by a witness who was
3 fidgety and a little injured. Said I dealt with
4 it my own way. He didn't probe and neither did
5 I. I didn't want to, and he knew he shouldn't.
6 He asked one too many questions when he spoke
7 with Angie and she said, well, yeah, he had
8 trouble going to the bathroom and he was always
9 missing his underwear. What does that start to
10 tell you there?

11 Because he was trying to be a little man
12 about it and not talk to his mom but you know
13 what was going on there. You know what this
14 defendant did and you know the injuries he
15 caused. And defense counsel will help you
16 understand that. I thank him for that.

17 So there you have it, and I think during
18 the course of this case the testimony showed you
19 what I told you you would see from the testimony.
20 That is I saw a serial predatory pedophile
21 gliding through the victim pool to select the
22 most vulnerable, weakest, those most in need of a
23 father figure at the expense of the child, the
24 child who's looking for a father figure, a
25 mentor, indecently assaulted, anally raped,

1 orally raped, abused. Some were discarded. Some
2 were forgotten. Some were stalked. Some were
3 tracked. Some were written creepy letters to.
4 What is love? Did you ever care about me? From
5 a 60-year old man to a 15-year old. That's what
6 you saw, the perfect serial pedophile. You heard
7 it from the testimony.

8 Now, I had a bunch of other stuff to
9 show you, letters. They're in evidence.
10 Pictures of the places where these things
11 occurred, showers, saunas, basements, car.
12 You'll see them if you need to. Pictures of the
13 victims taken at the defendant's home and one
14 with Aaron, you'll recognize his hair is wet in
15 one of them. You see some of the looks on their
16 faces sometimes reveal more pain than you can
17 imagine.

18 I know when I sit down I'll have
19 forgotten to say many things. You saw an example
20 of that during trial. We had to get a
21 stipulation to Ron Petrosky's assessment of the
22 victim's age because I forgot to ask him.
23 Lawyers forget stuff, too.

24 I know when I sit down I'll have
25 forgotten that I would like to point out this or

1 explain that or talk about this, that, or the
2 other. But I'm going to rely on your
3 recollection of the testimony that has not been
4 that long ago, starting with Brett and Aaron and
5 moving through Sabastian, to remember them, and
6 give a little justice.

7 And I'm going to conclude now and I
8 think I'm done. I looked at my notes. Not much
9 more to say. But I'll end kind of the way I did
10 with a story and that is that when I started
11 doing this a long time ago -- I've been doing
12 this a long time. I tried a lot of murder cases.
13 And you do that for a while, and it can get you
14 down because, you know, it's lives, young lives
15 usually, wasted lives ended. It can get you
16 down.

17 I remember I came home at the end of the
18 day after trying one or two or three or four or
19 five in a row and you know how you come home
20 after work, and if you're a man, you put your
21 stuff on your -- on the countertop. You ladies
22 might take her stuff out of her purse and you put
23 it on the countertop.

24 And I got home one day after the fifth
25 or sixth or seventh murder trial. I said, you

1 know what? I got one too many souls in my
2 pocket. I need a break. Because that's what I
3 felt like I had, souls in my pocket, lives that
4 were gone. And now I feel like I have eight --
5 no, not eight, ten, pieces of ten souls in my
6 pocket, pieces of childhoods ravaged, boys'
7 memories destroyed, incinerated by this
8 pedophile. You know what? It's beyond my
9 capacity. I have been cruel to them but it's
10 beyond my capacity to undo my cruelty or the
11 defendant's cruelty. I can't give back portions,
12 large or small, of their soul. I can't do that.
13 Neither can you. It can't be done.

14 But what you can do for them and what
15 you should do for them and what you must do for
16 them is what the evidence calls for and what you
17 should do is come out.

18 Excuse me please. Come out and say to
19 the defendant what the evidence says to him, that
20 he molested, abused, hurt these children, harmed.
21 He can't give them back their soul or those
22 pieces of souls that he took. Neither can you.
23 But he knows he did it and you know he did it.
24 Acknowledge it. Give them justice and give him
25 the justice he really deserves. Find him guilty

1 of everything.

2 Thank you, Your Honor.

3 THE COURT: Do you have anything?

4 MR. AMENDOLA: We have some objections,
5 yes.

6 THE COURT: Counsel want to approach?

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

9 THE COURT: Let's not go over board.
10 Just give the basic objection.

11 MR. ROMINGER: I will stick to a couple
12 points.

13 He commented on extensively that the
14 client could have come forward and broken his
15 post-arrest silence and added more to his
16 statement. We didn't put this statement in of
17 the defendant. We didn't put any testimony of
18 the defendant in. The Commonwealth is now saying
19 he should have put more things forward, could
20 have identified people in the shower, and done
21 something in his own defense. They have other
22 things on the same vein throughout their argument
23 suggesting the defendant should come forward with
24 something that would exonerate himself.

25 They referenced that statement he made.

1 We didn't put any statements in, Judge. They
2 chose --

3 THE COURT: Let's just do argument.

4 MR. ROMINGER: So, first of all, is the
5 commentating on the silence.

6 Second, the repeated use of the word
7 pedophile and serial pedophile and professional.
8 My notes indicate --excuse me -- he had a psycho
9 sexual disorder and that psycho sexual disorder
10 was predatory pedophile behavior. Pedophile
11 again is uncorrectable at this point. That's an
12 issue in this case. I understand that. But it's
13 highly inflammatory.

14 THE COURT: Identify your issues please.

15 MR. ROMINGER: That's number two. He
16 also said the defense specifically stood in
17 different places that caused witnesses to turn
18 different ways and generally impugned the defense
19 attorney's behavior it was suggested was designed
20 to mislead the jury which is not a fair argument.
21 The jury is going --

22 THE COURT: Don't make your argument.
23 Just list your objections.

24 MR. ROMINGER: He also suggested that
25 one of the witnesses was waiting for a question

1 on Anderson about the young boys, like that was
2 somehow manipulated or sprung.

3 Rexrode, anything more to tell us? He
4 was suggesting that the boy by being silent was
5 somehow being a victim.

6 Talked about grooming, cultivating, and
7 used pedophile again and again and the
8 post-arrest silence again.

9 Those are my major issues, Judge.

10 THE COURT: Anything further,
11 Mr. Amendola?

12 MR. AMENDOLA: No, Your Honor.

13 THE COURT: Okay. I think these
14 arguments were fair rebuttal. I cautioned the
15 jury again and again the defendant has no
16 obligation to testify or present any evidence in
17 his own defense. I will caution the jury again
18 that the decision must be made on the evidence
19 presented and we'll proceed.

20 MR. ROMINGER: Thank you, Your Honor.

21 (End of sidebar discussion.)

22 THE COURT: Ladies and gentlemen, just a
23 few concluding comments before we conclude. When
24 we first met, I don't know how many days ago it
25 has been now, but not nearly as many days as I --

1 not nearly as many days as I thought we were
2 going to be spending together. That in large
3 part is due to the professionalism and
4 organization of counsel who have presented this
5 case to you in, I think, as about as clearly and
6 concisely as it is able to the present complex
7 issues to you for your understanding.

8 Some final guidance before you begin
9 your deliberations and some suggestions on how
10 your deliberations will take place.

11 First, your deliberations can only be
12 carried on in Courtroom 2, the place where you
13 have been gathering for the last two weeks. The
14 jury attendants will be stationed outside your
15 door and available to attend to all of your
16 reasonable needs and comforts. You just pass a
17 note out to them for food or water or other
18 helpful supplies or any evidence that you want to
19 see during the course of your deliberations.

20 The schedule of your deliberations is
21 essentially your own, although I may inquire from
22 time to time regarding your intention so we can
23 make the necessary logistical arrangements to
24 attend to your needs.

25 As I have previously explained to you

1 until you reach a verdict, at night you will be
2 sequestered in a local hotel. You will not be
3 able to use or take with you cell phones,
4 telephones, I-pads, laptops, smart phones, or any
5 kind of electronic devices. Each of you will
6 have your own room but the televisions and
7 telephones will be turned off.

8 No deliberations should be conducted at
9 the hotel. That's because all deliberations must
10 be done when all of you are present in the room
11 at the same time and only in Courtroom 2. That's
12 to assure that all of you are engaged in the same
13 conversation.

14 While it is my responsibility to decide
15 the legal questions, I remind you again that I'm
16 not the judge of the facts. You are the judge of
17 the facts concerning the charges brought against
18 this defendant. You must decide those charges
19 based on the evidence presented here in this
20 courtroom and be reminded that the burden is on
21 the Commonwealth to prove its case beyond a
22 reasonable doubt and that the defendant has no
23 obligation at any time to present any evidence in
24 his own defense.

25 My role has been to assure that the

1 parties have received a fair trial and to assure
2 that you are properly instructed on the law.
3 Consequently, if I have done or said anything
4 during this trial that you believe either
5 consciously or unconsciously is intended by me to
6 send some message to you about what I think your
7 verdict should be, please disregard that. It is
8 clearly no intention on my part. I decide a lot
9 of cases nonjury, and I'm more than happy to
10 allow you, as the jury, to decide this case.

11 Your decision is a matter of
12 considerable importance. So remember it is your
13 responsibility as jurors to perform your duties
14 and reach a verdict based on the evidence that
15 you heard, but you may properly apply your common
16 sense. You may properly draw on your everyday
17 practical knowledge of life as each of you has
18 experienced.

19 You should, of course, keep your
20 deliberations free of bias and prejudice because
21 both the Commonwealth, the defendant, and the
22 fellow citizens of Centre County have the right
23 to expect that you will consider the evidence
24 conscientiously and apply the law as I have
25 explained it to you.

1 When you retire to deliberate, your
2 first order of business should be to select a
3 foreman. He or she is the one who will conduct
4 your deliberations and announce your verdict when
5 you return here to the courtroom.

6 Your verdict must be unanimous, meaning
7 that in order to return a verdict, all of you
8 must agree to it. You have a duty to consult
9 with each other, a duty to consider each other's
10 views, a duty to deliberate with a view toward
11 reaching an agreement, but you have no duty to
12 surrender an honest opinion about what you
13 believe the evidence does or does not show simply
14 for the purpose of returning a verdict.

15 Because in the end, each of you must
16 decide this case for yourselves but only after
17 you have engaged in impartial deliberation with
18 your fellow jurors. None of you should ever
19 hesitate to examine or re-examine your own views
20 and change your opinions if you are persuaded by
21 your fellow jurors that your views are wrong.

22 Counsel, any final objections, anything
23 misstated, overlooked that you want to put on the
24 record? Counsel?

25 MR. FINA: Your Honor, there was a

1 matter we spoke about.

2 THE COURT: Other than that?

3 MR. FINA: No.

4 THE COURT: That record is made.

5 MR. FINA: No.

6 THE COURT: I said to you earlier that
7 you represented the conscience of your community,
8 and I want to return to that now that we are at
9 the end.

10 You do not sit here as the moral
11 conscience of your community. It's not for you
12 to decide whether Mr. Sandusky is a good person
13 or a bad person. It's not for you to decide
14 whatever it is you conclude he either did or did
15 not do whether that is moral or immoral.

16 You sit here as the legal conscience of
17 your community because we live under the rule of
18 law and Mr. Sandusky is a citizen and the State
19 may not bring its power against him in punishment
20 until you, 12 of his neighbors and equals, first
21 determine unanimously that the State has proven
22 to you in a fundamentally fair trial and beyond a
23 reasonable doubt that he acted in violation of
24 the State's laws. That decision is now in your
25 hands and we will await your verdict.

1 I'll ask the tipstaves please to stand
2 and raise their right hand to be sworn.

3 (Whereupon, the tipstaves were sworn.)

4 THE COURT: I'll commit the 12 jurors to
5 you. The three alternates I'll ask to stay
6 behind for just a moment.

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

9 THE COURT: I now want to direct
10 comments to the three alternates.

11 Juror 16, your service is now concluded.
12 I want to -- I will speak to you more personally
13 in chambers in a few minutes but I certainly
14 don't want you to think that your time here has
15 been wasted but when you're concluded here, you
16 are free to go. But I do want to speak to you
17 before then.

18 Jurors 14 and 15, you will be required
19 to remain so that you can be available to fill in
20 if for some reason one or more of the jurors is
21 unable to continue to deliberate until the jury
22 has returned a verdict. You have seen that we
23 have already hired one of your alternate jurors
24 to stand in. If that should happen, we want you
25 to be available to do that. You will be

1 sequestered but not with the other 12.

2 So I continue my instruction to you that
3 the two of you as you sit in waiting must not
4 discuss this case with each other. As tempting
5 as that might be, you should not do it because if
6 it happens that your service is required, then
7 the jury will be instructed to start their
8 deliberations all over again, this time including
9 you, and it would be improper for you to enter
10 into those deliberations having discussed this
11 case with each other just as it would be to enter
12 into those deliberations having discussed the
13 case with your family or any coworkers that you
14 associate with.

15 With that, I will entrust the two of you
16 to the court staff and you can go now with them.

17 (Whereupon, the alternates jurors were
18 escorted from the courtroom.)

19 THE COURT: Counsel, if you leave the
20 courthouse, I'll ask you to leave a contact
21 number with the Court Administrator's Office so
22 that we can get in touch with you. I'll ask you
23 to be on 20 minutes call notice.

24 I'll note for the record that the jury
25 has retired to deliberate at 1:12 and with that,

1 the Court stands in recess to await the verdict
2 of the jury.

3 (Whereupon, a recess was taken.)

4 (Whereupon, the following discussion was
5 held in chambers:)

6 We'll note for the record that we're in
7 chambers at 3:20 in the presence of Mr. Rominger
8 and Mr. Fina. Notification of this chambers has
9 not been given to Mr. Amendola or Mr. McGettigan
10 or to the defendant because the issue involved is
11 purely an administrative one which counsel did
12 not believe requires their presence, a judgment
13 in which I concur.

14 At 2:50 p.m. I was handed a note from
15 the jury stating: Is there a list or spreadsheet
16 that describes what each exhibit is? We want to
17 find an exhibit without opening random envelopes,
18 with a signature which I can't read.

19 With the assistance of counsel for the
20 Commonwealth, a spreadsheet has been prepared of
21 the exhibits organized by witness. It has been
22 reviewed by counsel for the defense, and without
23 objection, has been delivered to the jury room by
24 the tipstaves.

25 We'll also note that I have reviewed

1 with counsel the verdict slip, a list of charges
2 broken down by alleged victim and worksheets
3 indicating yes or no answers to the various
4 charges to assist the jury sorting the elements.

5 Those have also been reviewed by counsel
6 and approved and distributed to the jury.

7 Mr. Fina, anything you want to add to
8 the record?

9 MR. FINA: Just, Your Honor, that we
10 specifically waived on the verdict sheet in all
11 the counts of unlawful contact with minors any
12 necessity to distinguish the specific unlawful
13 contact for grading purposes. We agree that any
14 guilty verdict on any of them will be graded as
15 an F3 for the purpose of sentencing.

16 THE COURT: Thank you.

17 MR. ROMINGER: Agreed.

18 THE COURT: Okay. Thank you very much.

19 (End of discussion in chambers.)

20 (Whereupon, the following discussion was
21 held in chambers:)

22 THE COURT: We'll note for the record
23 we're present in chambers at 3:30 with Mr. Fina
24 and Mr. Rominger. As noted before,
25 Mr. McGettigan, Mr. Amendola, and the defendant's

1 presence have been waived.

2 We have received a note from the jury
3 which reads as follows: What distinctions are
4 there between repeated counts of involuntary
5 deviate sexual intercourse for a single victim?
6 And then provide some examples and the note
7 itself will be made part of the record.

8 It appears that the confusion results
9 from the fact that Victim 1 is charged in counts
10 1 and 2 with counts of involuntary deviate sexual
11 intercourse but the jury does not have
12 information which reveals that Count 1 is the
13 conduct charged is by performing oral sex on
14 Victim 1 and Count 2 is by compelling the
15 juvenile victim to perform oral sex upon him.

16 The other questions reveal similar
17 problems.

18 Counsel have agreed that instead of
19 recharging the Court -- recharging the jury in
20 open court that the verdict slip will be amended
21 so that the specific conduct is noted on the
22 verdict slip by the questioned counts.

23 Mr. Fina, is that correct?

24 MR. FINA: Yes, Your Honor.

25 MR. ROMINGER: Correct, Your Honor.

1 THE COURT: And the wording will track
2 the language in the information.

3 (End of discussion in chambers.)

4 (Whereupon, the following discussion was
5 held in chambers:)

6 THE COURT: We'll note for the record
7 that we are in chambers. It is at 5:05 with
8 Mr. Rominger, Mr. McGettigan, and Mr. Fina to
9 report that at 4:50 the dinner -- the jurors
10 requested dinner menus and flip charts, post-it
11 notes, and multi-color highlighters.

12 I propose that I send to the jurors the
13 following note:

14 Dear members of the jury, your dinners
15 will be delivered as soon as they arrive at the
16 courthouse in approximately one hour. At
17 approximately 8:00 p.m. I will inquire regarding
18 the status of your deliberations to determine
19 what arrangements might be required to transport
20 you for your overnight accommodations. While
21 your deliberation schedule is essentially your
22 own, my suggestion is that you not continue your
23 deliberations this evening beyond 9:30 p.m.
24 unless you believe you are close to returning a
25 verdict tonight. If you conclude that you will

1 continue your deliberations in the morning, I
2 will bring you back into court to give you
3 further instructions at approximately 9:30 p.m.

4 If you would like to review specific
5 testimony, please provide a written request to
6 the tipstaff identifying the testimony. The
7 court reporter will then locate the testimony and
8 it will be read to you in open court.

9 That response is to a verbal request
10 given to the tipstaff - how do we ask for
11 testimony?

12 MR. McGETTIGAN: Oh, okay. I was
13 wondering.

14 THE COURT: It isn't spontaneous. That
15 was a verbal request when they brought them in
16 asking for the flip charts, the multi-colored
17 markers.

18 (Whereupon, a discussion was held off
19 the record.)

20 (End of discussion in chambers.)

21 (Whereupon, the following discussion was
22 held in chambers:)

23 THE COURT: We'll note for the record
24 that we continue to be in chambers from the
25 previous meeting and at approximately 5:15 I was

1 handed a note delivered to the tipstaves and that
2 it states as follows:

3 Could we have a list of victim
4 birthdays?

5 We'll go off the record.

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

8 THE COURT: To the members of the jury:

9 I have reviewed your last question which
10 reads can we have a list of victim birthdays --
11 quote/unquote -- with counsel.

12 The law does not permit me to provide a
13 summary of any information -- any evidence
14 testified to.

15 The dates of birth were the subjects of
16 testimony that you heard.

17 (End of discussion in chambers.)

18 (Whereupon, the following discussion was
19 held in chambers:)

20 THE COURT: We'll note for the record
21 that it is 7:50. I'm in chambers with
22 Mr. McGettigan and Mr. Fina. Sorry. We're in
23 chambers with Mr. Rominger as well.

24 At 7:40 I was handed a note from the
25 jury reading as follows: We wish to review the

1 testimony of Mike McQueary and of John Dranov.

2 So we'll go off the record for
3 discussion.

4 (Whereupon, a discussion was held off
5 the record.)

6 (End of discussion in chambers.)

7 THE COURT: You may be seated. Bring
8 the jury in please.

9 (Whereupon, the jury was escorted into
10 the courtroom.)

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

13 THE COURT: Good evening, ladies and
14 gentlemen. We'll note for the record that we
15 have present in court -- neither Mr. Amendola nor
16 Mr. Sandusky are present. They have waived their
17 presence to be here.

18 We are here for really two purposes.
19 One is to address a question which was sent out
20 by the jury received at 7:40 stating: We wish to
21 review the testimony of Mike McQueary and John
22 Dranov.

23 When we get questions like this, the
24 procedure is that I summon the attorneys into
25 chambers and then we discuss how we go about

1 responding and answering your questions.

2 As we reviewed the testimony of Michael
3 McQueary, it turns out that that testimony is
4 about two hours long. The testimony of
5 Dr. Dranov is much shorter and substantially less
6 than 20 minutes. It may be possible that we can
7 play a tape recording of that testimony rather
8 than read the transcript back, but in any event,
9 it would be a long night tonight if we were to
10 try to do the Mike McQueary testimony this
11 evening.

12 So my suggestion to you is that we
13 address that first thing in the morning, if that
14 is -- if that's okay with you.

15 Okay.

16 I had previously suggested that you may
17 consider deliberating until about 9:30 tonight.
18 However, you have been at it for a while now. I
19 will leave it to your discretion. You can either
20 tell me now, or once you get back in the jury
21 room, whether you want to keep going for a while,
22 move onto some other issue until you have heard
23 this testimony in the morning or whether you want
24 to call it quits tonight and start fresh in the
25 morning about 9:00 o'clock.

1 You don't have to answer that question
2 now. You can go back in the jury room and just
3 let the tipstaves know.

4 And then we'll either let you continue
5 your deliberations and have the vans here at 9:30
6 ready to take you back to the -- or take you to
7 the hotel or if you say, no, we're ready to call
8 it a night, I'll honor that request. So I won't
9 bring you back in. You can just send a note to
10 the tipstaves on that issue.

11 I will advise you, of course, that you
12 should not discuss the case among yourselves at
13 the hotel. As I said this afternoon or this
14 morning, all deliberations take place in the jury
15 deliberation room, in Courtroom 2, in the
16 presence of all the other jurors so that there
17 are not small group discussions anywhere. This
18 is all done collectively.

19 You are not permitted to use any phones,
20 cell phones, computers, laptops, I-pads, anything
21 like that.

22 If you want the court staff to contact
23 your family and say I'm not coming home tonight
24 or, you know, this is where I am and this is what
25 the situation is, if you give the tipstaves a

1 list of the phone numbers, we'll be happy to have
2 the court staff call your family and let them
3 know where you are and what the situation is.

4 Other than that then I'll wait to hear
5 when you want to quit for tonight and 9:30 is
6 only a suggestion. If you want to keep going
7 late into the night, that's up to you. Just let
8 me know. Other than that, I will make the
9 arrangements to pick you up at the hotel and have
10 you here ready to go at 9:00 o'clock in the
11 morning. By that time we'll know what
12 arrangements we can make to get that testimony
13 presented for you, and with that, I will excuse
14 you and wait to hear what your next step is.

15 (Whereupon, the jury was escorted out of
16 the courtroom.)

17 THE COURT: I do not anticipate that
18 we'll have any further proceedings in open court
19 this evening. I can't guarantee that but I --
20 for members of the press and public, I don't
21 anticipate that there will be any further
22 proceedings, and we will stand in recess until
23 9:00 o'clock tomorrow morning barring some very
24 surprising development which I do not anticipate.

25 MR. McGETTIGAN: Your Honor, would you

1 have someone let us know if the jury should
2 decide to leave, you know, in ten minutes so that
3 we can also leave?

4 THE COURT: I was just going to discuss
5 that with you at the bench.

6 MR. McGETTIGAN: Thank you, Your Honor.

7 THE COURT: We'll be in recess until
8 9:00 o'clock tomorrow morning probably.

9 (Whereupon, court was recessed for the
10 day.)

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

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C E R T I F I C A T E

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

Date _____ Patricia A. Grey, RPR
Official Reporter

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

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

Date _____ John M. Cleland, Senior Judge
Specially Presiding