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3 ex-Penn State officials set to go before judge

HARRISBURG, Pa. (AP) - It was late at night on Feb. 27, 2001, and Penn State's then-president, Graham Spanier, one of academia's most prominent administrators, typed a brief email to two other top administrators as they debated how to respond to a thorny situation.

He was, he wrote, supportive of the athletic director's proposed approach.

"The only downside for us is if the message isn't 'heard' and acted upon, and we then become vulnerable for not having reported it,"

Spanier wrote. The question of what exact situation the three men were discussing will go before a judge Monday to determine whether Spanier, retired university vice president Gary Schultz and then-athletic director Tim Curley must face trial on charges they covered up an allegation that Jerry Sandusky was sexually preying on boys.

The men say they are innocent and were never aware that an allegation at the time involved anything of a sexual nature. Rather, they say, they had believed that Sandusky, a former top assistant coach on Penn State's heralded football team, and the boy known

in court papers as Victim 2 were engaged in nothing more than horseplay in a university locker room shower earlier that month.

Instead of reporting it to police, Sandusky was told not to bring boys onto the campus anymore, according to a grand jury report released Nov.

1 that recommended charges against the men. At the time, nobody sought to learn the identity of the boy. Sandusky is now serving a 30- to 60-year prison sentence after being convicted last year of sexually abusing 10 boys. The conviction included molesting Victim 5 in those showers a mere six months later, sexually abusing Victim 3 around the same period and molesting Victims 1 and 9 in later years.

The case will go in front of District Judge William Wenner, a former Dauphin County detective, and the preliminary hearing is expected to last a day or two. In recent years as a district judge, Wenner has carved out a niche in handling many of the biggest grand jury cases developed by the state attorney general's office.

In these cases, Wenner has found, with the exception of a few charges he has dismissed, that state prosecutors have met the

low burden of evidence necessary to win approval to take their cases to a full court trial.

For this hearing, state prosecutors led by Chief Deputy Attorney General Bruce Beemer are not trying to prove the men's guilt. Rather, they just have to prove that enough evidence exists to warrant a trial.

No witness list was available Friday, but one key piece of evidence at the hearing could be that email exchange among the men.

"My eyes popped out of my head when I saw those emails because they are just so dramatically significant and documentary evidence of a then-conscious state of mind," said Thomas Kline, a Philadelphia lawyer whose client, Victim 5, testified against Sandusky.

A football team graduate assistant in 2001, Mike McQueary, has testified that he saw Sandusky and a boy engaged in a sex act in the locker room shower and within days reported it to coach Joe Paterno, Curley and Schultz. However, Curley and Schultz say McQueary never reported that the incident was sexual in nature, and Spanier, in turn, has said Curley

and Schultz never told him about any sort of sex abuse of a boy.

The three are charged with perjury, obstruction, endangering the welfare of children, failure to properly report suspected abuse and conspiracy. Those charges include allegations of hiding evidence from investigators and lying to the grand jury.

Curley and Schultz were initially charged in November 2011, when Sandusky was arrested, and accused of perjury and failure to properly report the incident.

Spanier was forced out as president at that time. A year later, he was charged with covering up a complaint about Sandusky while additional charges were filed against Curley and Schultz. Spanier remains a faculty member on administrative leave.

Paterno was fired and died in January 2012.