



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
)	Civil Division
AL CLEMENS, member of)	
the Board of Trustees of Pennsylvania State)	Docket No. 2013-2082
University; and)	
)	
WILLIAM KENNEY and JOSEPH V. ("JAY"))	
PATERNO,)	Counsel of Record:
former football coaches at Pennsylvania State)	Thomas J. Weber
University,)	GOLDBERG KATZMAN, P.C.
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Plaintiffs,)	P.O. Box 6991
)	Harrisburg, PA 17112
v.)	Telephone: (717) 234-4161
)	Email: tjw@goldbergkatzman.com
NATIONAL COLLEGIATE ATHLETIC)	
ASSOCIATION ("NCAA");)	Wick Sollers (admitted <i>pro hac vice</i>)
)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
MARK EMMERT, individually and as)	Patricia L. Maher (admitted <i>pro hac vice</i>)
President of the NCAA;)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
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Defendants,)	aparrish@kslaw.com
)	
And)	
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PENNSYLVANIA STATE UNIVERSITY,)	
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Defendant.)	
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FILED
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CLERK OF COURT
CENTRE COUNTY, PA

**MOTION TO OVERRULE DEFENDANT NCAA'S
OBJECTIONS TO ISSUANCE OF SUBPOENAS**

INTRODUCTION

Plaintiffs respectfully move this Court for an order overruling the objections by Defendant National Collegiate Athletic Association (“NCAA”) to the issuance of deposition subpoenas to five members of the NCAA’s Executive Committee or Division I Board of Directors (“D-I Board”): William Harvey (“Harvey”), Nathan Hatch (“Hatch”), Harris Pastides (“Pastides”), Stan Albrecht (“Albrecht”), and Lou Anna Simon (“Simon”), (collectively, the “Directors”). Continuing its effort to delay discovery into what actually led the NCAA to rush to assume jurisdiction over criminal conduct that had nothing to do with its Rules and Regulations, the NCAA has mischaracterized the procedural posture of this case and now seeks to prevent discovery from its key decision-makers, suggesting that their testimony is not necessary. For the reasons set forth below, plaintiffs respectfully request that the Court overrule the NCAA’s objections to the service of subpoenas to the Directors and allow the depositions to proceed.

FACTUAL AND PROCEDURAL BACKGROUND

1. When the NCAA announced the Consent Decree central to this action on July 23, 2012, Defendant Edward Ray (“Ray”), then Chairman of the NCAA Executive Committee stated:

The Executive Committee, which acts on behalf of the entire Association and implements policies to resolve core issues — *along with the Division I Board*, a body of presidents representing all of Division I — *directed President Emmert to examine the circumstances surrounding the Penn State tragedy and if appropriate, make recommendations regarding punitive and corrective measures.*

Public Statement of Edward Ray, July 23, 2012, Ex. A at 1 (emphasis added).

2. At the time the Consent Decree was announced, the Directors who are the subject of the deposition subpoenas were all members of the NCAA Executive Committee, and all but Simon were also members of the D-I Board. All but Harvey currently remain members of either

the Executive Committee, the D-I Board, or both. All five voted to authorize the Consent Decree on July 21, 2012. *See* Ex. B.

3. On November 26, 2014 plaintiffs' counsel served notices of intent to subpoena the Directors for depositions. Plaintiffs seek to depose these Directors in order to develop information regarding the process by which the NCAA imposed the Consent Decree on The Pennsylvania State University ("Penn State"), and in so doing, violated the rights and damaged the Estate and other Plaintiffs.

ARGUMENT AND LEGAL AUTHORITY

4. The NCAA objects to the issuance of deposition subpoenas based on its unilateral and self-serving predictions as to what the Directors could be asked in light of questions asked at the deposition of Defendant Dr. Ray.

5. Dr. Ray was deposed on December 8, 2014. At the request of the NCAA and Dr. Ray that he be subjected to only one deposition, Dr. Ray's deposition was taken not only for purposes of this case, but also for *Corman v. NCAA*, No. 1 M.D. 2013 (Pa. Commw. Ct.).

6. The NCAA tries to downplay its involvement in Dr. Ray's deposition, contending that the Estate participated in the December 8, 2014 deposition at Dr. Ray's request. NCAA Obj. at 4. The NCAA's effort to distance itself from Dr. Ray may be understandable in light of his testimony, but it cannot withstand scrutiny.

7. In fact, the NCAA also urged the Estate to participate in the deposition once it had been noticed in *Corman v. NCAA*, as an accommodation to Dr. Ray, the former Chair of its Executive Committee. That way, Dr. Ray could be deposed once for *both* the *Corman* case (in which he is not a defendant) and this case (in which he is a defendant). *See* Ex. C, Nov. 21, 2014 letter from P. Maher to S. Gragert (seeking assurances that all Ray documents had been

produced as a condition of participation in the Ray deposition); Ex. D, Nov. 4, 2014 email from P. Maher to B. Kowalski (discussing participation in the Ray deposition).

8. The NCAA asserts that substantial time was devoted at Dr. Ray's deposition to questions concerning the process by which the NCAA imposed the Consent Decree on Penn State.

9. According to the NCAA, discovery from the Directors should be prohibited because this line of questioning is purportedly irrelevant. *See* NCAA Obj. at 4-5.

10. The NCAA's position has no merit and should be overruled

The Discovery Sought Is Relevant.

11. Any doubts regarding relevancy are to be resolved in favor of discovery. *Ario v. Deloitte & Touche, LLP*, 934 A.2d 1290, 1293 (Pa. Commw. 2007).

12. Pennsylvania courts allow broad discovery, and limit discovery on grounds of relevance only in circumstances where the proposed discovery has no bearing on the matter. *See, e.g., ProPhase Labs, Inc. v. Quigley*, No. 2010-08227-31, 2014 Pa. Dist. & Cnty. Dec. LEXIS 132, at *1, *6 (Bucks Cnty. Ct. Mar. 5, 2014) (overruling objections to discovery being taken outside of Pennsylvania, where discovery "has been particularly arduous, contentious and motions practice has attended the most basic requests for information despite the fact that the nature of the case demands full, broad and extensive discovery," and finding that defendant had not met the standard of preventing discovery because "the proper inquiry is whether the party objecting to discovery has established unreasonable annoyance, embarrassment, oppression, burden or expense associated with the discovery request"); *McMillen v. Hummingbird Speedway, Inc.*, No. 113-2010 CD, 2010 Pa. Dist. & Cnty. Dec. LEXIS 270, at *2-3 (Jefferson Cnty. Ct. Sept. 9, 2010) (granting motion to compel, and holding that "[u]nder Pennsylvania's broad

discovery rules, as long as it is relevant to the litigation, whether directly or peripherally, a party may obtain discovery regarding any unprivileged matter. As a practical matter, that means that nearly any relevant materials are discoverable, because this Commonwealth recognizes only a limited number of privileges.”).

13. Plaintiffs are not required to outline their proposed examination before being entitled to conduct depositions of witnesses who undoubtedly have first-hand knowledge of an issue that lies at the heart of this case. Even if the NCAA were correct in its effort to characterize plaintiffs’ possible examination of these witnesses, the line of questioning sought by plaintiffs is relevant. Certainly, the NCAA has not met – and cannot meet – its burden of showing that the information sought fails to meet the broad standard for relevance. *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Commw. 2006); *Yadouga v. Cruciani*, 66 Pa. D. & C.4th 164, 168 (Lacka. Cnty. Ct. 2004).

14. The NCAA has not come close to showing that the discovery sought is irrelevant. To the contrary, the Directors to be deposed were involved in the process of authorizing Defendants Emmert and the NCAA to enter into the Consent Decree with Penn State that is at the heart of this dispute.

15. Questions concerning their involvement bear not only on the breach of contract claim, but also on whether the NCAA acted purposefully by publicly accusing Coach Paterno of enabling and concealing child abuse, and whether it acted in concert with others to do so.

16. The inquiries made of Dr. Ray are thus relevant to both the breach of contract claim (Count I) and the commercial disparagement claim (Count III), and plaintiffs are entitled to seek additional discovery on the same topics from the Directors.

17. The workings of the NCAA's Executive Committee and the D-I Board authorizing Defendant Emmert to impose the terms of the Consent Decree on Penn State are also relevant to the reasonableness of the statements about Coach Paterno in the Consent Decree.¹

The NCAA Has Waived Any Objection.

18. Even if there were a basis to challenge the relevance of the testimony of these Directors, the objection has been waived. Three lawyers appeared for the NCAA at Dr. Ray's deposition, but none of them objected (other than to form) to any questions regarding the process by which the NCAA imposed the Consent Decree on Penn State. *See* Ex. E, Ray Tr. *passim*.

19. Having made no relevance objection to questions asked of Dr. Ray at his deposition concerning the process used to impose the Consent Decree on Penn State, the NCAA cannot now reasonably expect to limit further discovery on that subject by contending *after the fact* that the questions to Dr. Ray were improper.

¹ For example, Dr. Ray, a defendant in this action, admitted that he had not even read the Freeh Report upon which the Consent Decree was based when he voted for its punishments and denouncements:

Sollers: You reviewed the Freeh Report at or about the time it came out, I take it.

Ray: Actually, it was -- I think I did not go through the detailed report until after the agreement was reached. Remember, the report came out on the 12th. I went to Hawaii on, I don't know, the 14th. So I may have looked at the executive summary when it came out, and certainly read press accounts, but I don't believe I read or was able to download and get a copy of the full report until after I got back, which would have been around the time of the press conference [announcing the Consent Decree], or sometime shortly thereafter.

Sollers: Did not have the Freeh Report sent out to you in Hawaii?

Ray: No. No.

Sollers: Do you recall when you got back --

Ray: So let me be clear about that. When I went to Hawaii, I didn't even know that we were going to be having any conversations about the Freeh Report. So I had no sense that I needed to prep for anything.

We went on either the 14th or the 15th, at this point I can't remember. And then we had this conference call on the 17th. So no, I didn't have the Freeh Report.

And then I came back on, I think the 19th or the 20th, traveling from there, probably the 20th, and then the 21st we had this phone call [approving the Consent Decree]. So I didn't have a lot of time to prep for anything.

Ex. E. Ray Tr. 78:4-79:10.

The Court Did Not Dismiss The Estate From Count I.

20. Largely ignoring the relevance of this discovery to plaintiffs' other claims, the NCAA contends that questions posed to Dr. Ray about the process are relevant only to the breach of contract claim (Count I) against the NCAA and Penn State, and argues that the Court dismissed the Estate from Count I. That is wrong.

21. The NCAA's argument relies on a selective (and inaccurate) reading of the Court's September 11, 2014 Opinion and Order.

22. As set out in plaintiffs' Opposition to the NCAA's latest round of Preliminary Objections, and contrary to the NCAA's assertions, the Court clearly stated that "Plaintiffs have standing to challenge the Consent Decree," and that the harm alleged "is derived from the language in the document itself [T]his distinguishing characteristic alone . . . warrants Plaintiffs' standing to challenge the Consent Decree." Op. & Order at 5-6.

23. The Court held that the Estate has standing to bring Count I challenging the Consent Decree, and did not dismiss the Estate as a plaintiff on that Count. *See* Op. & Order at 5-7.

24. Moreover, to the extent the Court concluded that Coach Paterno was not an "involved individual" because he was no longer alive when the NCAA initiated its investigation in November 2011, plaintiffs have amended their complaint to address that incomplete understanding of the facts (consistent with this Court's Order of September 11, 2014 and Pennsylvania's liberal pleading rules).

25. The Second Amended Complaint now clearly alleges that Coach Joseph Paterno was alive when the NCAA initiated its investigation and was therefore an "involved individual"

with respect to the NCAA's inquiry into matters at Penn State before his death in January 2012. See SAC ¶¶ 56-59, 61.

26. The Second Amended Complaint's allegations are supported by factual evidence that has come to light through discovery.

27. The NCAA targeted Coach Paterno, among others, for investigation in November 2011, well before his death. See Ex. F, Nov. 17, 2011 letter from M. Emmert to R. Erickson; Ex. G, Sandusky Grand Jury Presentment.

28. Coach Paterno was specifically named as the subject of individual sanctions in the Consent Decree.

29. The "Punitive Component" section of the Consent Decree vacated 13 years of football wins that were part of Coach Paterno's career record. Ex. H at 5.

30. In addition, Coach Paterno's statue was removed by Penn State the day before the Consent Decree was announced in an effort to curry favor with the NCAA. See Ex. I, Tr. Dep. of M. Emmert in *Corman v. NCAA* at 223:6 – 15²; Ex. J, July 20, 2012 email from R. Erickson to P. Suhey³.

² Dr. Emmert was asked during his deposition in *Corman* whether he had ever discussed the removal of the Paterno statue with President Erickson at Penn State, and he responded as follows: "He -- he brought it up to me in one conversation and indicated that they were -- were doing so and so that I knew about it. It was a conversation about timing about when the press conference would be, when they were thinking about doing that. So I was aware that it was going to happen I -- I think just maybe the day before it actually occurred."

³ Trustee Suhey emailed President Erickson, stating: "Just wanted to add to my e-mail to you from last night concerning the Paterno Statue. Do whatever you need to do to keep the NCAA from giving us the 'Death Penalty'. I don't care if you have to bring your own bulldozer over and drag it to your farm, do it!" President Erickson responded: "That's precisely what I'm trying to do, Paul. Was on the phone earlier this morning with Mark Emmert." This document was produced in the *Corman* litigation and is not subject to a protective order. Although Penn State marked it "Confidential," there is no order in that case restricting its use.

Plaintiff Al Clemens is Also Entitled to Discovery on Count I

31. Even if the Estate were not a party to Count I, plaintiff Al Clemens indisputably is a party to Count I and is entitled to take discovery relating to that Count. Counsel for the Estate are also counsel for Clemens and the other plaintiffs as well. As such, plaintiffs should clearly be permitted to move ahead with service of subpoenas on the Directors, and notice their depositions on behalf of all plaintiffs.

32. No value would be served by requiring new notices of intent to issue subpoenas in the name of Al Clemens.

The Court Should Deny The NCAA's Request For Further Delay

33. The NCAA has repeatedly sought to delay and deny discovery by referring to the pendency of preliminary objections, stating that “the Court should decline to issue the proposed subpoenas until after it rules on the NCAA’s preliminary objections to the Second Amended Complaint.” NCAA Obj. at 8.

34. This claim — that plaintiffs are not entitled to discovery before a ruling on another round of NCAA preliminary objections — is not new. But it is plainly wrong.⁴

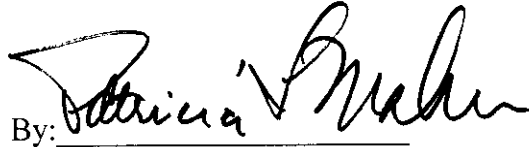
35. The Court should overrule the NCAA’s objections to the issuance of subpoenas to these Directors and permit this discovery to proceed, because the pendency of preliminary objections is not a basis to frustrate discovery.

⁴ Pennsylvania courts routinely permit discovery during the pendency of preliminary objections. In *McKissock & Hoffman v. Polymer Dynamics, Inc.*, 17 Pa. D. & C.5th 541, 551 (Phila. Cnty. Ct. 2010), the petitioner law firm was ordered to respond to discovery requests before the court ruled on the law firm’s preliminary objections to the amended complaint. See also *Rhoads v. Phila. Hous. Auth.*, No. 0090, 2008 Phila. Ct. Com. Pl. LEXIS 307, at *4 (Phila. Cnty. Ct. Dec. 19, 2008) (discovery requests issued and disputes briefed while preliminary objections to first amended complaint pending) *rev’d on other grounds*, 978 A.2d 431 (Pa. Commw. Ct. 2009); *Conner v. Tom*, 811 A.2d 6, 8 (Pa. Super Ct. 2002) (defendant served discovery requests two months after the complaint was filed, but before a ruling on the preliminary objections).

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court grant this Motion and overrule the NCAA's objections to service of deposition subpoenas to the Directors.

Date: January 14, 2015

By: 

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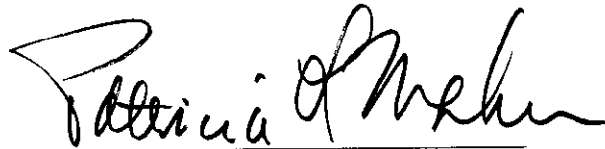
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The ESTATE of JOSEPH PATERNO;
AL CLEMENS, member of
the Board of Trustees of Pennsylvania State
University; and
WILLIAM KENNEY and JOSEPH V. (“JAY”) PATERNO,
former football coaches at Pennsylvania State
University,
Plaintiffs,
v.
NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION (“NCAA”);
MARK EMMERT, individually and as
President of the NCAA;
And
EDWARD RAY, individually and as former
Chairman of the
Executive Committee of the NCAA,
Defendants,
And
PENNSYLVANIA STATE UNIVERSITY,
Defendant.

STATEMENT OF CONFERENCE PURSUANT TO LOCAL RULE 208.2(e)

Pursuant to Local Rule 208.2(e), the undersigned counsel for movant plaintiffs hereby certifies that on January 9, 2014, a good faith conference was conducted by telephone with counsel for Defendant NCAA on December 9, 2015, in an effort to resolve the issues raised in the Motion to Overrule Defendant NCAA's Objections to Issuance of Subpoenas, without the need for intervention by the Court. Counsel for the parties were unable to resolve the issues raised in the motion.

A handwritten signature in black ink, appearing to read "Thomas J. Weber", written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **MOTION TO
OVERRULE DEFENDANT NCAA'S OBJECTIONS TO ISSUANCE OF SUBPOENAS**

was served this 14th day of January, 2015 by first class mail and email to the following:

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A handwritten signature in black ink, reading "Patricia L. Maher". The signature is written in a cursive style with a large, stylized "P" and "M".

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EXHIBIT A



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Penn State Press Conference Remarks

July 23, 2012 12:00am

Executive Committee Chair, Oregon State President Ed Ray

The historically unprecedented actions by the NCAA today are warranted by the conspiracy of silence that was maintained at the highest levels of the university in reckless and callous disregard for the children. There is incredible interest in what will happen to Penn State football. But, the fundamental story of this horrific chapter should focus on the innocent children and the powerful people who let them down.

There has also been much speculation on whether or not the NCAA has the authority to impose any type of penalty related to Penn State.

Not only does the NCAA have the authority to act in this case, we also have the responsibility to say that such egregious behavior is not only against our bylaws and Constitution, but also against our values system and basic human decency.

The Executive Committee, which acts on behalf of the entire Association and implements policies to resolve core issues -- along with the Division I Board, a body of presidents representing all of Division I -- directed President Emmert to examine the circumstances surrounding the Penn State tragedy and if appropriate, make recommendations regarding punitive and corrective measures.

As a result of information produced from the Sandusky criminal investigation and the Freeh report, which Penn State commissioned and also agreed to its findings, it became obvious that the leadership failures at Penn State over an extended period of time directly violated Association bylaws and the NCAA Constitution relating to control over the athletic department, integrity and ethical conduct.

The corrective and punitive measures the Executive Committee and the Division I Board of Directors have authorized should serve as a stark wake up call to everyone involved in college sports that our first responsibility, as outlined in our

Constitution, is to adhere to the fundamental values of respect, fairness, civility, honesty and responsibility.

I'll now turn to President Emmert to discuss today's actions and what is expected of Penn State in the future... President Emmert.

NCAA President Mark Emmert

The Penn State case has provoked in all of us deeply powerful emotions and shaken our most fundamental confidence in many ways. As we – the Executive Committee, the Division I Board and I – have examined and discussed this case, we have kept foremost in our thoughts the tragic damage that has been done to the victims and their families.

No matter what we do here, there is no action we can take that will remove their pain and anguish. But, what we can do is impose sanctions that both reflect the magnitude of these terrible acts and that also ensure Penn State will rebuild an athletic culture that went horribly awry.

Our goal is not to just to be punitive, but to make sure the University establishes an athletic culture and daily mindset in which football will never again be placed ahead of educating, nurturing, and protecting young people.

More than 100 years ago, the NCAA was created to assure that sports are fully integrated into our colleges and universities and that athletic programs wholly embrace the values of higher education.

Our Constitution and bylaws make it perfectly clear that the Association exists not simply to promote fair play on the field, but to insist that athletics programs provide positive moral models for our students, enhance the integrity of higher education, and promote the values of civility, honesty and responsibility. The sanctions we are imposing are based upon these most fundamental principles of the NCAA.

With these intentions in mind, the Executive Committee, the Division I Board and I have agreed to the following sanctions.

First, the NCAA is imposing a fine of \$60 million upon the University with the funds to be used to establish an endowment to support programs around the nation that serve the victims of child sexual abuse and seek to prevent such abuse from happening. This amount is the equivalent to one year's gross revenue by the football team.

Second, Penn State football will be banned from bowl games and any other post-season play for four years.

Third, the Penn State football team will have its initial scholarships reduced from 25 to 15 for a period of four years.

In order to minimize the negative impact on student-athletes, the NCAA will allow any entering or returning football student-athletes to transfer and immediately compete at the transfer university, provided he is otherwise eligible.

Further, any football student-athlete who wants to remain at Penn State may retain his athletic grant-in-aid as long as he meets and maintains applicable academic requirements, regardless of whether he competes on the football team.

Fourth, the NCAA vacates all wins of the Penn State football team from 1998 to 2011 and the records will reflect these changes.

Fifth, the University's athletic program will serve a five-year period of probation, during which it must work with an Academic Integrity monitor of the Association's choosing.

Finally, the NCAA is reserving the right to initiate a formal investigatory and disciplinary process and to impose sanctions on individuals involved in this case after the conclusion of any criminal proceedings.

Beyond these sanctions, the NCAA is imposing other corrective actions to ensure that the intended change of culture actually occurs.

The NCAA is requiring that the University adopt the reforms delineated in Chapter 10 of the Freeh Report, particularly Section 5.0.

Additionally, the Association is requiring that Penn State enter into an "Athletic Integrity Agreement" with the NCAA and the Big Ten conference. This Agreement will require the establishment of a Chief Compliance Officer position, a Compliance Council and an array of control mechanisms that are intended to ensure the athletic culture will be fully integrated into the broader university.

And finally, the NCAA will select an independent Athletics Integrity Monitor who will, for a five-year period, report quarterly to the NCAA, the University's Board of Trustees, and the Big Ten Conference on the progress Penn State is making in implementing all the provisions of the agreement.

Let me also address the issue of the so-called "death penalty." The Executive Committee, the Division I Board and I had extensive discussions about the appropriateness of imposing a suspension of the football program for one or more years.

An argument can be made that the egregiousness of the behavior in this case is greater than any other seen in NCAA history and that therefore a multi-year suspension is warranted. After much debate, however, we concluded that sanctions needed to reflect our goal of driving cultural change as much as apply punitive actions.

Suspension of the football program would bring with it significant unintended harm to many who had nothing to do with this case. The sanctions we have crafted are more focused and impactful than a blanket penalty.

Moreover, the actions already taken by the new Chair of the Board of Trustees, Karen Peetz, and the new President, Rodney Erickson, have demonstrated a strong desire and determination to take the steps necessary for Penn State to right these severe wrongs.

For the next several years Penn State can focus on the work of rebuilding its athletics culture, not worrying about whether or not it is going to a bowl game. With the sanctions imposed today and the new leadership of the University

we hope, indeed we intend to ensure that is the case.

In closing, let me say that this case involves tragic and tragically unnecessary circumstances. One of the grave dangers stemming from our love of sports is that the sports themselves can become "too big to fail," or even too big to challenge.

The result can be an erosion of academic values that are replaced by the value of hero worship and winning at all costs. All involved in intercollegiate athletics must be watchful that programs and individuals do not overwhelm the values of higher education.

In the Penn State case, the results were perverse and unconscionable. No price the NCAA can levy will repair the grievous damage inflicted by Jerry Sandusky on his victims.

However, we can make clear that the culture, actions, and inactions that allowed them to be victimized will not be tolerated in collegiate athletics.

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Press Conference Q&A

July 23, 2012 12:00am

Q. The Paterno family issued a statement yesterday calling the Freeh Report pretty much an indictment, a charging document, not necessarily a verdict. Don't you usually conduct your own investigation, and why did you rely so heavily on the Freeh Report?

MARK EMMERT: The Freeh Report is based on the data that came out of the national trial, provided extensive information in this case. The report has been accepted by the University itself. It was the result of more than 400 individual interviews, an examination of more than 3 million emails and other documents. It's vastly more involved and thorough than any investigation we've ever conducted.

Q. Does this, as speculated, open up some sort of Pandora's box to future cases, or is this unique in and of itself?

MARK EMMERT: This case is obviously incredibly unprecedented in every aspect of it, so are these first steps that we're taking today, and we can not see them as opening Pandora's box at all. This is a very distinct and very unique circumstance.

Q. How much communication have you had with Penn State about this, and do you expect them to appeal in any way?

MARK EMMERT: We have informed Penn State of the findings, the adoption of the findings coming from the Freeh Report, and also of our penalties. We have crafted this in the form of a consent decree, which the University can sign as well as we have.

Q. Classify the seriousness of these sanctions for me. Do you consider this more serious than the death penalty?

MARK EMMERT: Well, I'll leave the kind of judgment up to you. Obviously, these are very, very serious sanctions. We certainly hope, and I know President Ray and the Executive Committee hope, that the time that's being devoted will allow some very serious good to be done out of the circumstances.

The imposition of the both – the corrective measures and the punitive actions will most certainly have a significant impact on the University. That's the intention. I'll leave it to all of you to meditate whether that's better or worse.

If the issue of the mischaracterizations that exist there isn't these penalties and imposing something instead of the death penalty, I think that would be a false assumption. If the death penalty were to be imposed, an outcome that the Executive Committee and I – I may ask President Ray to push to the Executive Committee and I don't think they would not have agreed to just the death penalty. It would have included other penalties as well. President Ray?

ED RAY: Let me just briefly say in our discussion in the Executive Committee and the Division Board, we were very clear that in talking about outcomes, we were saying if the death penalty were to be considered or a suspension of work really is appropriate, that that in and of itself would not be the only penalty, that other elements would be there, not just punitive but corrective. I think that President Birmaher talked about

There was a decision. The decision that, some are, merely sense, and I can only tell you that, in weighing it, the Executive Committee and the Division Board will decide at the suspension of play would be appropriate.

For fact, I am aware that we've put norms about those that were not to participate in the conversation. Both the Executive Committee and the Division Board of Presidents and Chancellors unanimously supported the action that we've heard about the information.

Q. Might I ask a quick follow-up. Did you take a lot of pressure from the Penn State community, businesses, things like that?

MARK EMMERT: No.

Q. Are you considering the possibility of any future sanctions for coaches who were at Penn State during the years this abuse occurred and who may be looking to coach again?

MARK EMMERT: As I said in my opening statement, we are reviewing the joint, after the conclusion of all of the criminal charges and proceedings that will go forward, to look into any potential investigations or penalties that may need to be imposed on individuals. But for the time being, we're not doing anything with no victim.

Q. What is the lesson for other universities right now? What should these universities be doing right now that perhaps they haven't been doing in a long time?

MARK EMMERT: Well, then and again, I'll ask President Ray to speak to that point. Certainly, the lesson here is one of how to find the appropriate balance of core values. Why do we play sports in the first place, and does that culture ever get to a point where it's somewhere that values of the university, those things that we're holding dear?

And if you find yourself in a position where the athletic culture is taking precedence over the academic culture, then a variety of bad things can occur.

One would obviously hope that we would never see or see anything of the magnitude or agreed business again in our lives, but we do have to make sure that the cautionary tale of athletics over-riding the core values of an institution and losing sight of why we're really participating in these activities can occur, and that's the balance that every university needs to strike.

Q. Is there anything that Penn State can do in the future to lessen these penalties, or is there nothing to be done before this is over?

MARK EMMERT: As I said, Penn State has agreed to a consent decree to these findings and to these penalties, and that was established as fact.

What we will, I hope, want to do, and expanded by the corrective measures, in particular the athletic integrity agreement and the athletic integrity monitor, is to work with them to make sure that they implement the terms of that agreement.

That agreement was not one that we will take a number of years for us to draft that agreement with them. But we're in a culture with a corporate history agreement in a corporate world, we have full expectation that all of the terms of that agreement will be implemented. Should they not be, we reserve the right to re-evaluate this case.

Q. You mentioned the \$60 million is equivalent to a year's worth of revenue from the football program. Does this also require that that money come from the athletic department or any particular source?

MARK EMMERT: It does not require a specific source, it's an amount, like that.

business, money, things like that are getting that the other side is in a position of reduced impact, is the other side that is in a position of reduced impact.

Q. From this, I guess, the macro perspective here, you and your organization have been criticized the last few years for being toothless and not having power and such during rules cases. Do you think this is a statement by the NCAA that it is in charge of college athletics?

MARK EMMERT: This is a statement about our role. It is a reflection of the role of the Executive Committee and the Division I Board and the overall membership of the Association that the facts of this case are utterly unadventurous and interpretations beyond that I'll leave to others.

ED RAY: I would like to add, you know, we had a meeting of Presidents and Chancellors a year ago that Mark very nicely called together. Basically, as a group, the Presidents and Chancellors said we've had enough. This has to stop. We have to respect our responsibilities and change to oversee intercollegiate athletics.

In the first question you asked it does this send a message? The message is the Presidents and the Chancellors are in charge.

Somebody asked us, "Is there a theme, meaning here?" And I think it's important for all of you to realize, and Mark said it, there are extraordinary circumstances. The Executive Committee has the authority to act on behalf of the entire Association in extraordinary circumstances, and we've chosen to exercise that authority. I think all of us hope we'll never have to again.

The second element--and Mark talked about it is--the secondary take here is I think that every major college and university needs to do a gut-check and ask where are we on the appropriate balance between institutional traditions and the broader culture of the university and make certain that maybe we got the balance right--and if not, that they take corrective action.

Q. Can you speak to the decision to vacate the wins from '98 to 2011, and what does that say about Coach Paterno as being the winningest coach?

MARK EMMERT: Well, obviously, the 1998 date was selected because that's when the first reported incidents of abuse occurred and that's when the failures began and that was the point of time from which you could find on a spectrum of time that the failures began inside the institution.

To be clear, in our meeting to the Executive Committee that that was the beginning of the beginning date. Again, I'll leave that to you, obviously, to other members of the board. The failures began, in this case, began at that point in time and that's why that date was selected.

Q. The traditional infractions process involves a hearing where all relevant parties get to state their case and really bring their own defense. How do you reconcile that, although Penn State has signed the consent agreement, there weren't all the relevant parties represented to offer defensively to their own reputation?

MARK EMMERT: In this particular case, the failure happened to be a matter that was a traditional enforcement case. That's not what this is. This was an action by the Executive Committee exercising their authority, working with me to make sure that we can see a nonpartisan, agreed-upon solution to internal issues and then.

The consent agreement with us that the findings of the investigation were made more than ample information to sustain and support the allegations we were making. And it was simply a case that had to be done in front of us. From again, more than 450 members of the board, people that I can't name, I understand, to state that we had the

the president of the board of trustees.

And so the need to involve a properly constituted third party is inherent to what we could not conclude that this was an on-field enforcement process. It was quite different than an on-field enforcement process.

Q. Is there any way, with all the other investigations coming out, that if something were to change, that the NCAA might consider leniency if anything were to change in Penn State's favor?

MARK EMMERT: I don't know that it's right to speculate about hypothetical circumstances. We always deal with the facts in front of us and respond to them accordingly.

Q. In your roles through the years, you work closely with Graham Spanier and other people at Penn State on various issues. On a personal level, as you were working through this case over the last several months, what were some of your emotions? How would you describe your emotions, and how do you feel about those individuals now, particularly Spanier?

MARK EMMERT: I want to be really clear, there's nothing in the situation that anyone should feel good about. This is an awful place to be. It is not. It's not good for anyone. You look at the situation of the victim and their family here and you always have to go back to that and say what predicament did they find themselves in? What circumstances are they have to suffer through?

You look at what's going on at the University right now. You look at the actions we're imposing here today. The right actions on our part, and we feel confident that we're doing the right thing. But no one feels good about this. No one feels like this is a positive situation in any sense, and I'm sure that includes all the individuals involved here.

I'm not going to comment on how I personally feel about individuals here. This is just an unprecedented, painful chapter in the history of a tertiary educational institution.

ED RAY: I want to point out that, quite honestly, if the university culture had been as open, transparent, forthcoming, collaborative, cooperative as Penn State and the Board of Trustees at Penn State have been over the last year, we wouldn't be having this conversation.

Q. Mark, after the death penalty in '87, the – quantitatively, the number of football violations did go down. The risks did outweigh the reward. Do you expect that same result from this?

MARK EMMERT: Well, as President Ray just said, the fundamental message here, the quick-check message to us, we have the right balance in our culture. So we have it. And foremost, the academic values of integrity and honesty and accountability at the core of our university, and we're in a position where hard work and winning at all costs has substituted more core values.

That's the case, then you need to address that, and you need to address that as quickly as possible. That's the problem here.

I hope that's what we see.

Q. We all know what Penn State's record and reputation and Joe Paterno's were before this happened. Given that this was horrific and egregious, was any consideration given of that record and the fact that, legally speaking, they were first-time offenders?

MARK EMMERT: The entirety of the situation was examined. All of the facts, including those, were on the table and looked at. I don't think there was a moment of this case

that we didn't explore creatively and do just do it, intelligently, in a more coordinated way with the Executive Committee and the leadership.

Q. Dr. Emmert, when the Executive Committee decided to give you the power to act in this way, how would you describe the hesitancy or, perhaps in some cases, opposition to proceeding in this matter?

MARK EMMERT: Well, I let President Ray add comments as well, but I think it's appropriate to describe the conversation that we were engaged in as remarkably in agreement. That the NCAA needed to act in this case was never seriously debated.

Everyone understood that this case struck at the very heart of what intercollegiate athletics is about. And while there were much speculation about whether this fits a specific bylaw or that specific bylaw, it certainly is the nature, the fundamental nature of what athletics are supposed to be doing in the context of higher education.

And all of the Presidents that I spoke to, all of them immediately said, of course. That's exactly what's going on here.

So from that position, it was simply a matter of how do we proceed, not whether or not to proceed.

ED RAY: And I'll just add, really, echoing the same thing on behalf of the Executive Committee and the Division I Board, I think there was unanimous consent that what we were dealing with here was a horrific experience that struck at the very heart of the values of intercollegiate athletics and the NCAA.

I heard not a single voice in the Executive Committee or the Division I Board that wanted to step back and not take action now. It was a unanimous sense we needed to act and we needed to act quickly and effectively.

MARK EMMERT: I think, if I can add one more piece, faced the great challenge that we spent most of our time on was how do you craft sanctions that have the intended effect? Clearly, this calls for a punitive action. Clearly, also, it calls for corrective action to enable and also ensure that the kind of culture change occurs that's necessary at Penn State University, and at the same time has a minimal impact on innocent parties or people who have nothing to do with this.

That's always a challenge with NCAA sanctions. We all know that in this particular case we crafted sanctions that we have confidence are the best we can do in this particular case to have the punitive and corrective impact and force the university to go forward from this position.

Q. How much was taken into consideration, not giving the death penalty, of the opponents who had games scheduled with Penn State and the affect that would have on them?

MARK EMMERT: Well, it's certainly one of the many considerations on the impact of the death penalty, but I wouldn't want to overstate that at all in this regard.

When you think about a suspension of play, it's not just about the opponents you're going to play, it's about the fans, it's about all the people that are involved in the athletic events, it's about all the people who make a living around and around events, it's about all the people, all the student-athletes that are there, but that's all of it, enter on it.

So one of the considerations, as I said, was what's the collateral damage if you're not on the opponent. At the same time, it would very, incredibly be the actions of the President, Pat Holsinger, and his staff, and the many, and the faculty, and the staff, with which the case approached this.

re. Fresh Report is the only one that has made it available. The video was separated out. I think it's an apt word never a matched degree of openness for any university that has ever been. They have given free access to it as during the time everything in the University to to a level that is extraordinary. And that the University made that available to the public. Both are not quite remarkable.

And the willingness to provide with that information and accept that information was a really important factor in all of this.

Q. I wonder if you could elaborate on the independent compliance monitor. What specific steps or benchmarks will that person be watching for that would reflect a culture change?

MARK EMMERT: I mean, that question we will in the next week, we did with Penn State and the Big Ten Conference. We will develop an athletic integrity agreement which will provide a roadmap for changing the culture, making statistics and putting in place a more formal control structure to assure that institutional controls properly in hand.

As that agreement is developed, we will then appoint at the university's expense, an external monitor, someone we've not identified the individual but to persons who is not part of the NCAA or of course, part of the University. An independent third party, who will, with staff support, monitor the progress of the university on each step of that roadmap and report back to us to the trustees of Penn State and to the Big Ten Conference office in progress.

Should we see that they are failing to maintain appropriate progress with that roadmap then we have reserved the right to take other corrective steps.

Q. I wondered if you could explain a little bit more about the mechanism of the scholarship reduction, in terms of 10 initial, 20 total, what that will do to Penn State's football scholarships over the next four years.

MARK EMMERT: I have been cautious here of my staff. I may ask them to step up to the podium also and discuss that in more detail. But the numbers are not an unfair one. It is one where the total number, as you know, the new initial grant, and adds are always limited to 85 in football. This will drop that number to 75 and it will cap the total number of scholarships on the football program at 85.

But if you have other questions, we can follow up.

Q. Are you worried that the \$60 million fine will lead to sports being cut at Penn State, and what impact you think this will have on some of the non-revenue sports?

MARK EMMERT: I've already said this cannot come at the expense of the non-revenue sports or student athlete scholarships. The University, in going to have to come up with a different way of managing these expenses.

That's not to say we, of course, don't immediately start to cut from the economic side of the enterprise. That's not the appropriate solution. But the university will have to determine how to manage these challenges.

Q. Wondering if Penn State offered any sort of self-sanctions in this process, including the possibility of not playing a season? Or was it just you guys, in terms of the penalty, imposing that?

MARK EMMERT: We just imposed these penalties.

Q. Mark, obviously, understanding the breadth and scope of the Freeh Report, was there still any questioning or did you have any discussions with your enforcement staff and with committee on infractions people about why they would not be involved in

this process? Secondly, was there anything personally for you in terms of frustration dealing with the pace of sanctions being given that spurred you to be interested in this-- in doing this in an expedited way?

MARK EMMERT: The point of the process that we've engaged in-- and again, I'll stick to it to address it-- is a reflection of the magnitude of this case and the nature of the broad-based failures of integrity in this institution, not of any lack of confidence in our enforcement process.

Quite the contrary. I feel very good about our enforcement process and especially the changes that are under way in that process right now.

The unique nature of this resolution speaks more to the case itself than it does anything else, right?

ED RAY: I'll just say quickly, and I think staff can provide you with historical examples where the Executive Committee has found a situation that was so extraordinary it required the Executive Committee, that has the authority to step up and exercise its right to deal with individual infractions, to do so in this case.

So it's not without precedent, but it's only because of the extraordinary nature of the situation that we have, in fact, chosen to exercise that authority.

Q. Mark, what put this outside the investigative realm initially was the letter to Dr. Erickson in November. Since then, have you written a letter? There have been several other criminal cases around the country that may have come under this jurisdiction.

MARK EMMERT: No, I have not.

Q. I was just curious as to whether there was some sort of sense of urgency to get this done before the fall semester started, before football season started. And if there was, were you worried about any sort of reaction from Penn State students if there wasn't a decision made before then?

MARK EMMERT: There was clearly and remains a sense of urgency in resolving this case, certainly in and of itself prior to the fall semester and incoming football season. The timing was simply that, following the extensive work of both the criminal investigators and the Fresh Report, the information was there, and there was no compelling reason to delay the process.

MODERATOR: Next question, please.

Q. Mark, just one clarification on two things. One, it sounds like your communication with Penn State-- and just correct me if I'm wrong here-- was that you approached them with these penalties and they accepted them and that was it? There was no dialogue and no back and forth?

MARK EMMERT: That's right.

Q. The second thing is you haven't addressed Joe Paterno specifically yet. I'm just wondering, when you reviewed what he did, what you felt about his actions?

MARK EMMERT: Well, again, we expressly have no findings and findings withheld judgment on individuals and will continue to do so until all of the criminal investigations have concluded, and until then, we won't have any comment on individuals.

Q. Actually, that gets to my question. The Fresh Report being as comprehensive as it's been, why? Why hold back in dealing with the individuals until after the criminal investigations have been done, except insofar as the Fresh Report?

MARK EMMERT: We don't want to say that on its own the work became confused with or have any impact on the criminal investigations. They need to go on their own. We of course have helped to do both criminal investigations, and that process has to play out, and it's going to be a painful process, and then we can come in and deal with the consequences around the slaying.

¹ *Journal of Management Education*, 2000, 24(1), 10-12.



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EXHIBIT B

REPORT OF THE
NCAA EXECUTIVE COMMITTEE
JULY 21, 2012

ACTION ITEMS.

- None.

INFORMATIONAL ITEM.

- **Action regarding Pennsylvania State University:** NCAA President Mark Emmert discussed the most recent information related to Pennsylvania State University, including the findings as outlined in the Freeh report, the Sandusky criminal trial, as well as information provided by the university. Emmert reviewed several proposed actions and penalties with the committee and requested the authority to move forward with a consent decree between the NCAA and the university. He noted that, should the university not agree to this resolution, the NCAA would be prepared to take action without consent.

Pursuant to its authority under the NCAA Constitution and Bylaw Provision 4.1.2(e) to resolve core issues of Association-wide import,

It was VOTED (12-0)

“To authorize the NCAA President to enter into a consent decree with Pennsylvania State University and undertake any related activities in furtherance thereof, including the execution of an athletics integrity agreement memorializing the institution’s commitments. The consent decree is warranted based on the findings of the Freeh Report and Sandusky criminal trial that demonstrate a disregard for the values of the NCAA Constitution and Bylaws. In entering into a consent decree, the NCAA President may take into account Penn State’s mitigation efforts to this point. The consent decree may include sanctions and corrective measures including, but not limited to, an agreement that no current Penn State football student-athlete (who meets eligibility requirements) should be restricted from transferring to another institution, the levy of a significant fine whose proceeds will benefit the cause against sexual abuse of children, appropriate loss of postseason competition, a reduction in football scholarships, vacation of past wins and a probationary period. Further, the NCAA President is authorized to require corrective measures for Penn State to enact, including its binding commitment to integrity and independent monitoring.”

The NCAA Division I Board of Directors voted to support the action of the Executive Committee. *[Note: Division I Board roll will be added.]*

Committee Chair: Ed, Ray, Oregon State University, Pacific-12 Conference
Staff Liaisons: Bernard Franklin, MSAA
Delise O'Meally, MSAA

July 21, 2012	
Attendees	Absentees
Stan Albrecht, Utah State University Mark Emmert, NCAA President William Harvey, Hampton University Nathan Hatch, Wake Forest University William Meehan, Jacksonville State University Ann Millner, Weber State University J. Patrick O'Brien, West Texas A&M University Jack Ohle, Gustavus Adolphus College Harris Pastides, University of South Carolina, Columbia Edward Ray, Oregon State University James Schmotter, Western Connecticut State University Lou Anna Simon, Michigan State University Timothy White, University of California, Riverside	Guy Bailey, Texas Tech University Judy Genshaft, University of South Florida Thomas Haas, Grand Valley State University David Hopkins, Wright State University Ann Martin, Regis University Jeff Martinez, University of Redlands Sydney McPhee, Middle Tennessee State University Noreen Morris, Northeast Conference John Peters, Northern Illinois University
<u>Other Participants</u> David Berst, vice president of Division I Daniel Dutcher, vice president of Division III Mark Emmert, NCAA President Jim Isch, chief operating officer Kevin Lennon, vice president of academic and membership affairs Mike Racy, vice president of Division II Donald Remy, executive vice president of legal affairs/general counsel Wallace Renfro, vice president and chief policy advisor Julie Roe Lach, vice president of enforcement Bob Williams, vice president of communications	

EXHIBIT C

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November 21, 2014

Via Email and First Class Mail

Sarah M. Gragert, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304

*Re: Estate of Joseph Paterno v. NCAA, et al., Case No. 2013-2082 (Centre County
Common Pleas)*

Dear Sarah:

I am writing to summarize our discussion today regarding the NCAA's responses to the Estate's Second Requests for Production of Documents, as well as documents the NCAA has produced on behalf of Dr. Edward Ray. We want to make sure that we correctly understand the NCAA's position regarding responses to certain document requests that we need in advance of Dr. Ray's deposition on December 8.

To recap what we discussed with respect to the Estate's Second Requests:

You indicated that you will make another production of documents on behalf of the NCAA that will include documents responsive to the Estate's First and Second Requests, and that you expect to make that production early in the week of November 24.

You stated that Requests 1-3 call for documents that had not previously been collected or produced, but that production in response to these Requests will be made as part of next week's production. With respect to the Responses to Requests Nos. 2-3, you indicated that all documents responsive to these requests will be produced even though the written responses state that the NCAA will produce documents "that respond to the reasonable scope of the request." You told us that you are "standing on your objections," but still intend to produce *all* responsive documents.

With respect to Request No. 4, although you objected in the response that the Request calls for speculation, you told us that all responsive documents will be produced.

The responses to several requests (Nos. 4-8) state that the responsive documents are “fully subsumed in requests contained in the Estate’s First RFPs and incorporates its objections thereto.” We asked for clarification of what that part of the response means, and you told us that documents responsive to these requests were also responsive to the Estate’s First Requests for Production of Documents, and either have been or will be produced once the final production, referenced above, is made.

We asked about the response to Request No. 9 regarding historical examples where the NCAA Executive Committee has dealt with an extraordinary situation rather than leave it to NCAA personnel or processes. Specifically, we asked whether the three historical examples that David Berst identified in his deposition in *Corman v. NCAA* constitute all of the examples of such action by the Executive Committee. You told us that those three instances are just examples, but there are others. You indicated that your will provide documents sufficient to identify all such examples. We agreed to accept, at least initially, documents sufficient to identify all examples of such action by the Executive Committee (rather than *all* documents that relate to each instance), but we reserve the right to seek additional responsive documents regarding particular instances.

With respect to Request No. 11, you advised that Dr. Emmert did not regularly use email accounts other than his NCAA account to conduct NCAA business, except when he received NCAA-related messages on other accounts, or when he forwarded messages from memmert@ncaa.org to another account (his or his wife’s) in order to print something at home. You told us that all such email accounts, including his personal account and his wife’s account, have been searched and responsive documents will be produced, although there is at least one email as to which you are asserting attorney-client privilege.

We also discussed the responses provided on behalf of Dr. Ray that we received in February 2014. The responses to the first 24 requests that deal with the Penn State/Sandusky matter and contain various objections, every one of which concludes with a statement that Dr. Ray will produce documents that are both not privileged *and* “that relate to or reflect [Dr. Ray’s] contacts or lack of contacts with the state of Pennsylvania.” We asked for clarification of this position, because Dr. Ray’s personal counsel has advised that he provided the NCAA with Dr. Ray’s documents that relate to the Penn State matter for production.

You told us that you want to preserve the arguments you have made with respect to Dr. Ray in responding to the complaints in this action, but that you also consider Dr. Ray’s documents that relate to Penn State or the Executive Committee’s actions with respect to Penn State as relating to his contacts with Pennsylvania. Therefore, all documents responsive to requests directed to Dr. Ray either have been or will be produced. You told us that you have recently received additional responsive documents from Dr. Ray’s personal counsel, and that those will be included in the upcoming production.

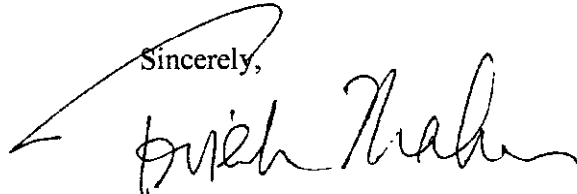
Finally, we told you that we are making every effort to prepare for Dr. Ray’s deposition on December 8 so that it can be completed at one time for both the *Corman* and *Paterno* cases. We asked that you provide us a privilege log for any documents withheld on grounds of privilege that pertain to Dr. Ray or the actions of the Executive Committee, of which he was the Chair at the relevant time. This would include the requests to Dr. Ray and Requests 1-3, and 6-9 of the

Sarah M. Gragert, Esq.
November 21, 2014
Page 3

Second RFPs to the NCAA. We appreciate your willingness to provide such a privilege log before Dr. Ray's deposition.

I have tried to commit to writing accurately the exchange we had. I trust you will let me know if you believe I have misunderstood or misstated your position on any of the issues addressed above.

Sincerely,



Patricia L. Maher

cc: Everett C. Johnson, Jr., Esq.
Brian E. Kowalski, Esq.
Thomas J. Weber, Esq.
Paul V. Kelly, Esq.
John J. Commisso, Esq.

EXHIBIT D

Maher, Trish

From: Maher, Trish
Sent: Tuesday, November 04, 2014 11:00 AM
To: Brian.Kowalski@lw.com; EVERETT.JOHNSON@LW.com
Cc: Sollers, Wick; Doran, Samuel
Subject: Paterno v. NCAA

Brian,

I want to follow up on a few discovery issues. First, when we spoke recently about the NCAA's production of documents responsive to the Estate's First Requests to the NCAA, you said that production of the remaining documents responsive to Request Nos. 1-24 was imminent. Can we expect the balance of that production this week?

Second, you indicated that you will confirm that we have received all documents the NCAA has produced to the *Corman* plaintiffs, other than documents that relate to the endowment. Have we received all such documents?

Finally, in order for us to participate in the upcoming deposition of Ed Ray on December 8, you agreed to confirm that all documents responsive to the Estate's document requests to Ed Ray have been produced and/or that he has nothing responsive to certain requests. Can you confirm whether this is the case?

We are free to talk this week as necessary.

Trish

Trish Maher | King & Spalding LLP
1700 Pennsylvania Ave., N.W. | Washington, D.C. 20006
pmaher@kslaw.com | 202-626-5504

EXHIBIT E

IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

THE ESTATE of)
JOSEPH PATERNO, et)
al,)
 Plaintiff,)
 vs.) No. 2013-2082
NATIONAL COLLEGIATE)
ATHLETIC)
ASSOCIATION)
("NCAA"), et al.)
 Defendant.)

VIDEOTAPED DEPOSITION OF DR. EDWARD RAY
TAKEN IN BEHALF OF Plaintiffs
Corvallis, Oregon
December 8, 2014

REPORTED BY: DEBORAH L. COOK, RPR, CSR

<p>1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA</p> <p>2</p> <p>3 JAKE CORMAN, in his)</p> <p>4 official capacity as)</p> <p>5 Senator from the 34th)</p> <p>6 Senatorial District of)</p> <p>7 Pennsylvania and Chair of) No. 1 M.D. 2013</p> <p>8 the Senate Committee on)</p> <p>9 Appropriations; and ROBERT)</p> <p>10 M. McCORD, in his official)</p> <p>11 capacity as Treasurer of)</p> <p>12 the Commonwealth of)</p> <p>13 Pennsylvania,)</p> <p>14 Plaintiffs,)</p> <p>15 vs.)</p> <p>16 NATIONAL COLLEGIATE)</p> <p>17 ATHLETIC ASSOCIATION,)</p> <p>18 Defendant.)</p> <p>19)</p> <p>20 vs.)</p> <p>21 PENNSYLVANIA STATE)</p> <p>22 UNIVERSITY,)</p> <p>23 Defendant.)</p> <p>24</p> <p>25</p> <p>16 VIDEOTAPED DEPOSITION OF DR. EDWARD RAY</p> <p>17 TAKEN IN BEHALF OF Plaintiffs</p> <p>18 Corvallis, Oregon</p> <p>19 December 8, 2014</p> <p>20</p> <p>21</p> <p>22</p> <p>23 REPORTED BY: DEBORAH L. COOK, RPR, CSR</p> <p>24</p> <p>25</p> <p style="text-align: right;">[Page 2]</p>	<p>1 JOSHUA VOSS</p> <p>2 Conrad O'Brien</p> <p>3 240 N. Third Street</p> <p>4 5th Floor</p> <p>5 Harrisburg, Pennsylvania 17101</p> <p>6 215.864.8081</p> <p>7 Jvoss@conradobrien.com</p> <p>8</p> <p>9 For the Defendant: NCAA, and Dr. Edward Ray,</p> <p>10 Individually, (Paterno Estate Case)</p> <p>11 BRIAN KOWALSKI</p> <p>12 Sarah Gragert</p> <p>13 Latham & Watkins, LLP</p> <p>14 55-11th Street, NW</p> <p>15 Washington, DC [STATE2] 20004</p> <p>16 Brian.kowalski@lw.com</p> <p>17 Sarah.gragert@lw.com</p> <p>18 For the Defendant: NCAA</p> <p>19 DONALD REMY</p> <p>20 VP/General Counsel NCAA</p> <p>21 PO Box 6222</p> <p>22 Indianapolis Indiana 46206</p> <p>23 317.917.6914</p> <p>24 Dremy@ncaa.org</p> <p>25</p> <p>16 For the Defendant: Pennsylvania State</p> <p>17 University</p> <p>18 DONNA DOBLICK</p> <p>19 Reed Smith, LLP</p> <p>20 25 Fifth Avenue</p> <p>21 Suite 1200</p> <p>22 Pittsburgh Pennsylvania 15222</p> <p>23 412.288.7274</p> <p>24 Ddobllick@reedsmith.com</p> <p>25 For the Defendant: Dr. Edward Ray</p> <p>MICHAEL SHEETZ</p> <p>Cooley LLP</p> <p>500 Boylston Street</p> <p>Boston, Massachusetts 02116</p> <p>617.937.2330</p> <p>Msheetz@cooley.com</p> <p style="text-align: right;">[Page 4]</p>
<p>1 BE IT REMEMBERED THAT, pursuant to</p> <p>2 Notice, hereinafter set out, the deposition of</p> <p>3 DR. EDWARD RAY was taken before Deborah L.</p> <p>4 Cook, RPR, Certified Shorthand Reporter, CSR</p> <p>5 #04-0389, on Monday, December 8, 2014, at the</p> <p>6 offices of Oregon State University, CH2M Hill</p> <p>7 Alumni Center, Austin/Parrish Boardroom, 725 SW</p> <p>8 26th Street, Corvallis, Oregon, 97331,</p> <p>9 commencing at the hour of 9:30 a.m.</p> <p>10</p> <p>11</p> <p>12 A P P E A R A N C E S</p> <p>13 For the Plaintiff: Estate of Joe Paterno</p> <p>J. SEDWICK "Wick" Sollers, III</p> <p>PATRICIA L. MAHER</p> <p>15 King & Spalding, LLP</p> <p>16 1700 Pennsylvania Avenue, NW</p> <p>17 Washington, DC 20006</p> <p>18 202.626.5612</p> <p>19 wsollers@kslaw.com</p> <p>20 pmaher@kslaw.com</p> <p>21</p> <p>22 For the Plaintiff: Senator Jake Corman, et al.</p> <p>MATTHEW HAVERSTICK</p> <p>MARK SEIBERLING</p> <p>Conrad O'Brien</p> <p>1500 Market Street</p> <p>West Tower, Suite 3900</p> <p>Philadelphia, Pennsylvania 19102</p> <p>215.523.8325</p> <p>MHaverstick@conradobrien.com</p> <p>Mseiberling@conradobrien.com</p> <p>24</p> <p>25and.....</p> <p style="text-align: right;">[Page 3]</p>	<p>1 Also Present:</p> <p>2 KEVIN McKENNA</p> <p>3 Latsha Davis & McKenna</p> <p>4 350 Eagleview Blvd.</p> <p>5 Suite 100</p> <p>6 Exton Pennsylvania 19341</p> <p>7 610.524.8454</p> <p>8 Kmckenna@ldylaw.com</p> <p>9 Consultant for Plaintiffs (Corman Case)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>8 ALSO PRESENT: Kyle Reubendale, Videographer</p> <p style="text-align: right;">[Page 5]</p>

<p>1 DR. EDWARD RAY, 2 produced as a witness in behalf of the 3 Plaintiffs, having been first duly sworn, was 4 examined and testified as follows: 5 6 MR. SHEETZ: Actually, before we 7 begin, Wick, are we doing two depositions today? 8 And is that why we only had sort of the one, the 9 Paterno case, identified, or is it all in one? 10 MR. SOLLERS: That's a good question, 11 and I was going to address that. 12 13 EXAMINATION 14 BY MR. SOLLERS: 15 Q. So before we start, Dr. Ray, a couple 16 of housekeeping items. My understanding, today, 17 we're taking the deposition of Dr. Ray in the 18 context of two cases, the Paterno case, and I 19 represent, as I said, the Estate of Joe Paterno, 20 also the Corman v -- Corman, et al., v. NCAA, et 21 al., case. 22 In large part, we're doing this a 23 little bit differently than usual, but to 24 accommodate your schedule, so that we -- 25 A. I appreciate that.</p> <p style="text-align: right;">[Page 10]</p>	<p>1 MR. KOWALSKI: We agree with that 2 stipulation. And as you know, and I note for the 3 record, that our intention is that that 4 stipulation is limited to the documents that you 5 use in this deposition, and if there's anything 6 beyond that, we will need to confer again. 7 MR. SOLLERS: We understand that, and 8 agree. 9 MR. SHEETZ: Are there any other 10 stipulations with regard to objections that you 11 are proposing for purposes of the deposition? 12 MR. SOLLERS: No. 13 MR. SHEETZ: Okay. 14 BY MR. SOLLERS: 15 Q. With that, Dr. Ray, we have gotten 16 through some of the legalese, and we can talk a 17 little more like human beings. 18 As I said, my name is Wick Sollers. 19 I am with King & Spalding in Washington DC. I 20 represent the estate of Joe Paterno, and I would 21 like to get a little bit of your background, 22 although I don't want to get into a too extensive 23 amount of your background. 24 My understanding is that you were an 25 economics professor at Ohio State from 1970 to</p> <p style="text-align: right;">[Page 12]</p>
<p>1 Q. -- will not impose upon you an extra 2 day. So after we conclude our examination, the 3 examination by the Corman team lawyers will 4 resume. 5 Does that make sense? Is that 6 acceptable? 7 MR. SHEETZ: Sure. 8 MR. SOLLERS: The parties have also 9 signed a stipulation. We don't have copies, 10 because the signatures were just applied, but we 11 do have copies of the stipulation that allows the 12 exhibits that are going to be used in this matter 13 this morning, and this afternoon, to be used for 14 all lawful purposes, and not to run afoul of a 15 Confidentiality Agreement or order that is in 16 place in the Paterno case, while there's not a 17 similar Confidentiality Agreement in the Corman 18 case. 19 So in order to make sure that there's 20 no confusion and that we can use the documents 21 without running afoul of that order, we have 22 signed a stipulation, which we have marked as 23 Exhibit 1 to your deposition. 24 (EXHIBIT No. 1. Stipulation, 25 marked.)</p> <p style="text-align: right;">[Page 11]</p>	<p>1 2003; is that right? 2 A. Yes. 3 Q. And you were provost and executive 4 vice president of Ohio State from '98 to 2003? 5 A. Yes. 6 Q. President at Oregon State since 2003? 7 A. Yes. 8 Q. Did you have any involvement with 9 NCAA matters while you were at Ohio State? 10 A. No. 11 Q. When did you first become involved in 12 NCAA matters? 13 A. When I became the, then PACC 10, 14 later PACC 12, conference representative to the 15 Division 1 Board, and simultaneously the 16 Executive Committee -- 17 Q. And when did you -- 18 A. -- in 2007 -- 19 Q. In 2007. 20 A. -- sorry. 21 Q. Who was the president of the NCAA at 22 the time? 23 A. Myles Brand. 24 Q. And in the fall of 2003, at the time 25 of the Sandusky indictment, you had been a</p> <p style="text-align: right;">[Page 13]</p>

<p>1 representative with the NCAA, or to the NCAA for</p> <p>2 four years; is that correct?</p> <p>3 A. In 2003?</p> <p>4 Q. In 2011.</p> <p>5 A. Yeah.</p> <p>6 Q. And did you -- did you know Myles</p> <p>7 Brand prior to your involvement with the NCAA?</p> <p>8 A. Yes.</p> <p>9 Q. How did you know him?</p> <p>10 A. He became provost in Ohio State in</p> <p>11 1987; stayed, I believe, until 1989, and I was</p> <p>12 the Department Chair of the Department of</p> <p>13 Economics, and got to know him in that capacity.</p> <p>14 Q. When you became the PACC 10</p> <p>15 representative at the NCAA, did you join the</p> <p>16 Executive Committee right away?</p> <p>17 A. Yes.</p> <p>18 Q. Were you on any particular sub</p> <p>19 committees?</p> <p>20 A. I chaired the Finance, Audit, and</p> <p>21 Investment Committees.</p> <p>22 Q. Were you still in the Executive</p> <p>23 Committee in 2009 when President Brand died?</p> <p>24 A. Yes.</p> <p>25 Q. And at that point --</p> <p style="text-align: right;">[Page 14]</p>	<p>1 BY MR. SOLLERS:</p> <p>2 Q. Member schools like -- do the member</p> <p>3 schools take the NCAA investigations seriously,</p> <p>4 in your view?</p> <p>5 A. Yes.</p> <p>6 Q. Can NCAA sanctions seriously impact</p> <p>7 the schools they are imposed upon?</p> <p>8 MR. KOWALSKI: Object to form.</p> <p>9 THE WITNESS: I don't -- it would</p> <p>10 depend on the case.</p> <p>11 BY MR. SOLLERS:</p> <p>12 Q. In your view --</p> <p>13 A. Could.</p> <p>14 Q. -- can NCAA sanction's seriously</p> <p>15 impact a school, a member institution?</p> <p>16 A. It's possible.</p> <p>17 Q. Have you observed it? Have you</p> <p>18 observed such sanctions to seriously impact a</p> <p>19 member institution?</p> <p>20 A. Impact in what sense?</p> <p>21 Q. In any detrimental sense, have a</p> <p>22 detrimental impact upon the institution?</p> <p>23 MR. SHEETZ: Objection.</p> <p>24 BY MR. SOLLERS:</p> <p>25 Q. You may answer.</p> <p style="text-align: right;">[Page 16]</p>
<p>1 A. I thought that was in 2008, September</p> <p>2 of 2008? I could be wrong.</p> <p>3 Q. Did you become the chair of the</p> <p>4 Executive Committee --</p> <p>5 A. At the end --</p> <p>6 Q. -- at that time?</p> <p>7 A. -- end of October, of that year, when</p> <p>8 he passed away, yes.</p> <p>9 Q. And I should have said this in the</p> <p>10 beginning. I'm going to do my best to ask</p> <p>11 questions clearly, but if at any point you don't</p> <p>12 understand my question, I would be happy to</p> <p>13 repeat it.</p> <p>14 A. Okay.</p> <p>15 Q. And if at any point you need to take</p> <p>16 a break, we can certainly take a break.</p> <p>17 A. Thank you.</p> <p>18 Q. Do you think that, from the</p> <p>19 perspective of a member institution, and, of</p> <p>20 course, you are the president of a member</p> <p>21 institution now, the NCAA is a powerful</p> <p>22 organization?</p> <p>23 MR. KOWALSKI: Object to the form.</p> <p>24 Go ahead and answer.</p> <p>25 THE WITNESS: Yes.</p> <p style="text-align: right;">[Page 15]</p>	<p>1 A. There, obviously, have been cases in</p> <p>2 which teams have been kept from being able to</p> <p>3 participate in bowls after football seasons.</p> <p>4 There are cases where schools have had</p> <p>5 scholarship reductions for a period of one, two,</p> <p>6 or more years depending upon findings in a</p> <p>7 particular case.</p> <p>8 Obviously, that has a potential</p> <p>9 adverse impact on their success in competition.</p> <p>10 Q. An NCAA investigation can be a very</p> <p>11 serious matter; is that true?</p> <p>12 A. Yes.</p> <p>13 Q. You are familiar, I believe, with the</p> <p>14 NCAA rules and bylaws, generally; is that fair?</p> <p>15 A. Only very broadly.</p> <p>16 Q. Have you read them?</p> <p>17 A. I have tried to read them.</p> <p>18 Q. So have we.</p> <p>19 A. Comprehension is -- comprehension is</p> <p>20 an issue. I am not a lawyer.</p> <p>21 MR. SOLLERS: I am going to have</p> <p>22 marked the Division 1 Manual, and have you take a</p> <p>23 look at that --</p> <p>24 (EXHIBIT No. 2, Division 1</p> <p>25 Manual, marked.)</p> <p style="text-align: right;">[Page 17]</p>

<p>1 MR. SOLLERS: And we have got some 2 copies here. 3 MR. SHEETZ: Patricia, do you have a 4 copy here? 5 BY MR. SOLLERS: 6 Q. So it's a little cumbersome because 7 of the size of this table, but we will do our 8 best. 9 MR. SHEETZ: This is Exhibit 1? 10 MR. SOLLERS: Wick, this is 11 Exhibit 2. The stipulation is Exhibit 1. 12 BY MR. SOLLERS: 13 Q. A couple of general questions, if I 14 might, Dr. Ray -- 15 MR. SHEETZ: You don't want Dr. Ray 16 to read the whole thing right now? 17 MR. SOLLERS: No, sir. 18 BY MR. SOLLERS: 19 Q. We'll refer to it as we go along, and 20 I will certainly give you an opportunity, to the 21 extent I am going to ask you about any particular 22 provision, to take a look at it and read it. 23 Would you agree, Dr. Ray, that the 24 rules in the bylaws are for the benefit of the 25 NCAA, and it's member institutions?</p> <p style="text-align: right;">[Page 18]</p>	<p>1 protect the interests of those who work for the 2 institutions? 3 A. It has the intent of carrying out the 4 wishes of the association members, which are led 5 by presidents and chancellors, who obviously have 6 the intent of looking after the well-being of 7 everyone connected to the university. 8 So in a very indirect sense, the NCAA 9 serves the members of the association and, you 10 know, is cognizant of their interests. But 11 that's as close as it gets. 12 Q. Are you generally aware that there 13 are certain rules and bylaws that the NCAA has 14 issued that protect the rights of those who work 15 for the member institutions? 16 MR. KOWALSKI: Object to the form. 17 THE WITNESS: I don't know enough of 18 the details to respond to that affirmatively or 19 not. 20 BY MR. SOLLERS: 21 Q. Are you aware of rules in these 22 bylaws, Exhibit 2, that are structured to ensure 23 a fair and reliable investigation process, to the 24 extent an investigation occurs? 25 A. I understand that that's the intent</p> <p style="text-align: right;">[Page 20]</p>
<p>1 A. That's the intent, yes. 2 Q. And would you also agree that the 3 rules are for the benefit of the students, 4 coaches, and staff? 5 MR. KOWALSKI: Object to the form. 6 THE WITNESS: Yes. 7 BY MR. SOLLERS: 8 Q. Do you agree that the core purpose, 9 or at least a core purpose of the NCAA, is to 10 protect the interests of the people who attend 11 and work for those institutions? 12 MR. KOWALSKI: Object to form. 13 THE WITNESS: To my mind, that's too 14 broad. I think the focus of the NCAA is 15 predominantly the well-being and success of 16 student athletes. Everything else is secondary. 17 BY MR. SOLLERS: 18 Q. Does the NCAA also intend, in your 19 view, to protect the interests of people who 20 attend and work for those institutions? 21 MR. KOWALSKI: Object to form. 22 THE WITNESS: I am not sure what that 23 means. 24 BY MR. SOLLERS: 25 Q. Does the NCAA have an intent to</p> <p style="text-align: right;">[Page 19]</p>	<p>1 of the bylaws. I don't know the specific bylaws 2 that state that, but I understand that. 3 Q. Do you agree that the NCAA's rules 4 govern, quote, "basic athletic issues, such as 5 admissions, financial aid, eligibility and 6 recruiting," unquote? 7 MR. SHEETZ: Excuse me. Can you tell 8 us what you are quoting from? 9 BY MR. SOLLERS: 10 Q. Constitution Article 1.3.2. It's on 11 page 1, if you want to take a look, Dr. Ray. 12 A. Uh-huh. (Reading document.) 13 Q. The bottom of page 1 -- 14 MR. SHEETZ: Do you want him just to 15 tell you if you quoted this accurately? 16 BY MR. SOLLERS: 17 Q. I would like you, Dr. Ray, to tell me 18 whether you agree that the NCAA rules govern 19 basic athletics issues, such admissions, 20 financial aid, eligibility, and recruiting. Do 21 you agree with that? 22 A. (Reading document.) I think the 23 scope is actually broader than that. 24 Q. Please explain. 25 A. One of the things that we talk about</p> <p style="text-align: right;">[Page 21]</p>

<p>1 regularly, or at least did when I was part of the 2 Executive Committee, were issues of institutional 3 control, institutional integrity, accountability. 4 They always emanated from matters 5 associated with athletics, but there was a 6 broader sense of responsibility by the 7 institutions and by the association. 8 Q. Do you agree that the principles of 9 institutional control and ethical conduct -- 10 excuse me, conduct exist in that context, what 11 you just described? 12 MR. KOWALSKI: Object to form. 13 THE WITNESS: I am sorry. Say that 14 again? 15 BY MR. SOLLERS: 16 Q. You described your vision of -- 17 A. Uh-huh. Uh-huh. 18 Q. -- the mission of the NCAA and 19 institutional control. Do the principles of 20 institutional control and ethical conduct exist 21 within that context, the context of basic 22 athletics issues? 23 MR. KOWALSKI: I am going to object. 24 Go ahead. 25 THE WITNESS: I would say certainly</p> <p style="text-align: right;">[Page 22]</p>	<p>1 very clearly to have enforcement behind a 2 firewall that pursued matters, and that was very 3 separate from the rest of the association. 4 So I really had no details on any 5 enforcement matter that was going on while I was 6 serving on the Executive Committee. 7 Q. Describe for us the involvement you 8 have had in enforcement matters, if you would, 9 during your time on the Executive Committee. 10 A. I first got involved at all with 11 enforcement in -- would have been the fall, I 12 think, of -- summer and fall of 2011 when we 13 convened a large group of presidents, 14 chancellors, ADs, commissioners, and we talked 15 about how NCAA activities should be governed 16 going forward. 17 I was asked to chair a subcommittee 18 to look at the rules and regulations of 19 enforcement and make recommendations, if any, for 20 changes. There were four other committees that 21 were constituted at the same time, also chaired 22 by presidents or chancellors, and that played out 23 over the next two years. 24 Q. Was that known as a retreat? 25 A. Well, we called it a retreat. I</p> <p style="text-align: right;">[Page 24]</p>
<p>1 within athletics issues, but could, in fact, go 2 beyond that to athletic-related things that would 3 not specifically be athletics program itself. 4 BY MR. SOLLERS: 5 Q. It's true that athletics is at the 6 core of the NCAA's mission, is it not? 7 A. The advancement, protection of 8 student athletes, and the appropriate practice of 9 competition, ethical behavior is at the center, 10 certainly. 11 Q. Let me talk to you, or ask a couple 12 questions about the enforcement process, if I 13 might. 14 A. Uh-huh. 15 Q. If the enforcement staff learns of 16 reasonably reliable information indicating that a 17 member institution has violated NCAA rules, is it 18 your understanding that it must provide what is 19 called a Notice of Inquiry to the chancellor or 20 president of the institution? 21 A. I don't know if -- I honestly don't 22 know if they must, but I know that's very often 23 the case. 24 The reason I don't know a lot of 25 specifics is because the practice of the NCAA was</p> <p style="text-align: right;">[Page 23]</p>	<p>1 don't know. A bunch of people got together. 2 Q. And -- 3 A. For a couple of days. 4 Q. What was the output of that retreat 5 or working group, however you want to describe 6 it? 7 A. Well, the retreat, if I can remember, 8 there was one group that was asked to look at 9 academic performance standards, you know, for 10 bowl consideration, post-season play, et cetera. 11 And Walt -- I can't remember his last name -- 12 Harrison -- Walt Harrison chaired that. 13 There was one on student support, 14 financial and otherwise. Graham Spanier chaired 15 that. 16 There was one on the rules and 17 regulations, you asked about the bylaws, could 18 things be made simpler and more understandable. 19 Jim Barker who, at the time was chancellor or 20 president at Clemson, chaired that. 21 And there was one on student success 22 that was different from the support one. I am 23 not quite sure how. But Mike Adams of Georgia 24 was the head of that, and then I was asked to 25 chair the one on enforcement.</p> <p style="text-align: right;">[Page 25]</p>

<p>1 Q. Did this Working Group, if I am 2 describing it correctly, ever issue a report? 3 A. Yes, we issued a report. I think the 4 first, kind of the penultimate draft, would have 5 been in -- I think it was in January of '12. I 6 may be off by a year. But I think it was January 7 of '12. 8 And then it was voted on by the 9 Executive Committee in August of '12. And then 10 it was adopted by the association, actually after 11 I was off the board, in January of '13 to be 12 implemented by, I think July of '13. 13 Q. Other than this Working Group effort, 14 did you have any other involvement in enforcement 15 matters? 16 A. No. 17 Q. Did you ever have any involvement in 18 an individual institutional enforcement matter? 19 A. No. 20 Q. Ever have any involvement in an 21 individual athlete enforcement matter? 22 A. Only in the sense that when, for 23 example, there's any kind of finding by the NCAA, 24 they always notify the president. 25 So in my capacity as president of</p> <p style="text-align: right;">[Page 26]</p>	<p>1 BY MR. SOLLERS: 2 Q. Are you aware of the implications 3 pursuant to the rules, the NCAA rules, if the 4 allegations suggest significant involvement of 5 any individual staff member or student? 6 A. Well, I, again, not having been 7 involved in specific cases, I do understand 8 that -- the old process that we reformed, which 9 is the only one I know, because I haven't been 10 involved in anything under the new system -- 11 involved the possibility of cases being 12 dismissed, or minor sanctions being imposed. For 13 example, you can't recruit that player, because 14 you gave him a tee-shirt when he wasn't supposed 15 to get it. 16 Or that it could go into a formal 17 investigation, which may or may not be terminated 18 by some sort of agreement between the parties 19 about what did or didn't happen, and what 20 appropriate remedies would be. 21 Or it could go into an investigation 22 that would ultimately be dealt with by what is 23 called Committee on Infractions. And I also know 24 it was -- there still is, a Committee on Appeals. 25 So that even after there's a finding in the</p> <p style="text-align: right;">[Page 28]</p>
<p>1 Oregon State, if an assistant coach gave a kid a 2 tee-shirt he wasn't supposed to get, or talked to 3 someone outside the prescribed period that you 4 could talk to recruits, we would self-report 5 that, or typically self-report it. 6 They would send a letter saying we 7 looked at this, here's our finding. But that was 8 the extent of my involvement, just to get notice 9 of how it was resolved. 10 Q. Let me go back to the Notice of 11 Inquiry. Do you -- are you aware that the Notice 12 of Inquiry presents an institution with an 13 opportunity to address the issue and respond to 14 the NCAA? Is that the general purpose of the 15 Notice of Inquiry? 16 MR. KOWALSKI: Objection. 17 THE WITNESS: Again, I have no 18 personal experience. I believe that's true, 19 because like everybody else, I read the 20 newspapers, and I have seen statements about 21 schools being given notice, and some vague 22 description of what the process would be going 23 forward. 24 But I have never personally been 25 involved with it, that I am aware of.</p> <p style="text-align: right;">[Page 27]</p>	<p>1 Committee on Infractions, there's an appeals 2 procedure, and I think the appeals procedure is 3 kind of a last step. 4 Q. Are you generally aware of the 5 process that exists in the event that someone is 6 designated as an involved individual in one of 7 these allegations or inquiries? 8 A. I am sorry, how do you mean do I 9 understand? 10 Q. Do you understand that there is a 11 process that applies if somebody is designated an 12 involved individual in an NCAA inquiry? 13 A. I actually don't know what the 14 process is. I know that if somebody is found to 15 be involved, there may be personally related 16 sanctions or findings. But that's about as much 17 as I know. 18 Q. Are you aware, generally, that there 19 is a process to notify and provide an opportunity 20 to respond to allegations if an -- excuse me, if 21 an individual is deemed to be, quote, "involved," 22 unquote, by the NCAA? 23 A. Again, that's my third-hand 24 understanding. 25 Q. Do you know what the purpose of the</p> <p style="text-align: right;">[Page 29]</p>

<p>1 rule is?</p> <p>2 MR. SHEETZ: Which rule are you</p> <p>3 referring to?</p> <p>4 BY MR. SOLLERS:</p> <p>5 Q. I am talking about Rule 32.1.5. And</p> <p>6 the rule states that, "Involved individuals are</p> <p>7 former or current student athletes, and former or</p> <p>8 current institutional staff members who have</p> <p>9 received notice of significant involvement in</p> <p>10 alleged violations."</p> <p>11 MR. SHEETZ: 395?</p> <p>12 MR. SOLLERS: 32.1.5.</p> <p>13 THE WITNESS: (Reading document.)</p> <p>14 BY MR. SOLLERS:</p> <p>15 Q. Take your time.</p> <p>16 A. (Reading document.) The definition</p> <p>17 of involved individuals, yeah. I remember the</p> <p>18 rule, but yeah.</p> <p>19 Q. And then there is a process that is</p> <p>20 set forth to allow someone who is designated an</p> <p>21 involved individual to respond to the inquiry</p> <p>22 that may be going on; is that fair?</p> <p>23 A. Let me make this as clear as I can.</p> <p>24 I have never, ever, been directly involved in any</p> <p>25 case directly, to have detailed knowledge of any</p> <p style="text-align: right;">[Page 30]</p>	<p>1 pursuing cases, because I have never had personal</p> <p>2 experience or been asked to participate</p> <p>3 personally.</p> <p>4 Q. Are you aware that interviews must be</p> <p>5 recorded or summarized, in some instances, but if</p> <p>6 they are summarized there should be an</p> <p>7 affirmation of the accuracy of the summary? Is</p> <p>8 that something you are aware of?</p> <p>9 A. No. I would have assumed it, but I</p> <p>10 have no basis in fact for knowing that that</p> <p>11 always happens.</p> <p>12 Q. At the Committee on Infractions</p> <p>13 stage, individuals are given the opportunity and</p> <p>14 are encouraged to present relevant information</p> <p>15 concerning mitigating factors. Is that generally</p> <p>16 something you are aware of?</p> <p>17 A. I believe that's the case, but I</p> <p>18 can't actually attest to it.</p> <p>19 Q. And so basically, the accused has a</p> <p>20 right to defend themselves; is that fair?</p> <p>21 A. I believe so.</p> <p>22 Q. Are you aware that the rules also</p> <p>23 state that the Committee on Infractions shall not</p> <p>24 rely on anonymous information?</p> <p>25 A. I don't know that for a fact, but I</p> <p style="text-align: right;">[Page 32]</p>
<p>1 individual's or any institution's path toward</p> <p>2 some sort of conclusion.</p> <p>3 I have looked at the rules in the</p> <p>4 past, but I honestly can't say that I remember</p> <p>5 rules in a process that was firewalled away from</p> <p>6 normal, everyday NCAA activity. It really was</p> <p>7 its own world in terms of the details.</p> <p>8 Q. Are you aware that there's certain</p> <p>9 procedural protections that are provided in the</p> <p>10 NCAA rules for an individual who is designated as</p> <p>11 involved?</p> <p>12 A. I believe that to be the case, yes.</p> <p>13 Q. Do you have a general awareness that</p> <p>14 the NCAA enforcement staff may interview</p> <p>15 individuals suspected of violations, but they</p> <p>16 must provide notice of the reasons for the</p> <p>17 interview?</p> <p>18 A. I know that they interview people all</p> <p>19 the time. I don't actually know -- I assume they</p> <p>20 would give notice, but I have no detailed</p> <p>21 knowledge of the form that that would take, or</p> <p>22 the time period prior to conversations they have</p> <p>23 with individuals.</p> <p>24 Again, I do not know the details,</p> <p>25 either on under the old system or the new, for</p> <p style="text-align: right;">[Page 31]</p>	<p>1 would expect that they would have to have</p> <p>2 confirmed sources. I just don't know.</p> <p>3 Q. And I won't take you through the</p> <p>4 details, but you are generally aware that the</p> <p>5 Committee on Infractions is authorized to impose</p> <p>6 sanctions in appropriate circumstances; is that</p> <p>7 true?</p> <p>8 A. Well, I know they have. So, yeah.</p> <p>9 Q. Right. Do you generally agree that</p> <p>10 those sanctions are intended to erase the</p> <p>11 competitive advantage that the violations were</p> <p>12 intended to achieve?</p> <p>13 MR. KOWALSKI: Object to the form.</p> <p>14 MR. SHEETZ: Would you repeat the</p> <p>15 question for me? I am sorry. I missed part of</p> <p>16 that.</p> <p>17 THE WITNESS: Yeah. I am trying to</p> <p>18 figure that out.</p> <p>19 BY MR. SOLLERS:</p> <p>20 Q. Do you agree that the sanctions that</p> <p>21 the Committee on Infractions has the right to</p> <p>22 impose are intended, generally, to erase the</p> <p>23 competitive advantage that the violations may</p> <p>24 have been intended to achieve?</p> <p>25 A. I think that would be one reason, but</p> <p style="text-align: right;">[Page 33]</p>

<p>1 I think there are other reasons. And I will be 2 very specific. At Ohio State, and I had nothing 3 to do with the case, I think Randy Ayers was the 4 basketball coach. 5 And I don't even remember what the 6 allegations were, but the charge that came 7 forward -- and I know this is one of their more 8 serious charges -- was lack of institutional 9 control. 10 And I mean, you could say that lack 11 of institutional control was about competitive 12 advantage, but I think it's more -- it's about 13 more than whether you won or lost. It's about -- 14 again, it's back to institutional integrity, 15 whether you operate in an ethical fashion, the 16 other things that we have talked about. 17 Q. Now, that you raise that, let's talk 18 generally for a moment, or let me ask you a 19 couple of questions, generally, about lack of 20 institutional control. 21 What is the authority, in your view, 22 for the pursuit of a lack of institutional 23 control inquiry on the part of NCAA? Is there a 24 general bylaw that covers that? 25 A. I am not aware of specific language</p> <p style="text-align: right;">[Page 34]</p>	<p>1 Q. What about the Penn State matter? 2 A. We didn't get involved in 3 enforcement. We got involved in something that 4 the NCAA does regularly, and that is to talk to 5 people when allegations are made. 6 And there are -- throughout the 7 process, even if they go to the Committee on 8 Infractions, about do the parties want to reach 9 an agreement about what the facts of the matter 10 are, and what appropriate punitive or corrective 11 actions, or both, ought to be made. And the NCAA 12 staff do that all the time. 13 Q. Isn't it the case that President 14 Emmert cited lack of institutional control in his 15 Letter of Inquiry of November 17th, 2011, that he 16 sent to President Erickson? 17 MR. KOWALSKI: Objection to form. 18 MR. SHEETZ: Do you want to show him 19 the document? 20 BY MR. SOLLERS: 21 Q. Do you recall that, generally? We'll 22 look at the document in a second. 23 A. I believe -- well, I know -- I am 24 aware that Mark raised the point, but I don't 25 remember the letter, specifically, whether it's</p> <p style="text-align: right;">[Page 36]</p>
<p>1 or an acid test. I am just not aware of any. 2 Q. Is that a decision that is under the 3 purview of the Executive Committee? 4 A. No. Again, there's a firewall 5 between enforcement and the Executive Committee 6 and the Division 1, 2, and 3 Boards. 7 So these are matters that are dealt 8 with by the Committee on Infractions. Their 9 reading and understanding of the rules and 10 regulations and then, you know, they pursue that 11 in conversations and investigations with the 12 involved institutions and/or individuals. 13 Q. Has there ever, in your experience, 14 been a situation in which the Executive 15 Committee, not the Enforcement Group, but the 16 Executive Committee has pursued an inquiry on 17 lack of institutional control? 18 MR. KOWALSKI: Object to form. 19 THE WITNESS: I don't think the 20 Executive Committee ever pursues an investigation 21 of anything. 22 BY MR. SOLLERS: 23 Q. How about an inquiry? 24 A. Again, we never got involved in 25 enforcement.</p> <p style="text-align: right;">[Page 35]</p>	<p>1 included there. But I know it was an issue. 2 Q. Would you agree that the most severe 3 sanction available to the NCAA is the death 4 penalty? 5 A. Suspension of play, yes. SMU is very 6 much alive and well. 7 Q. Do you agree that the rules allow for 8 the death penalty only in the case of repeat 9 violators? 10 MR. KOWALSKI: Objection to form. 11 THE WITNESS: I don't know that as a 12 fact. 13 BY MR. SOLLERS: 14 Q. Are you aware of a process, we will 15 call it an alternative process, which I will 16 identify as summary disposition? 17 A. I have zero legal training or 18 experience to know what does or doesn't 19 constitute a summary anything. 20 Q. Well, I am talking about a process 21 that's in the NCAA rules that allows for a 22 summary disposition. I think you may have 23 started to describe it a moment ago in which 24 there is an agreement on the resolution of the 25 matter with a member institution.</p> <p style="text-align: right;">[Page 37]</p>

<p>1 A. Well, I am aware from press accounts, 2 primarily, that cases were concluded with 3 agreements, but I didn't know -- I didn't know 4 what it was called.</p> <p>5 Q. What about the Penn State matter? 6 Didn't you refer to that as a summary judgment, 7 or summary disposition along the way, when that 8 matter was being worked on by you?</p> <p>9 A. I may have used that term, but it's a 10 technical definition. I am not sure what I 11 was -- you know, I don't know what, in legal 12 language, would constitute a summary judgment.</p> <p>13 Q. I don't want to get bogged down in 14 that terminology, and I am not trying to trick 15 you on that at all. I am just trying to talk 16 about --</p> <p>17 A. We were talking about an agreement.</p> <p>18 Q. And is it generally your 19 understanding that there is the opportunity or 20 the possibility of resolving a matter through an 21 agreement, as opposed to going through the full 22 infractions investigation process?</p> <p>23 A. Yes. It happened quite a bit, at 24 least that's my understanding and impression, but 25 again, from a distance.</p> <p style="text-align: right;">[Page 38]</p>	<p>1 THE WITNESS: For an agreement to be 2 reached, everybody has to agree, both parties, or 3 there could be several parties, depending on the 4 particulars.</p> <p>5 BY MR. SOLLERS:</p> <p>6 Q. The question is, for there to be a 7 summary disposition of an NCAA matter, is consent 8 required?</p> <p>9 MR. SHEETZ: Objection.</p> <p>10 THE WITNESS: Only if a summary 11 disposition is that there has to be an agreement. 12 That's what I understand, agreement. Once I get 13 into summary anything, I am beyond my own 14 expertise.</p> <p>15 BY MR. SOLLERS:</p> <p>16 Q. So you don't have -- as you sit here 17 today, you don't have an extensive knowledge of 18 the NCAA summary disposition process; is that 19 fair?</p> <p>20 A. That's fair.</p> <p>21 Q. Dr. Ray, let me ask you a couple 22 questions about the Executive Committee and its 23 responsibilities.</p> <p>24 I take it the Executive Committee is 25 responsible for hiring the president of the NCAA;</p> <p style="text-align: right;">[Page 40]</p>
<p>1 The cases did get resolved, and it 2 didn't take a year or two, and both parties 3 agreed to findings of fact, or whatever, and 4 concluded an agreement.</p> <p>5 Q. And was it your view that that is 6 what occurred at Penn State?</p> <p>7 A. Yes.</p> <p>8 Q. Do you agree that for such a process, 9 summary disposition process to occur, there must 10 be consent to the summary disposition process 11 itself?</p> <p>12 A. I --</p> <p>13 MR. SHEETZ: Objection --</p> <p>14 Excuse me, Ed. So counsel around the 15 table need to have the opportunity to be able to 16 interpose an objection at the end of the 17 question, so if you can give a second or two for 18 us to be able to do that before you start 19 answering, that would be great. Thank you.</p> <p>20 BY MR. SOLLERS:</p> <p>21 Q. Do you have an understanding that for 22 a summary disposition process to occur, there 23 needs to be consent of all the parties?</p> <p>24 MR. SHEETZ: Objection.</p> <p>25 MR. KOWALSKI: Join.</p> <p style="text-align: right;">[Page 39]</p>	<p>1 is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And what role did you have in hiring 4 President Emmert after Myles Brand died?</p> <p>5 A. I chaired the search committee that 6 identified, interviewed, and then recommended 7 candidates to -- I think it's the Executive 8 Committee that ultimately has the authority to 9 make an offer to a candidate.</p> <p>10 So I chaired the Search Committee 11 that brought information to the Executive 12 Committee on which they could make a decision.</p> <p>13 Q. Had you known Mark Emmert before the 14 search?</p> <p>15 A. Yes. He was president at the 16 University of Washington. And in that capacity, 17 a member of the PACC 10, later PACC 12 Executive 18 Committee, which consists of the presidents and 19 chancellors of the participating institutions.</p> <p>20 Q. How would you characterize your 21 relationship with Mr. Emmert prior to his hiring 22 as the head of the NCAA?</p> <p>23 A. Positive and friendly. Mostly at a 24 professional level, because the only time I saw 25 him was at PACC 10 or PACC 12 meetings, which</p> <p style="text-align: right;">[Page 41]</p>

[11] (Pages 38 to 41)

<p>1 occur two or three times a year.</p> <p>2 Q. Couple of questions about the Working</p> <p>3 Group and the retreat that we discussed earlier.</p> <p>4 Do you recall whether there was a</p> <p>5 deadline to complete the recommendations of your</p> <p>6 Working Group?</p> <p>7 A. I don't remember a specific deadline.</p> <p>8 I didn't think it was going to take two years,</p> <p>9 let's put it that way.</p> <p>10 Q. All right.</p> <p>11 A. So did I know what I was signing up</p> <p>12 for? No. The pay was the same.</p> <p>13 (EXHIBIT No. 3, Ed Ray Remarks</p> <p>14 at Professional Conference,</p> <p>15 Northwestern States Higher</p> <p>16 Education Internal Auditors,</p> <p>17 marked.)</p> <p>18 MR. SHEETZ: Is this Exhibit 3?</p> <p>19 MS. MAHER: Yes.</p> <p>20 BY MR. SOLLERS:</p> <p>21 Q. Doctor, I am showing you remarks that</p> <p>22 were made at the Professional Conference,</p> <p>23 Northwestern States Higher Education Internal</p> <p>24 Auditors.</p> <p>25 At page 3 of this document there's a</p> <p style="text-align: right;">[Page 42]</p>	<p>1 whole, to try to fashion the -- redesign the</p> <p>2 enforcement process to provide more clarity about</p> <p>3 the penalties associated with different</p> <p>4 activities.</p> <p>5 We expanded from three categories to</p> <p>6 four to provide clarity about cases that were</p> <p>7 kind of borderline, extreme, or only very</p> <p>8 significant, which we spent a lot of time on, and</p> <p>9 to provide specific penalty guidelines.</p> <p>10 And in that process, to make sure</p> <p>11 that we felt that the penalties and corrective</p> <p>12 actions were appropriate to the category in which</p> <p>13 cases would be placed.</p> <p>14 BY MR. SOLLERS:</p> <p>15 Q. Was there an effort to make the NCAA</p> <p>16 look tougher?</p> <p>17 MR. KOWALSKI: Objection.</p> <p>18 THE WITNESS: I think there was an</p> <p>19 effort, at least within the Working Group, to</p> <p>20 make cases going forward clearer to all parties,</p> <p>21 and outcomes or potential outcomes clearer to all</p> <p>22 parties.</p> <p>23 So you knew if you were given</p> <p>24 notification of particular violations, you could</p> <p>25 look it up in the table, and you would know what</p> <p style="text-align: right;">[Page 44]</p>
<p>1 section on hiring of Mark Emmert.</p> <p>2 A. Uh-huh.</p> <p>3 Q. And consistent with what you said a</p> <p>4 moment ago, "Our goal was to find someone capable</p> <p>5 of leading the NCAA through a period of great</p> <p>6 turbulence and change, someone bright,</p> <p>7 articulate, fearlessly committed to doing the</p> <p>8 right thing, and young enough to serve for many</p> <p>9 years."</p> <p>10 And you said you were very pleased</p> <p>11 with the results of the search. Do you recall</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And then on the following page,</p> <p>15 there's discussion about the Enforcement Working</p> <p>16 Group that was formed out of the 2011 retreat.</p> <p>17 Is that the Working Group that you</p> <p>18 testified about here this morning?</p> <p>19 A. Yes.</p> <p>20 Q. And as part of that Working Group,</p> <p>21 was there an effort to demonstrate more rigor in</p> <p>22 NCAA enforcement?</p> <p>23 MR. KOWALSKI: Objection to form.</p> <p>24 THE WITNESS: I would say there was a</p> <p>25 clear sense from the association members, as a</p> <p style="text-align: right;">[Page 43]</p>	<p>1 the likely penalties and corrective actions would</p> <p>2 be.</p> <p>3 But even there, I am not sure we</p> <p>4 succeeded, because obviously then you get into a</p> <p>5 discussion that every case is different, and</p> <p>6 there are aggravating circumstances and</p> <p>7 mitigating circumstances.</p> <p>8 And so we came out with, I think, a</p> <p>9 pretty complicated Penalty Guideline Table that</p> <p>10 included the four categories of violations and a</p> <p>11 range of findings. And then threw in the</p> <p>12 possibility of mitigation and aggravation on the</p> <p>13 presumption that Committee on Infractions, or</p> <p>14 wherever the case got finalized, had guidance.</p> <p>15 But we struggled with being very precise.</p> <p>16 Q. Had Dr. Emmert expressed some concern</p> <p>17 about the perceived proliferation and media</p> <p>18 reports about it, of bad acts at certain member</p> <p>19 institutions -- leading up to the Working Group,</p> <p>20 sorry?</p> <p>21 A. I think -- I think -- my sense of it,</p> <p>22 and it's only my impression, was that Mark,</p> <p>23 whatever he said, was reacting to general</p> <p>24 conversation among association members about</p> <p>25 whether or not cases were being, you know,</p> <p style="text-align: right;">[Page 45]</p>

<p>1 treated appropriately or not.</p> <p>2 Did we need to be -- did we need to</p> <p>3 have stiffer penalties for specific violations?</p> <p>4 It wasn't -- there was no notion of, we're going</p> <p>5 to be tough just for the hell of it.</p> <p>6 It was, you know, revisit what the</p> <p>7 infractions are, and what the penalties are, and</p> <p>8 settle on what you think are appropriate ranges</p> <p>9 for penalties, and allowing for mitigation and</p> <p>10 aggravation. Give it your best shot.</p> <p>11 BY MR. SOLLERS:</p> <p>12 Q. Do you recall whether the Working</p> <p>13 Group effort was, in part, a reaction to media</p> <p>14 criticism of the NCAA and it's enforcement</p> <p>15 practices?</p> <p>16 A. Not the working of the committee. I</p> <p>17 think it's fair to say that the retreat itself</p> <p>18 was to have a conversation, after Mark had spent,</p> <p>19 basically, his first year talking to association</p> <p>20 members, and I presume others, an effort to get a</p> <p>21 lot of people together and think about what --</p> <p>22 what, if anything, do we do going forward.</p> <p>23 And it was really out of that retreat</p> <p>24 that these five subgroups were created and</p> <p>25 charged to bring back their best efforts for the</p> <p style="text-align: right;">[Page 46]</p>	<p>1 hard to believe I didn't. But I honestly don't</p> <p>2 remember receiving it, but I knew of it. But I</p> <p>3 don't remember if I actually got it in the mail,</p> <p>4 or --</p> <p>5 Q. Have you reviewed it at all leading</p> <p>6 up to this deposition?</p> <p>7 A. I have read it, yeah.</p> <p>8 Q. So you have read it recently?</p> <p>9 A. In the last week or two.</p> <p>10 Q. I see. But you don't recall reading</p> <p>11 it back at the time, November 17th, or so, that</p> <p>12 the letter was sent?</p> <p>13 A. No. No, I remember -- and this may</p> <p>14 be the refreshing of looking at it in the last</p> <p>15 two weeks, but I do believe I had a sense that</p> <p>16 there were specific questions that Mark had posed</p> <p>17 to Rod Erickson and the institution, asking them</p> <p>18 to respond.</p> <p>19 (EXHIBIT No. 4, letter to</p> <p>20 President Erickson, 11-17-11,</p> <p>21 marked.)</p> <p>22 BY MR. SOLLERS:</p> <p>23 Q. Dr. Ray, I am handing you what's been</p> <p>24 marked as Exhibit 4, which is the November 17th</p> <p>25 letter to President Erickson. And as you have</p> <p style="text-align: right;">[Page 48]</p>
<p>1 sake of the association.</p> <p>2 Some things went very fast. That's</p> <p>3 why I said I had no sense of the timeline, and</p> <p>4 some -- some got nowhere, and we took two years.</p> <p>5 Q. Let me turn now to the Penn State</p> <p>6 matter. Do you recall how you first learned of</p> <p>7 the Jerry -- Jerry Sandusky indictment, and how?</p> <p>8 A. No, I suspect I just learned about it</p> <p>9 from the newspapers. I am not even sure when he</p> <p>10 was indicted, but I am sure it was from news</p> <p>11 media accounts, television, newspapers.</p> <p>12 Q. Do you recall whether you reviewed</p> <p>13 the presentment or indictment of Jerry Sandusky?</p> <p>14 MR. SHEETZ: At any time?</p> <p>15 BY MR. SOLLERS:</p> <p>16 Q. At any time. But start with at or</p> <p>17 about the time the presentment occurred.</p> <p>18 A. I didn't read anything from the</p> <p>19 indictment.</p> <p>20 Q. Have you never read the indictment,</p> <p>21 to this day?</p> <p>22 A. I have not.</p> <p>23 Q. Did you receive a copy of a letter</p> <p>24 that Dr. Emmert sent to President Erickson?</p> <p>25 A. I honestly don't remember, but it's</p> <p style="text-align: right;">[Page 47]</p>	<p>1 testified, you have looked at it in the last</p> <p>2 couple of weeks?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Is this letter the -- indicating the</p> <p>5 various questions that were being posed to</p> <p>6 President Erickson, is this the letter that</p> <p>7 kicked off the inquiry into Penn State?</p> <p>8 MR. KOWALSKI: Object to form.</p> <p>9 THE WITNESS: I guess my -- and</p> <p>10 again, my nonlegal opinion is, there never was an</p> <p>11 NCAA inquiry.</p> <p>12 But basically what Mark did was ask</p> <p>13 them to respond to these questions, and then</p> <p>14 either contemporaneously, I don't remember</p> <p>15 specifically, but I think it was</p> <p>16 contemporaneously, he announced -- and I heard it</p> <p>17 through the media -- that the NCAA would not take</p> <p>18 any action while legal matters were proceeding --</p> <p>19 you know, proceeding forward.</p> <p>20 That at least at that point, they</p> <p>21 simply were not going to -- they were going to</p> <p>22 stand down, and let the legal process take its</p> <p>23 course.</p> <p>24 So that was my understanding of the</p> <p>25 letter, and what its implications were. But he</p> <p style="text-align: right;">[Page 49]</p>

<p>1 had asked for specific responses to the 2 questions. 3 BY MR. SOLLERS: 4 Q. What did it mean to you when 5 Mr. Emmert wrote, "I am writing to notify you 6 that the NCAA will examine Penn State's exercise 7 of institutional control over its intercollegiate 8 athletics programs, as well as the actions and 9 inactions of relevant responsible personnel." 10 That's in the first -- middle of the 11 first paragraph. 12 A. Yeah. I would take that to mean the 13 NCAA believed it had some standing to be involved 14 in the matters surrounding the Sandusky, and 15 possible other cases. But it doesn't indicate 16 any kind of timeline or specific actions that are 17 going to be taken. 18 Q. What do you take the word "examine" 19 to mean? 20 MR. SHEETZ: Can you direct us to 21 what you are referring to? 22 MR. SOLLERS: I have. It was the 23 sentence we were just reading, which I directed 24 you to a moment ago. 25 MR. SHEETZ: So perhaps you could</p> <p style="text-align: right;">[Page 50]</p>	<p>1 Q. Let me direct your attention to the 2 second paragraph, third line. It says, 3 "Specifically, under Article 2.1," quote, "it's 4 the responsibility of each member institution to 5 control its intercollegiate athletics program in 6 compliance with the rules and regulations of the 7 association." 8 Is that the institutional control 9 section of the bylaws? 10 MR. KOWALSKI: Object to form. 11 THE WITNESS: I don't know where they 12 got that from, but I mean -- I don't know if it's 13 quoting the bylaw, or it's a statement of 14 assertion, with the support of counsel, that led 15 him to write that sentence. 16 BY MR. SOLLERS: 17 Q. Do you know how this letter was 18 drafted, by the way? 19 A. No. 20 Q. Did you have any input in this 21 letter? 22 A. No. As I say, I am not even sure I 23 saw it when it went out, or if I just heard it 24 had gone out. 25 And, again, that may sound unusual,</p> <p style="text-align: right;">[Page 52]</p>
<p>1 give me the courtesy of just directing me to that 2 sentence? 3 MR. SOLLERS: Certainly. It's in the 4 middle of the first paragraph. "I'm writing to 5 notify you that the NCAA will examine Penn 6 State's exercise of institutional control over 7 it's intercollegiate athletics programs, as well 8 as the actions and inactions of relevant 9 responsible personnel." 10 MR. SHEETZ: Thank you. 11 THE WITNESS: Yeah. And for me, 12 again, my interpretation of it would be, this was 13 kind of a declaration of, we have standing to be, 14 you know, to conduct our own investigation at 15 some point or other. It's not specific what form 16 it would take or when. 17 And as I say, it's my recollection -- 18 I could be wrong, because I can't specifically 19 pinpoint a date, was that Mark either 20 contemporaneously, or shortly thereafter, made it 21 clear that the NCAA would not proceed with an 22 investigation or activity, at least at that 23 point, because they didn't want to interfere with 24 the legal proceedings that were going forward. 25 BY MR. SOLLERS:</p> <p style="text-align: right;">[Page 51]</p>	<p>1 but there really was a strict firewall between 2 everything involving enforcement in cases, and 3 the normal activities of the NCAA. Which, by the 4 way, includes something like 89 championships and 5 tournaments. So there's a lot of work to be done 6 apart from enforcement. 7 Enforcement gets the most attention 8 for understandable reasons, but it was a separate 9 box. So if I didn't get it, I wouldn't have been 10 surprised, because I didn't expect to be involved 11 in anything. 12 Q. Fair enough. Couple of other 13 questions, recognizing that this is not a letter 14 in which you had input, and may not have even 15 seen back in November of 2011. 16 But in the third paragraph, on the 17 second page, in the middle it says, "Bylaw 18 11.1.2.1 goes on to say that it shall be the 19 responsibility of an institutions's head coach to 20 promote an atmosphere for compliance within the 21 program supervised by the coach, and to monitor 22 the activities regarding compliance of all 23 assistant coaches, and other administrators 24 involved with the program who report directly or 25 indirectly to the coach," end quote.</p> <p style="text-align: right;">[Page 53]</p>

<p>1 Does that appear to you to be a</p> <p>2 reference to Coach Joe Paterno?</p> <p>3 MR. KOWALSKI: Objection to form.</p> <p>4 THE WITNESS: I think it's a generic</p> <p>5 sentence that says the scope of what could be</p> <p>6 investigated certainly would include, if there</p> <p>7 were presumed or charged violations within a</p> <p>8 particular sport, that everybody connected to it</p> <p>9 would be subject to review.</p> <p>10 BY MR. SOLLERS:</p> <p>11 Q. Goes on to state, "Under the same</p> <p>12 bylaw governing the conduct and employment of</p> <p>13 athletics personnel, it makes clear that," quote,</p> <p>14 "institutional staff members found in violation</p> <p>15 of NCAA regulations shall be subject to</p> <p>16 disciplinary or corrective action," dot, dot,</p> <p>17 dot, "whether such violations occurred at the</p> <p>18 certifying institution, or during the</p> <p>19 individual's previous employment," unquote.</p> <p>20 Does this sentence appear to you to</p> <p>21 designate the possibility of individual exposure</p> <p>22 in this matter?</p> <p>23 MR. KOWALSKI: Object to form.</p> <p>24 THE WITNESS: Well, it would be</p> <p>25 consistent with a lot of cases that I am aware</p> <p style="text-align: right;">[Page 54]</p>	<p>1 Q. The references we just read did not</p> <p>2 relate solely to the institution; is that</p> <p>3 correct?</p> <p>4 A. Yeah, I believe that's correct. That</p> <p>5 individuals could be held accountable for</p> <p>6 actions, if they can be established. And that's</p> <p>7 consistent with what -- you know, I have read it</p> <p>8 in the newspaper, seen it on TV, I am sure you</p> <p>9 have, where coaches have left the place because</p> <p>10 they were facing show cause.</p> <p>11 I mean, the most obvious example to</p> <p>12 me was Jim Trestle. I was no longer there at</p> <p>13 Ohio State when that case came up. But I believe</p> <p>14 he got a show cause order, and I don't remember</p> <p>15 if it was two or three years. All I know is what</p> <p>16 I read in the newspaper.</p> <p>17 But I think he was out of college</p> <p>18 coaching for a period of time, and frankly, has</p> <p>19 never come back to college coaching. Got to be a</p> <p>20 president of the university, so I guess that's a</p> <p>21 new path one could pursue.</p> <p>22 I wouldn't recommend it, though.</p> <p>23 MR. SHEETZ: Wick, we have went an</p> <p>24 hour. Whenever is a good time for a two- or</p> <p>25 three-minute break.</p> <p style="text-align: right;">[Page 56]</p>
<p>1 of, where individuals have been held accountable</p> <p>2 for violations, or agreed-upon violations that</p> <p>3 occurred in their programs. We're all aware of</p> <p>4 coaches who were -- got show cause orders.</p> <p>5 Now I am getting out of my depth.</p> <p>6 But show cause orders that say, you know, they</p> <p>7 can't coach for a year or two or three, because</p> <p>8 they were responsible, or should have been</p> <p>9 responsible.</p> <p>10 BY MR. SOLLERS:</p> <p>11 Q. It's fair to say, is it not, that</p> <p>12 this is not a letter that simply asks questions?</p> <p>13 It had specific references to the possibility of</p> <p>14 individuals being involved in potential</p> <p>15 wrongdoing; is that correct?</p> <p>16 MR. KOWALSKI: Objection.</p> <p>17 THE WITNESS: Again, I would say, to</p> <p>18 me, it sounds like, if you don't know the facts,</p> <p>19 you make a statement of standing that you think</p> <p>20 you believe you have authority to delve into</p> <p>21 matters, including the institution, and</p> <p>22 individuals in athletics, outside of athletics,</p> <p>23 and by the way, here are a few questions I would</p> <p>24 like you to provide me answers to.</p> <p>25 BY MR. SOLLERS:</p> <p style="text-align: right;">[Page 55]</p>	<p>1 MR. SOLLERS: Okay. Just a minute.</p> <p>2 MR. SHEETZ: Whatever is good for</p> <p>3 you.</p> <p>4 BY MR. SOLLERS:</p> <p>5 Q. Do you ever recall talking to</p> <p>6 Mr. Emmert about this letter?</p> <p>7 A. I really don't.</p> <p>8 Q. Do you recall talking to him about</p> <p>9 the Sandusky charges back at about this time?</p> <p>10 A. No, I do not.</p> <p>11 Q. And in your capacity as the head of</p> <p>12 the Executive Committee, what involvement did you</p> <p>13 have back in this time frame, November of 2011,</p> <p>14 in the Penn State matter?</p> <p>15 A. None. I mean, the only thing I had</p> <p>16 to react to was -- again, whether it was</p> <p>17 contemporaneously or a bit later. Mark had</p> <p>18 pretty much settled things, because I know he</p> <p>19 said at some point that the NCAA would stand down</p> <p>20 from proceeding with an investigation while legal</p> <p>21 matters were at the stage they were in. And I</p> <p>22 took that as kind of an open-ended, we're not</p> <p>23 getting involved.</p> <p>24 Q. So you say settled matters, meaning</p> <p>25 settled the involvement of the NCAA in the Penn</p> <p style="text-align: right;">[Page 57]</p>

<p>1 State matter, at least for the time being, when 2 he made that statement; is that fair?</p> <p>3 A. Well, any process by the NCAA was 4 suspended until legal cases, I think may -- 5 obviously naively -- ran their course, because 6 we're two and a half years later, and nothing has 7 been resolved, that I am aware of.</p> <p>8 Q. Well, you said it more articulately 9 than I did.</p> <p>10 But NCAA suspended its -- whatever 11 its jurisdiction was, and we have talked about 12 what that may or may not be. But they suspended 13 their jurisdiction, or at least active 14 involvement pending what?</p> <p>15 MR. SHEETZ: Object to the form.</p> <p>16 MR. KOWALSKI: Same.</p> <p>17 THE WITNESS: Well, we can mince 18 words, but I clearly understood they would not 19 pursue an active investigation at that point, 20 because there were a lot of legal cases, charges 21 being made, people being indicted, being 22 considered for indictment.</p> <p>23 So I interpreted that to mean that 24 the NCAA would be respectful of legal 25 authorities' need to be able to go forward with</p> <p style="text-align: right;">[Page 58]</p>	<p>1 group?</p> <p>2 A. I have no knowledge of any contact.</p> <p>3 No.</p> <p>4 Q. Were you getting any reports from 5 November, December of 2011, until the point that 6 the Freeh Report came out on July 12th of 2012, 7 on the progress of that investigation?</p> <p>8 A. No. No. We had three meetings. You 9 know, January is the annual meeting, April is the 10 typical meeting, and then August. So they are 11 actually between the events, and the -- the Freeh 12 Report being released.</p> <p>13 There were two sets of meetings that 14 last basically a day and a half, and I don't know 15 if you have ever tried to get in and out of 16 Indianapolis, but you get in and out as fast as 17 you can. It's a nice place, but it's hard to get 18 in and out of. And for me, it's a day each way, 19 basically, so to go for a meeting for a day is 20 three days.</p> <p>21 Q. That's pretty harsh for the folks 22 here that live in Indianapolis.</p> <p>23 A. You know what, they signed on.</p> <p>24 Q. Last question before a break, when do 25 you, then, become involved in the Penn State</p> <p style="text-align: right;">[Page 60]</p>
<p>1 their investigations without tripping over NCAA 2 investigators, or whatever, so that the NCAA 3 Enforcement folks simply would not actively 4 pursue an investigation.</p> <p>5 And by the way, it was irrelevant 6 whether he said that or not, because there was a 7 firewall between Enforcement and everything else. 8 And I was part of everything else.</p> <p>9 BY MR. SOLLERS:</p> <p>10 Q. And you were aware that the Freeh 11 group was retained to investigate the Sandusky 12 matters; is that true?</p> <p>13 A. When I read it in the newspaper, 14 yeah. That's how I learned. I mean, again, 15 nobody ever told me anything. Literally never 16 told me anything. And I had no idea about even 17 when they were going to report, until they 18 reported. I had no idea what their charge was.</p> <p>19 Everybody had heard of Louie Freeh, I 20 guess, because he had been -- was the director of 21 the FBI or something. And that kind of gets your 22 attention, but that was the depth of my attention 23 about Louis Freeh and his work.</p> <p>24 Q. Did you have any involvement in the 25 interaction between the NCAA and Louis Freeh's</p> <p style="text-align: right;">[Page 59]</p>	<p>1 matter on behalf of the NCAA? When are you 2 brought into the situation and briefed?</p> <p>3 MR. SHEETZ: Object to form.</p> <p>4 MR. KOWALSKI: Same.</p> <p>5 THE WITNESS: Well, I got involved 6 when I was asked to be available for a phone call 7 on July 17th, I think it was. And I only 8 remember the date because I looked at some 9 material recently. And I don't remember if we 10 set up two meetings at that point, the 17th and 11 the 21st, which is apparently when the second one 12 occurred.</p> <p>13 I was going to Hawaii and taking my 14 grandson, whose greatest wish was to go to Maui 15 for his high school graduation. So I was taking 16 my late wife, and his mom, and him to Maui. So 17 that first meeting I was on a phone call in Maui 18 with my family.</p> <p>19 BY MR. SOLLERS:</p> <p>20 Q. When was that meeting? July 17th, 21 you said?</p> <p>22 A. I believe so.</p> <p>23 MR. SOLLERS: Okay. Take a break 24 now.</p> <p>25 VIDEOGRAPHER: Time is 10:37. We're</p> <p style="text-align: right;">[Page 61]</p>

<p>1 off the record.</p> <p>2 (Brief recess taken from</p> <p>3 10:37 a.m. to 10:47 a.m.)</p> <p>4 VIDEOGRAPHER: Time is 10:47. We're</p> <p>5 back on the record.</p> <p>6 BY MR. SOLLERS:</p> <p>7 Q. Dr. Ray, very briefly on the</p> <p>8 November 17, 2001, letter from Emmert --</p> <p>9 MR. SHEETZ: 2011?</p> <p>10 MR. SOLLERS: Correct.</p> <p>11 BY MR. SOLLERS:</p> <p>12 Q. Show you what's been marked as</p> <p>13 Exhibit 6 -- 5.</p> <p>14 MS. MAHER: 5.</p> <p>15 (EXHIBIT No. 5, E-Mail with</p> <p>16 letter to President Erickson,</p> <p>17 marked.)</p> <p>18 BY MR. SOLLERS:</p> <p>19 Q. And this is an e-mail from Mark</p> <p>20 Emmert to the Board and Executive Committee and</p> <p>21 attaches -- purports to attach a letter sent to</p> <p>22 President Erickson, and also discusses the</p> <p>23 statement was going to be released by staff. You</p> <p>24 are on the list.</p> <p>25 Do you recall receiving this e-mail</p> <p style="text-align: right;">[Page 62]</p>	<p>1 at member institutions?</p> <p>2 A. (Reading document.)</p> <p>3 Q. So I will direct your attention to</p> <p>4 the second and third paragraphs.</p> <p>5 A. Yeah. I am reading them.</p> <p>6 Q. Okay.</p> <p>7 A. (Reading document.) Yeah.</p> <p>8 Q. Is it fair to say that this e-mail</p> <p>9 describes part of the back drop to the retreat</p> <p>10 that ultimately occurred?</p> <p>11 A. My take away from this, even now,</p> <p>12 would be that he's thinking about having a</p> <p>13 retreat. And it's going to cover lots of topics,</p> <p>14 including, you know, several that he missed here.</p> <p>15 But I think probably would map into the</p> <p>16 subcommittees that were formed, Student Health</p> <p>17 and Well-Being, Enforcement, so forth --</p> <p>18 Q. One of the statements -- I am sorry.</p> <p>19 I didn't mean to interrupt you.</p> <p>20 One of the statements is, "Frankly,</p> <p>21 if accurate, this arrest rate and the</p> <p>22 accompanying behavior is very troubling and</p> <p>23 unacceptable." And there's a discussion also in</p> <p>24 the second paragraph of media attention.</p> <p>25 Is that part of the back drop to what</p> <p style="text-align: right;">[Page 64]</p>
<p>1 with the attached letter to President Erickson?</p> <p>2 A. I don't actually remember it, but as</p> <p>3 I said earlier, I believe it's accurate.</p> <p>4 Q. Do you recall any discussion that was</p> <p>5 had with the Board of Directors and Executive</p> <p>6 Committee? The e-mail says, "Per our discussion,</p> <p>7 attached is the letter I sent to President</p> <p>8 Erickson yesterday."</p> <p>9 Do you recall whether there was a</p> <p>10 conference call or discussion?</p> <p>11 A. I honestly don't remember.</p> <p>12 (EXHIBIT No. 6, E-Mail, 2-25-11,</p> <p>13 re Conference Call, marked.)</p> <p>14 BY MR. SOLLERS:</p> <p>15 Q. Now, I will show you what's been</p> <p>16 marked as Exhibit 6, and this is going back to</p> <p>17 the back drop --</p> <p>18 MR. SHEETZ: She's not as good as</p> <p>19 Wick is.</p> <p>20 MS. MAHER: I am farther away.</p> <p>21 BY MR. SOLLERS:</p> <p>22 Q. And take your time and read the</p> <p>23 e-mail. And the question is going to be whether</p> <p>24 or not that was part of the back drop to the</p> <p>25 Working Group with concerns about issues going on</p> <p style="text-align: right;">[Page 63]</p>	<p>1 ultimately was this retreat and your Working</p> <p>2 Group?</p> <p>3 A. I think it was a combination of all</p> <p>4 of us -- everybody was aware of the various cases</p> <p>5 that were being played out in the media, and the</p> <p>6 public discourse.</p> <p>7 And there was a sense when we were</p> <p>8 looking for a new president that we wanted to</p> <p>9 take a fresh look at how the NCAA operated from</p> <p>10 top to bottom. It was a time to do that.</p> <p>11 And Mark had been doing a listening</p> <p>12 tour where he went and met with Division 1, 2,</p> <p>13 and 3 presidents, chancellors, visited campuses,</p> <p>14 went to conference meetings, and tried to get a</p> <p>15 sense of what people thought he and the</p> <p>16 association ought to be doing going forward.</p> <p>17 And that -- to have a retreat at some</p> <p>18 point, following that fact-finding -- listening</p> <p>19 tour, seemed pretty logical to me, so this was</p> <p>20 not a big deal.</p> <p>21 Q. Would you agree that President Emmert</p> <p>22 appeared to be quite concerned about criminal</p> <p>23 behavior on the part of some of the football</p> <p>24 student athletes?</p> <p>25 A. Well, you know, it's interesting</p> <p style="text-align: right;">[Page 65]</p>

<p>1 because I actually don't remember getting this or 2 reading this. And what that suggests to my mind 3 is I got the point. Let's talk about having a 4 retreat, we're going to have a phone call to talk 5 about having a retreat. 6 And reading this material now on 7 maybe we should do this, maybe we should do that, 8 either I didn't read it in its entirety, or it 9 just sort of like, yeah, whatever, we're going to 10 have a call to talk about setting up a retreat. 11 And then at the retreat we will talk about what 12 we need to talk about. 13 Q. All right. Turning back to the 14 specifics of the Penn State matter, I think you 15 have testified that you don't recall receiving 16 regular updates as the Freeh investigation was 17 occurring; is that fair? 18 A. I don't recall ever getting an 19 update, yeah. 20 Q. And then you have -- you have already 21 testified about your efforts to get out to 22 Hawaii, understandably. 23 A. I got there. 24 Q. And got there. And you had your 25 first, you recall, first phone call on July 17th</p> <p style="text-align: right;">[Page 66]</p>	<p>1 mean, can we reach agreement with Penn State on a 2 set of punitive actions and corrective measures, 3 and I was certainly led to understand -- 4 MR. KOWALSKI: Be careful on -- I 5 just caution you not to reveal the contents of 6 any privileged communication -- 7 THE WITNESS: Yeah. I mean, I don't 8 remember exactly who said what. But I sort of, 9 during that conversation, came to understand that 10 the Executive Committee could make agreements 11 with somebody who had -- was subject to an 12 investigation in the same way that the staff does 13 all the time. And even during the one- or 14 two-year investigation, agreements are reached. 15 And my question was, can we make 16 agreements with people? And my understanding 17 was, the response I got was, all the committees 18 work for you. The staff all work for you. So if 19 they are authorized to, in an isolated firewalled 20 off environment, come to agreements, the people 21 who authorized them to do that certainly could do 22 it as well. 23 And so I came to believe it was 24 within our scope of authority to consider a 25 possible agreement with Penn State. That was</p> <p style="text-align: right;">[Page 68]</p>
<p>1 while you were still in Hawaii? 2 A. Yes. 3 Q. And what do you recall occurring on 4 that phone call? 5 A. Can you be more specific? 6 Q. What do you recall about the phone 7 call? 8 A. Well, we had a -- just a very 9 open-ended conversation. What I can't honestly 10 remember is when I knew that Mark and Rod were 11 talking to each other. 12 And I think it was actually on that 13 phone call that I first learned that they were 14 having a conversation that, as I interpreted 15 it -- I can't put words in other people's 16 mouths -- but my sense of the conversation was 17 that Penn State wanted to find out if they could 18 reach an agreement with the NCAA about a set of 19 punitive steps and, you know, appropriate 20 remedies going forward with the NCAA through 21 discussions with Mark, rather than go through a 22 one- or two-year typical Committee on Infractions 23 process. 24 I remember very specifically asking, 25 well, why are we having this conversation? I</p> <p style="text-align: right;">[Page 67]</p>	<p>1 part of what came out of that. And your question 2 is pretty open-ended. 3 And then we talked about, well, what 4 kind of agreement are we talking about? And I 5 think at that point, we had no specifics. Just 6 that Mark and Rod had been talking to each other, 7 and so people -- obviously, this was the first 8 time we had all gotten on a call together. 9 It was very close to the time of the 10 Freeh Report being released, and Penn State 11 accepting it and releasing it. So people were 12 pretty emotional about what we were all just 13 learning. And we really weren't capable of 14 coming to a decision about -- 15 I think what Mark wanted to hear from 16 us, in part, was, so give me some guidance here. 17 What do you want as elements of the agreement? 18 What don't you need as elements of the agreement? 19 And people had different positions. 20 I don't remember who had what, but we 21 really couldn't come to any understanding, sort 22 of -- and again, since I was chairing the 23 meeting, I am looking for what's the take away, 24 so we don't have the same conversation the next 25 time.</p> <p style="text-align: right;">[Page 69]</p>

<p>1 And for me the take away was 2 everybody just needs to think with this awhile. 3 It's all so fresh to us. Everybody needs to 4 think about what they believe might be acceptable 5 or unacceptable elements of an agreement. And so 6 we didn't vote on anything, nothing formal was 7 decided, other than that we would reconvene. 8 And that's why I said earlier, I 9 don't remember if the meeting for the 21st had 10 been established before or after the call on the 11 17th. So I don't know if we knew when we stopped 12 the conversation on the 17th, agreeing we all 13 needed to think about things -- I don't know if 14 at that point we knew there would be another 15 conference call scheduled for the 21st. 16 I just don't remember when I learned 17 that. Because between then and the 21st, I was 18 coming back from Hawaii. So it was all -- a 19 little aggravating. 20 BY MR. SOLLERS: 21 Q. So I take it what you have described 22 the last few minutes is the call on the 17th, to 23 the best of your knowledge; is that fair? 24 A. The gist of it, to me. 25 Q. And at one point you said you</p> <p style="text-align: right;">[Page 70]</p>	<p>1 the topic of the Executive Committee's authority? 2 BY MR. SOLLERS: 3 Q. Whether he's even discussing 4 anything, was Mr. Remy on the call? 5 A. Well, this might shock you as a 6 lawyer, but he actually was pretty quiet. And I 7 don't know if you have ever been in a room full 8 of presidents and chancellors, but they have a 9 pretty high opinion of themselves, and they don't 10 like to hear from people unless they ask them 11 what they think. 12 So I know he was on the call. I am 13 sure he was part of the conversation, but really, 14 really a minor part. 15 I think the gist of the conversation 16 was Mark informing us that he was talking to Rod, 17 there was some interest in reaching agreement 18 about elements of a package that would bring 19 closure to Penn State to any exposure with 20 respect to the NCAA. 21 And you and I have never been in 22 meetings together. Michael and I, Don have been. 23 I mean, the way I run a meeting is I am here to 24 hear from other people. I'm not there -- you 25 know, some people run meetings and all they do is</p> <p style="text-align: right;">[Page 72]</p>
<p>1 discussed authority. 2 Do you recall who described on the 3 call what the authority was for the Executive 4 Committee to act on this matter? 5 MR. KOWALSKI: Object. 6 I just caution you not to reveal the 7 contents of any privileged legal communications 8 with counsel. So I think if you need to talk, we 9 can take a break and talk about it, because I am 10 confident they are not trying to elicit 11 privileged information. 12 BY MR. SOLLERS: 13 Q. Well, I am not trying to elicit any 14 privileged information. 15 A. I suggest we move on. 16 Q. Do you recall whether Mr. Emmert 17 described what the basis for the authority was 18 for the Executive Committee to act? 19 A. I honestly don't remember if Mark 20 expressed an opinion, if we could do it or not. 21 I honestly don't remember. He may have, but -- 22 Q. And without giving me any substance, 23 was Mr. Remy talking on that phone call? 24 MR. KOWALSKI: So the question is 25 whether, on that phone call, Mr. Remy discussed</p> <p style="text-align: right;">[Page 71]</p>	<p>1 blather on. 2 I am sure that most of the time I was 3 just giving people free rein to talk. Tell me 4 what you think. Let's all process this. 5 And as I say, to me, because I had 6 the responsibility as chair, the gist of the 7 conversation was people were not ready to decide 8 anything about specifics. They were too 9 emotionally overwrought by what had been put out, 10 that had to be somehow absorbed and assimilated, 11 and this needed to be left for another day. 12 So Mark and Rod needed to do their 13 best to figure out what kind of a package Rod 14 thought he could take to his Board, and Mark 15 could take to his Board to see if we could 16 actually reach agreement, or if they would simply 17 follow the usual process of a one- or two-year 18 investigation. 19 Q. Other than Mr. Remy, do you recall 20 anyone on the call expressing concern or asking a 21 question about the authority of the Executive 22 Committee to handle this matter? 23 MR. KOWALSKI: I think this is -- if 24 you recall the person specifically asking for 25 Mr. Remy's legal advice on that topic, we have</p> <p style="text-align: right;">[Page 73]</p>

<p>1 to -- please be cautious on that, but otherwise 2 you can go ahead --</p> <p>3 THE WITNESS: No. Honestly, it was 4 an issue for me about, explain to me how we can 5 do this. And I don't remember how it came about.</p> <p>6 But the way I felt reassured was 7 that, well, the staff in the committees reach 8 agreements all the time in cases, less severe, 9 more severe cases. You appoint all the 10 committees. So, obviously, if the committees and 11 staff can do it, and they all work for you, if 12 you wanted to take action in a particular case -- 13 and by action, I mean participating in a 14 discussion of an agreement -- yeah, you can do 15 that. I mean that's what I took away from it.</p> <p>16 BY MR. SOLLERS:</p> <p>17 Q. Had you ever done that in any other 18 case?</p> <p>19 A. No. That's why I asked, can we do 20 this?</p> <p>21 Q. So I take it this is the only time 22 that you, as a member of the Executive Committee, 23 were actually involved in a matter such as this?</p> <p>24 MR. KOWALSKI: Object to form.</p> <p>25 THE WITNESS: I know -- there were no</p> <p style="text-align: right;">[Page 74]</p>	<p>1 Penn State matter?</p> <p>2 A. I am not an expert in the bylaws, no.</p> <p>3 I asked if we could participate in an agreement 4 and I was told, everyone that works for you can 5 do it, so it's kind of nutty to presume you 6 couldn't do it, if you chose to do so.</p> <p>7 Q. Dr. Ray, I think at the question and 8 answer session following the press conference on 9 July 23rd, 2012, you said that the Executive 10 Committee has authority to act in extraordinary 11 circumstances.</p> <p>12 Is that -- is that your testimony 13 today?</p> <p>14 A. That we had -- my understanding was 15 we had the authority to act on the issue of 16 reaching an agreement or not. Period.</p> <p>17 Q. And I am not going to quiz you on the 18 bylaws, but do you know what section of the 19 bylaws provides that authority to act in 20 extraordinary circumstances?</p> <p>21 A. No.</p> <p>22 Q. Is that a general authorization, in 23 your view?</p> <p>24 A. To me, it was the simple reflection 25 of the observation that the NCAA, through its</p> <p style="text-align: right;">[Page 76]</p>
<p>1 other cases where I was asked for an opinion 2 about an agreement, partly because I was never in 3 a position, either here at Oregon State, or at 4 Ohio State where it's provost, or here as 5 president, I might have been asked to participate 6 in a discussion outside of NCAA responsibilities, 7 but this is a one-off for me.</p> <p>8 BY MR. SOLLERS:</p> <p>9 Q. And I am talking specifically about 10 your role on the Executive Committee, to be 11 clear. So I take it from your testimony, this is 12 a unique situation?</p> <p>13 A. To me it was, yes.</p> <p>14 Q. Do you recall any debate, either on 15 that July 17th call or after, about the authority 16 of the Executive Committee to act on the Penn 17 State matter?</p> <p>18 MR. KOWALSKI: Same caution about 19 communications with legal counsel.</p> <p>20 THE WITNESS: I don't remember any 21 red flags that we couldn't advise Mark on an 22 agreement that he and Rod could agree to.</p> <p>23 BY MR. SOLLERS:</p> <p>24 Q. Do you know under what provision of 25 the bylaws the Executive Committee acted in the</p> <p style="text-align: right;">[Page 75]</p>	<p>1 staff and committees, reaches agreements with 2 parties on a regular basis. Never brings it to 3 any other authority, they are authorized to do 4 that on behalf of the Executive Committee and the 5 Division Boards who run the association.</p> <p>6 So I was, as a matter of logic, led 7 to believe that we certainly had the authority in 8 a particular case, if we thought necessary, to be 9 part of a discussion of an agreement.</p> <p>10 Q. In those other instances you have 11 described, you were on the other side of the 12 firewall?</p> <p>13 A. So I have no idea how they got to 14 that point, or who decided. But it was clear 15 everyone who did it was accountable to the 16 Division Boards and the Executive Committee for 17 whom they worked.</p> <p>18 Q. And this is the only time that the 19 matter came in, into your side of the firewall is 20 that fair?</p> <p>21 A. Yes. Yes. Three weeks before I was 22 off the Executive Committee. So you know, some 23 people are just very lucky.</p> <p>24 MR. SOLLERS: One moment.</p> <p>25 BY MR. SOLLERS:</p> <p style="text-align: right;">[Page 77]</p>

<p>1 Q. While we're looking for a document, 2 let me ask you a couple of questions about the 3 Freeh Report.</p> <p>4 You reviewed the Freeh Report at or 5 about the time it came out, I take it.</p> <p>6 A. Actually, it was -- I think I did not 7 go through the detailed report until after the 8 agreement was reached. Remember, the report came 9 out on the 12th. I went to Hawaii on, I don't 10 know, the 14th.</p> <p>11 So I may have looked at the executive 12 summary when it came out, and certainly read 13 press accounts, but I don't believe I read or was 14 able to download and get a copy of the full 15 report until after I got back, which would have 16 been around the time of the press conference, or 17 sometime shortly thereafter.</p> <p>18 Q. Did not have the Freeh Report sent 19 out to you in Hawaii?</p> <p>20 A. No. No.</p> <p>21 Q. Do you recall when you got back --</p> <p>22 A. So let me be clear about that. When 23 I went to Hawaii, I didn't even know that we were 24 going to be having any conversations about the 25 Freeh Report. So I had no sense that I needed to</p> <p style="text-align: right;">[Page 78]</p>	<p>1 A. Yeah. That was the date on which we 2 discussed what we were comfortable with having in 3 the -- in any agreement that we would reach with 4 Penn State. And the sense I had was -- and I 5 don't remember if this was made clear before or 6 after.</p> <p>7 We took two votes. One vote, because 8 we hadn't resolved anything on the 17th, and 9 people were -- a number of people spoke out 10 saying that they thought suspension of play ought 11 to be part of a package. I don't remember how 12 many. Maybe others had a sense of where the 13 balance was.</p> <p>14 But we just agreed everybody needed 15 to take more time to think through what they 16 thought was appropriate. So at the meeting on 17 the 21st -- I hate meetings. And I hate long 18 meetings more than I hate meetings.</p> <p>19 So in my capacity as chair, I was 20 able to organize us to stay on focus on what was 21 relevant. So the first thing it seemed to me 22 that we needed to sort out, since we had no 23 guidance on it was, from our standpoint, what did 24 the package have to include or not include. 25 And so I raised the question of where</p> <p style="text-align: right;">[Page 80]</p>
<p>1 prep for anything.</p> <p>2 We went on either the 14th or the 3 15th, at this point I can't remember. And then 4 we had this conference call on the 17th. So no, 5 I didn't have the Freeh Report.</p> <p>6 And then I came back on, I think the 7 19th or the 20th, traveling from there, probably 8 the 20th, and then the 21st we had this phone 9 call. So I didn't have a lot of time to prep for 10 anything.</p> <p>11 Q. The 21st was another conference call 12 amongst the Executive Committee?</p> <p>13 A. Yes.</p> <p>14 Q. And the Board of Directors, as well, 15 or Division 1 Board of Directors or not?</p> <p>16 A. My recollection is it included all of 17 those who could be available who were members of 18 the Executive Committee, and those who could be 19 available who were members of the Division 1 20 Board.</p> <p>21 You never get 100 percent attendance. 22 I don't know how many -- most people were on the 23 call, but not everybody.</p> <p>24 Q. And do you recall what occurred on 25 the July 21st, 2012, conference call?</p> <p style="text-align: right;">[Page 79]</p>	<p>1 were people on the issue of suspension of play. 2 Does that have to be part of the package or not 3 be part of the package.</p> <p>4 Q. And we're talking the 17th now?</p> <p>5 A. No, the 21st.</p> <p>6 Q. Okay.</p> <p>7 A. We didn't do anything on the 17th, 8 other than agree we needed to go home and think 9 about it.</p> <p>10 Q. Well, while we're on it, and forgive 11 me for interrupting you, but was there any 12 discussion of suspension of play on the 17th?</p> <p>13 A. Some people spoke in favor of it, or 14 that it should be part of the package; others 15 said they weren't so sure. Others didn't speak 16 up at all.</p> <p>17 Again, I asked people -- I didn't 18 call on people. I said, well, what do you think? 19 I asked people to talk to the rest of the group, 20 and it was a conversation.</p> <p>21 Q. Do you recall who was in favor of 22 suspension of play?</p> <p>23 A. At that point, I was certainly one 24 who favored suspension of play. You can see the 25 influence I had. And I think there may have been</p> <p style="text-align: right;">[Page 81]</p>

<p>1 one or two others who were declarative, but I 2 mean there was --</p> <p>3 Q. Do you remember who that was?</p> <p>4 A. Well, you know, I think -- I don't 5 want to misspeak, but I am pretty sure that at 6 least on the 21st, Harris Steed (phonetic) at 7 South Carolina, favored suspension of play. But 8 I don't honestly remember if he said so on the 9 17th.</p> <p>10 And I am not even sure we -- 11 everybody was as rigorous as they might have been 12 about saying, This is Charlie, and here's what I 13 think. So you are listening to voices, and it's 14 on a conference call.</p> <p>15 So I can't say with certainty that he 16 expressed that view on the 17th, but I believe he 17 did on the 21st. And that was when we took our 18 first vote.</p> <p>19 And the first vote was, should 20 suspension of play be part of any package that we 21 would agree to. Never mind Penn State. They can 22 agree or not agree, and if they don't agree, they 23 go through a one- or two-year investigation.</p> <p>24 And so we took a vote of whether or 25 not suspension of play ought to be part of an</p> <p style="text-align: right;">[Page 82]</p>	<p>1 which we understood he was consulting with and 2 speaking for, and find out whether they agreed. 3 That would have been the sequence.</p> <p>4 And so Mark said, here, you know, Rod 5 and I have talked. Here are the eight elements 6 of this thing. I think there was some general 7 discussion of why is that there, and why is that 8 that, and why is the other this, and why is this 9 that, and then we took a vote.</p> <p>10 And I could be wrong, but I believe 11 the vote was unanimous to accept the package that 12 Rod and Mark had put together.</p> <p>13 Q. Just so I make sure I understand the 14 timing, I think you testified that your 15 recollection is that President Emmert stated that 16 Penn State would not accept, voluntarily, a 17 package that included suspension of play; is that 18 fair?</p> <p>19 A. Yeah. But I don't remember exactly 20 when he told us that.</p> <p>21 Q. I assume that was before the vote on 22 that issue, as to whether or not --</p> <p>23 A. See, I don't honestly remember, 24 because, you know, put yourself in that position. 25 The position was, at least my sense was, that</p> <p style="text-align: right;">[Page 84]</p>
<p>1 agreement, and it lost overwhelmingly.</p> <p>2 Q. This is the 21st?</p> <p>3 A. On the 21st. And I don't know what 4 the vote was, but if you told me it was 19 to 2, 5 I would believe you.</p> <p>6 Q. Was it a voice vote?</p> <p>7 A. I think it was a roll call. I am 8 pretty sure it was a roll call. And I may be 9 wrong, but my recollection was that David Burst 10 called the roll, and then told everybody what the 11 vote was. But it was clear, before it was over, 12 it was overwhelmingly no.</p> <p>13 So now the discussion is, is there a 14 package we can agree to. And that's why I say, I 15 don't remember when Mark told us that his sense 16 of things was that Penn State would never agree 17 to any kind of agreement that included suspension 18 of play. He may have told us that on the 21st. 19 I just don't remember when I first heard that 20 from him.</p> <p>21 And he had a package of -- of 22 penalties and corrective measures that he felt he 23 and Rod were comfortable with, that he wanted us 24 to discuss. And if we agreed, then it would make 25 sense for Rod to go to his Board of Trustees,</p> <p style="text-align: right;">[Page 83]</p>	<p>1 Penn State wanted closure. And they wanted to 2 know could we agree on a package of the penalties 3 and corrective actions that would suspend the 4 need for a one- or two-year investigation.</p> <p>5 And so my position is, what does it 6 mean for us to do the right thing? Don't tell me 7 what you are willing to agree to. What do we 8 think based on the very imperfect information we 9 have, because all the legal cases haven't played 10 themselves out. We don't know where this thing 11 is going. What is acceptable to us? Can we 12 agree on that, and then discuss what's agreeable 13 to Penn State?</p> <p>14 So I don't remember if -- I honestly 15 don't remember if he told us they would not 16 accept suspension of play before the vote about, 17 do we want suspension in the package, or if he 18 told us afterwards. And that's why he and Rod 19 had put together a package that did not include 20 that.</p> <p>21 Q. Thank you for that clarification.</p> <p>22 When you were describing what Penn 23 State wanted or didn't want, how were you 24 learning about that?</p> <p>25 A. Mark told us. Basically said, here's</p> <p style="text-align: right;">[Page 85]</p>

<p>1 what Rod and I agree. 2 Q. Did you have any direct 3 conversations, yourself, with President Erickson 4 about this resolution? 5 A. No. I have never talked to Rod 6 Erickson since day one of this, and we're 7 friends. I mean, I saw him in an association 8 meeting over drinks, and asked how he and his 9 family was doing, and he asked me how my family 10 was doing, and that was it. No, I never had a 11 conversation with Rod about any of this. 12 Q. Anyone else describe in the -- let's 13 talk about the 21st phone call. 14 Did anyone else describe what Penn 15 State wanted or didn't want in that phone call? 16 MR. SHEETZ: Other than Mr. Emmert? 17 BY MR. SOLLERS: 18 Q. Other than Mr. Emmert. 19 A. I don't remember anyone. I just 20 don't remember anyone else. I mean, Mark was on 21 point. 22 Q. Sorry. I will try not to talk over 23 you. I apologize. 24 Do you know what the lines of 25 communication were between the NCAA and Penn</p> <p style="text-align: right;">[Page 86]</p>	<p>1 version. And I don't know whether the final is 2 different in any material respects -- there is a 3 final version that we produced. I am just noting 4 that this is a draft version. 5 MR. SOLLERS: For the record, this 6 is -- we believe this is the only version that we 7 have, and there is a final. I believe it's been 8 produced in the Corman case. 9 MR. KOWALSKI: We have produced to 10 you all the documents we produced in the Corman 11 case. We will take a look. 12 MR. SOLLERS: But I think this 13 accurately portrays the vote as 12-0. There is 14 another draft floating around that says 10-0. 15 MR. KOWALSKI: Understand. 16 BY MR. SOLLERS: 17 Q. Dr. Ray, this is a draft -- a 18 document that does say Draft. It says, Report of 19 the NCAA Executive Committee. I take it this 20 appears to be a summary of what occurred on that 21 conference call July 21st, 2012, at least a 22 summary of the vote? 23 A. I believe that's what it represents, 24 or purports to represent, yeah. I mean, I don't 25 ever remember seeing this, frankly, but that's</p> <p style="text-align: right;">[Page 88]</p>
<p>1 State, other than Mr. Emmert with Mr. Erickson? 2 A. No. 3 Q. Did you ever talk to Gene Marsh? 4 A. I don't even know who Gene Marsh is. 5 Q. That answers that question. 6 Were you aware that Mr. Burst and 7 Mr. Remy were having conversations with 8 Mr. Marsh? 9 A. No. 10 Q. The 21st conference call, you have 11 described the vote concerning suspension of play. 12 Do you recall who voted in favor of 13 suspension of play? 14 A. I think I did, and I think Harris may 15 have. I hate to speak for him, but I think it 16 was like 19 to 2. And so we quickly moved on to 17 consider, so what is the package that does not 18 include suspension of play. 19 Q. Dr. Ray, let me show you what's been 20 marked Exhibit 7. 21 (EXHIBIT No. 7, Draft Report of 22 Executive Committee, marked.) 23 THE WITNESS: (Reading document.) 24 MR. KOWALSKI: Before you start, I 25 would note this is, I think, a draft of this</p> <p style="text-align: right;">[Page 87]</p>	<p>1 their type, and that's the way they, you know -- 2 if you get meeting stuff, it looks like this. So 3 this is their format for sending stuff out so -- 4 but beyond that, I mean, I don't remember seeing 5 this. 6 Q. And this is consistent with what 7 you -- to your testimony that there was a vote, 8 and it appears that this is a vote of the NCAA 9 Division 1 Board of Directors; is that fair? 10 MR. SHEETZ: Are you asking him to 11 characterize the document, or do you want him to 12 talk about his memory, or what would you like? 13 MR. SOLLERS: Excuse me. I will be 14 more specific. 15 BY MR. SOLLERS: 16 Q. I take it -- let me ask you this: 17 The vote that is recorded here, 12-0, is that a 18 vote of the Executive Committee? 19 A. I believe that's the Executive 20 Committee vote. Because if you read down here at 21 the end it says, "Note, Division 1 Board roll 22 will be added." So I assume that means they 23 didn't have the number, although I actually think 24 both votes were unanimous, both by the Executive 25 Committee, and the Division 1 Board.</p> <p style="text-align: right;">[Page 89]</p>

<p>1 And it was decided that they should 2 each vote separately. I have no idea why, but I 3 agreed. They are not completely overlapping 4 groups. There are people on the Executive 5 Committee who are, for example, the chair of the 6 Division 2 Board, the chair of the Division 3 7 Board, person who is the head of the President's 8 Advisory Group, or something, who typically is 9 from 2 or 3, not of 1. 10 So the Executive Committee includes 11 people who are not on the Division 1 Board, and 12 not everyone on the Division 1 Board is on the 13 Executive Committee, only a subset. 14 There may be 20 people on the 15 Division 1 Board, or something like that, but 16 it's larger, obviously, than the Executive 17 Committee and draws from different populations. 18 So that's -- somebody thought it was 19 a good idea to have two votes, so we did. But I 20 think they were both unanimous. 21 Q. And this appears to be a recordation 22 of the vote to authorize Mr. Emmert to enter into 23 the Consent Decree, and I take it, along the 24 lines of what had been described during the call 25 with you all; is that fair?</p> <p style="text-align: right;">[Page 90]</p>	<p>1 Q. I would direct your attention -- do 2 you still have the bylaws -- to that provision in 3 the bylaws, the NCAA Division I Manual. 4 MR. SHEETZ: (Looking at documents.) 5 BY MR. SOLLERS: 6 Q. And I will read 4.1.2 (e) into the 7 record. States, "Act on behalf of the 8 association by adopting and implementing policies 9 to resolve core issues and other association wide 10 matters." 11 Do you ever recall any discussion -- 12 not trying to elicit anything that is legal 13 advice -- but do you recall any discussion about 14 whether or not, other than legal advice, you were 15 operating under this provision when you took this 16 vote? 17 MR. SHEETZ: On the 21st? 18 MR. SOLLERS: Correct. 19 THE WITNESS: I don't ever remember. 20 That doesn't mean it didn't happen, but I don't 21 ever remember anyone citing to me 4.1.2 (e). 22 BY MR. SOLLERS: 23 Q. Do you recall any discussion of 24 whether or not this was a core issue? 25 A. No.</p> <p style="text-align: right;">[Page 92]</p>
<p>1 A. That's what this indicates, that we 2 had voted 12-nothing to proceed with the 3 agreed-upon package. 4 Q. And do you recall any discussion 5 about the authority under which the Executive 6 Committee was acting? 7 A. Again, there were conversations at 8 the meeting on the 17th. 9 Q. And do you recall any discussion 10 about provision 4.1.2 (e) of the bylaws, which is 11 referenced in the second paragraph, maybe third 12 paragraph, depending on how you count, of this 13 document? 14 MR. KOWALSKI: Caution you not to 15 reveal the contents of any privileged legal 16 communications with NCAA legal counsel. 17 MR. SHEETZ: Did you say 4.1.2, lower 18 case (e)? 19 MR. SOLLERS: Correct. 20 THE WITNESS: I don't remember anyone 21 citing provision 4.1.2, subcase (e). 22 BY MR. SOLLERS: 23 Q. Do you see the reference to that 24 provision? 25 A. Yeah. Right in the middle, yeah.</p> <p style="text-align: right;">[Page 91]</p>	<p>1 Q. Any discussion about association wide 2 matters? 3 A. No. I mean, what I remember is a 4 discussion about, could the Executive Committee 5 in the Division 1 Board take on the role of 6 participating in a negotiated agreement, period. 7 That's what I remember. 8 I do not remember it being brought up 9 again on the 21st, because I had the clear 10 understanding from the discussion on the 17th 11 that we were in a position where we could 12 participate in the discussion of an agreement. 13 Q. Ever been involved in any other 14 matter that implicated, in your view, this 15 particular provision of the bylaws? 16 A. No. I had nothing to do with 17 enforcement. 18 Q. Do you know who prepares the reports 19 of the votes, such as this, that's Exhibit 7? 20 A. Of the information item? 21 Q. Yes, sir. 22 A. Yeah, I have no idea who types them 23 up or -- I have no idea. 24 Q. Do you know -- is there a secretary, 25 somebody who takes notes and draws up a summary?</p> <p style="text-align: right;">[Page 93]</p>

<p>1 A. I am sure there is, but -- we didn't 2 ask him or her to identify themselves, so -- 3 Q. But you are not aware, as matter of 4 routine, of anyone who would draft such a report? 5 A. We get -- we got reports all the 6 time. I have no idea who the people were who 7 drafted the reports. I assume they were doing it 8 at the direction of others, you know. That would 9 have been the clerical staff that would have 10 written it up. 11 Q. Understood. But do you have any idea 12 who would direct the drafting of such a summary? 13 A. Of this? 14 Q. Yes, sir. 15 A. I don't know. You know, I do know, I 16 am pretty sure, David Burst was the one who did 17 the roll call. So it's not inconceivable that 18 somebody was told to use his notes to write 19 something up. 20 I have no idea who inserted specific 21 language like this 4.1.2 (e). I have no idea who 22 would have done that. I assume someone with a 23 lot more legal expertise than me, who thought 24 they were actually citing authority. But I knew 25 nothing about it.</p> <p style="text-align: right;">[Page 94]</p>	<p>1 what are the typical stopping points. I had no 2 idea. 3 Q. Did you ever consider whether or not 4 this matter should have been handled, or should 5 be handled via the traditional enforcement 6 process? 7 A. Absolutely. I mean, the only 8 discussion I was interested in having was, can we 9 reach an agreement. Are we in a position where 10 we can act as the advisory body to the president 11 to reach an agreement with the president of Penn 12 State, or it goes through the enforcement 13 process. 14 So there was never any discussion 15 about any other alternative. Either we reach 16 agreement, or it goes through the normal process. 17 So the normal process was the default position, 18 if no agreement could be reached. 19 Q. And again, without getting into legal 20 advice, who at the NCAA was suggesting that this 21 matter could be resolved by the Executive 22 Committee without going through the enforcement 23 process? 24 MR. KOWALSKI: I am not sure -- if 25 you can answer that question without revealing</p> <p style="text-align: right;">[Page 96]</p>
<p>1 Q. Are you aware of any other major case 2 being resolved by the NCAA through a Consent 3 Decree? 4 A. Not specifically. I just have the 5 sense that there were consent -- again, I don't 6 know if that language is accurate. What the hell 7 do I know about a Consent Decree? 8 But I know there were cases that were 9 revolved through agreements on what the curative 10 actions needed to be, and they included cases 11 from minor infractions -- as I said, a kid gets a 12 tee-shirt when he's not supposed to, so you can't 13 recruit him, and you accept that, end of story -- 14 all the way to perhaps much more serious cases. 15 But, again, it was -- I was isolated 16 from any of the nuts and bolts of the enforcement 17 process. 18 So couldn't even tell you, typically, 19 where does the process -- where is it that an 20 agreement is reached? Is it before an 21 investigation is completed? Is it before or 22 after COIA renders a decision? Is it before the 23 appeals process plays out? I have no idea what 24 the pattern was. I am sure the folks at the NCAA 25 could provide you with sort of what is the --</p> <p style="text-align: right;">[Page 95]</p>	<p>1 communications with legal counsel, you can go 2 ahead. 3 THE WITNESS: Well, again, you know, 4 all I think I am -- I think would be appropriate 5 for me to say is in the conversation on the 17th, 6 I rather -- I think inartfully asked, can we 7 actually be party to trying to devise an 8 agreement as an alternative to going through a 9 one- or two-year investigative process. 10 And I was led to believe we could do 11 that, because it's the kind of thing that happens 12 quite a lot. And it happens through staff and 13 committees that are appointed by the Executive 14 Committee, and the Division Boards. 15 So if our direct reports can do that, 16 presumably we could assume authority in a 17 particular case to do exactly what they do, and 18 that is, talk to those who are accused and see if 19 there's common agreement on elements, punitive 20 and corrective, to be taken; and if so, that's 21 the end of the case. It doesn't continue through 22 the investigative process. So that's what I 23 thought I was involved in. 24 BY MR. SOLLERS: 25 Q. Did you ever become aware of any</p> <p style="text-align: right;">[Page 97]</p>

<p>1 concerns raised by the NCAA enforcement staff 2 that this matter was being handled by the 3 Executive Committee and not by the Enforcement 4 Group?</p> <p>5 A. No, not to my knowledge. You know, 6 this was a pretty truncated process. We're 7 talking about four days, and I am flying back and 8 forth to Hawaii. So I am not having a lot of 9 side conversations. I am trying to have my 10 grandson have a good time.</p> <p>11 So I wasn't talking to anybody. I 12 mean, I don't remember anything beyond the two 13 meetings. Maybe I got a call from somebody 14 saying, by the way, the next meeting is, but it 15 would have been pretty perfunctory stuff where 16 somebody sent me an e-mail saying, the next 17 meeting is.</p> <p>18 Q. Did you have any -- I may have asked 19 you this, and forgive me if I have. 20 Did you have any discussions with 21 President Emmert about what the Executive 22 Committee might or might not do before the Freeh 23 Report was issued on July 12th?</p> <p>24 A. I don't remember any such 25 conversation. Again, my recollection is I asked</p> <p style="text-align: right;">[Page 98]</p>	<p>1 which usually means, I don't know, the Board of 2 Trustees, I assume. Or if it was Rod, that he 3 technically released it with the approval of the 4 Board of Trustees.</p> <p>5 But it would be like me saying that 6 Oregon State University makes this declarative 7 statement. It's not Ed Ray making a declarative 8 statement. It's Ed Ray, with the concurrence of 9 my Board, or that I am, in whatever situation it 10 is, authorized to speak on behalf of the 11 institution.</p> <p>12 Q. Did you know the Board of Trustees at 13 Penn State did not vote on the Freeh Report? 14 MR. KOWALSKI: Object to form. 15 THE WITNESS: No. 16 BY MR. SOLLERS: 17 Q. Do you know now that the Board of 18 Trustees at Penn State has never voted to accept 19 the Freeh Report? 20 A. I have heard that they never had a 21 full board meeting, but now you are getting into 22 legalese again. My understanding is they had an 23 Executive Committee to the Board, they had a 24 chair to the Board. I have no idea what their 25 bylaws say about what they can or can't</p> <p style="text-align: right;">[Page 100]</p>
<p>1 on the 17th, why are we having this conversation. 2 So I think this was new territory for my 3 involvement in anything.</p> <p>4 Q. In your July 23rd, 2012, interview 5 with ESPN you stated, quote, "Given the agreement 6 of the basic facts as we know them from the Freeh 7 Report," unquote, who do you think was in 8 agreement about the basic facts?</p> <p>9 A. I think that the only information I 10 have on that is I think it was July 12th that 11 Penn State released the Freeh Report. And 12 basically said they were releasing it, and in a 13 general sense, accepting their findings -- the 14 findings of the Freeh Report.</p> <p>15 So I viewed it as a general 16 acceptance, not in every detail. Maybe there 17 were lots of other facts yet to be discovered, 18 maybe. And as we know, that still could be the 19 case. But basically the acceptance of the Freeh 20 Report and its basic -- I want to -- "accuracy" 21 may be too strong -- but it had many of the 22 elements right, came from Penn State. It was 23 their assertion.</p> <p>24 Q. From whom at Penn State? 25 A. I think the University released it</p> <p style="text-align: right;">[Page 99]</p>	<p>1 authorize. That's for others to sort out. 2 Q. Couple of quick questions about the 3 Freeh investigation and report, understanding you 4 don't, in all likelihood, have access to those 5 details. 6 Did you know whether or not the Freeh 7 group's interviews were recorded? 8 A. Not, actually. I think in the report 9 they may say that, but other than that, I don't 10 have any information. 11 Q. Do you know whether the Freeh group 12 relied on anonymous sources? 13 A. No, I don't know. 14 Q. Do you know whether interviews that 15 were summarized were signed by the interviewed 16 individual to affirm accuracy? 17 A. No, I do not. 18 Q. Do you know whether or not named or 19 involved individuals were provided with notice 20 and opportunity to respond? 21 MR. KOWALSKI: Objection to form. 22 THE WITNESS: I have no idea. 23 BY MR. SOLLERS: 24 Q. Do you know whether the individuals 25 who were involved or named in the report gave</p> <p style="text-align: right;">[Page 101]</p>

<p>1 consent to the conclusions of the report?</p> <p>2 MR. KOWALSKI: Objection to form.</p> <p>3 THE WITNESS: I have no knowledge of</p> <p>4 what they did or didn't, or what opportunities</p> <p>5 they had to respond.</p> <p>6 BY MR. SOLLERS:</p> <p>7 Q. Doctor, when you say the University</p> <p>8 accepted the findings of the Freeh Report, there</p> <p>9 was no comment, was there, from Penn State at the</p> <p>10 time of the release?</p> <p>11 MR. KOWALSKI: Objection.</p> <p>12 THE WITNESS: I thought -- my</p> <p>13 recollection is there was.</p> <p>14 BY MR. SOLLERS:</p> <p>15 Q. Was there any comment about the</p> <p>16 findings in the report?</p> <p>17 MR. KOWALSKI: It's a document that</p> <p>18 exists. You don't have to just ask his memory.</p> <p>19 You can show it to him. It either says it or it</p> <p>20 doesn't.</p> <p>21 THE WITNESS: Yeah. I am not sure</p> <p>22 what you are asking, in any event, so -- if you</p> <p>23 ask it again, maybe I can answer it.</p> <p>24 BY MR. SOLLERS:</p> <p>25 Q. I think you testified previously that</p> <p style="text-align: right;">[Page 102]</p>	<p>1 and he was a member of the Executive Committee of</p> <p>2 the Board back at the time of the release.</p> <p>3 So rewinding a little bit to July 12,</p> <p>4 2012, I understand you are getting ready to go to</p> <p>5 Hawaii, and empathetic to that.</p> <p>6 But did you feel pressured to act,</p> <p>7 based on the public perception that was very much</p> <p>8 in the media, on behalf of the NCAA?</p> <p>9 MR. KOWALSKI: Object to form.</p> <p>10 THE WITNESS: Yeah, I don't know what</p> <p>11 you mean by act, but I did feel, at the time,</p> <p>12 that either Mark needed to reaffirm that we were</p> <p>13 not going to do anything until he had sort of a</p> <p>14 blessing from legal authorities, that he wasn't</p> <p>15 going to get in their way, or he would ask people</p> <p>16 to begin the normal investigation process, if he</p> <p>17 and others felt there was enough material and</p> <p>18 information in the Freeh Report to at least</p> <p>19 initiate an inquiry.</p> <p>20 (EXHIBIT No. 8, E-Mail re,</p> <p>21 Sounds of Silence, marked.)</p> <p>22 BY MR. SOLLERS:</p> <p>23 Q. Let me show you what has been marked</p> <p>24 as Exhibit 8, which is an e-mail from you to -- I</p> <p>25 think to Julie --</p> <p style="text-align: right;">[Page 104]</p>
<p>1 the University just released the report, is that</p> <p>2 fair?</p> <p>3 A. Well, they did release the report,</p> <p>4 but my -- and again, this is -- memory and</p> <p>5 hindsight is imperfect. My sense at this point</p> <p>6 was they didn't just release it, and say here it</p> <p>7 is. That they released it, and either by virtue</p> <p>8 of that, or by subsequent statements around it,</p> <p>9 indicated they accepted it.</p> <p>10 Q. Are you aware that in February 2013</p> <p>11 Keith Masser, who is the chairman of Penn State's</p> <p>12 Board of Trustees, told USA Today's editorial</p> <p>13 board that the main conclusions in the Freeh</p> <p>14 Report amounted to speculation? Have you heard</p> <p>15 that?</p> <p>16 A. No, I am not aware of that.</p> <p>17 Let's be clear: my wife was dying in</p> <p>18 the last two years. I buried her, and I have</p> <p>19 been dealing with children and grandchildren. I</p> <p>20 have not, in fact, spent any time studying what</p> <p>21 people are purported to have said, or actually</p> <p>22 said about Penn State in 2013 and 2014.</p> <p>23 And I don't know who Masser is, by</p> <p>24 the way.</p> <p>25 Q. He's the chairman of the Board now,</p> <p style="text-align: right;">[Page 103]</p>	<p>1 A. Uh-huh.</p> <p>2 Q. -- Julie Roe. And Julie Roe, if I am</p> <p>3 not mistaken, is in the Enforcement side of the</p> <p>4 house?</p> <p>5 A. Was at the time.</p> <p>6 Q. Was at the time?</p> <p>7 A. She was the head of Enforcement</p> <p>8 Group. And she was the chief staff person to the</p> <p>9 Enforcement Work Group, and so I had --</p> <p>10 Q. So she was on -- I am sorry. I</p> <p>11 didn't mean to talk over you --</p> <p>12 A. -- periodic -- I had periodic</p> <p>13 communications with her about our report that</p> <p>14 would be coming up in the next -- at the next</p> <p>15 Executive and Division I meeting, which was in</p> <p>16 early August of '12. My last meeting by the way.</p> <p>17 Q. That was the report of the Working</p> <p>18 Group that you are describing?</p> <p>19 A. Yeah. Yeah.</p> <p>20 Q. And she was on the other side of that</p> <p>21 wall you have described, correct?</p> <p>22 MR. SHEETZ: Objection to form --</p> <p>23 THE WITNESS: Yes and no. I mean,</p> <p>24 obviously, she dealt with enforcement, and</p> <p>25 everything she did that touched on any details of</p> <p style="text-align: right;">[Page 105]</p>

<p>1 any case, that was segregate it from any 2 conversations I ever had with her. 3 To me, she was just kind of the chief 4 staff person working with the Working Group, who 5 had, obviously, a lot of experiences with cases. 6 So you get a bunch of -- trust me, 7 you get a bunch of presidents and chancellors 8 together talking about how the world should work, 9 it really helps if you have someone who's 10 grounded in how things have worked historically, 11 pluses, minuses, to be part of that conversation. 12 She was kind of a resource person for 13 us about if we're going to look at enforcement, 14 what would we change, and to what end. 15 BY MR. SOLLERS: 16 Q. This e-mail is -- the subject is, 17 Sounds of Silence. And the next-to-last sentence 18 is, "The sounds of silence are not good. If Penn 19 State could have Louis Freeh conduct an 20 investigation over the last year, why haven't we 21 done anything?" 22 And that's the last part of the first 23 paragraph. 24 A. Uh-huh. 25 Q. Were you concerned the NCAA had not</p> <p style="text-align: right;">[Page 106]</p>	<p>1 Q. So, unfortunately, for your Hawaii 2 trip the wheels start turning pretty quickly 3 after this date; is that fair? 4 A. Yeah. Absolutely. 5 (EXHIBIT No. 9, E-Mail, 6 Redacted, marked.) 7 BY MR. SOLLERS: 8 Q. Show you what we will mark as 9 Exhibit -- 9. I am not a very good counter. 10 It's an e-mail that has been largely 11 redacted. 12 A. (Reading document.) 13 Q. And the e-mail -- 14 MR. SHEETZ: Why don't you let him 15 look at it. 16 MR. SOLLERS: Sure. 17 THE WITNESS: (Reading document.) 18 Uh-huh. 19 BY MR. SOLLERS: 20 Q. So this is an e-mail forwarding your 21 e-mail to Jim Isch from Julie Roe, and Jim 22 Isch -- who is Jim Isch, by the way? 23 A. He -- I think he's just retired. He 24 was kind of like the chief operating officer, and 25 he was the interim president between Myles' death</p> <p style="text-align: right;">[Page 108]</p>
<p>1 taken action at this point? 2 A. No. I was basically pointing out to 3 her -- and if you read the sentence before that, 4 that I suggest she reconnect with legal 5 authorities. Because they might say, no, you 6 know what, keep your mouths shut, stay out of the 7 way, we are knee-deep in investigations, but you 8 ought to ask. 9 And if they say stay out of it, then 10 my recommendation would be, all right, well, then 11 just re-release your statement that we're not 12 going to do anything until and unless legal 13 authorities tell us it's okay to do so. 14 If you can do something, if they are 15 not bothered by that, legal authorities, then you 16 ought to look at the Freeh Report, whatever other 17 information you have, and ask, is there enough 18 here to initiate an inquiry into what happened, 19 that this was a significant event. And you do a 20 reality check at that moment, to act, don't act, 21 but don't sit there like a bump on a log. 22 Speak to the issue, because it is an 23 important issue, that you are either going to 24 continue to wait, or you are going to initiate an 25 investigative process.</p> <p style="text-align: right;">[Page 107]</p>	<p>1 and Mark's beginning in October of '09. And 2 before that he was the CFO, the chief financial 3 officer. 4 Q. The e-mail to Julie from Jim Isch 5 says, "I agree we need to call Ed and share with 6 him the plan. I wonder if Mark shouldn't make 7 the call to both Ed and Lou Anna. I am sure 8 she's thinking the same thoughts, Jim." 9 Do you recall receiving a call from 10 anyone to discuss the plan? 11 A. No. But I must have gotten a call 12 that conversations were going on, and they wanted 13 to convene a conference call of the Executive and 14 Division I committees to discuss what was going 15 on. 16 So I mean, I assume that's what this 17 is referring to. And it's pretty close to, you 18 know, I mean, it's 13th -- 17th, we're having a 19 call. 20 So somewhere in four days somebody 21 had to call me, or send me an e-mail, I don't 22 know, and say we're going to have a meeting. 23 There are developments. We need to talk about 24 them. But I don't remember anything specific. 25 Q. You don't remember Mr. Emmert calling</p> <p style="text-align: right;">[Page 109]</p>

<p>1 you and discussing a plan?</p> <p>2 A. I honestly don't.</p> <p>3 MR. SHEETZ: Wick, I just ask you, we</p> <p>4 have been going about an hour and 15 since we</p> <p>5 reconvened. So just think about when you want to</p> <p>6 take a break for lunch, and if it's more -- you</p> <p>7 can just decide however you want, but I am going</p> <p>8 to need a bio-break in a few minutes for a couple</p> <p>9 minutes. We can go to 12:30 or 1:00, whatever</p> <p>10 you want.</p> <p>11 MR. SOLLERS: Let's take a</p> <p>12 five-minute break right now, and then we can make</p> <p>13 a decision on lunchtime.</p> <p>14 VIDEOGRAPHER: The time is 11:52.</p> <p>15 We're off the record.</p> <p>16 (Brief recess taken from</p> <p>17 11:53 a.m. to 11:59 a.m.)</p> <p>18 VIDEOGRAPHER: The time is 11:59.</p> <p>19 We're back on the record.</p> <p>20 BY MR. SOLLERS:</p> <p>21 Q. Dr. Ray, I am going to show you an</p> <p>22 exhibit we will mark as 10.</p> <p>23 (EXHIBIT No. 10, E-Mail,</p> <p>24 7-14-12, marked.)</p> <p>25 BY MR. SOLLERS:</p> <p style="text-align: right;">[Page 110]</p>	<p>1 remember I read the Rick Reilly article. I think</p> <p>2 it was in Sports Illustrated, maybe not, maybe it</p> <p>3 was online. And I was responding to -- having</p> <p>4 read that, throwing out a question. But beyond</p> <p>5 that, I don't remember anything.</p> <p>6 Q. At this point, do you recall whether</p> <p>7 there was a plan to have President Erickson</p> <p>8 respond to the November 17th, 2011, Emmert</p> <p>9 letter?</p> <p>10 A. I have no specific knowledge. What I</p> <p>11 can tell you is I never heard whether he</p> <p>12 responded. So there was a letter, the</p> <p>13 November 17th, I think you said, and it asked for</p> <p>14 a response by December 16th, I think, because you</p> <p>15 showed me the letter today. But I don't know if</p> <p>16 they ever answered it. I just don't know.</p> <p>17 Q. Do you ever recall discussing that</p> <p>18 issue with President Emmert?</p> <p>19 A. No, but I think -- I honestly don't.</p> <p>20 As I say, I am dealing with the death of a wife</p> <p>21 of 45 years, and kids and grandkids, and</p> <p>22 financial chaos. So my recollections of</p> <p>23 everything are not what one would hope.</p> <p>24 But at some point, and I think I saw</p> <p>25 it in some of the materials you may have. I</p> <p style="text-align: right;">[Page 112]</p>
<p>1 Q. And this exhibit is during the time</p> <p>2 frame post Freeh Report, but before the first</p> <p>3 conference call of the Executive Committee.</p> <p>4 There's Exhibit 10, and it's an</p> <p>5 e-mail from you to Julie Roe, Mark Emmert, and</p> <p>6 Jim Isch.</p> <p>7 A. (Reading document.)</p> <p>8 Q. And I'd just like you to describe</p> <p>9 what you mean by the NCAA as the adult in the</p> <p>10 room regarding Penn State.</p> <p>11 A. Well, there are two phrases that I</p> <p>12 use often. One is, how do we make sure we do the</p> <p>13 right thing, and what does it mean to be the</p> <p>14 adult in the room.</p> <p>15 And so what I was asking here, being</p> <p>16 a responsible party, what should we do, if</p> <p>17 anything?</p> <p>18 Q. And this is designated as follow-up.</p> <p>19 Do you know what this is a follow-up to? Was</p> <p>20 that a follow-up to a call with Mr. Emmert, or do</p> <p>21 you recall at this time?</p> <p>22 A. I honestly don't remember.</p> <p>23 Q. Are you in Hawaii at this day?</p> <p>24 A. I don't know. As I say, I don't</p> <p>25 remember if we went on the 14th or 15th. I do</p> <p style="text-align: right;">[Page 111]</p>	<p>1 asked -- either asked -- I think I asked Mark or</p> <p>2 somebody, what the hell happened to the answers</p> <p>3 to the questions? Because I never heard they</p> <p>4 were answered. And I've never seen the answers,</p> <p>5 if they did answer.</p> <p>6 Q. What, in your view, was the urgency</p> <p>7 to act?</p> <p>8 A. Well, I am not sure what you mean by</p> <p>9 act, but to me, it was inappropriate for the NCAA</p> <p>10 not to say one of two things: Either we're not</p> <p>11 going to do anything continuing, because the</p> <p>12 legal authorities have asked us to step aside,</p> <p>13 which would be perfectly appropriate.</p> <p>14 Or, given that the Freeh Report</p> <p>15 exists and there may be other materials</p> <p>16 available, we could, in fact, begin an inquiry,</p> <p>17 but you want to check with legal authorities</p> <p>18 before you do anything, because you don't want to</p> <p>19 muck up the works on legal actions.</p> <p>20 Q. You are in Hawaii, extenuating</p> <p>21 circumstances, was that an issue for you that</p> <p>22 there was a necessity to act so quickly on behalf</p> <p>23 of the NCAA?</p> <p>24 MR. SHEETZ: Objection to the form.</p> <p>25 MR. KOWALSKI: Join.</p> <p style="text-align: right;">[Page 113]</p>

<p>1 THE WITNESS: Well, let's put it this 2 way: if I had gotten a response saying we're 3 going to respond in August, but we're not going 4 to do anything, I would have said, great. I 5 mean, I had no timeline, other than that at some 6 point, the NCAA ought to say something. So to 7 me, it wasn't urgency. 8 BY MR. SOLLERS: 9 Q. Now, you have talked in various 10 comments to the press about President Emmert 11 receiving a directive from the Executive 12 Committee to look into the situation and report 13 back. 14 Do you recall any specific directive 15 given to President Emmert with regard to this 16 matter? 17 MR. KOWALSKI: Object to form. 18 THE WITNESS: No, I don't even know 19 what that means, other than the conversations 20 about the agreement, I don't know -- you would 21 have to refresh my memory. 22 BY MR. SOLLERS: 23 Q. Yes, sir. In your prepared remarks, 24 July 23rd, 2012, press conference, quote, "The 25 Executive Committee, which acts on behalf of the</p> <p style="text-align: right;">[Page 114]</p>	<p>1 If I knew I was going to be sitting 2 here, maybe I would have changed the word "reach 3 out and try to reach an agreement." 4 Q. Who was Bob Williams? 5 A. He's the communications guy at the 6 NCAA. I think he's still there. 7 Q. And recognizing you may not have 8 drafted this particular language, what do you 9 understand it to mean, that President Emmert was 10 directed, quote, "to examine the circumstances 11 surrounding the Penn State tragedy," unquote? 12 A. That we authorized him to see if an 13 agreement could be reached. 14 Q. And do you know what, if anything, 15 President Emmert did, other than reviewing the 16 Freeh Report to examine the circumstances? 17 A. No, I have no idea. 18 Q. Did President Emmert make 19 recommendations regarding punitive and corrective 20 measures? 21 A. At the meeting on the 21st he 22 presented the package of punitive and corrective 23 measures that he and Rod thought would be 24 acceptable to each president's board. And as I 25 say, that's what we voted on.</p> <p style="text-align: right;">[Page 116]</p>
<p>1 entire association, and implements policies to 2 resolve core issues, along with the Division 1 3 Board, a body of presidents representing all of 4 Division 1, directed President Emmert to examine 5 the circumstances surrounding the Penn State 6 tragedy, and if appropriate, make recommendations 7 regarding punitive and corrective measures." 8 Do you recall when that directive was 9 given to President Emmert? 10 A. I think my interpretation of it -- 11 those are not my words, by the way. Those are 12 the words of Bob Williams, who wrote my statement 13 for me that I got the night before the press 14 conference. So let's be clear about that. 15 Q. I did not know that. 16 A. I changed a few words in sort of 17 the -- to put it more in my voice, but I was 18 given suggested language to use for that 19 statement. And again, I did not get it until 20 probably less than 12 hours, or 13 hours before 21 the press conference. 22 What I would interpret we directed 23 him to do was when we voted on the 21st, see if 24 you can reach an agreement. That was the gist of 25 that.</p> <p style="text-align: right;">[Page 115]</p>	<p>1 Q. And do you recall what that package 2 included? Was that the final package? 3 A. Yeah, I mean we made no changes. We 4 accepted what we thought he and Rod had agreed to 5 as a package of -- or an agreement. 6 Q. Did it include the 60 million? 7 A. Yes, it must have. I mean, I can't 8 remember -- he read the elements off to us. It 9 must have included the 60 million. It must have 10 included the scholarship reductions for the next 11 several years, the inability to appear in bowls, 12 I think it was for three or four years. 13 What I don't remember is if it 14 included -- although it must have, that there 15 would be a monitor over the next three or 16 four years to make sure they took the corrective 17 actions. 18 So they must have been -- I don't 19 remember how precise it was. There clearly were 20 corrective actions, but I don't remember. I 21 don't think there were a lot of details about how 22 would you actually implement that. 23 Q. Other than the call that you had on 24 July 17th, the call on July 21st, did you have 25 any visibility into the course of the discussions</p> <p style="text-align: right;">[Page 117]</p>

<p>1 that were going on between President Emmert and 2 President Erickson? 3 A. No. 4 Q. Did you have -- 5 A. Zero. 6 Q. Did you have any knowledge of, for 7 instance, the increase in the payment that was 8 going to be required from Penn State from 30 9 million to 60 million? 10 A. No. Never heard of it. 11 Q. Was there any package presented to 12 you and the Executive Committee on the July 17th 13 phone call? 14 A. I honestly don't recall, because the 15 overriding message I took away from that is we're 16 not ready to -- we're not ready to decide 17 anything. We're all over the place. 18 And a number of people literally 19 said, I need time. I just need to think about 20 this. This call is help. I have heard what 21 other people think. I just need time. 22 Q. If I am correct, your specific 23 recollection of a package being presented for 24 consideration is from the July 17th call; is that 25 fair?</p> <p style="text-align: right;">[Page 118]</p>	<p>1 you want me to read the whole thing? 2 BY MR. SOLLERS: 3 Q. No, I will direct your attention 4 because it's a long document. We will have a few 5 questions about it, but in this document -- well, 6 first of all, how was this prepared, if you 7 recall? Was this an active give-and-take, or 8 were these prepared responses -- 9 A. This document? 10 Q. Yes, sir. 11 A. I have no idea. I have no idea who 12 wrote it. I don't even know -- I have no idea. 13 Q. I guess my question is, to the best 14 of your knowledge, is this the result of a give 15 and take question and answer, or were these 16 prepared responses to prepared questions, which 17 sometimes occurs in a document like this? 18 A. One of my biggest failings in life is 19 I am not scripted. So if it says I said it, 20 however stupid it might be, I probably said it, 21 and there probably was somebody somewhere who 22 wished to God I had read a script. So I don't 23 know what to tell you. 24 And whether it's exactly what I said, 25 I don't know, but I didn't read prepared answers</p> <p style="text-align: right;">[Page 120]</p>
<p>1 A. No. My recollection is the package 2 being prepared -- 3 Q. Excuse me. My mistake. 4 A. -- was July 21st. 5 Q. I misspoke. 6 A. Whether elements of a package were or 7 were not discussed on the 17th, I honestly can't 8 remember, other than our -- I know we had a 9 discussion about does -- how do we feel about 10 suspension of play, and people were all over the 11 place. 12 Q. Right. I misspoke. I apologize. I 13 meant to say July 21st. 14 A. I don't think you misspeak a lot, 15 just between us. 16 Q. Oh, I did. I guarantee you I did, 17 and I do. 18 (EXHIBIT No. 11, ESPN Interview, 19 7-23-12, marked.) 20 BY MR. SOLLERS: 21 Q. I will show you what I think is your 22 statements in the course of a Q and A. 23 MR. SHEETZ: This is 11? 24 MS. MAHER: Yes. 25 THE WITNESS: (Reading document.) Do</p> <p style="text-align: right;">[Page 119]</p>	<p>1 to questions. I don't. When I meet with my 2 faculty or anybody else, I tell them what I 3 think, to the best of my ability. 4 Q. The only reason I asked you that way 5 is you had said before that the comments that you 6 had given after the -- the press conference had 7 been written for you by somebody else, so I 8 didn't know -- 9 A. No. No. Only the opening statement. 10 In the press conference we said what we honestly, 11 you know, as best we could articulate, what we 12 thought, and tried to be responsive to questions. 13 Q. Well, why don't I ask you a couple 14 questions on this. In this document you said 15 something similar to what we talked about a 16 moment ago, was that "The Executive Committee, 17 individual and Board, charged President Emmert to 18 discuss possibilities with his staff, with 19 others, whoever he felt would be appropriate. He 20 called some of us individually to talk about what 21 set actions would be most appropriate, given the 22 facts as we understand them." 23 MR. SHEETZ: I am sorry to interrupt 24 you, but I have no idea where exactly you are. 25 Could you tell me?</p> <p style="text-align: right;">[Page 121]</p>

<p>1 MR. SOLLERS: Yeah -- we're on page 2 2, and it's the second paragraph. 3 THE WITNESS: Second question and 4 answer? 5 BY MR. SOLLERS: 6 Q. Yes, sir. 7 MR. SHEETZ: The one that starts, "It 8 was pretty straightforward"? 9 MR. SOLLERS: Right. 10 MR. SHEETZ: So why don't you let 11 Dr. Ray at least read that question, and then you 12 can ask questions. 13 MR. SOLLERS: Of course. 14 THE WITNESS: (Reading document.) 15 Uh-huh. Is there a question? 16 BY MR. SOLLERS: 17 Q. The question is you say that "He," 18 meaning Mr. Emmert, "called some of us 19 individually to talk about what set actions would 20 be most appropriate." 21 Do you recall him calling you and 22 talking to you about actions -- 23 A. I honestly don't. I honestly don't. 24 You know, you would have to ask him. I mean, he 25 would know, presumably, what calls he made. But</p> <p style="text-align: right;">[Page 122]</p>	<p>1 A. No. No. 2 Q. Do you have any knowledge of any 3 communication to any representative of Penn 4 State, on the issue of suspension of play? 5 A. No. 6 Q. Did anyone on the NCAA staff ever 7 express any concern to you about why the NCAA was 8 involved in this criminal matter? 9 MR. KOWALSKI: Objection to form. 10 And please don't reveal any 11 privileged conversations, to the extent this 12 calls for it. 13 THE WITNESS: Okay. Now that he's 14 done, could you repeat the question? 15 BY MR. SOLLERS: 16 Q. Sure. 17 MR. KOWALSKI: Sorry. Sorry. 18 BY MR. SOLLERS: 19 Q. And you are cautioned not to reveal 20 anything that is legal advice. 21 A. I heard the caution. I lost the 22 question. 23 Q. Did anyone on the NCAA staff ever 24 express any concern to you about why the NCAA was 25 involved in the Penn State criminal matter?</p> <p style="text-align: right;">[Page 124]</p>
<p>1 there was so much going on in this period, the 2 17th to the 21st, if he called me in between, I 3 honestly don't remember. 4 Q. And in that next paragraph you do 5 reference the suspension of play issue. 6 A. Uh-huh. 7 Q. And you say that the D-I board was -- 8 excuse me, "Both the Executive Committee and the 9 Division I Board, their overwhelming position was 10 to not include suspension of play"; is that 11 right? 12 A. Uh-huh. Yes. 13 Q. And that is consistent with what you 14 described concerning the July 21st? 15 A. Right. 16 Q. Do you have any knowledge of what was 17 communicated to President Erickson about the 18 issue of suspension of play? 19 A. No. 20 Q. Do you have any knowledge of what was 21 communicated to Gene Marsh -- who I will tell you 22 was outside counsel to Penn State. 23 A. You told me that already. 24 Q. -- on the issue of suspension of 25 play?</p> <p style="text-align: right;">[Page 123]</p>	<p>1 MR. KOWALSKI: Same objection. 2 THE WITNESS: Is this in any 3 particular time frame, or -- 4 BY MR. SOLLERS: 5 Q. Any time frame. 6 A. No. But I think -- not staff, but I 7 think when the Work Group was meeting, which 8 would have been months later, some of the members 9 of the group may have groused about it. But I 10 mean, this was months later. But certainly not 11 through any of this process. 12 Q. When you say months later, you mean 13 when? 14 A. Maybe January or April of '12. At 15 one of the meetings someone may have come up to 16 me and said -- 17 MR. SHEETZ: Of '12 or '13? 18 THE WITNESS: Of -- well, I don't 19 know. Could have been '12, or -- no, we were 20 done at the end of '12, I guess; is that right? 21 No, it would have been -- yeah, it 22 would have been '13, either January or April of 23 '13 -- 24 BY MR. SOLLERS: 25 Q. I see.</p> <p style="text-align: right;">[Page 125]</p>

<p>1 A. -- when we were talking about the 2 Enforcement Report, somebody may have said 3 something about I wish, you know, that NCAA 4 hadn't done -- been involved in this, or 5 whatever, but I don't even remember who it was. 6 And that may be confounded with the 7 hate mail I get, still. 8 Q. Do you have any recollection of who 9 expressed concern to you? 10 A. No. Remember, I was off the NCAA 11 Board August 2nd, I think it was of '12, was my 12 last meeting. So I didn't even go to the next 13 meetings, except when asked to be there to talk 14 about the Enforcement Report. 15 And I only went to the sessions that 16 included discussion of the Enforcement Report, to 17 be a resource to explain why we were recommending 18 what we were recommending. 19 Q. In an interview -- in an interview on 20 July 29, 2012, with USA Today, you stated, "The 21 Executive Committee has the authority, when it 22 believes something is of a big enough and 23 significant enough nature, that it should 24 exercise its ability to expedite the process of 25 reviewing cases."</p> <p style="text-align: right;">[Page 126]</p>	<p>1 agreement. 2 BY MR. SOLLERS: 3 Q. In your prepared remarks at your 4 July 23rd, 2012, press conference, recognizing 5 again that you may not have authored the remarks 6 in their entirety, quote, "As a result of 7 information produced from the Sandusky criminal 8 investigation, and the Freeh Report, which Penn 9 State commissioned and also agreed to its 10 findings, it became obvious that the leadership 11 failures at Penn State over an extended period of 12 time directly violated association bylaws, and 13 the NCAA Constitution relating to control over 14 the Athletic Department, integrity and ethical 15 conduct." 16 What information from the Sandusky 17 criminal investigation were you referencing? 18 A. I was relying on staff in Enforcement 19 to have reviewed all of the materials and 20 determined that they were appropriate grounds for 21 trying to reach an agreement. 22 Q. Do you know what bylaws were 23 violated? 24 A. No. 25 Q. Do you know whether a specific bylaw</p> <p style="text-align: right;">[Page 128]</p>
<p>1 Do you know where the authority 2 resides to expedite the process of reviewing a 3 case? 4 MR. SHEETZ: Objection to the form. 5 MR. KOWALSKI: Same. 6 THE WITNESS: Well, language being 7 imprecise, what I would have meant was the 8 authority to discuss the possibility of an 9 agreement in a very, very serious case, which is 10 what we did in the Penn State case. 11 BY MR. SOLLERS: 12 Q. And where is that authority? 13 MR. KOWALSKI: Objection. 14 THE WITNESS: Well, again, I can't 15 quote chapter and verse from the bylaws, but I 16 was certainly left with the very clear 17 understanding, from our discussion on the 17th, 18 that the Executive Committee could, itself, and 19 the Division I Board, authorize the president to 20 enter into negotiations for an agreement, rather 21 than waiting for staff and committees to do the 22 same, which they did regularly. 23 So the only difference was that the 24 Executive Committee and the Division I Board were 25 entering into discussions about an -- a possible</p> <p style="text-align: right;">[Page 127]</p>	<p>1 was violated, even if you don't know which bylaw? 2 A. No. That would be tricky, wouldn't 3 it, if I knew something was violated, and I 4 didn't know what it was? 5 Q. While we're looking for the exhibit, 6 did you have a view as to whether there was any 7 competitive advantage that Penn State received as 8 a result of the Sandusky scandal? 9 MR. KOWALSKI: Objection. 10 THE WITNESS: Well, I could 11 conjecture about a possible advantage, but I 12 didn't -- I mean, I didn't have a substantive 13 discussion with anyone about how they benefitted 14 or didn't benefit athletically from the Sandusky 15 behavior, and the apparent failure of people to 16 report, appropriately, to authorities when they 17 had reason to report to authorities. 18 I just knew the general tenor of what 19 had happened, and I think sort of the discussion 20 about competitive advantage or not, should have 21 been part of what Mark and Rod talked about, and 22 the basis for their agreeing to certain 23 conditions. 24 None of which I had anything to do 25 with, except to, you know -- we voted yay or nay.</p> <p style="text-align: right;">[Page 129]</p>

<p>1 and we voted unanimously to accept what the two</p> <p>2 of them had agreed to.</p> <p>3 BY MR. SOLLERS:</p> <p>4 Q. So I take it -- well, I don't want</p> <p>5 to -- I don't want to summarize inaccurately what</p> <p>6 you said, but are you aware of any competitive</p> <p>7 advantage that Penn State obtained as a result of</p> <p>8 the entire Sandusky affair?</p> <p>9 MR. KOWALSKI: Objection.</p> <p>10 THE WITNESS: It really depends on</p> <p>11 what the ultimate proven facts are. If</p> <p>12 everything that is alleged can be confirmed, if</p> <p>13 people participated in a coverup, if that avoided</p> <p>14 negative notoriety to the program for a period of</p> <p>15 time, that might or might not have undercut their</p> <p>16 competitive position. But all of that is</p> <p>17 conjecture. I hope to God some day we know the</p> <p>18 facts, all of the facts.</p> <p>19 And you know what else kills me?</p> <p>20 Nobody asks about the kids. I never get asked</p> <p>21 about the kids.</p> <p>22 BY MR. SOLLERS:</p> <p>23 Q. Well, it's fair to say that the NCAA</p> <p>24 did not act as if this was conjecture; isn't that</p> <p>25 true?</p> <p style="text-align: right;">[Page 130]</p>	<p>1 Q. How about any of the folks on the To</p> <p>2 line?</p> <p>3 A. I am terrible on names. I mean, I</p> <p>4 know people that I meet regularly and know, but I</p> <p>5 meet a lot of people all the time, and I don't</p> <p>6 have a great --</p> <p>7 Q. Understood. My understanding is this</p> <p>8 is an internal NCAA e-mail, and it's raising the</p> <p>9 question about what bylaw citations should be</p> <p>10 used in the Penn State announcement.</p> <p>11 A. Uh-huh.</p> <p>12 Q. And the individual, the author</p> <p>13 states, "I want to clarify that the process is</p> <p>14 what is described on the website, as opposed to a</p> <p>15 specific bylaw cite. The process described</p> <p>16 provides relief from specific bylaws, but is not</p> <p>17 part of a specific bylaw. For example, this is</p> <p>18 not a Committee on Infractions matter. Hope that</p> <p>19 helps."</p> <p>20 Do you recall there being any debate</p> <p>21 about what bylaw may have been violated or not</p> <p>22 violated, or whether a bylaw was violated at all,</p> <p>23 in this instance?</p> <p>24 A. No.</p> <p>25 Q. Let me ask you a few more questions</p> <p style="text-align: right;">[Page 132]</p>
<p>1 MR. KOWALSKI: Objection to form.</p> <p>2 THE WITNESS: I don't know the</p> <p>3 substance of his conversations with Rod, so I</p> <p>4 don't know if competitive advantage came up, or</p> <p>5 if it focused only on issues of institutional</p> <p>6 integrity, control, ethical behavior. I don't</p> <p>7 know the substance of those conversations. I</p> <p>8 couldn't attest to them.</p> <p>9 BY MR. SOLLERS:</p> <p>10 Q. Fair enough. I will show you</p> <p>11 Exhibit 12, which is an e-mail. And you are not</p> <p>12 on the e-mail. I will tell you that right up</p> <p>13 front.</p> <p>14 (EXHIBIT No. 12, E-Mail Chain,</p> <p>15 7-23-12, marked.)</p> <p>16 THE WITNESS: That's refreshing.</p> <p>17 BY MR. SOLLERS:</p> <p>18 Q. And direct your attention to the</p> <p>19 bottom e-mail.</p> <p>20 A. (Reading document.)</p> <p>21 Q. I will give you a moment to read it.</p> <p>22 A. (Reading document.) Huh.</p> <p>23 Q. Do you know the folks on this e-mail?</p> <p>24 Do you know who Chris Richardson is, the author?</p> <p>25 A. No idea.</p> <p style="text-align: right;">[Page 131]</p>	<p>1 about the suspension of play. In your July 29,</p> <p>2 2012, interview with USA Today you stated that,</p> <p>3 quote, you really started -- excuse me, that you,</p> <p>4 quote, "really started at this from the scorched</p> <p>5 earth approach," unquote.</p> <p>6 Do you know what you meant by that?</p> <p>7 MR. SHEETZ: Could you show us the</p> <p>8 interview, please? It's hard to follow when you</p> <p>9 read snippets -- for me, anyway.</p> <p>10 MR. SOLLERS: Sorry.</p> <p>11 (EXHIBIT No. 13, USA Today</p> <p>12 Interview, 7-29-12, marked.)</p> <p>13 BY MR. SOLLERS:</p> <p>14 Q. This is Exhibit 13, Dr. Ray.</p> <p>15 A. (Reading document.)</p> <p>16 Q. And my question relates to the very</p> <p>17 top. You see the headline is, "I started at this</p> <p>18 from a scorched earth approach."</p> <p>19 MR. SHEETZ: Well, why don't we at</p> <p>20 least identify where it is in the text of this</p> <p>21 purported recording of an interview?</p> <p>22 MR. SOLLERS: Sure.</p> <p>23 BY MR. SOLLERS:</p> <p>24 Q. First of all, do you remember this</p> <p>25 interview?</p> <p style="text-align: right;">[Page 133]</p>

<p>1 A. No, not at all. I must have talked 2 to 30 or 40 media outlets in the first two days, 3 much less by -- when is this? The 29th, so we're 4 talking a week later. 5 Q. So you gave a number of interviews; 6 is that right? 7 A. Yeah. Too many, apparently. 8 Q. I have a lot of things to go through. 9 A. You know when you try to be 10 forthcoming, it can rule the day. 11 Q. Were those interviews set up by the 12 NCAA? Do you know? 13 A. No, I think people -- I don't know. 14 I think a number of people wanted to talk to me, 15 and Steve Clark, who's our vice president for 16 marketing and communications, would have talked 17 to interested reporters, whatever, and arranged 18 times for me to be available to talk to them. 19 And it was mostly that day and the 20 next day, so if it was the 23rd, it would have 21 been the 23rd and 24th. And then there may have 22 been others after that. You said this was the 23 29th? 24 Q. Yes, sir. 25 A. So I would guess that maybe Steve</p> <p style="text-align: right;">[Page 134]</p>	<p>1 the room, and doing the right thing. 2 So we agreed we would have Mark and 3 Rod continue to talk and reconvene at another 4 time. People were very upset when we had the 5 conversation on the 17th, and I think it's 6 appropriate we didn't try to take any action, but 7 I want to just let people talk it out, come back 8 to specifics later. 9 Q. There was never -- strike that. 10 Was there ever any sentiment 11 expressed amongst the group to suspend play at 12 Penn State? 13 A. In the July 17th conversation I asked 14 what people were thinking, and there was 15 discussion about should suspension of play be 16 part of any package that we would agree to, yes 17 or no. What do you think? And Penn people 18 basically said, we don't know. We need to sleep 19 on this. 20 And then the 21st, I said, well, 21 that's an important thing. How do people feel, 22 because, you know, I think I must have had -- 23 well, so what do people think. And talked a 24 little bit, and took a vote, voted it down 25 overwhelmingly, and then moved on.</p> <p style="text-align: right;">[Page 136]</p>
<p>1 Clark got a call from them asking if they could 2 talk to me, and like a fool, I agreed. So where 3 is this -- 4 MR. SHEETZ: I don't find -- I don't 5 see the "scorched earth" quote -- I just looked 6 through it quickly. 7 BY MR. SOLLERS: 8 Q. If you look in the first answer. 9 A. Uh-huh. 10 Q. And it's about ten lines down. 11 MR. SHEETZ: So Ed, read the entire 12 first answer, okay, and then Wick can ask the 13 question. 14 MR. SOLLERS: That's fine. Sure. 15 THE WITNESS: (Reading document.) 16 BY MR. SOLLERS: 17 Q. I really have just a simple question, 18 which is what you meant by the "scorched earth 19 approach"? 20 A. Well, and again, I can't remember 21 detail. But I would have -- I think here, I 22 would have been referring to that July 17th 23 conversation that emotions ran high, that people 24 were very upset, and we were incapable of 25 figuring out what it meant to be the adults in</p> <p style="text-align: right;">[Page 135]</p>	<p>1 So there was discussion of the 2 general idea of should suspension of play be an 3 element in the package or not on the 17th. No 4 consensus at all. People -- as I say, most of 5 that discussion was probably people -- just 6 overwrought emotions, people were very upset. 7 And we agreed everybody needed to just stand 8 down, think about it, come back to it. 9 Q. Was there -- and I take it Mr. Emmert 10 was in that -- was on that call on July 17th, 11 correct? 12 A. Yes. 13 Q. Was there ever a message communicated 14 to him, at least by you, or to your knowledge, 15 that the death penalty was favored by the 16 Executive Committee? 17 A. No, because how would I know? 18 Q. But you never communicated such a 19 thing to him? 20 A. No. 21 Q. And I am happy to show it to you. I 22 have an e-mail -- you responded to a lot of folks 23 who were sending you e-mails, and we have seen a 24 lot of those. 25 You said in an e-mail to one of these</p> <p style="text-align: right;">[Page 137]</p>

<p>1 individuals, quote, "We never discussed a threat 2 to Penn State if they failed to sign the Consent 3 Decree," unquote. 4 Is that your testimony today as well? 5 A. Yes, we never discussed a threat. 6 There were only two options: both parties agreed 7 to a set of punitive and corrective actions, or 8 they choose to go the investigative inquiry 9 route. They control their fate. There was no 10 credible way for anybody to threaten anything, 11 because nobody could impose anything. 12 Q. Are you generally aware that 13 President Erickson testified last week in the 14 Corman case, which is the other case that is 15 being -- was part of the deposition here today? 16 A. No. Actually, I was in Washington DC 17 at an education conference, Wednesday, Thursday, 18 Friday, so no, I have no idea who he talked to 19 when. 20 Q. And if he testified that the NCAA 21 Executive Committee -- he was told by Mr. Emmert 22 that the NCAA Executive Committee wants to, 23 quote, "shut your program down, they want blood," 24 unquote, you were not aware of that; is that 25 fair --</p> <p style="text-align: right;">[Page 138]</p>	<p>1 was with or without suspension of play. Because 2 the logic of it is, there's a package and there's 3 this other package. So this is A, this is B. B 4 includes suspension of play. Well, that's pretty 5 serious. 6 So if you are going to do that in 7 package B, then all of the other penalties, 8 corrective actions, whatever they are, would have 9 to be moderated so that basically, you know, you 10 are going for the same result, either through A, 11 or through B. 12 If you are doing more severe things 13 through B, because suspension of play is 14 considered by most the most serious thing, then 15 you might or might not include some or all of the 16 things that would otherwise be there without 17 suspension of play. 18 Q. Do you remember what the lesser 19 penalties were in Plan B? 20 A. No. And that's -- I am looking at 21 the time to try to figure out when in the hell we 22 could have had this -- oh, I guess this is -- no, 23 we had the conversation on the 21st. 24 And I don't remember the time of the 25 conversation, but it's possible that it was 4:00</p> <p style="text-align: right;">[Page 140]</p>
<p>1 A. No, I never heard any such thing -- 2 MR. KOWALSKI: Object to form -- 3 MR. SOLLERS: In -- we haven't marked 4 this one? 5 MS. MAHER: Yeah -- 6 MR. SHEETZ: Break at 1:00? 7 MR. SOLLERS: We're getting there. 8 (EXHIBIT No. 14, E-Mail, 9 7-21-12, marked.) 10 BY MR. SOLLERS: 11 Q. Dr. Ray, I will show you what is 12 marked Exhibit 14. It's an e-mail from you to 13 Mark Emmert, cc'd to other NCAA personnel, My Two 14 Cents Worth, date is July 21st, 2012. I will let 15 you take a look at it. 16 A. (Reading document.) 17 Q. I would focus your attention on the 18 second paragraph, I will just ask you about the 19 second paragraph. 20 A. (Reading document.) 21 Q. I just wanted to get you to explain 22 to us what Plan A and Plan B were, to the best of 23 your recollection. 24 A. Well, I -- I actually don't remember 25 specifically, but I am fairly confident that this</p> <p style="text-align: right;">[Page 139]</p>	<p>1 or 5:00 our time, which would be consistent, 2 with -- you know, I could have sent an e-mail 3 before the meeting -- you know. this is actually 4 a little embarrassing. Mark is a very bright 5 guy. 6 I mean, I didn't tell him anything 7 here he isn't smart enough to figure out for 8 himself. Tell him you have got two sets of 9 possibilities; one is suspension of play, one 10 with not -- no suspension of play. Find out 11 where people are, but don't ask for a vote until 12 you know where they are, because you might not 13 like the result you get. 14 And as it turns out, I mean, the 15 whole conversation went differently anyway, 16 because when we had the meeting on the 21st, the 17 first issue we took up was suspension of play. 18 Does it have to be in there, "yes" or "no." We 19 overwhelmingly voted no. 20 So now the only thing up for 21 consideration is, so what has Mark brought us. 22 So B got eliminated immediately without him ever 23 having to say which he preferred. 24 Q. Because that would tend to indicate 25 that this e-mail preceded the phone call?</p> <p style="text-align: right;">[Page 141]</p>

<p>1 A. I don't actually remember that, but 2 it logically seems as if it would, and basically 3 all I was telling him -- I think I was just 4 saying, you know, do the best you can. You are 5 going to do fine, you are wonderful. 6 Because as I say, it's almost 7 embarrassing. You read this and say, well, yeah, 8 who wouldn't have figured that out? This is 9 basically what you ought to do. 10 So I think this was actually -- I 11 don't think it was very helpful, but I think it 12 was just an effort by me to reach out and be 13 supportive, because he was dealing with difficult 14 circumstances. 15 Q. What did you mean in the first line 16 by, "suggest a course that leaves you in the 17 strongest possible leadership position"? 18 A. Well, he is president of the NCAA, so 19 I wanted -- again, I think it's a bit 20 presumptuous on my part, but just be encouraging. 21 You know, make sure they know, you are the guy. 22 You are in charge. 23 You know, you are not asking, gosh, 24 golly what should I do. You have had all these 25 discussions, you have teed it up, you are going</p> <p style="text-align: right;">[Page 142]</p>	<p>1 expectation. 2 MR. SOLLERS: Why don't we break now 3 for lunch? I only have a few minutes -- famous 4 last words -- few minutes when we resume, and 5 I'll turn it over to my brethren. 6 VIDEOGRAPHER: Time is 12:51, and 7 we're off the record. 8 (Lunch recess taken from 9 12:51 p.m. to 1:55 p.m.) 10 VIDEOGRAPHER: Time is 1:55. We're 11 back on the record. 12 BY MR. SOLLERS: 13 Q. Dr. Ray, I will show you what we have 14 marked as Exhibit 15. 15 (EXHIBIT No. 15, E-Mail Chain, 16 Ed Ray and Don McHugh.) 17 BY MR. SOLLERS: 18 Q. Just direct your attention to the 19 second paragraph, and this appears to be an 20 e-mail to one of many correspondents that you 21 had, I think, after the press conference on 22 July 23rd. This is dated August 14th, 2012. And 23 the first sentence is, "There were no findings 24 against Joe Paterno." 25 Is that your view?</p> <p style="text-align: right;">[Page 144]</p>
<p>1 to take on following through on this. We got the 2 point person we need. That's all I meant by it. 3 Q. In another e-mail response to one of 4 your admirers, it's stated -- and again, I will 5 show you the e-mail, but it's pretty simple. 6 Quote, "No sanctions were imposed and no duress 7 was involved," unquote. Quote, "I do not 8 threaten people, and I do not jump to vindictive 9 conclusions," end quote. 10 Is that your position that there 11 were -- there was no duress involved in this 12 situation with regard to Penn State? 13 A. I have no knowledge of any duress. 14 Q. Or threats? 15 A. Or threats. Again, they could either 16 accept an agreement that they agreed to, or they 17 could go the one- or two-year route. There was 18 no way to make a credible threat of any kind, 19 given they didn't have to agree to anything. 20 They had recourse to the standard one-, two-, 21 three-year process. 22 Q. Which would have happened if Penn 23 State had rejected the Consent Decree; is that 24 right? 25 A. Yes, that was my absolute</p> <p style="text-align: right;">[Page 143]</p>	<p>1 A. Yes. 2 Q. You also mention two lines later, 3 "conspiracy of silence." And explain, if you 4 would, what the conspiracy of silence was, in 5 your view? 6 A. Yeah. Where is the phrase? 7 Q. Two lines later, sir. 8 A. (Reading document.) Yeah, we talked 9 about this before, the idea that to the extent 10 the allegation was that there were people who 11 knew about inappropriate behavior, they did 12 nothing to stop it, they did nothing to report 13 it, one could at least entertain the notion that 14 that avoided notoriety could defame the 15 institution or the program, and that would hinder 16 their ability to recruit, which ultimately could 17 translate into wins or losses and so forth. 18 Q. When you reference a conspiracy of 19 silence, as you did also in your July 23rd, 2012, 20 remarks, isn't that an individual finding? 21 A. No, because I didn't know which 22 individuals knew what. 23 Q. Who were the co-conspirators, in your 24 view? 25 MR. SHEETZ: Objection to form.</p> <p style="text-align: right;">[Page 145]</p>

<p>1 MR. KOWALSKI: Objection -- same.</p> <p>2 THE WITNESS: I knew who were</p> <p>3 speculated to be the conspirators. Two of</p> <p>4 them -- three of them have been indicted, and</p> <p>5 those are the ones who are still awaiting trial.</p> <p>6 I think they are supposed to be at trial sometime</p> <p>7 soon.</p> <p>8 BY MR. SOLLERS:</p> <p>9 Q. And they were indicted on perjury</p> <p>10 counts, correct?</p> <p>11 A. Uh-huh. Yeah.</p> <p>12 MR. KOWALSKI: Objection.</p> <p>13 THE WITNESS: I believe. I don't</p> <p>14 know.</p> <p>15 BY MR. SOLLERS:</p> <p>16 Q. And was Joe Paterno a co-conspirator,</p> <p>17 in your view?</p> <p>18 A. I don't know, honestly.</p> <p>19 Q. Let me show you -- refer you back to</p> <p>20 Exhibit 11 --</p> <p>21 MR. SOLLERS: Do you have that, Mike?</p> <p>22 It's the July 23, 2012, ESPN Q and A.</p> <p>23 BY MR. SOLLERS:</p> <p>24 Q. And direct your attention to page 2,</p> <p>25 the first full paragraph.</p> <p style="text-align: right;">[Page 146]</p>	<p>1 A. (Reading document.) Yeah.</p> <p>2 Q. Was that your view that the NCAA was</p> <p>3 going to take a wait-and-see attitude about facts</p> <p>4 as it pertained to individuals?</p> <p>5 A. Yes.</p> <p>6 Q. If that's the case, why did the NCAA</p> <p>7 insist upon the language of the Consent Decree</p> <p>8 that specifically named individuals in the</p> <p>9 Consent Decree from the Freeh Report?</p> <p>10 MR. KOWALSKI: Objection to form.</p> <p>11 THE WITNESS: Well, A, I did not</p> <p>12 draft or approve the consent document, and I</p> <p>13 actually -- maybe you showed it to me earlier,</p> <p>14 but I don't actually remember them naming</p> <p>15 individuals.</p> <p>16 BY MR. SOLLERS:</p> <p>17 Q. I am going to hand you the Consent</p> <p>18 Decree, which is Exhibit 16.</p> <p>19 (EXHIBIT No. 16, Consent Decree,</p> <p>20 marked.)</p> <p>21 MR. SHEETZ: Thank you.</p> <p>22 THE WITNESS: (Reading document.)</p> <p>23 BY MR. SOLLERS:</p> <p>24 Q. And direct your attention to page 3</p> <p>25 of the Consent Decree, the first indented bullet,</p> <p style="text-align: right;">[Page 148]</p>
<p>1 A. The response to the first question?</p> <p>2 Q. Yes, sir.</p> <p>3 A. (Reading document.)</p> <p>4 Q. And five lines down it also refers to</p> <p>5 the "conspiracy of silence."</p> <p>6 MR. SHEETZ: Why don't you read the</p> <p>7 full paragraph, so you know what the context is.</p> <p>8 THE WITNESS: (Reading document.)</p> <p>9 MR. SHEETZ: Want to direct him to a</p> <p>10 different place in the interview?</p> <p>11 MR. SOLLERS: Yeah, I think so.</p> <p>12 BY MR. SOLLERS:</p> <p>13 Q. Let me direct you further down on the</p> <p>14 same page. Sorry for the --</p> <p>15 A. That's all right.</p> <p>16 Q. -- for the error.</p> <p>17 Under the question, which is, "I am</p> <p>18 sure you had also had familiarity with Graham</p> <p>19 Spanier. What are your thoughts about his</p> <p>20 involvement as somebody who had such a big role</p> <p>21 in NCAA committees, and had a lot of respect in</p> <p>22 both Big 10 and NCAA circles?"</p> <p>23 Ask you to take a look at your</p> <p>24 response, and then I will ask you a question</p> <p>25 about it.</p> <p style="text-align: right;">[Page 147]</p>	<p>1 and if I can read it into the record, "University</p> <p>2 President Graham B. Spanier, Senior Vice</p> <p>3 President, Finance and Business; Gary Schultz,</p> <p>4 Athletic Director; Timothy Curley, and Head</p> <p>5 Football Coach Joseph V. Paterno failed to</p> <p>6 protect against a child sexual predator harming</p> <p>7 children for over a decade. These men concealed</p> <p>8 Sandusky's activities from the Board of Trustees,</p> <p>9 the University community, and authorities."</p> <p>10 Second bullet, "These individuals,</p> <p>11 unchecked by the Board Of Trustees that did not</p> <p>12 perform its oversight duties, empowered Sandusky</p> <p>13 to attract potential victims to the campus and</p> <p>14 football events by allowing him to have</p> <p>15 continued, unrestricted, and unsupervised access</p> <p>16 to the University's facilities and affiliation</p> <p>17 with the University's prominent football</p> <p>18 program."</p> <p>19 It goes on, but I will stop reading</p> <p>20 into the record there. There's a further bullet,</p> <p>21 the last bullet down on the page that it was</p> <p>22 "more reasonable" -- and this is coming directly</p> <p>23 from the Freeh Report -- "more reasonable to</p> <p>24 conclude that, in order to avoid the consequences</p> <p>25 of bad publicity, the most powerful leaders at</p> <p style="text-align: right;">[Page 149]</p>

<p>1 the University -- Spanier Schultz, Paterno and 2 Curley -- repeatedly concealed critical facts 3 relating to Sandusky's child abuse from the 4 authorities, the University's Board of Trustees, 5 the Penn State community, and the public at 6 large." 7 MR. KOWALSKI: That last one was 8 directly from the Freeh Report? 9 MR. SOLLERS: Right. It was a quote 10 from the Freeh Report. 11 MR. KOWALSKI: Right. And just so 12 the record is clear, I think the others that you 13 read are also direct quotes from the Freeh 14 Report. 15 MR. SOLLERS: That is correct. Thank 16 you. 17 BY MR. SOLLERS: 18 Q. So the question is, how, Dr. Ray, is 19 the quoting of these findings, purported findings 20 from the Freeh Report, consistent with a 21 wait-and-see attitude? 22 MR. KOWALSKI: Objection to the form. 23 THE WITNESS: I don't know how to 24 respond, because I never saw this document at the 25 time, or subsequent to that, that I am aware of.</p> <p style="text-align: right;">[Page 150]</p>	<p>1 keep your voice up so the court reporter can take 2 it down -- 3 THE WITNESS: Sorry. 4 BY MR. SOLLERS: 5 Q. Was it your belief at or about the 6 time of the Consent Decree, and your public 7 statements, and the NCAA press conference that 8 there were not individual culpability findings? 9 MR. SHEETZ: Objection to the form. 10 THE WITNESS: Well, I am comfortable 11 saying there were certainly allegations of 12 individual culpability, but that remained to be 13 determined at trial. I didn't make judgments 14 about individuals. 15 BY MR. SOLLERS: 16 Q. You discussed a conspiracy of silence 17 on multiple occasions in your public remarks. 18 Did you not view that as an 19 individual finding? 20 A. No. 21 Q. Did you not view that as a comment on 22 individual culpability? 23 A. No. I took it as a comment on the 24 institutional environment in which who was 25 culpable, and to what degree, still needed to be</p> <p style="text-align: right;">[Page 152]</p>
<p>1 I assume whatever is in here is 2 something that I would assume the language was 3 agreed to by both Rod and Mark, but it's 4 untethered to anything I knew. 5 BY MR. SOLLERS: 6 Q. And if testimony has characterized 7 this Consent Decree as a quote, "cram down," 8 unquote, are you not aware of that? 9 A. No. No idea who claims what -- No. 10 Q. And I guess one question is, this 11 Consent Decree, I think, was produced by you to 12 us. And so I just wanted to clarify whether or 13 not you had seen that document before? 14 A. I don't believe I have. 15 Q. Do you know who drafted that 16 document? 17 A. No. You would have to ask NCAA. 18 Q. And as you sit here today, and I 19 understand there's been a lot of events 20 intervening, but you don't recall seeing the 21 Consent Decree at or about the time it was 22 entered into? 23 A. No. I don't even know when it was 24 signed, I guess, basically -- 25 MR. SHEETZ: Keep -- when you speak,</p> <p style="text-align: right;">[Page 151]</p>	<p>1 sorted out through the legal process. But that 2 the institution was silent on the behavior that 3 was going on. 4 Q. What qualification on individual 5 culpability can you point to in your remarks, or 6 the remarks of Mr. Emmert at the time of the 7 Consent Decree? 8 MR. KOWALSKI: Object to form. 9 MR. SHEETZ: Objection. 10 THE WITNESS: Graham Spanier sent me 11 an e-mail the night before the press conference, 12 and I told him that I had no intention of naming 13 individuals, and I did not believe that Mark 14 would either, and I hoped that through all of 15 this, he would somehow be exonerated. That is 16 the position I took. 17 (EXHIBIT No. 17, CentreDaily 18 Article re Gerald Ford Award, 19 marked.) 20 BY MR. SOLLERS: 21 Q. Let me show you what's been marked as 22 Exhibit 17, which relates to the Gerald Ford 23 Award being taken away from Joe Paterno, and the 24 commentaries from Donald Remy, the general 25 counsel of the NCAA.</p> <p style="text-align: right;">[Page 153]</p>

<p>1 Do you recall this, sir?</p> <p>2 A. Not specifically, but I do know this</p> <p>3 happened, so I don't know when I became aware of</p> <p>4 it.</p> <p>5 (Reading document.) And it was --</p> <p>6 it's sad.</p> <p>7 Q. Is it your testimony that this is not</p> <p>8 an individual action taken by the NCAA?</p> <p>9 MR. KOWALSKI: Object to form.</p> <p>10 THE WITNESS: I have no opinion about</p> <p>11 it, since I had no influence on the decision.</p> <p>12 BY MR. SOLLERS:</p> <p>13 Q. Did the Executive Committee discuss,</p> <p>14 to your best recollection, the dynamics of the</p> <p>15 child sexual victimization?</p> <p>16 MR. KOWALSKI: Object to the form.</p> <p>17 THE WITNESS: I don't think there was</p> <p>18 a discussion of the details of the charges that</p> <p>19 were brought against Sandusky, or individual</p> <p>20 behavior.</p> <p>21 BY MR. SOLLERS:</p> <p>22 Q. Do you know if the Executive</p> <p>23 Committee ever considered consulting an expert</p> <p>24 regarding child sexual victimization or child</p> <p>25 molestation?</p> <p style="text-align: right;">[Page 154]</p>	<p>1 MR. KOWALSKI: Object to the form of</p> <p>2 the question.</p> <p>3 THE WITNESS: I don't ever remember,</p> <p>4 specifically, contentions along those lines, but</p> <p>5 I did read the Freeh Report. And it was clear</p> <p>6 that key individuals at Penn State were not part</p> <p>7 of the -- of their -- they didn't interview key</p> <p>8 people, including everyone who was indicted.</p> <p>9 BY MR. SOLLERS:</p> <p>10 Q. Did you ever learn of the conclusion</p> <p>11 of the Thornburgh Report that the Freeh Report</p> <p>12 was a rush to injustice?</p> <p>13 A. No, I have no knowledge of the</p> <p>14 Thornburgh Report.</p> <p>15 Q. Are you aware that the lead</p> <p>16 prosecutor in the Sandusky case, Frank Fina, has</p> <p>17 publicly exonerated Joe Paterno?</p> <p>18 MR. KOWALSKI: I'll object to the</p> <p>19 form of that question, for sure.</p> <p>20 THE WITNESS: No, I don't even know</p> <p>21 who the guy is.</p> <p>22 BY MR. SOLLERS:</p> <p>23 Q. Have you reviewed Graham Spanier's</p> <p>24 defamation lawsuit pending against Louis Freeh?</p> <p>25 A. No.</p> <p style="text-align: right;">[Page 156]</p>
<p>1 A. Not to my knowledge.</p> <p>2 Q. Do you recall if you read the</p> <p>3 critique of the Freeh Report that was published</p> <p>4 by King & Spalding, my law firm, along with</p> <p>5 reports from former Attorney General Thornburgh,</p> <p>6 James Clemente, an FBI profiling expert, and</p> <p>7 Fred -- Dr. Fred Berlin, an expert on pedophilia?</p> <p>8 A. I didn't read any of those. I moved</p> <p>9 on.</p> <p>10 Q. Did you ever learn through any means</p> <p>11 that Attorney General Thornburgh had found that</p> <p>12 the Freeh Report was seriously flawed, both in</p> <p>13 its process and in its findings, as to Joe</p> <p>14 Paterno?</p> <p>15 MR. KOWALSKI: Objection.</p> <p>16 THE WITNESS: No. I knew there were</p> <p>17 a lot of people who made such claims, but I don't</p> <p>18 remember, specifically, Thornburgh, or any</p> <p>19 details surrounding it.</p> <p>20 BY MR. SOLLERS:</p> <p>21 Q. Do you remember any discussion about</p> <p>22 the fact that Louis Freeh and his team did not</p> <p>23 talk to virtually any of the people with the most</p> <p>24 relevant information concerning the Sandusky</p> <p>25 affair?</p> <p style="text-align: right;">[Page 155]</p>	<p>1 Q. Just about finished, Dr. Ray. I want</p> <p>2 to show you a couple of e-mails.</p> <p>3 (EXHIBIT No. 18, E-Mail Chain,</p> <p>4 September 2012, marked.)</p> <p>5 MR. SHEETZ: Marking these</p> <p>6 collectively as 17?</p> <p>7 MS. MAHER: No, 18. Is yours 18?</p> <p>8 THE WITNESS: Uh-huh. (Reading</p> <p>9 document.)</p> <p>10 BY MR. SOLLERS:</p> <p>11 Q. We have already discussed that you</p> <p>12 received a lot of e-mails and other</p> <p>13 communications from various people around the</p> <p>14 country, including from people in Pennsylvania;</p> <p>15 is that correct?</p> <p>16 A. Uh-huh. Uh-huh.</p> <p>17 Q. And as you will see in this document,</p> <p>18 if you go towards the end, the last two pages,</p> <p>19 the second to the last page, this is from an</p> <p>20 individual that appears to be from Altoona,</p> <p>21 Pennsylvania; is that correct?</p> <p>22 A. I don't know. How would I know? Oh,</p> <p>23 yeah, I see Altoona on here.</p> <p>24 Q. Yes, sir. Do you recall</p> <p>25 corresponding with other individuals in</p> <p style="text-align: right;">[Page 157]</p>

<p>1 Pennsylvania about the NCAA action and Consent 2 Decree, and the Penn State matter? 3 A. I heard from many people, and I tried 4 to be responsive, at least to the extent that it 5 appeared to be productive to be responsive. 6 Q. And I think this is Exhibit 19. 7 (EXHIBIT No. 19, E-Mail Chain, 8 7-23-12, marked.) 9 BY MR. SOLLERS: 10 Q. I think you mentioned a moment ago 11 this very e-mail. This is the e-mail to Graham 12 Spanier -- or excuse me, the e-mail from Graham 13 Spanier to you, and then I guess you did respond 14 to him. 15 A. Uh-huh. 16 Q. And it appears he sent you this 17 e-mail, as you testified, the night before -- 18 A. Uh-huh. 19 Q. -- the press conference from the 20 NCAA, and then you responded, as you recall; is 21 that right? 22 A. Uh-huh. Right. Yeah. 23 Q. Did you have any other discussions 24 with President Spanier about this case? 25 A. No.</p> <p style="text-align: right;">[Page 158]</p>	<p>1 A. I tried to be as open and honest with 2 people. I felt people were in a lot of pain, and 3 to the extent I could be as clear as possible, I 4 tried to do that. 5 And some seemed to appreciate it, and 6 some seemed to get more and more aggressive, and 7 I would say, we're not -- this conversation is 8 over. But I was trying to be forthcoming to 9 people. 10 MR. SOLLERS: One moment, please. 11 (Discussion off the record.) 12 MR. SOLLERS: Thank you, Dr. Ray. I 13 appreciate your time today. 14 THE WITNESS: Thank you. Appreciate 15 it. 16 VIDEOGRAPHER: Time is 14:16. We're 17 off the record. 18 (Brief recess taken from 19 2:17 p.m. to 2:19 p.m.) 20 VIDEOGRAPHER: This is the videotaped 21 deposition of Edward Ray, taken by the plaintiffs 22 in the matter of Corman, et al., v. National 23 Collegiate Athletic Association v. Pennsylvania 24 State University in the Commonwealth Court of 25 Pennsylvania, Case No. 1 M.D. 2013.</p> <p style="text-align: right;">[Page 160]</p>
<p>1 Q. Any discussions -- any discussions 2 whatsoever prior to the press conference? 3 A. No. 4 Q. Have you talked to him since? 5 A. No, I haven't talked to him. He sent 6 his -- he -- it's really kind of poignant. He 7 sent his sympathies at Beth's passing. He knew 8 Beth, and said he hoped it wasn't inappropriate 9 for him to express his sympathy. So I am sure I 10 wrote back saying, no. Good luck. 11 Q. Yes, sir. 12 (EXHIBIT No. 20, E-Mail Chain, 13 August 2012, marked.) 14 BY MR. SOLLERS: 15 Q. And last e-mail, this is Exhibit 20, 16 and ask you to confirm that this appears to be 17 e-mail traffic back and forth, From and To an 18 individual, Richard Bishop in Kingston, 19 Pennsylvania. And this is the third page. You 20 will see the address. 21 A. Yeah. I don't remember this 22 specifically, but it clearly is an exchange of 23 e-mails back and forth. 24 Q. And you took the time to correspond 25 with a number of people?</p> <p style="text-align: right;">[Page 159]</p>	<p>1 EXAMINATION 2 3 BY MR. Haverstick: 4 Q. Good afternoon, Doctor. We met 5 earlier today. My name is Matt Haverstick, and I 6 represent State Senator Jake Corman. 7 At the beginning, I think we 8 discussed the fact that we're really combining 9 two depositions into one today, to accommodate 10 your schedule. And we appreciate, by the way, 11 the time you have given us. 12 You understand that we may use part 13 of, or some of, or all of the deposition that 14 Mr. Sollers took, in our case, and the reason we 15 do that is so I don't have to repeat the same 16 ground that we covered with Mr. Sollers? 17 MR. SHEETZ: You don't have to repeat 18 the same ground that Mr. Sollers -- 19 BY MR. Haverstick: 20 Q. As long as you understand -- 21 A. Well, I understand I have no control 22 over what you do with the deposition. 23 Q. I am not going to be too awfully long 24 this afternoon, so I am going to try to get 25 through these, and popcorn around a bit, and</p> <p style="text-align: right;">[Page 161]</p>

<p>1 hopefully get through what I need to for this 2 afternoon.</p> <p>3 Could I direct your attention back to 4 Exhibit 4, please?</p> <p>5 A. (Complies.) (Reading document.)</p> <p>6 Q. Do you recall being shown that 7 document earlier today?</p> <p>8 A. Yes.</p> <p>9 Q. After receiving an e-mail regarding 10 that letter, which I think may have been 11 Exhibit 5, and we can look at that, too, if we 12 need to, do you recall being shown an e-mail that 13 forwarded a copy of that letter to you?</p> <p>14 A. No. I probably didn't.</p> <p>15 Q. Could we take a look at Exhibit 5, 16 and make sure --</p> <p>17 MR. SHEETZ: It's not 5.0 --</p> <p>18 MR. VOSS: It is 5 --</p> <p>19 MR. SHEETZ: I beg your pardon. I 20 had 6 in --</p> <p>21 MR. KOWALSKI: It says 5 --</p> <p>22 MR. SHEETZ: Hang on a second, and 23 let me get it.</p> <p>24 Dr. Ray, here is Exhibit 5, which I 25 am putting before you.</p> <p style="text-align: right;">[Page 162]</p>	<p>1 it clear.</p> <p>2 BY MR. Haverstick:</p> <p>3 Q. Sure. My question meant any kind, 4 any kind of communication, whether written or 5 verbal.</p> <p>6 So to the best of your memory, you 7 had no written communication between Exhibit 5 8 and July 17th?</p> <p>9 A. I do not honestly recall any 10 communications --</p> <p>11 Q. Written or oral?</p> <p>12 A. -- regarding Penn State.</p> <p>13 Q. And back to my, I think, last 14 question, why did you not have conversations with 15 Dr. Emmert about Penn State in that intervening 16 period?</p> <p>17 MR. SHEETZ: Objection to the form.</p> <p>18 MR. KOWALSKI: I just want to say for 19 the record, Matt, that we have marked exhibits 20 that are e-mails that involve Ed and Mark Emmert. 21 So for the clarity of the record, we should, you 22 know, not play memory games with --</p> <p>23 BY MR. Haverstick:</p> <p>24 Q. I am not trying to. I am not trying 25 to. This is not a setup for a memory game.</p> <p style="text-align: right;">[Page 164]</p>
<p>1 THE WITNESS: (Reading document.) 2 Uh-huh.</p> <p>3 MR. SHEETZ: You testified about that 4 earlier today.</p> <p>5 THE WITNESS: Yes. That I got this 6 along with everybody else.</p> <p>7 BY MR. Haverstick:</p> <p>8 Q. Here's my question: To the best of 9 your memory, is this the last communication you 10 had from Dr. Emmert about the Penn State matter 11 until the July 17, 2012, teleconference?</p> <p>12 A. I believe that's correct.</p> <p>13 Q. You don't recall any other 14 conversations with him before July 17th about 15 Penn State?</p> <p>16 A. No. No.</p> <p>17 Q. Why was that?</p> <p>18 MR. KOWALSKI: Objection.</p> <p>19 MR. SHEETZ: Objection to the form.</p> <p>20 By the way, these are conversations. 21 You are talking about verbal conversations, 22 right? Because people have gone back and forth 23 over the course of the day about conversation 24 referring to an e-mail exchange, or conversation 25 being verbal, so I just think we should just make</p> <p style="text-align: right;">[Page 163]</p>	<p>1 Other than e-mails that may have been 2 produced, are you aware of any other written 3 communications between you and Dr. Emmert?</p> <p>4 A. Regarding Penn State?</p> <p>5 Q. Penn State.</p> <p>6 A. No.</p> <p>7 Q. And no telephone conversations, no 8 communications -- no oral communications?</p> <p>9 MR. SHEETZ: Between November 17th of 10 2011, and on or about July 17th of 2012, that's 11 the question.</p> <p>12 THE WITNESS: Yeah, I don't remember 13 any communications.</p> <p>14 BY MR. Haverstick:</p> <p>15 Q. Let me ask the question a slightly 16 different way.</p> <p>17 Was the limited amount of 18 communication you had in that time period an 19 example of the firewall you were talking about 20 before?</p> <p>21 MR. KOWALSKI: Objection.</p> <p>22 THE WITNESS: In -- I would not have 23 expected any communications, because this was now 24 a matter that, as far as I knew, had been dealt 25 with through an agreement.</p> <p style="text-align: right;">[Page 165]</p>

<p>1 And Mark had announced -- well, I 2 guess this is when this all first came up, 3 that -- and I don't remember the context, but 4 Mark announced that the NCAA would not engage in 5 any investigation or anything, at that point, and 6 allow the legal processes to go forward. 7 BY MR. Haverstick: 8 Q. So it was your understanding, as of 9 the time you got Exhibit 5, that at that point, 10 NCAA was not going to involve itself in the Penn 11 State matter? 12 MR. KOWALSKI: Objection to form. 13 THE WITNESS: The document itself 14 asks for answers to specific questions, and if I 15 remember correctly, it says so in this document, 16 "Unless you provide reason for a different 17 timeline, your responses should be submitted by 18 December 16th in order for the NCAA to determine 19 next steps." 20 So I would have presumed -- and I 21 don't honestly remember this, but I would have 22 presumed that Rod, in consultation with others, 23 would respond by December 16th. 24 BY MR. Haverstick: 25 Q. Did you have an understanding that</p> <p style="text-align: right;">[Page 166]</p>	<p>1 meted out to Penn State? 2 A. I thought, based on all of the 3 reporting, that we should consider suspension of 4 play as one possible element in the agreement. 5 Q. Did you say that during the July 17th 6 call? 7 A. I don't specifically remember saying 8 it, but knowing me, I can't imagine that I was 9 shy about what I thought. 10 Q. Other than suspension of play, do you 11 remember during the July 17th call, anyone on the 12 Executive Committee suggesting potential 13 penalties that might go into what we're all 14 calling the package? 15 A. I don't remember discussion of 16 specific elements. It may have occurred, but I 17 honestly don't remember. 18 Q. Do you remember whether there was any 19 discussion of the length of any potential bowl 20 ban? 21 A. I do not remember that. 22 Q. Do you remember whether there was any 23 conversation about the number of scholarships 24 that might be taken away as part of the package? 25 A. I don't remember that.</p> <p style="text-align: right;">[Page 168]</p>
<p>1 after Dr. Erickson would have responded that it 2 would then turn into an enforcement matter? Was 3 that your expectation, if you remember? 4 A. I don't remember, but reading this, 5 my expectation would be that it might or might 6 not lead to an investigation, depending on the 7 answers. And depending upon the legal cases that 8 were being adjudicated, or at least initiated. 9 Q. Let's advance in time to the July 10 17th telephone call between Dr. Emmert and the 11 executive board -- or Executive Committee, pardon 12 me. 13 Prior to that call, do you know if -- 14 let me start with you. You had, prior to that 15 call, no conversations with Dr. Emmert about 16 potential penalties that could be issued to Penn 17 State? 18 A. I don't recall any such 19 conversations. 20 Q. Are you aware if Dr. Emmert had any 21 with any other Executive Committee member prior 22 to -- 23 A. I have no idea. 24 Q. Did you, on July 17, you personally, 25 have a view on what punishment, if any, should be</p> <p style="text-align: right;">[Page 167]</p>	<p>1 MR. SHEETZ: This is during the 2 July 17th meeting, right? 3 BY MR. Haverstick: 4 Q. Right. 5 A. Right. 6 Q. To the best of your memory, is the 7 first time that the executive -- is the first 8 time that you heard about what the elements -- 9 the punitive elements of the package were going 10 to be was on the second call, the 21st? 11 A. Yes. 12 Q. And in that call, Dr. Emmert 13 presented the elements of the package to the 14 board? 15 A. As part of the discussion after the 16 vote on suspension of play. 17 Q. Do you recall whether the board on 18 the 21st, had ideas of its own about what 19 penalties should be in the package? 20 MR. KOWALSKI: Objection to form. 21 BY MR. Haverstick: 22 Q. Understanding there had already been 23 a vote on the suspension of play? 24 A. To the best of my recollection, 25 because I wanted to try to move us to closure in</p> <p style="text-align: right;">[Page 169]</p>

<p>1 a timely way, I think the first discussion was 2 from Mark to explain the punitive and corrective 3 measures that he and Rod had agreed to, and then 4 I would have -- I am confident I moved toward 5 asking people to vote on that, rather than get 6 into an extended discussion about tweaking here 7 or there, or wherever. And we basically voted to 8 accept what he and Rod had agreed to. 9 Q. Do you know if Dr. Emmert ever 10 expressed, in either of the two phone calls, his 11 position on suspension of play as a potential 12 penalty? 13 A. Whether he would prefer it or not? 14 Q. Yes. 15 A. I don't think he ever did. I think 16 he actually talked to us only in terms of what 17 both parties could probably agree to and not 18 agree to. 19 Q. May we take a look, please, at 20 Exhibit 14? 21 MR. SHEETZ: I am sorry? 22 MR. Haverstick: Exhibit 14. 23 MR. SHEETZ: By the way, I am 24 officially giving these back to you, and you can 25 decide what you want to show him.</p> <p style="text-align: right;">[Page 170]</p>	<p>1 believed might be achieved through the standard 2 enforcement process that was less harsh than A 3 and B? 4 MR. KOWALSKI: Objection to the form. 5 THE WITNESS: No. I don't think I 6 knew the elements of A and B until the call. 7 BY MR. Haverstick: 8 Q. Well, A and B are references that 9 you -- 10 A. Yeah. But I didn't know the specific 11 elements of A and B, except that B, if we had 12 concurred, would include suspension of play, and 13 then maybe lesser -- lesser amounts of other 14 elements of what would be in A, which would not 15 include suspension of play. They were two 16 potential packages. 17 Q. Did you ever tell Dr. Emmert that he 18 was authorized to tell President Erickson that 19 one option was for the Executive Committee to 20 simply impose a punishment? 21 A. No. 22 Q. And to your knowledge, that was never 23 communicated to Dr. Erickson? 24 A. Not to my knowledge -- well, go back, 25 what was not communicated. What was not</p> <p style="text-align: right;">[Page 172]</p>
<p>1 BY MR. Haverstick: 2 Q. Do you have 14 in front of you? 3 A. Yes. 4 Q. And by the way, my colleague just 5 corrected me, every time I am saying "board," I 6 mean "Executive Committee." So I want the record 7 to be clear, if I say "Executive Board," it's 8 just me fouling up, and I actually mean Executive 9 Committee. 10 A. I am not sensitive. 11 Q. I would like to ask you a few more 12 questions about this e-mail. 13 A. Uh-huh. 14 Q. I am looking at the second paragraph, 15 penultimate sentence. "Both plans attempt to 16 impose harsher penalties than staff believe can 17 be gained through the standard enforcement 18 process." 19 Who from NCAA staff told you, do you 20 remember, the information that is in that 21 sentence? 22 A. I honestly don't know who told me 23 that. I know we discussed it when we were 24 talking about the votes. 25 Q. Do you recall what penalty staff</p> <p style="text-align: right;">[Page 171]</p>	<p>1 communicated, to my knowledge, was any 2 presumption or assertion that we could impose 3 anything. 4 Q. There were really, in your mind, two 5 potential outcomes for this situation. One, the 6 standard enforcement process, and the other, 7 the -- what was became known as "The Package" or 8 Consent Decree? 9 A. Right. 10 Q. So you never authorized anybody to 11 communicate to Dr. Erickson that, in fact, there 12 was a third option of imposition of punishment? 13 A. I never approved that. Never 14 supported it. 15 Q. The fourth -- there's a sentence in 16 the fourth paragraph I would like to ask you 17 about. It's the first sentence, the last clause 18 in that sentence, a reference to "the current 19 enforcement process, which you did not create and 20 you are reforming at the direction of the 21 association members." 22 Is that a reference to the Working 23 Group -- and I am now asking you about the 24 "reforming at the direction of the association 25 members" clause.</p> <p style="text-align: right;">[Page 173]</p>

<p>1 Is that a reference to the Working 2 Group's attempts to reform the enforcement 3 process? 4 A. (Reading document.) That the 5 enforcement process was in the process of being 6 rewritten. 7 Q. As part of the Working Group that you 8 had been -- 9 A. The Working Group was going to report 10 in two weeks. 11 Q. There's a little more discussion 12 about the Working Group, I think, in the 13 following paragraph. I just want to make sure 14 that I am right about it. Specifically, the last 15 sentence references "much tougher penalties for 16 future cases." 17 Is that, or was it, a reference to 18 the work of the Working Group? 19 A. (Reading document.) It would have 20 been that the Working Group was considering 21 clearer and stronger penalties. But this case 22 would have played out under the existing rules. 23 Q. Not under the new enforcement rules 24 suggested by the Working Group? 25 A. No.</p> <p style="text-align: right;">[Page 174]</p>	<p>1 this e-mail came with an attachment that I am 2 going to show you in a minute, and that is a 3 draft of the Preliminary Report from your Working 4 Group. 5 So am I correct that when I read that 6 last sentence in that paragraph, and there's a 7 discussion about being serious about making 8 penalties more meaningful, that that is a 9 reference to making -- that is a reference to the 10 Working Group's efforts to make penalties more 11 meaningful in an enforcement regime? 12 MR. KOWALSKI: Object to form. 13 MR. SHEETZ: The end of that 14 sentence? I lost you. In an enforcement regime? 15 BY MR. Haverstick: 16 Q. In an enforcement regime, or revised 17 enforcement regime? 18 A. The Work Group -- and I don't 19 remember if we had a charge to that effect. But 20 the Work Group felt that we needed to make the 21 guidelines for penalties clearer, and stricter 22 for any given -- or at least potentially stricter 23 for any particular violation. 24 Q. Did "more meaningful" also mean 25 tougher?</p> <p style="text-align: right;">[Page 176]</p>
<p>1 Q. We can put that one aside. 2 Dr. Ray, I am going to show you an 3 e-mail that we are marking as Exhibit 21, and I 4 am going to stick with the Working Group topic 5 for a minute. 6 (EXHIBIT No. 21, E-Mail Chain, 7 re Agenda and Preliminary 8 Report, marked.) 9 MR. KOWALSKI: What are you marking 10 this? 11 MR. SHEETZ: 21. 12 THE WITNESS: (Reading document.) 13 BY MR. Haverstick: 14 Q. If you don't mind, flip over to the 15 second page of this document, and I am looking at 16 the last paragraph of an e-mail you wrote to 17 Julie Roe on Thursday December 29th. I am going 18 to read it: "In the description of the violation 19 levels and penalties, you might give a before and 20 after example for the Level 1 violation penalty 21 structure so that people get a sense, in the body 22 of narrative, that we are serious about making 23 the penalties more meaningful." 24 A. Uh-huh. 25 Q. Now, I will represent to you that</p> <p style="text-align: right;">[Page 175]</p>	<p>1 A. I really don't honestly know what the 2 end would have meant, beyond that we wanted them 3 stricter. 4 Q. I am now going to show you a document 5 that we marked as Exhibit 22. 6 (EXHIBIT No. 22, Preliminary 7 Report, January 2012, marked.) 8 BY MR. Haverstick: 9 Q. And this is the Draft Preliminary 10 Report that was attached to this e-mail. 11 A. Uh-huh. (Reading document.) 12 Q. Naturally, if you want to review the 13 whole thing, go ahead, but I have a very, very 14 narrow question for this document. 15 A. Ask the question. 16 Q. On page 2 of the draft, in the first 17 sentence there's -- I am sorry, in the first 18 paragraph, this sentence appears, "It was clear 19 the presidents were," quote, "mad as hell, and 20 not going to take it anymore," end quotes. 21 Do you recall what university 22 presidents were mad as hell about? 23 A. In the -- at the end of the retreat 24 in -- that would have been July '11, I think it 25 was July, or August. I don't remember, but the</p> <p style="text-align: right;">[Page 177]</p>

<p>1 retreat that the whole group had --</p> <p>2 MR. SHEETZ: In 2011?</p> <p>3 THE WITNESS: In 2011. Graham</p> <p>4 Spanier said, "We're damn mad, and we're not</p> <p>5 going to take it anymore." Graham Spanier.</p> <p>6 And what he meant by that was all</p> <p>7 these violations that seem to be going on, cases</p> <p>8 coming left and right, we need to have people</p> <p>9 have an appreciation that cases will be brought,</p> <p>10 findings will be made, and very clear</p> <p>11 consequences will follow, depending upon the</p> <p>12 behavior that people exhibit.</p> <p>13 (EXHIBIT No. 23, E-Mail Chain,</p> <p>14 July 2012, marked.)</p> <p>15 BY MR. Haverstick:</p> <p>16 Q. I am going to show you another e-mail</p> <p>17 that we're going to mark as 23.</p> <p>18 A. (Reading document.)</p> <p>19 Q. This is an e-mail exchange between</p> <p>20 you and John Hennessy of Stanford.</p> <p>21 A. Uh-huh.</p> <p>22 Q. There's a brief note from you in the</p> <p>23 middle of the document --</p> <p>24 A. Uh-huh.</p> <p>25 MR. SHEETZ: Ed, if you have a</p> <p style="text-align: right;">[Page 178]</p>	<p>1 BY MR. Haverstick:</p> <p>2 Q. Marked as Exhibit 24, a document that</p> <p>3 is, I will represent to you, the final version of</p> <p>4 the meeting minutes for the July 21, 2012.</p> <p>5 There's a previous exhibit that I think is, in</p> <p>6 substance, the same in terms of the text, but it</p> <p>7 was a draft. This is the -- this is the one</p> <p>8 that --</p> <p>9 THE WITNESS: Without the "Draft" on</p> <p>10 it?</p> <p>11 BY MR. Haverstick:</p> <p>12 Q. Correct.</p> <p>13 And I have a couple of questions</p> <p>14 about it. First of all, do you know why the</p> <p>15 meeting minutes don't record the vote taken on</p> <p>16 the suspension of play?</p> <p>17 A. (Reading document.) No.</p> <p>18 Q. Have you ever seen a version of the</p> <p>19 meeting minutes that did include that?</p> <p>20 A. I don't remember ever receiving</p> <p>21 anything. I don't remember receiving this.</p> <p>22 Q. At the -- well, it's the second</p> <p>23 bullet, really. The one we care about. The</p> <p>24 first paragraph of the second bullet, "He," and</p> <p>25 that's Dr. Emmert, "noted that should the</p> <p style="text-align: right;">[Page 180]</p>
<p>1 response to give, just say "yes" or "no," or</p> <p>2 whatever you want to say, but don't "uh-huh"</p> <p>3 because she can't take down "uh-huh."</p> <p>4 THE WITNESS: Sorry. Uh-huh.</p> <p>5 BY MR. Haverstick:</p> <p>6 Q. You write to Mr. Hennessy, "That</p> <p>7 should help to reset counters."</p> <p>8 What does that mean?</p> <p>9 A. It means that the report of the Work</p> <p>10 Group, the preceding sentence, is going to be</p> <p>11 acted upon, presumably to be sent to the whole</p> <p>12 association, on August 2nd, and that that should</p> <p>13 help reset the counters.</p> <p>14 The people will know exact</p> <p>15 guidelines, ranges by levels of infractions, four</p> <p>16 instead of three, and know what mitigation and</p> <p>17 aggravation are so that people have a very clear</p> <p>18 sense how violations translate into actions.</p> <p>19 Q. We're done with that. You can put</p> <p>20 that one away.</p> <p>21 We're marking as Exhibit 24, a</p> <p>22 document that is -- I will slide it to you first.</p> <p>23 (EXHIBIT No. 24, Meeting</p> <p>24 Minutes, 7-21-12, marked.)</p> <p>25 THE WITNESS: (Reading document.)</p> <p style="text-align: right;">[Page 179]</p>	<p>1 University not agree to this resolution" --</p> <p>2 A. Yeah, where is this? I am --</p> <p>3 MR. SHEETZ: Hang on a second. I'm</p> <p>4 not --</p> <p>5 First sentence of the second bullet</p> <p>6 says, "NCAA President Mark Emmert" --</p> <p>7 MR. Haverstick: I didn't say first</p> <p>8 sentence. The last sentence. The last sentence</p> <p>9 of the first bullet --</p> <p>10 The second-to-the-last sentence of</p> <p>11 the second bullet is the one we care about.</p> <p>12 MR. SHEETZ: Where it says, "He noted</p> <p>13 that" --</p> <p>14 BY MR. Haverstick:</p> <p>15 Q. Yeah, that's it.</p> <p>16 Now we're all there, so you can go</p> <p>17 ahead and read it.</p> <p>18 A. (Reading document.) Yeah.</p> <p>19 Q. The notation says that "The NCAA</p> <p>20 would be prepared to take action without</p> <p>21 consent."</p> <p>22 Is that a reference to the</p> <p>23 enforcement mechanism being used?</p> <p>24 A. Yes. Start an investigation.</p> <p>25 Q. And do you recall that being</p> <p style="text-align: right;">[Page 181]</p>

<p>1 addressed by Dr. Emmert on the July 21, 2012, 2 call? 3 A. I honestly don't remember if we 4 revisited what the two options were, since we had 5 a proposal for an agreement in front of us that 6 we approved. 7 Q. This vote shows a 12-nothing vote. 8 Do you recall whether Michigan State President 9 Lou Anna Simon recused herself from the vote? 10 A. I honestly don't know. I do not 11 remember anyone recusing themselves, but I could 12 be mistaken. 13 (EXHIBIT No. 25, E-Mail Chain, 14 7-23-12, marked.) 15 BY MR. Haverstick: 16 Q. Last one, I think. I'm going to show 17 you a document marked as Exhibit 25. 18 A. (Reading document.) 19 Q. This is more curiosity than anything. 20 You write to Dr. Emmert the day 21 after -- 22 A. Uh-huh. 23 MR. SHEETZ: It's the same day. 24 BY MR. Haverstick: 25 Q. You are right, I apologize. Same</p> <p style="text-align: right;">[Page 182]</p>	<p>1 MR. KOWALSKI: We don't have any 2 questions. Thank you. 3 (Proceedings concluded at 4 2:58 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">[Page 184]</p>
<p>1 day. 2 "You must have been on shakier ground 3 than I realized." 4 Was that a joke? 5 A. Yeah. That if you think, I helped, 6 you must have been -- that isn't where I was. 7 MR. Haverstick: Give me one minute. 8 (Discussion off the record.) 9 MR. Haverstick: Thanks to 10 Mr. Sollers' very thorough examination, I don't 11 have any more questions for you. And I 12 appreciate your time. 13 THE WITNESS: That has me worried. 14 MR. KOWALSKI: Let's take five 15 minutes so we have a second to sit and make sure 16 we're cool, and then -- I imagine we don't have 17 anything. 18 MR. Haverstick: Donna, do you have 19 any? 20 MS. DOBLICK: Penn State has no 21 questions for this witness. 22 VIDEOGRAPHER: The time is 2:51, and 23 we're off the record. 24 (Brief recess taken from 25 2:51 p.m. to 2:57 p.m.)</p> <p style="text-align: right;">[Page 183]</p>	<p>1 REPORTER'S CERTIFICATE 2 I, DEBORAH L. COOK, RPR, Certified 3 Shorthand Reporter, in and for the State of 4 Oregon do hereby certify that DR. EDWARD RAY 5 personally appeared before me at the time and 6 place mentioned in the caption herein; that the 7 witness was by me first duly sworn on oath and 8 examined upon oral interrogatories propounded by 9 counsel; that said examination, together with the 10 testimony of said witness, was taken down by me 11 in stenotype and transcribed through 12 computer-aided transcription; and that the 13 foregoing transcript, review being requested by 14 the witness or a party, constitutes a true record 15 of said examination of and testimony given by 16 said witness, and of all other oral proceedings 17 had during the taking of said deposition, and of 18 the whole thereof; review to be completed by 19 witness 30 days from receipt of transcript, or 20 will be deemed to have done so. 21 WITNESS my hand and seal at Dundee, 22 Oregon, this 9th day of December, 2014. 23 24 Deborah L. Cook, RPR 25 Certified Shorthand Reporter Oregon CSR #04-0389</p> <p style="text-align: right;">[Page 185]</p>

<p>1 I, the undersigned, declare that I have</p> <p>2 read the foregoing transcript, and I have made</p> <p>3 any corrections, additions, or deletions that I</p> <p>4 was desirous of making; that the foregoing is a</p> <p>5 true and correct transcript of my testimony</p> <p>6 contained therein.</p> <p>7</p> <p>8</p> <p>9 <u>DR. EDWARD RAY</u></p> <p>10</p> <p>11</p> <p>12 Subscribed and sworn to before me</p> <p>13 this _____ day of _____,</p> <p>14 20____, at _____,</p> <p>(City) (State)</p> <p>15</p> <p>16 <u>NOTARY PUBLIC</u></p> <p>17</p> <p>My commission expires on:</p> <p>18 _____</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">[Page 186]</p>																																																										
<p>1 IN THE COURT OF COMMON PLEAS OF</p> <p>2 CENTRE COUNTY PENNSYLVANIA</p> <p>~And~</p> <p>3 IN THE COMMONWEALTH COURT OF PENNSYLVANIA</p> <p>Re: PATERNO/CORMAN et al., vs. NCAA, et al.</p> <p>4 No. 2013-2082 and 1 MD 2013</p> <p>5 I, DR. EDWARD RAY, have read my deposition transcript,</p> <p>dated December 8, 2014, and make the following</p> <p>6 modifications:</p> <table border="0"> <tr> <td>7 Page</td> <td>Line</td> <td>Correction/Addition</td> </tr> <tr><td>8</td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td></tr> </table> <p><u>DR. EDWARD RAY</u></p> <p>This _____ day of _____, 2014.</p> <p style="text-align: right;">[Page 187]</p>	7 Page	Line	Correction/Addition	8			9			10			11			12			13			14			15			16			17			18			19			20			21			22			23			24			25			
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EXHIBIT F



November 17, 2011

Mark A. Emmert
President

101 West 122
Indianapolis, Indiana 46206
317/917-6211

President Rodney Erickson
Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

Dear President Erickson:

As we have discussed, on November 5, 2011, the NCAA first learned about allegations of sexual abuse of young boys occurring in the athletic facilities of Pennsylvania State University, perpetrated by a former assistant head football coach. Further, at the same time the NCAA learned that these alleged acts occurred over two decades and that individuals with present or former administrative or coaching responsibilities may have been aware of this behavior. The recount of these tragic events in the Grand Jury Report is deeply troubling, and if true, individuals who were in a position to monitor and act upon learning of potential abuses appear to have been acting starkly contrary to the values of higher education, as well as the NCAA. I am writing to notify you that the NCAA will examine Penn State's exercise of institutional control over its intercollegiate athletics program, as well as the actions, and inactions, of relevant responsible personnel. I also have notified the NCAA Division I Board of Directors of the NCAA approach. We recognize that there are ongoing federal and state investigations and the NCAA does not intend to interfere with those probes. Moreover, we respect that under our criminal justice system there is a defined process to ascertain the facts, as well as determine criminal guilt or innocence. We will utilize any information gained from the criminal justice process in our review and have posed additional questions below to gather information that we believe relevant to this review.

As you undoubtedly are aware, the NCAA Constitution contains principles regarding institutional control and responsibility, as well as ethical conduct. Specifically, under Article 2.1, "it is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program" Further, that "includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution." These principles of institutional control are further elaborated on in Articles 6.01.1 and 6.4 of the Constitution, and universities are often held accountable in our infractions process for failure to meet them. Under Article 2.4, the NCAA Constitution requires that "for intercollegiate athletics to promote the character development of participants, to

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enhance the integrity of higher education and to promote civility in society, student-athletes, coaches, and all others associated with these athletics programs and events should adhere to such fundamental values as respect, fairness, civility, honesty and responsibility. These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics program." These principles are bedrock to the foundation of intercollegiate athletics; and the membership of the Association has made clear through the enactment of relevant bylaws that they are expected to be respected and followed.

Indeed, NCAA Bylaw 10.1 identifies 10 types of unethical conduct, but specifically makes clear that the list of 10 *is not limited to* those delineated. Among other things, that list captures the general principle of honesty embedded in Bylaw 10.01.1, which requires individuals to "act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports." While admittedly, the actions alleged to have occurred in this instance are not specifically listed in the bylaw, it is clear that deceitful and dishonest behavior can be found to be unethical conduct. Surely, the spirit of this bylaw also constrains behavior that endangers young people. To be clear, the requirement is so important that the language is repeated verbatim in Bylaw 11.1.1, governing the conduct of athletics personnel. Bylaw 11.1.2.1 goes on to state that "it shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach." Under this same bylaw governing the conduct and employment of athletics personnel, it makes clear that "institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action . . . whether such violations occurred at the certifying institution or during the individual's previous employment . . ."

Lastly, it is important to bring to your attention that Bylaw 19.01.2 affirmatively states that "individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen." This provision has been cited by enforcement in at least a half dozen major infractions cases in the past. Those who exhibit this behavior are meeting the ethical expectations of the NCAA membership. Those who do not, fail us all.

With this as a backdrop and to prepare for potential inquiry, the university should provide relevant information and data in response to the following questions:

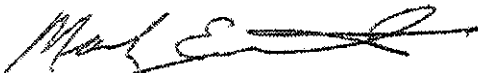
1. How has Penn State and/or its employees complied with the Articles of the Constitution and bylaws that are cited in this letter?

2. How has Penn State exercised institutional control over the issues identified in and related to the Grand Jury Report? Were there procedures in place that were or were not followed? What are the institution's expectations and policies to address the conduct that has been alleged in this matter upon discovery by any party?
3. Have each of the alleged persons to have been involved or have notice of the issues identified in and related to the Grand Jury Report behaved consistent with principles and requirements governing ethical conduct and honesty? If so, how? If not, how?
4. What policies and procedures does Penn State have in place to monitor, prevent and detect the issues identified in and related to the Grand Jury Report or to take disciplinary or corrective action if such behaviors are found?

The behaviors and failures described in the allegations set forth by the grand jury try not only the integrity of the university, but that of intercollegiate athletics as a whole and the NCAA member institutions that conduct college sports. It is critical that each campus and the NCAA as an Association re-examine how we constrain or encourage behaviors that lift up young people rather than making them victims. As you and I have discussed, it is essential that Penn State respond to the questions I have posed so that any failures in the management of athletics programs – both real and perceived – can be rectified. Unless you provide reason for a different timeline, your responses should be submitted by December 16 in order for the NCAA to determine next steps.

I look forward to the complete cooperation of Penn State in our review and any future action that we may take.

Sincerely,



Mark Emmert
President

ME:dby

cc: Division I Board of Directors
Selected NCAA Staff Members

EXHIBIT G

INTRODUCTION

We, the members of the Thirty-Third Statewide Investigating Grand Jury, having received and reviewed evidence regarding violations of the Crimes Code occurring in Centre County, Pennsylvania, and elsewhere pursuant to Notice of Submission of Investigation No. 1, do hereby make the following findings of fact and recommendation of charges.

FINDINGS OF FACT

The Grand Jury conducted an investigation into reported sexual assaults of minor male children by Gerald A. Sandusky ("Sandusky") over a period of years, both while Sandusky was a football coach for the Pennsylvania State University ("Penn State") football team and after he retired from coaching. Widely known as Jerry Sandusky, the subject of this investigation founded The Second Mile, a charity initially devoted to helping troubled young boys. It was within The Second Mile program that Sandusky found his victims.

Sandusky was employed by Penn State for 23 years as the defensive coordinator of its Division I collegiate football program. Sandusky played football for four years at Penn State and coached a total of 32 years. While coaching, Sandusky started "The Second Mile" in State College, Pennsylvania, in 1977. It began as a group foster home dedicated to helping troubled boys. It grew into a charity dedicated to helping children with absent or dysfunctional families. It is now a statewide, three region charity and Sandusky has been its primary fundraiser.¹ The Second Mile raises millions of dollars through fundraising appeals and special events. The mission of the program is to "help children who need additional support and would benefit from positive human interaction." Through The Second Mile, Sandusky had access to hundreds of boys, many of whom were vulnerable due to their social situations.

¹ Sandusky retired from The Second Mile in September 2010.

VICTIM 1

The Grand Jury conducted an investigation into the reported sexual assault of a minor child, Victim 1, by Sandusky, when Victim 1, a Second Mile participant, was a houseguest at Sandusky's residence in College Township, Centre County, Pennsylvania. During the course of the multi-year investigation, the Grand Jury heard evidence that Sandusky indecently fondled Victim 1 on a number of occasions, performed oral sex on Victim 1 on a number of occasions and had Victim 1 perform oral sex on him on at least one occasion.

Victim 1 testified that he was 11 or 12 years old when he met Sandusky through The Second Mile program in 2005 or 2006. As with the remaining victims, Victim 1 only came to Sandusky's attention during his second year in the program, when the boy attended The Second Mile's camp on the Penn State University Park campus. During the 2007 track season, Sandusky began spending time with Victim 1 weekly, having the boy stay overnight at his residence in State College, Pennsylvania. Sandusky took Victim 1 to professional and college sporting events, such as Philadelphia Eagles games, or pre-season practices at Penn State. When Victim 1 slept at the Sandusky residence, he would sleep in a finished bedroom in the basement. Occasionally, other boys would also stay overnight at Sandusky's home but usually it was only Victim 1. Sandusky also encouraged Victim 1 to participate in The Second Mile as a volunteer. Sandusky gave Victim 1 a number of gifts, including golf clubs, a computer, gym clothes, dress clothes and cash. Sandusky took the boy to restaurants, swimming at a hotel near Sandusky's home, and to church.

Victim 1 testified that Sandusky had a practice of coming into the basement room after he told Victim 1 that it was time to go to bed. Victim 1 testified that Sandusky would "crack his back." He described this as Sandusky getting onto the bed on which Victim 1 was already lying

and rolling under the boy. With Victim 1 lying on top of him, face to face, Sandusky would run his arms up and down the boy's back and "crack" it. The back-cracking became a ritual at bedtime. Victim 1 said that after Sandusky had cracked his back a number of times, he progressed to rubbing Victim 1's backside while they lay face-to-face on the bed. Victim 1 testified that this began to occur during the summer of 2005 or 2006, before he entered sixth or seventh grade. Sandusky then began to blow on Victim 1's bare stomach. Eventually, Sandusky began to kiss Victim 1 on the mouth. Victim 1 was uncomfortable with the contact and would sometimes try to hide in the basement to avoid Sandusky. Victim 1 testified that ultimately Sandusky performed oral sex on him more than 20 times through 2007 and early 2008. Sandusky also had Victim 1 perform oral sex on him one time and also touched Victim 1's penis with his hands during the 2007-2008 time period. Victim 1 did not want to engage in sexual conduct with Sandusky and knew it was wrong. Victim 1 stopped taking Sandusky's phone calls and had his mother tell Sandusky he was not home when Sandusky called. This termination of contact with Sandusky occurred in the spring of 2008, when Victim 1 was a freshman in high school.

Before Victim 1 ceased contact with Sandusky, Sandusky routinely had contact with him at a Clinton County high school where the administration would call Victim 1 out of activity period/study hall in the late afternoon to meet with Sandusky in a conference room. No one monitored these visits. Sandusky assisted the school with coaching varsity football and had unfettered access to the school.

Victim 1 testified about an incident that occurred one evening at the high school when he and Sandusky were alone in the weight room where there was a rock climbing wall. After Victim 1 fell off the wall a few times, Sandusky lay down on top of him, face to face, and was

rolling around the floor with the boy. No one was able to see Victim 1 and Sandusky because of the configuration of the room. Sandusky was lying under Victim 1 with his eyes closed. Suddenly a wrestling coach, Joe Miller, unexpectedly entered the room and Sandusky jumped up very quickly and explained that they had just been wrestling.

Joseph Miller testified that he was head wrestling coach for the elementary wrestling program for that school district. He knew Victim 1, who had wrestled for him. Miller corroborated that one evening in 2006 or 2007, he returned to the high school to retrieve something he had forgotten. He saw a light on in the weight room which should have been turned off and when he went in, he discovered Victim 1 and Sandusky, lying on their sides, in physical contact, face to face on a mat. He said both Victim 1 and Sandusky were surprised to see him enter the room. He recalls that Sandusky jumped up and said, "Hey Coach, we're just working on wrestling moves." Sandusky was not a wrestling coach. Miller found the use of that secluded room odd for wrestling because the bigger wrestling room right outside the weight room had more room to wrestle and more mats. He had seen Victim 1 with Sandusky frequently before the weight room incident. He saw them together after school and before athletic practice time.

Steven Turchetta testified that he was an assistant principal and the head football coach at the high school attended by Victim 1. He testified that Sandusky was a volunteer assistant football coach. Sandusky also worked with children in the Second Mile program in that school district. Turchetta described the Second Mile as a very large charitable organization that helped children who are from economically underprivileged backgrounds and who may be living in single parent households. Turchetta first met Sandusky in 2002 when Sandusky attempted to assist some Second Mile members who were on Turchetta's football team. Sandusky's

involvement grew from there. In the 2008 season, Sandusky was a full-time volunteer coach. Turchetta said it was not unusual for him, as assistant principal, to call a Second Mile student out of activity period at the end of the day, at Sandusky's request, to see Sandusky. He knew of several students who were left alone with Sandusky, including Victim 1. Turchetta characterized Sandusky as very controlling within the mentoring relationships he established with Second Mile students. Sandusky would often want a greater time commitment than the teenagers were willing to give and Sandusky would have "shouting matches" with various youths, in which Turchetta would sometimes be the mediator. Turchetta would also end up being Sandusky's point of contact for a youth whom he had been unable to reach by phone the previous evening. Turchetta testified that Sandusky would be "clingy" and even "needy" when a young man broke off the relationship he had established with him and called the behavior "suspicious." Turchetta became aware of Victim 1's allegations regarding sexual assault by Sandusky when the boy's mother called the school to report it. Sandusky was barred from the school district attended by Victim 1 from that day forward and the matter was reported to authorities as mandated by law.

Office of Attorney General Narcotics Agent Anthony Sassano testified concerning phone records that establish 61 phone calls from Sandusky's home phone to Victim 1's home phone between January 2008 and July 2009. In that same time, there were 57 calls from Sandusky's cell phone to Victim 1's home phone. There were four calls made from Victim 1's home phone to Sandusky's cell phone and one call from Victim 1's mother's cell phone to Sandusky's cell phone. There were no calls made to Sandusky's home phone by Victim 1 during that time period.

Another youth, F.A., age fifteen, testified that Sandusky had taken him and Victim 1 to a Philadelphia Eagles football game and that Sandusky had driven. He witnessed Sandusky place

his right hand on Victim 1's knee; Sandusky had also done this to F.A. on more than one occasion when they were in Sandusky's car. F.A. was uncomfortable when Sandusky did this and moved his leg to try to avoid the contact. Sandusky would keep his hand on F.A.'s knee even after F.A. tried to move it. F.A. also testified that Sandusky would reach over, while driving, and lift his shirt and tickle his bare stomach. F.A. did not like this contact. F.A. also witnessed Sandusky tickling Victim 1 in similar fashion. Sandusky invited F.A. to stay over at his house but F.A. only stayed one time when he knew Victim 1 was also staying over, after returning from the Philadelphia Eagles game. F.A. confirmed that Victim 1 slept in Sandusky's basement room when F.A. stayed there. F.A. testified that he stayed away from Sandusky because he felt he didn't want to be alone with him for a long period of time, based on the tickling, knee touching and other physical contact. Victim 1 confirmed that Sandusky would drive with his hand on Victim 1's leg.

VICTIM 2

On March 1, 2002, a Penn State graduate assistant ("graduate assistant") who was then 28 years old, entered the locker room at the Lasch Football Building on the University Park Campus on a Friday night before the beginning of Spring Break. The graduate assistant, who was familiar with Sandusky, was going to put some newly purchased sneakers in his locker and get some recruiting tapes to watch. It was about 9:30 p.m. As the graduate assistant entered the locker room doors, he was surprised to find the lights and showers on. He then heard rhythmic, slapping sounds. He believed the sounds to be those of sexual activity. As the graduate assistant put the sneakers in his locker, he looked into the shower. He saw a naked boy, Victim 2, whose age he estimated to be ten years old, with his hands up against the wall, being subjected to anal

intercourse by a naked Sandusky. The graduate assistant was shocked but noticed that both Victim 2 and Sandusky saw him. The graduate assistant left immediately, distraught.

The graduate assistant went to his office and called his father, reporting to him what he had seen. His father told the graduate assistant to leave the building and come to his home. The graduate assistant and his father decided that the graduate assistant had to promptly report what he had seen to Coach Joe Paterno ("Paterno"), head football coach of Penn State. The next morning, a Saturday, the graduate assistant telephoned Paterno and went to Paterno's home, where he reported what he had seen.

Joseph V. Paterno testified to receiving the graduate assistant's report at his home on a Saturday morning. Paterno testified that the graduate assistant was very upset. Paterno called Tim Curley ("Curley"), Penn State Athletic Director and Paterno's immediate superior, to his home the very next day, a Sunday, and reported to him that the graduate assistant had seen Jerry Sandusky in the Lasch Building showers fondling or doing something of a sexual nature to a young boy.

Approximately one and a half weeks later, the graduate assistant was called to a meeting with Penn State Athletic Director Curley and Senior Vice President for Finance and Business Gary Schultz ("Schultz"). The graduate assistant reported to Curley and Schultz that he had witnessed what he believed to be Sandusky having anal sex with a boy in the Lasch Building showers. Curley and Schultz assured the graduate assistant that they would look into it and determine what further action they would take. Paterno was not present for this meeting.

The graduate assistant heard back from Curley a couple of weeks later. He was told that Sandusky's keys to the locker room were taken away and that the incident had been reported to The Second Mile. The graduate assistant was never questioned by University Police and no other

entity conducted an investigation until he testified in Grand Jury in December, 2010. The Grand Jury finds the graduate assistant's testimony to be extremely credible.

Curley testified that the graduate assistant reported to them that "inappropriate conduct" or activity that made him "uncomfortable" occurred in the Lasch Building shower in March 2002. Curley specifically denied that the graduate assistant reported anal sex or anything of a sexual nature whatsoever and termed the conduct as merely "horsing around". When asked whether the graduate assistant had reported "sexual conduct" "of any kind" by Sandusky, Curley answered, "No" twice. When asked if the graduate assistant had reported "anal sex between Jerry Sandusky and this child," Curley testified, "Absolutely not."

Curley testified that he informed Dr. Jack Raykovitz, Executive Director of the Second Mile of the conduct reported to him and met with Sandusky to advise Sandusky that he was prohibited from bringing youth onto the Penn State campus from that point forward. Curley testified that he met again with the graduate assistant and advised him that Sandusky had been directed not to use Penn State's athletic facilities with young people and "the information" had been given to director of The Second Mile. Curley testified that he also advised Penn State University President Graham Spanier of the information he had received from the graduate assistant and the steps he had taken as a result. Curley was not specific about the language he used in reporting the 2002 incident to Spanier. Spanier testified to his approval of the approach taken by Curley. Curley did not report the incident to the University Police, the police agency for the University Park campus or any other police agency.

Schultz testified that he was called to a meeting with Joe Paterno and Tim Curley, in which Paterno reported "disturbing" and "inappropriate" conduct in the shower by Sandusky upon a young boy, as reported to him by a student or graduate student. Schultz was present in a

subsequent meeting with Curley when the graduate assistant reported the incident in the shower involving Sandusky and a boy. Schultz was very unsure about what he remembered the graduate assistant telling him and Curley about the shower incident. He testified that he had the impression that Sandusky might have inappropriately grabbed the young boy's genitals while wrestling and agreed that such was inappropriate sexual conduct between a man and a boy. While equivocating on the definition of "sexual" in the context of Sandusky wrestling with and grabbing the genitals of the boy, Schultz conceded that the report the graduate assistant made was of inappropriate sexual conduct by Sandusky. However, Schultz testified that the allegations were "not that serious" and that he and Curley "had no indication that a crime had occurred." Schultz agreed that sodomy between Sandusky and a child would clearly be inappropriate sexual conduct. He denied having such conduct reported to him either by Paterno or the graduate assistant.

Schultz testified that he and Curley agreed that Sandusky was to be told not to bring any Second Mile children into the football building and he believed that he and Curley asked "the child protection agency" to look into the matter. Schultz testified that he knew about an investigation of Sandusky that occurred in 1998, that the "child protection agency" had done, and he testified that he believed this same agency was investigating the 2002 report by the graduate assistant. Schultz acknowledged that there were similarities between the 1998 and 2002 allegations, both of which involved minor boys in the football showers with Sandusky behaving in a sexually inappropriate manner. Schultz testified that the 1998 incident was reviewed by the University Police and "the child protection agency" with the blessing of then-University counsel Wendell Courtney. Courtney was then and remains counsel for The Second Mile. Schultz confirmed that University President Graham Spanier was apprised in 2002 that a report of an

incident involving Sandusky and a child in the showers on campus had been reported by an employee. Schultz testified that Spanier approved the decision to ban Sandusky from bringing children into the football locker room and the decision to advise The Second Mile of the 2002 incident.

Although Schultz oversaw the University Police as part of his position, he never reported the 2002 incident to the University Police or other police agency, never sought or reviewed a police report on the 1998 incident and never attempted to learn the identity of the child in the shower in 2002. No one from the University did so. Schultz did not ask the graduate assistant for specifics. No one ever did. Schultz expressed surprise upon learning that the 1998 investigation by University Police produced a lengthy police report. Schultz said there was never any discussion between himself and Curley about turning the 2002 incident over to any police agency. Schultz retired in June 2009 but currently holds the same position as a senior vice president with Penn State, on an interim basis.

Graham Spanier testified about his extensive responsibilities as President of Penn State and his educational background in sociology and marriage and family counseling. He confirmed Curley and Schultz's respective positions of authority with the University. He testified that Curley and Schultz came to him in 2002 to report an incident with Jerry Sandusky that made a member of Curley's staff "uncomfortable." Spanier described it as "Jerry Sandusky in the football building locker area in the shower [] with a younger child and that they were horsing around in the shower." Spanier testified that even in April, 2011, he did not know the identity of the staff member who had reported the behavior. Spanier denied that it was reported to him as an incident that was sexual in nature and acknowledged that Curley and Schultz had not indicated any plan to report the matter to any law enforcement authority, the Commonwealth of

Pennsylvania Department of Public Welfare or any appropriate county child protective services agency. Spanier also denied being aware of a 1998 University Police investigation of Sandusky for incidents with children in football building showers.

Department of Public Welfare and Children and Youth Services local and state records were subpoenaed by the Grand Jury; University Police records were also subpoenaed. The records reveal that the 2002 incident was never reported to any officials, in contravention of Pennsylvania law.

Sandusky holds emeritus status with Penn State. In addition to the regular privileges of a professor emeritus, he had an office and a telephone in the Lasch Building. The status allowed him access to all recreational facilities, a parking pass for a vehicle, access to a Penn State account for the internet, listing in the faculty directory, faculty discounts at the bookstore and educational privileges for himself and eligible dependents. These and other privileges were negotiated when Sandusky retired in 1999. Sandusky continued to use University facilities as per his retirement agreement. As a retired coach, Sandusky had unlimited access to the football facilities, including the locker rooms. Schultz testified that Sandusky retired when Paterno felt it was time to make a coaching change and also to take advantage of an enhanced retirement benefit under Sandusky's state pension.

Both the graduate assistant and Curley testified that Sandusky himself was not banned from any Penn State buildings and Curley admitted that the ban on bringing children to the campus was unenforceable.

The Grand Jury finds that portions of the testimony of Tim Curley and Gary Schultz are not credible.

The Grand Jury concludes that the sexual assault of a minor male in 2002 should have been reported to the Pennsylvania Department of Public Welfare and/or a law enforcement agency such as the University Police or the Pennsylvania State Police. The University, by its senior staff, Gary Schultz, Senior Vice President for Finance and Business and Tim Curley, Athletic Director, was notified by two different Penn State employees of the alleged sexual exploitation of that youth. Pennsylvania's mandatory reporting statute for suspected child abuse is located at 23 Pa.C.S. §6311 (Child Protective Services Law) and provides that when a staff member reports abuse, pursuant to statute, the person in charge of the school or institution has the responsibility and legal obligation to report or cause such a report to be made by telephone and in writing within 48 hours to the Department of Public Welfare of the Commonwealth of Pennsylvania. An oral report should have been made to Centre County Children and Youth Services but none was made. Nor was there any attempt to investigate, to identify Victim 2 or to protect that child or any others from similar conduct, except as related to preventing its re-occurrence on University property. The failure to report is a violation of the law which was graded a summary offense in 2002, pursuant to 23 Pa.C.S. §6319.²

The Grand Jury finds that Tim Curley made a materially false statement under oath in an official proceeding on January 12, 2011, when he testified before the 30th Statewide Investigating Grand Jury, relating to the 2002 incident, that he was not told by the graduate assistant that Sandusky was engaged in sexual conduct or anal sex with a boy in the Lasch Building showers.

Furthermore, the Grand jury finds that Gary Schultz made a materially false statement under oath in an official proceeding on January 12, 2011, when he testified before the 30rd Statewide Investigating Grand Jury, relating to the 2002 incident that the allegations made by the

² The grading of the failure to report offense was upgraded from a summary offense to a misdemeanor of the third degree in 2006, effective May 29, 2007.

graduate assistant were "not that serious" and that he and Curley "had no indication that a crime had occurred."

VICTIM 3

Victim 3, now age 24, met Sandusky through The Second Mile in the summer of 2000, when he was between seventh and eighth grade. The boy met Sandusky during his second year in the program. Sandusky began to invite Victim 3 to go places with him. Victim 3 was invited to Sandusky's home for dinner, to hang out, walk the family dogs and to go to Penn State football games and to Holuba Hall and the gym. When Victim 3 went to the gym with Sandusky, they would exercise and then shower. He recalls feeling uncomfortable and choosing a shower at a distance from Sandusky. Sandusky then made him feel bad about showering at a distance from him, so Victim 3 moved closer. Sandusky initiated physical contact in the shower with Victim 3 by patting him, rubbing his shoulders, washing his hair and giving him bear hugs. These hugs would be both face to face and with Sandusky's chest to Victim 3's back. Victim 3 said that on at least one occasion, Sandusky had an erection when he bear hugged Victim 3 from behind. He also recalled that when he slept over at Sandusky's residence, he slept in the basement bedroom. He testified that Sandusky would come into the bedroom where he was lying down. He sometimes said he was going to give Victim 3 a shoulder rub; sometimes he would blow on Victim 3's stomach; other times he tickled Victim 3. Sandusky would rub the inside of Victim 3's thigh when he tickled him. On two occasions Victim 3 recalls that Sandusky touched Victim 3's genitals through the athletic shorts Victim 3 wore to bed. Victim 3 would roll over on his stomach to prevent Sandusky from touching his genitals.

Victim 3 knew Victim 4 to spend a great deal of time with Sandusky.

VICTIM 4

The investigation revealed the existence of Victim 4, a boy who was repeatedly subjected to Involuntary Deviate Sexual Intercourse and Indecent Assault at the hands of Sandusky. The assaults took place on the Penn State University Park campus, in the football buildings, at Toftrees Golf Resort and Conference Center ("Toftrees") in Centre County, where the football team and staff stayed prior to home football games and at bowl games to which he traveled with Sandusky. Victim 4, now age 27, was a Second Mile participant who was singled out by Sandusky at the age of 12 or 13, while he was in his second year with The Second Mile program in 1996 or 1997. He was invited to a Sandusky family picnic at which there were several other non-family members and Sandusky's adopted children. Victim 4 described that on that first outing, Sandusky had physical contact with him while swimming, which Victim 4 described as testing "how [Victim 4] would respond to even the smallest physical contact." Sandusky engaged Victim 4 in workouts or sports and then showered with him at the old East locker rooms across from Holuba Hall, the football practice building. Sandusky initiated physical contact with Victim 4 by starting a "soap battle"--throwing a handful of soap at the boy and from there, the fight turned into wrestling in the shower. Victim 4 remembers indecent contact occurring many times, both in the shower and in hotel rooms at Toftrees.

Victim 4 became a fixture in the Sandusky household, sleeping overnight and accompanying Sandusky to charity functions and Penn State football games. Victim 4 was listed, along with Sandusky's wife, as a member of Sandusky's family party for the 1998 Outback Bowl and the 1999 Alamo Bowl. He traveled to and from both bowl games with the football team and other Penn State staff, coaches and their families, sharing the same accommodations. Victim 4 would frequently stay overnight at Toftrees with Sandusky and the football team prior to home

games; Sandusky's wife was never present at Toftrees when Victim 4 stayed with Sandusky. This was where the first indecent assaults of Victim 4 occurred. Victim 4 would attend the pre-game banquet and sit with Sandusky at the coaches' table. Victim 4 also accompanied Sandusky to various charity golf outings and would share a hotel room with him on those occasions.

Victim 4 stated that Sandusky would wrestle with him and maneuver him into a position in which Sandusky's head was at Victim 4's genitals and Victim 4's head was at Sandusky's genitals. Sandusky would kiss Victim 4's inner thighs and genitals. Victim 4 described Sandusky rubbing his genitals on Victim 4's face and inserting his erect penis in Victim 4's mouth. There were occasions when this would result in Sandusky ejaculating. He testified that Sandusky also attempted to penetrate Victim 4's anus with both a finger and his penis. There was slight penetration and Victim 4 resisted these attempts. Sandusky never asked to do these things but would simply see what Victim 4 would permit him to do. Sandusky did threaten to send him home from the Alamo Bowl in Texas when Victim 4 resisted his advances. Usually the persuasion Sandusky employed was accompanied by gifts and opportunities to attend sporting and charity events. He gave Victim 4 dozens of gifts, some purchased and some obtained from various sporting goods vendors such as Nike and Airwalk. Victim 4 received clothes, a snowboard, Nike shoes, golf clubs, ice hockey equipment and lessons, passes for various sporting events, football jerseys, and registration for soccer camp. Sandusky even guaranteed Victim 4 he could be a walk-on player at Penn State. Victim 4 was in a video made about linebackers that featured Sandusky, and he appeared with him in a photo accompanying an article about Sandusky in Sports Illustrated.

The Penn State football program relocated to the Lasch Football Building in 1999 and that facility had a sauna. Victim 4 reported that after the move, most of the sexual conduct that did not occur in a hotel room occurred in the sauna, as the area is more secluded.

Victim 4 remembers Sandusky being emotionally upset after having a meeting with Joe Paterno in which Paterno told Sandusky he would not be the next head coach at Penn State and which preceded Sandusky's retirement. Sandusky told Victim 4 not to tell anyone about the meeting. That meeting occurred in May, 1999.

Eventually, Victim 4 began to intentionally distance himself from Sandusky, not taking his phone calls and at times even hiding in closets when Sandusky showed up at Victim 4's home. Victim 4 had a girlfriend, of whom Sandusky did not approve. Sandusky tried to use guilt and bribery to regain time with Victim 4. Victim 4 had begun to smoke cigarettes and had Sandusky buy them for him. Victim 4 also said that Sandusky once gave him \$50 to buy marijuana at a location known to Victim 4. Sandusky drove there at Victim 4's direction and Victim 4 smoked the marijuana in Sandusky's car on the ride home. This was when Victim 4 was trying to distance himself from Sandusky because he wanted no more sexual contact with him.

VICTIM 5

Victim 5, now age 22, met Sandusky through The Second Mile in 1995 or 1996, when he was a 7 or 8 year old boy, in second or third grade. Sometime after their initial meeting at a Second Mile camp at Penn State, Sandusky called to invite the boy to a Penn State football game. Victim 5 was thrilled to attend. Sandusky picked him up at home and then Sandusky drove to pick up Victim 6. There were a couple of other kids in the car. The boys were left at Holuba Hall by Sandusky. They attended the Sandusky family tailgate and the football game. This

became a pattern for Victim 5, who attended perhaps as many as 15 football games as Sandusky's guest. Victim 5 also traveled with Sandusky to watch other college football games. Victim 5 remembers that Sandusky would often put his hand on Victim 5's left leg when they were driving in Sandusky's car, any time Victim 5 was in the front seat.

Victim 5 was taken to the Penn State football locker rooms one time by Sandusky. Sandusky put his hand on Victim 5's leg during the ride to the locker room. To the best of his recollection, this occurred when he was 8 to 10 years old, sometime during 1996-1998. The locker room was the East Area Locker rooms, next to Holuba Hall. No one was present in the locker rooms. Victim 5 was sweaty from a brief period of exercise and then Sandusky took him in the sauna and "pushed" Victim 5 "around a little bit". Looking back on it as an adult, Victim 5 says it was inappropriate. Sandusky would press his chest and body up against Victim 5's back and then push him away. All the contact was initiated by Sandusky. Then Sandusky said they needed to shower. Victim 5 was uncomfortable because he had never been naked in front of anyone who wasn't a family member. So he turned his back to Sandusky and chose a shower that was a distance away from where Sandusky was showering. Victim 5 looked back over his shoulder and saw that Sandusky was looking at him and that Sandusky had an erection. Victim 5 did not understand the significance of this at the time but still averted his gaze because he was uncomfortable. The next thing he knew, Sandusky's body touched Victim 5 from behind and Sandusky was rubbing Victim 5's arms and shoulders. Victim 5 crept forward and so did Sandusky. Victim 5 then took another step, this time to the right, and Sandusky pinned Victim 5 up against a wall in the corner. Sandusky then took Victim 5's hand and placed it on his erect penis. Victim 5 was extremely uncomfortable and pulled his hand away and slid by Sandusky.

Victim 5 walked out of the shower and dried himself off and got dressed. Sandusky never touched him again. Victim 5 thinks that he did not get invited to any football games after that.

VICTIM 6

Victim 6, who is now 24 years old, was acquainted with Victim 5 and another young boy in The Second Mile program, B.K.; their interaction with Sandusky overlapped. Victim 6 was referred to the Second Mile program by a school counselor. He met Sandusky at a Second mile picnic at Spring Creek Park when he was seven or eight years old, in 1994 or 1995. After Sandusky interacted with Victim 6 after a skit at the picnic, Sandusky telephoned to invite Victim 6 to tailgate and attend a football game with some other boys. He was picked up by Sandusky. Victim 5, B.K., and other boys were present. They went to Holuba Hall, a football practice building on the Penn State campus, and were left there by Sandusky. They threw footballs around until it was time for them to walk to the tailgate hosted by Sandusky's family and then attended the football game. Victim 6 recalls this pattern repeating many times.

Victim 6 recalls being taken into the locker room next to Holuba Hall at Penn State by Sandusky when he was 11 years old, in 1998. Sandusky picked him up at his home, telling him he was going to be working out. As they were driving to the University, Sandusky put his right hand upon Victim 6's left thigh several times. When they arrived, Sandusky showed Victim 6 the locker rooms and gave him shorts to put on, even though he was already dressed in shorts. They then lifted weights for about 15 or 20 minutes. They played "Polish bowling" or "Polish soccer", a game Sandusky had invented, using a ball made out of tape and rolling it into cups. Then Sandusky began wrestling with Victim 6, who was much smaller than Sandusky. Then Sandusky said they needed to shower, even though Victim 6 was not sweaty. Victim 6 felt awkward and tried to go to a shower some distance away from Sandusky but Sandusky called him over, saying

he had already warmed up a shower for the boy. While in the shower, Sandusky approached the boy, grabbed him around the waist and said, "I'm going to squeeze your guts out." Sandusky lathered up the boy, soaping his back because, he said, the boy would not be able to reach it. Sandusky bear-hugged the boy from behind, holding the boy's back against his chest. Then he picked him up and put him under the showerhead to rinse soap out of his hair. Victim 6 testified that the entire shower episode felt very awkward. No one else was around when this occurred. Looking back on it as an adult, Victim 6 says Sandusky's behavior towards him as an 11 year old boy was very inappropriate.

When Victim 6 was dropped off at home, his hair was wet and his mother immediately questioned him about this and was upset to learn the boy had showered with Sandusky. She reported the incident to University Police who investigated. After a lengthy investigation by University Police Detective Ronald Shreffler, the investigation was closed after then-Centre County District Attorney Ray Gricar decided there would be no criminal charges. Shreffler testified that he was told to close the investigation by the director of the campus police, Thomas Harmon. That investigation included a second child, B.K., also 11, who was subjected to nearly identical treatment in the shower as Victim 6, according to Detective Schreffler.

Detective Schreffler testified that he and State College Police Department Detective Ralph Ralston, with the consent of the mother of Victim 6, eavesdropped on two conversations the mother of Victim 6 had with Sandusky on May 13, 1998, and May 19, 1998. The mother of Victim 6 confronted Sandusky about showering with her son, the effect it had on her son, whether Sandusky had sexual feelings when he hugged her naked son in the shower and where Victim 6's buttocks were when Sandusky hugged him. Sandusky said he had showered with other boys and Victim 6's mother tried to make Sandusky promise never to shower with a boy

again but he would not. She asked him if his "private parts" touched Victim 6 when he bear-hugged him. Sandusky replied, "I don't think so....maybe." At the conclusion of the second conversation, after Sandusky was told he could not see Victim 6 anymore, Sandusky said, "I understand. I was wrong. I wish I could get forgiveness. I know I won't get it from you. I wish I were dead." Detective Ralston and the mother of Victim 6 confirm these conversations.

Jerry Lauro, an investigator with the Pennsylvania Department of Public Welfare, testified that during the 1998 investigation, Sandusky was interviewed on June 1, 1998, by Lauro and Detective Schreffler. Sandusky admitted showering naked with Victim 6, admitted to hugging Victim 6 while in the shower and admitted that it was wrong. Detective Schreffler advised Sandusky not to shower with any child again and Sandusky said that he would not.

The Grand Jury was unable to subpoena B.K. because he is in the military and is stationed outside the United States.

VICTIM 7

Victim 7, now 26 years old, met Sandusky through the Second Mile program, to which he was referred by a school counselor at about the age of 10, in 1994. When Victim 7 had been in the program for a couple of years, Sandusky contacted Victim 7's mother and invited Victim 7 to a Penn State football game. He would also attend Sandusky's son's State College High School football games with Sandusky. Victim 7 enjoyed going on the field at Penn State games, interacting with players and eating in the dining hall with the athletes. Victim 7 would stay overnight at Sandusky's home on Friday nights before the home games and then go to the games with him. Sometimes they would go out for breakfast and would attend coaches meetings. Victim 6 was also a part of this group of boys. He knew B.K. and several other boys that were in Sandusky's circle.

Victim 7 testified that Sandusky made him uncomfortable when he was a young boy. He described Sandusky putting his hand on Victim 7's left thigh when they were driving in the car or when they would pull into his garage. Victim 7 eventually reacted to this by sitting as far away from Sandusky as he could in the front seat.

He also described more than one occasion on which Sandusky put his hands down the waistband of Victim 7's pants. Sandusky never touched any private parts of Victim 7. Victim 7 would always slide away because he was very uncomfortable with Sandusky's behavior. Victim 7 described Sandusky cuddling him when he stayed at his home, lying behind him with his arm around the boy. Sandusky also bear-hugged Victim 7 and cracked his back. He also took Victim 7 to Holuba Hall to work out and then to the East Area Locker rooms to shower. Victim 7 was very uncomfortable with this shared showering. Sandusky would tell Victim 7 to shower next to him even though there were multiple other showerheads in the locker room. Victim 7 testified that he has a "blurry memory" of some contact with Sandusky in the shower but is unable to recall it clearly. Victim 7 had not had contact with Sandusky for nearly two years but was contacted by Sandusky and separately by Sandusky's wife and another Sandusky friend in the weeks prior to Victim 7's appearance before the Grand Jury. The callers left messages saying the matter was very important. Victim 7 did not return these phone calls.

VICTIM 8

In the fall of 2000, a janitor named James "Jim" Calhoun ("Jim") observed Sandusky in the showers of the Lasch Building with a young boy pinned up against the wall, performing oral sex on the boy. He immediately made known to other janitorial staff what he had just witnessed.

Fellow Office of Physical Plant employee Ronald Petrosky was also working that evening and recalls that it was football season of 2000 and it was a Thursday or Friday evening,

because the football team was away for its game. Petrosky, whose job it was to clean the showers, first heard water running in the assistant coaches' shower room. He then saw that two people were in the assistant coaches' shower room. He could only see two pairs of feet; the upper bodies were blocked. Petrosky waited for the two persons to exit the shower so he could clean it. He later saw Jerry Sandusky exit the locker room with a boy, who he described as being between the ages of 11 and 13. They were carrying gym bags and their hair was wet. Petrosky said good evening and was acknowledged by Sandusky and the boy. He noted that the hallway in the Lasch building at that point is long and that Sandusky took the boy's hand and the two of them walked out hand in hand. Petrosky began to clean the shower that Sandusky and the boy had vacated. As he worked, Jim approached him. Petrosky described Jim as being upset and crying. Jim reported that he had seen Sandusky, whose name was not known to him, holding the boy up against the wall and licking on him. Jim said he had "fought in the [Korean] war....seen people with their guts blowed out, arms dismembered...I just witnessed something in there I'll never forget." And he described Sandusky performing oral sex on the boy. Petrosky testified that Jim was shaking and he and his fellow employees feared Jim might have a heart attack. Petrosky testified that all the employees working that night except Witherite were relatively new employees. In discussions held later that shift, the employees expressed concern that if they reported what Jim had seen, they might lose their jobs. Jim's fellow employees had him tell Jay Witherite what he had seen.

Jay Witherite was Jim's immediate supervisor. Witherite testified that Jim was "very emotionally upset", "very distraught", to the point that Witherite "was afraid the man was going to have a heart attack or something the way he was acting." Jim reported to Witherite that he had observed Sandusky performing oral sex on the boy in the showers. Witherite tried to calm Jim,

who was cursing and remained upset throughout the shift. Witherite told him to whom he should report the incident, if he chose to report it.

Witherite testified that later that same evening, Jim found him and told him that the man he had seen in the shower with the young boy was sitting in the Lasch building parking lot, in a car. Witherite confirmed visually that it was Sandusky who was sitting in his car in the parking lot. Witherite says that this was between 10:00 p.m. and 12:30 a.m. Petrosky also saw Sandusky drive very slowly through the parking lot about 2 to 3 hours after the incident was reported to him by Jim, at approximately 11:30 p.m. to 12:00 a.m. Petrosky recognized Sandusky in his vehicle. Petrosky testified that Sandusky drove by another time, about two hours later, again driving by very slowly but not stopping. The second drive-by was between 2:00 and 3:00 a.m. Petrosky testified that Sandusky did not enter the building either time. The area is well lit and the coaches' cars were known to Petrosky.

Jim was a temporary employee at the Lasch Building, working there for approximately 8 months. No report was ever made by Jim Calhoun. Jim presently suffers from dementia, resides in a nursing home and is incompetent to testify. Victim 8's identity is unknown.

EXHIBIT H

**BINDING CONSENT DECREE IMPOSED BY THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION AND ACCEPTED BY THE PENNSYLVANIA
STATE UNIVERSITY**

I. BASIS FOR CONSENT DECREE

On November 5, 2011, the National Collegiate Athletic Association (“NCAA” or the “Association”) learned of allegations of child sexual abuse occurring in the athletic facilities of The Pennsylvania State University (“University” or “Penn State”), perpetrated by former assistant football coach Gerald A. Sandusky (“Sandusky”). The University commissioned Freeh Sporkin & Sullivan, LLP (“FSS”), led by former FBI Director Louis Freeh, to investigate the alleged failure of University personnel to respond to and report Sandusky’s misconduct, and “[t]he circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.”¹ On June 22, 2012, a Criminal Jury convicted Sandusky on 45 criminal counts related to 10 victims, including a 2001 incident that occurred in the University athletic showers and was witnessed by a then-graduate assistant. On July 12, 2012, FSS released its investigative report (the “Freeh Report”). The Freeh Report’s findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky’s serial child sexual abuse.

The NCAA recognizes that the circumstances involved in the Penn State matter are, in many respects, unlike any matter encountered by the NCAA in the past; it is doubtful, hopefully, that a similar circumstance would arise on any other campus in the future. In particular, the egregiousness of the predicate conduct is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct. The University has undertaken a commendable process by commissioning the independent FSS investigation. FSS has established an exhaustive factual record compiled from, *inter alia*, more than 430 interviews and analysis of more than 3.5 million pieces of electronic data and documents.²

In light of this record and the University’s willingness, for purposes of this resolution, to accept the Freeh Report, which the University itself commissioned, traditional investigative and administrative proceedings would be duplicative and unnecessary. Rather, the existing record permits fashioning an appropriate remedy for the violations on an expedited timetable, which benefits current and future University students, faculty and staff.

¹ Freeh Sporkin & Sullivan, LLP, Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, July 12, 2012, page 8, *available at* http://www.thefreehreportonpsu.com/REPORT_FINAL_071212.pdf.

² *Id.* at 9.

II. FINDINGS AND CONCLUSIONS

In a November 17, 2011 letter from NCAA President Mark Emmert to University President Rodney Erickson, Dr. Emmert noted that the membership of the Association has made clear in its Constitution and Bylaws what is expected of member institutions, administrators and coaches. Penn State was asked to describe how the University and relevant personnel have met their obligations to the Association. Penn State has communicated to the NCAA that it accepts the findings of the Freeh Report for purposes of this resolution and acknowledges that those facts constitute violations of the Constitutional and Bylaw principles described in the letter. Penn State expressly agrees not to challenge the consent decree and waives any claim to further process, including, without limitation, any right to a determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rules, and any judicial process related to the subject matter of this Consent Decree.

Therefore, without further investigation or response, the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.

1. A failure to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.
2. A failure to maintain minimal standards of appropriate and responsible conduct. The NCAA seeks to foster an environment and culture of honesty, as exemplified by NCAA Bylaws 10.01.1 and 11.1.1, and by Bylaw 10.1 on ethical conduct. Indeed, NCAA Bylaw 10.1 enumerates a non-exhaustive list of examples of inappropriate conduct. In addition, Article 2.4 of the NCAA Constitution requires athletic programs to adhere to fundamental values of respect, fairness, civility, honesty and responsibility.
3. A lack of adherence to fundamental notions of individual integrity. An institution's head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order "for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society."

The entirety of the factual findings in the Freeh Report supports these conclusions. A detailed recitation of the Freeh Report is not necessary, but these conclusions rely on the following key factual findings with respect to the University's oversight of its football program:

- [University] President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky's activities from the Board of Trustees, the University community and authorities. . . .
- These individuals, unchecked by the Board of Trustees that did not perform its oversight duties, empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims. Some coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him.
- By not promptly and fully advising the Board of Trustees about the 1998 and 2001 child sexual abuse allegations against Sandusky and the subsequent Grand Jury investigation of him, Spanier failed in his duties as President. The Board also failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable.³

FSS recognized that Spanier, Schultz, Paterno and Curley provided various explanations for their deficient conduct, but FSS found that it was

- more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University – Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large.⁴

Although FSS concluded that avoiding the consequences of bad publicity was the most significant cause for the University's failure to protect child victims and report to authorities, FSS further concluded it was not the only cause. FSS also noted, among other causes, that

³ *Id.* at 14-15.

⁴ *Id.* at 15-16.

- the President “discouraged discussion and dissent”;
- Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults”;
- the football program “did not fully participate in, or opted out, of some University programs, including Clery Act compliance. . .”; and
- the University maintained a “culture of reverence for the football program that is ingrained at all levels of the campus community.”⁵

III. SANCTIONS

The NCAA concludes that this evidence presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency. The sexual abuse of children on a university campus by a former university official – and even the active concealment of that abuse – while despicable, ordinarily would not be actionable by the NCAA. Yet, in this instance, it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims. Indeed, the reverence for Penn State football permeated every level of the University community. That imbalance of power and its result are antithetical to the model of intercollegiate athletics embedded in higher education. Indeed, the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold and calls for extraordinary action.

As a result, the NCAA has determined that the University’s sanctions be designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics. Moreover, the NCAA recognizes that in this instance no student-athlete is responsible for these events and, therefore, the NCAA has fashioned its sanctions in consideration of the potential impact on all student-athletes. To wit, after serious consideration and significant discussion, the NCAA has determined not to impose the so-called “death penalty.” While these circumstances certainly are severe, the suspension of competition is most warranted when the institution is a repeat violator and has failed to cooperate or take corrective action. The University has never before had NCAA major violations, accepted these penalties and corrective actions, has removed all of the individual offenders identified by FSS from their past senior leadership roles, has itself commissioned the FSS investigation and provided unprecedented access and openness, in some instances, even agreed to waive attorney-client privilege, and already has implemented many corrective actions. Acknowledging these and other factors, the NCAA does not deem the so-called “death penalty” to be appropriate.

⁵ *Id.* at 16-17.

In light of the foregoing, the NCAA imposes the following sanctions on the University:

A. Punitive Component

- **\$60 million fine.** The NCAA imposes a \$60 million fine, equivalent to the approximate average of one year's gross revenue from the Penn State football program, to be paid over a five-year period beginning in 2012 into an endowment for programs preventing child sexual abuse and/or assisting the victims of child sexual abuse. The minimum annual payment will be \$12 million until the \$60 million is paid. The proceeds of this fine may not be used to fund programs at the University. No current sponsored athletic team may be reduced or eliminated in order to fund this fine.
- **Four-year postseason ban.** The NCAA imposes a four-year ban on participation in postseason play in the sport of football, beginning with the 2012-2013 academic year and expiring at the conclusion of the 2015-2016 academic year. Therefore, the University's football team shall end its 2012 season and each season through 2015 with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a conference championship, any bowl game, or any post-season playoff competition.
- **Four-year reduction of grants-in-aid.** For a period of four years commencing with the 2013-2014 academic year and expiring at the conclusion of the 2016-2017 academic year, the NCAA imposes a limit of 15 initial grants-in-aid (from a maximum of twenty-five allowed) and for a period of four years commencing with the 2014-2015 academic year and expiring at the conclusion of the 2017-2018 academic year a limit of 65 total grants-in-aid (from a maximum of 85 allowed) for football during each of those specified years. In the event the number of total grants-in-aid drops below 65, the University may award grants-in-aid to non-scholarship student-athletes who have been members of the football program as allowed under Bylaw 15.5.6.3.6.
- **Five years of probation.** The NCAA imposes this period of probation, which will include the appointment of an on-campus, independent Integrity Monitor and periodic reporting as detailed in the Corrective Component of this Consent Decree. Failure to comply with the Consent Decree during this probationary period may result in additional, more severe sanctions.
- **Vacation of wins since 1998.** The NCAA vacates all wins of the Penn State football team from 1998 to 2011. The career record of Coach "Joe" Paterno will reflect the vacated records.

- **Waiver of transfer rules and grant-in-aid retention.** Any entering or returning football student-athlete will be allowed to immediately transfer and will be eligible to immediately compete at the transfer institution, provided he is otherwise eligible. Any football student-athlete who wants to remain at the University may retain his athletic grant-in-aid, as long as he meets and maintains applicable academic requirements, regardless of whether he competes on the football team.
- **Individual penalties to be determined.** The NCAA reserves the right to initiate a formal investigatory and disciplinary process and impose sanctions on individuals after the conclusion of any criminal proceedings related to any individual involved.

B. Corrective Component

- **Adoption of all recommendations presented in Chapter 10 of the Freeh Report.** The NCAA requires the University to adopt all recommendations for reform delineated in Chapter 10 of the Freeh Report. The University shall take all reasonable steps to implement the recommendations in spirit and substance by December 31, 2013.
- **Implementation of Athletics Integrity Agreement.** The Freeh Report includes a number of recommendations related to the University's Athletic Department. Specifically, in Chapter 10, Section 5.0, the Report addresses the integration of the Athletic Department into the greater University community. Within 10 days of this Consent Decree, the University will be required to enter into an "Athletics Integrity Agreement" ("AIA") with the NCAA and the Big Ten Conference, which obligates the University to adopt all of the recommendations in Section 5.0 of the Freeh Report as described in the above paragraph and, at a minimum, the following additional actions:
 - **Compliance Officer for Athletics.** Establish and select an individual for a position of a compliance officer or equivalent who is, at a minimum, responsible for the ethical and compliance obligations of the Athletic Department.
 - **Compliance Council.** Create a Compliance Council (or Council Subcommittee) composed of faculty, senior University administrators, and the compliance officer for athletics, which shall be responsible for review and oversight of matters related to ethical, legal and compliance obligations of the Athletic Department.

- Disclosure Program. Create a reporting mechanism, including a hotline, for named or anonymous individuals to disclose, report, or request advice on any identified issues or questions regarding compliance with (i) the AIA; (ii) the Athletic Department's policies, conduct, practices, or procedures, or (iii) the NCAA Constitution, Bylaws, or the principals regarding institutional control, responsibility, ethical conduct, and integrity reflected in the Constitution and Bylaws.
- Internal Accountability and Certifications. Appoint a named coach, manager, or administrator for each of the University's NCAA-sanctioned intercollegiate athletic teams who shall be assigned to monitor and oversee activities within his or her team and shall annually certify to the Compliance Council that his or her team is compliant with all relevant ethical, legal, compliance and University standards and obligations.
- External Compliance Review/Certification Process. The Athletic Director shall annually certify to the Compliance Council, the Board of Trustees, and the NCAA that the Athletic Department is in compliance with all ethical, compliance, legal and University obligations. If the Department fails to earn a certification, the Board of Trustees (or subcommittee thereof) or an appropriate University administrator shall take appropriate action against the Athletic Department, including the possibility of reduction in athletic funding.
- Athletics Code of Conduct. Create or update any code of conduct of the Athletic Department to codify the values of honesty, integrity and civility.
- Training and Education. In addition to Chapter 10, Section 5.5 of the Freeh Report, require all student-athletes and University employees associated with the Athletic Department, including faculty and staff to complete a yearly training course that addresses issues of ethics, integrity, civility, standards of conduct and reporting of violations. Each person who is required to complete training shall certify, in writing, that he or she has received such training. All training shall be overseen by the Compliance Council. The Board of Trustees also should receive training and education on these issues, including its relationship, role and responsibilities regarding the athletics program.
- If the NCAA determines, in its sole discretion, that the University materially breached any provision of the AIA, such action shall be considered grounds for extending the term of the AIA or imposing additional sanctions, up to and including, a temporary ban on participation in certain intercollegiate athletic competition and additional fines. The NCAA shall be permitted to accept as true and take into consideration all factual findings of the Freeh Report in imposing additional sanctions related to breach of the AIA and may initiate further NCAA investigative and administrative proceedings. The NCAA will provide the University notice of the allegation of a material breach and an opportunity to


respond, but the final determination rests with the NCAA.

- **Appointment of an independent Athletics Integrity Monitor for a five-year period.** The NCAA requires that the University appoint an independent Athletics Integrity Monitor (the “Monitor”) for a five-year period, at the University’s expense. The Monitor will prepare a quarterly report to the University’s Board of Trustees, the Big Ten Conference, and the NCAA regarding the University’s execution and maintenance of the provisions of the AIA. The Monitor will make recommendations to the University to take any steps he or she reasonably believes are necessary to comply with the terms of the AIA and to enhance compliance with NCAA rules and regulations. The Monitor will operate under the following conditions:
 - He or she will be selected by the NCAA, in consultation with the University and the Big Ten Conference.
 - He or she will have access to any University facilities, personnel and non-privileged documents and records as are reasonably necessary to assist in the execution of his or her duties. The University shall preserve all such records as directed by the Monitor.
 - He or she will have the authority to employ legal counsel, consultants, investigators, experts and other personnel reasonably necessary to assist in the proper discharge of his or her duties. His or her expenses will be paid by the University, and the University shall indemnify and hold harmless the Monitor and his or her professional advisors from any claim by any third party except for conduct: a) outside the scope of the Monitor’s duties; b) undertaken in bad faith; or c) constituting gross negligence or willful misconduct.

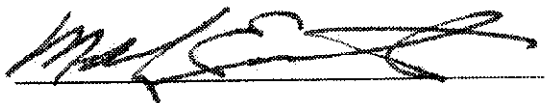
This Consent Decree may be modified or clarified by mutual written consent of the parties.

By signature of its President below, the University represents (i) that it has taken all actions necessary, to execute and perform this Consent Decree and the AIA and will take all actions necessary to perform all actions specified under this Consent Decree and the AIA in accordance with the terms hereof and thereof; (ii) its entry into this Consent Decree and the AIA is consistent with, and allowed by, the laws of Pennsylvania and any other applicable law.

IN WITNESS WHEREOF, this Consent Decree has been signed by or on behalf of each of the parties as of July 23, 2012.



Rodney A. Erickson, President
The Pennsylvania State University



Mark A. Emmert, President
National Collegiate Athletic Association

EXHIBIT I

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JAKE CORMAN, in his official)	
capacity as Senator from the)	
34th Senatorial District of)	
Pennsylvania and Chair of the)	
Senate Committee on)	
Appropriations; and ROBERT M.)	
McCord, in his official)	
capacity as Treasurer of the)	Case No.
Commonwealth of Pennsylvania,)	1 M.D. 2013
)	
Plaintiffs,)	
)	
vs.)	
)	
NATIONAL COLLEGIATE ATHLETIC)	
ASSOCIATION,)	
)	
Defendant,)	
)	
vs.)	
)	
PENNSYLVANIA STATE UNIVERSITY,)	
)	
Defendant.)	

VIDEOTAPED DEPOSITION OF DR. MARK EMMERT
Indianapolis, Indiana
Tuesday, December 2, 2014

Reported by:
DEBORAH HABIAN, CSR, RMR, CLR, CRR
JOB NO. 87828

<div>Page 2</div> <div> 1 2 3 4 December 12, 2014 5 10:11 a.m. EST 6 7 Deposition of DR. MARK EMMERT, at the offices 8 of Barnes & Thornburg, 11 South Meridian 9 Street, Indianapolis, Indiana, pursuant to notice 10 before Deborah Habian, Illinois Certified 11 Shorthand Reporter, Registered Merit Reporter, 12 Certified LiveNote Reporter, Certified Realtime 13 Reporter. 14 15 16 17 18 19 20 21 22 23 24 25 </div>	<div>Page 3</div> <div> 1 APPEARANCES: 2 3 ON BEHALF OF PLAINTIFFS 4 CONRAD O'BRIEN 5 1500 Market Street 6 Philadelphia, Pennsylvania 19102 7 BY: MARK SEIBERLING, ESQ. 8 JOSHUA VOSS, ESQ. 9 10 and 11 12 LATSHA DAVIS & McKENNA 13 350 Eagleview Boulevard 14 Exton, Pennsylvania 19341 15 BY: KEVIN McKENNA, ESQ. 16 17 18 19 20 21 22 23 24 25 /// </div>
<div>Page 4</div> <div> 1 APPEARANCES: 2 3 ON BEHALF OF DEFENDANT NCAA 4 LATHAM & WATKINS 5 555 Eleventh Street, N.W. 6 Washington, D.C. 20004 7 BY: ALLEN GARDNER, ESQ. 8 SARAH GRAGERT, ESQ. 9 10 11 ON BEHALF OF DEFENDANT PENN STATE UNIVERSITY 12 REED SMITH 13 Reed Smith Centre 14 225 Fifth Avenue 15 Pittsburgh, Pennsylvania 15222 16 BY: DONNA DOBLICK, ESQ. 17 18 19 ALSO PRESENT: 20 DONALD REMY, ESQ., General Counsel, 21 VP Legal Affairs, NCAA 22 ZANDRIA CONYERS, NCAA 23 KIMBERLY SAYLOR, Legal Video Specialist 24 25 </div>	<div>Page 5</div> <div> 1 INDEX 2 WITNESS PAGE 3 MARK EMMERT 4 Examination by Mr. Seiberling 9 5 6 EXHIBITS 7 EMMERT DEPOSITION EXHIBIT PAGE 8 Exhibit 1 Division I manual for 50 9 2011/12 10 11 Exhibit 2 NCAA document 51 12 13 Exhibit 3 11/11/2011 e-mail 60 14 15 Exhibit 4 11/16/2011 e-mail 65 16 17 Exhibit 5 Call invite 71 18 19 Exhibit 6 Emmert 11/17/ 2011 letter 73 20 to President Erickson 21 22 Exhibit 7 Call invite 83 23 24 Exhibit 8 Appointment invite 88 25 </div>

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1	THE VIDEOGRAPHER: This is the start of		1	please.	
2	DVD labeled No. 1 of the videotaped deposition		2	(Witness sworn.)	
3	of Mark Emmert in the matter Jake Corman vs.		3	THE WITNESS: I do.	
4	NCAA in the Court -- Commonwealth Court of		4	THE REPORTER: Thank you.	
5	Pennsylvania, Case No. 1 M.D. 2013.	10:11	5		
6	This deposition is being held at Barnes		6	MARK EMMERT,	
7	& Thornburg LLP, 11 South Meridian Street		7	called as a witness herein by the Plaintiffs,	
8	Indianapolis, Indiana on December 2nd, 2014 at		8	having been first duly sworn, was examined and	
9	approximately 10:11 a.m.		9	testified as follows:	
10	My name is Kimberly Saylor. I am the	10:11	10	EXAMINATION	
11	Legal Video Specialist from TSG Reporting,		11	BY MR. SEIBERLING:	
12	Incorporated, headquartered at 747 Third Avenue,		12	Q. Morning, Dr. Emmert.	
13	New York, New York. The court reporter is		13	A. Morning.	
14	Deborah Habian in association with TSG		14	Q. My name is Mark Seiberling. I	
15	Reporting.		15	represent Jake Corman, the plaintiff in the	10:12
16	Will counsel please introduce yourself.		16	matter. I have with me today my colleagues,	
17	MR. SEIBERLING: Mark Seiberling,		17	Josh Voss and Kevin McKenna.	
18	counsel for the plaintiff, Jake Corman.		18	I'm pretty sure you're aware of the	
19	MS. DOBLICK: Donna Doblick, Reed Smith		19	drill of a deposition, so I'm not going to waste	
20	on behalf of Penn State University.	10:11	20	too much time on going over the specifics, and I	10:12
21	MR. GARDNER: And Allen Gardner on		21	assume you know to -- to answer clearly,	
22	behalf of the Association.		22	audibly. If I state a question, you don't	
23	THE VIDEOGRAPHER: Will the court		23	understand it, feel free to ask me to rephrase	
24	reporter please swear in the witness.		24	it. I'll do my best.	
25	THE REPORTER: Raise your right hand,		25	A. Okay.	10:12

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<p>1 Q. If you need to take a break, we'll take 2 a break. Whether you have to use the restroom 3 or a break for whatever reason, we'll do our 4 best to accommodate you.</p> <p>5 Prior to your deposition today, did you 10:12 6 meet with your counsel?</p> <p>7 A. Yes.</p> <p>8 Q. For how long?</p> <p>9 A. Oh. Um, a couple of hours probably.</p> <p>10 Q. When did this occur? 10:13</p> <p>11 A. Yesterday.</p> <p>12 Q. Who was present?</p> <p>13 A. Both outside counsel and our general 14 counsel, Donald Remy.</p> <p>15 Q. Were you shown any documents? 10:13</p> <p>16 A. Yes.</p> <p>17 Q. What types of documents?</p> <p>18 A. Mostly copies of the e-mail and other 19 communications, some media reports.</p> <p>20 Q. Did you review any deposition 10:13 21 transcripts prior to your --</p> <p>22 A. No, I did not.</p> <p>23 Q. -- appearance today?</p> <p>24 Generally, if could you just tell us 25 about your professional history. 10:13</p>	<p>1 A. Sure. I spent 30 years on university 2 campuses around the country. I took my Ph.D. in 3 political science, public policy -- public 4 administration is the actual field -- and came 5 up the ranks as a professor at the University of 10:14 6 Colorado, became an administrator, worked in 7 administration at a number of institutions, 8 ultimately being president of the University of 9 Washington in Seattle for a little over six 10 years, and then -- and then took this job with 10:14 11 the Association a little over four years ago.</p> <p>12 Q. If you can -- we can take a step back.</p> <p>13 First, you were a professor?</p> <p>14 A. Yes, um-hum.</p> <p>15 Q. And where was that? 10:14</p> <p>16 A. First at Northern Illinois University 17 and then the University of Colorado.</p> <p>18 Q. And then you moved on to 19 administration?</p> <p>20 A. Yes, um-hum, became provost of Montana 10:14 21 State University and then provost and chancellor 22 at the University of Connecticut and then 23 chancellor of Louisiana State University and 24 then the University of Washington as president, 25 which was my alma mater and then -- and then to 10:14</p>
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<p>1 this job.</p> <p>2 Q. When you were at any of those 3 institutions, were they subject to any type of 4 NCAA investigations?</p> <p>5 MR. GARDNER: Object to the form. 10:15</p> <p>6 THE WITNESS: We don't -- I don't have 7 any knowledge of any -- at any other place, 8 other than at Louisiana State University, where 9 we had an NCAA investigation while I was there 10 involving a -- as -- I don't remember the 10:15 11 details of it, but involving a tutor who had 12 provided impermissible educational benefits to 13 -- to some student athletes.</p> <p>14 BY MR. SEIBERLING:</p> <p>15 Q. Did the NCAA investigate that matter? 10:15</p> <p>16 A. They did.</p> <p>17 Q. And what was the result?</p> <p>18 A. The result was a finding of an 19 infraction, the imposition of some penalties, 20 some personnel action was taken against the 10:15 21 individual employee and the school was put on 22 probation, as I recall. I don't remember the 23 specific details of it.</p> <p>24 Q. Did the NCAA investigate or did LSU 25 conduct its own investigation? 10:16</p>	<p>1 A. Both.</p> <p>2 Q. Who led the LSU investigation?</p> <p>3 A. I don't recall.</p> <p>4 Q. Were you involved at all in that 5 investigation? 10:16</p> <p>6 A. I wasn't involved in the investigation 7 per se, no.</p> <p>8 Q. What was your role, if any, in the 9 investigation or the aftermath of the 10 investigation? 10:16</p> <p>11 A. I was a recipient of the information 12 that came in after the fact and communicated 13 with and met with the head of enforcement at -- 14 with the NCAA at the time, a fellow named David 15 Price, and simply received information on it. 10:16</p> <p>16 Q. So you presented your findings to the 17 NCAA?</p> <p>18 A. I did not, no. I didn't -- I didn't 19 attend a committee on infractions hearing if 20 that's -- I'm not sure what you're asking. If 10:16 21 the question is did I attend a committee on 22 infractions, meaning to present information, the 23 answer's no.</p> <p>24 Q. But you took the report that LSU had 25 done and presented it to it sounds like David 10:17</p>

<p style="text-align: right;">Page 14</p> <p>1 Price?</p> <p>2 A. My athletic department did. I did not.</p> <p>3 Q. Did you -- but you said you attended a</p> <p>4 meeting with David Price?</p> <p>5 A. I met with David Price and I don't 10:17</p> <p>6 recall where in the process exactly it was, but</p> <p>7 I wanted to make sure that we were doing</p> <p>8 everything possible to make sure that we were</p> <p>9 compliant with NCAA rules.</p> <p>10 As a new university president, this was 10:17</p> <p>11 my first presidency. I wanted to make sure that</p> <p>12 I was as aware as I could be of the rules and</p> <p>13 policies and processes and that we were</p> <p>14 following best practices, and so I wanted to</p> <p>15 meet with the leadership of the NCAA enforcement 10:17</p> <p>16 side and so we -- he came down and we had a</p> <p>17 significant talk, along with my athletic</p> <p>18 administrative staff, and -- to -- to make sure</p> <p>19 that we had everything in place to not have any</p> <p>20 incidents again. 10:17</p> <p>21 Q. And I'm sorry, what were the -- were</p> <p>22 there sanctions imposed as a result?</p> <p>23 A. Yeah, there were. There were some</p> <p>24 modest sanctions. I'm sorry, I don't remember</p> <p>25 the specific details of them. I think they were 10:18</p>	<p style="text-align: right;">Page 15</p> <p>1 some recruiting restrictions, maybe a</p> <p>2 scholarship restriction or two, but I -- but I</p> <p>3 honestly don't recall.</p> <p>4 Q. It's my understanding that there was a</p> <p>5 whistleblower action that resulted either from 10:18</p> <p>6 the investigation or the individuals who filed</p> <p>7 the initial complaints. Is that correct?</p> <p>8 A. As I recall, there was an individual</p> <p>9 who had worked in the tutoring office who -- who</p> <p>10 had complaints about the tutoring system being 10:18</p> <p>11 too aggressive in that they were providing</p> <p>12 impermissible support for student athletes, that</p> <p>13 they were going beyond what was allowed by NCAA</p> <p>14 rules in terms of support for academic support</p> <p>15 for -- for students. 10:19</p> <p>16 And I don't remember the precise</p> <p>17 details of those allegations that this</p> <p>18 individual made, nor do I know or remember the</p> <p>19 individual, but that was the general thrust of</p> <p>20 what the concerns were. 10:19</p> <p>21 Q. Do you know what the results of that</p> <p>22 whistleblower action was?</p> <p>23 A. There was an investigation conducted</p> <p>24 and that material was handled by the NCAA</p> <p>25 enforcement office. 10:19</p>
<p style="text-align: right;">Page 16</p> <p>1 Q. An investigation conducted by NCAA</p> <p>2 related to the whistleblower?</p> <p>3 A. Conducted related to this whole</p> <p>4 course -- I mean, to this whole course of action</p> <p>5 around the fact that an individual was found to 10:19</p> <p>6 have provided impermissible academic support to</p> <p>7 some student athletes.</p> <p>8 Q. My understanding was there was a</p> <p>9 separate civil whistleblower suit. Is that not</p> <p>10 correct? 10:20</p> <p>11 A. I don't recall that.</p> <p>12 Q. When you were at Montana State</p> <p>13 University, was there an NCAA investigation?</p> <p>14 A. Not to my memory. I had no</p> <p>15 responsibility for athletics at that time. I 10:20</p> <p>16 was the chief academic officer. The athletic</p> <p>17 department reported to the president and the</p> <p>18 chief fiscal officer at the time, chief</p> <p>19 administrative officer, so I wasn't involved in</p> <p>20 any of the intercollegiate athletic activities 10:20</p> <p>21 at the time.</p> <p>22 Q. But after you left, sanctions were</p> <p>23 imposed against Montana State; is that correct?</p> <p>24 A. I don't know -- I don't know that.</p> <p>25 Q. You have no knowledge of a finding by 10:20</p>	<p style="text-align: right;">Page 17</p> <p>1 the NCAA of a lack of institutional control at</p> <p>2 Montana State?</p> <p>3 A. I do not.</p> <p>4 Q. When you were at UConn, were you aware</p> <p>5 of any NCAA investigations? 10:21</p> <p>6 A. No, not to my knowledge. Again, the</p> <p>7 athletic department didn't report to me. It</p> <p>8 reported to the university president, and I</p> <p>9 don't recall there, but I -- you know, I don't</p> <p>10 recall NCAA investigations at that -- at that 10:21</p> <p>11 time.</p> <p>12 Q. When you were at UConn, were you aware</p> <p>13 of issues related to a construction project</p> <p>14 going on at UConn?</p> <p>15 MR. GARDNER: Object to form. 10:21</p> <p>16 THE WITNESS: I'm not sure what you're</p> <p>17 asking.</p> <p>18 BY MR. SEIBERLING:</p> <p>19 Q. Allegations of cost overruns and</p> <p>20 mismanagement related to a construction project 10:21</p> <p>21 at UConn.</p> <p>22 A. I was aware that that occurred after I</p> <p>23 left UConn.</p> <p>24 Q. Can you explain what the construction</p> <p>25 project was? 10:21</p>

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<p>1 A. No. I don't know the specifics of what 2 the construction project was that the 3 allegations pertained to. When I was there, the 4 university launched a very large construction -- 5 set of construction projects. So there were, 10:21 6 oh, gosh, I don't know, four or five major 7 construction projects going on simultaneously, 8 and I -- so no, I don't know the specific 9 allegations that occurred again after I left, 10 and I don't know the -- what -- what building or 10:22 11 what projects those pertained to. 12 Q. Were you aware of a state investigation 13 that was conducted? 14 A. Only after the fact. 15 Q. Were you questioned as part of that 10:22 16 investigation? 17 A. No. 18 Q. Do you know what came out or resulted 19 from that investigation? 20 A. No, I don't. 10:22 21 Q. When you were at UConn, did you work 22 with an individual named Vicky Triponey? 23 A. I did. 24 Q. And what was -- what was her position? 25 A. She was -- I forget her exact title, 10:22</p>	<p>1 but she was vice chancellor, chief student 2 affairs officer. 3 Q. And did she report to you? 4 A. She did. Um-hum. 5 Q. Did she work under you your entire 10:23 6 tenure while at UConn? 7 A. No, I hired her in the latter part of 8 my tenure. She replaced an individual who 9 retired. 10 Q. When you left UConn, did -- was she 10:23 11 still there? 12 A. She was. 13 Q. How long did -- when you left, did you 14 keep in contact with Miss Triponey at all? 15 A. No, no. I did serve as a reference for 10:23 16 a job or two that she applied for, but beyond 17 that, no, we didn't communicate. 18 Q. Was one of those jobs her -- her 19 position at Penn State? 20 A. Yes. 10:23 21 Q. Who contacted you as -- as a reference? 22 A. Oh, she communicated with me. I don't 23 remember whether it was an e-mail or a call, but 24 simply asked me to serve as a reference and -- 25 it was quite sometime ago. I don't remember 10:23</p>
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<p>1 whether I did a telephonic interview with a 2 search firm or whomever it was, but I served as 3 a reference. I've done that for many, many 4 people, so I don't -- I don't recall the precise 5 details of how that took place. 10:24 6 Q. After providing -- after providing a 7 reference on her behalf, did you have any other 8 contact with her? 9 A. No. 10 Q. Have you had any contact with her 10:24 11 within the last three years? 12 A. As I recall, she sent me a brief e-mail 13 around the time of the Penn State issues that 14 we're discussing here. I don't remember 15 precisely when that occurred, but it was a 10:24 16 simple commentary that she sent to me. Other 17 than that, I don't have any other memories of -- 18 Q. Do you know remember the -- 19 A. -- communications. 20 Q. Sorry. 10:24 21 A. That's all right. 22 Q. Do you remember the substance of the 23 e-mail? 24 A. No, other than an expression of, you 25 know, just concern about the circumstance. But 10:25</p>	<p>1 I was receiving many of those kind of comments 2 at the time, since it was such an extraordinary 3 circumstance. 4 Q. Did you respond to her e-mail? 5 A. No, not that I recall. 10:25 6 Q. Did you have anyone else within the 7 NCAA respond to her e-mail? 8 A. No, not that I recall. 9 Q. Did anyone from the media contact you 10 about Vicky Triponey? 10:25 11 A. I don't remember anyone contacting me 12 about her. There were, during that time, as you 13 can well imagine, a great many media 14 conversations, but I don't remember any about 15 her per se. 10:25 16 Q. Did she ever contact you about problems 17 or issues she was having while at Penn State? 18 A. No, not that I remember. As I said, I 19 don't remember any communications with her at 20 all while she was at Penn State. 10:26 21 Q. How about after she left Penn State? 22 A. Just the one e-mail that I was 23 referring to. 24 Q. She didn't contact you about the 25 circumstances of her departure? 10:26</p>

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<p>1 A. No.</p> <p>2 Q. When you were in your administrative</p> <p>3 roles at these different universities, what was</p> <p>4 your view on athletics as it related to the</p> <p>5 institution and the importance to the 10:26</p> <p>6 institution?</p> <p>7 A. I've always been very supportive of</p> <p>8 intercollegiate athletics. It's obviously what</p> <p>9 led me to take this position.</p> <p>10 Q. Did you view it as important to the -- 10:27</p> <p>11 the institution and the culture of the</p> <p>12 institution?</p> <p>13 A. Yes, I always viewed it as an integral</p> <p>14 part of the American collegiate experience. And</p> <p>15 again, it's a significant reason why I took this 10:27</p> <p>16 position.</p> <p>17 Q. In your current position, just explain</p> <p>18 generally your -- your responsibilities --</p> <p>19 A. Um-hum.</p> <p>20 Q. -- your job duties. 10:27</p> <p>21 A. Well, first of all, I think the most</p> <p>22 important thing to always remember that is</p> <p>23 frequently missed when talking about the NCAA is</p> <p>24 what the NCAA is. The NCAA is an association of</p> <p>25 member universities, 1,100 universities that 10:27</p>	<p>1 have voluntarily come together for</p> <p>2 self-regulation. All of the rules, all of the</p> <p>3 dominant policies, all of the decisions about</p> <p>4 punitive actions are made either directly by</p> <p>5 those members, the universities and colleges 10:28</p> <p>6 themselves or their representatives.</p> <p>7 The role of the Association president</p> <p>8 then is to help the membership with those</p> <p>9 decision-making processes and to execute the</p> <p>10 specific actions that they ask the national 10:28</p> <p>11 office to do.</p> <p>12 So we execute 89 and run 89 national</p> <p>13 championships. So we're responsible for all</p> <p>14 NCAA championships. We're responsible for</p> <p>15 helping the membership govern itself in its 10:28</p> <p>16 three divisions, helping them determine in a</p> <p>17 very complex process the governing</p> <p>18 decision-making model, which is very much like a</p> <p>19 legislative model that you'd find in a variety</p> <p>20 of other settings where the -- the boards and 10:28</p> <p>21 councils and various bodies representing the</p> <p>22 membership come together to make decisions to --</p> <p>23 to establish their policies, their rules, their</p> <p>24 regulations.</p> <p>25 Then we also have responsibility for 10:29</p>
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<p>1 conducting various eligibility processes. So</p> <p>2 the membership says we would like to have all</p> <p>3 student athletes have a -- an academic</p> <p>4 achievement level in a high school at this</p> <p>5 specific level. Then all of those initial 10:29</p> <p>6 approvals for eligibility are conducted by the</p> <p>7 national office staff. So my staff does that.</p> <p>8 My staff handles all of the inquiries</p> <p>9 and questions around interpretations of rules,</p> <p>10 which seems like it ought to be a minor thing. 10:29</p> <p>11 It's not. It's actually quite challenging given</p> <p>12 how voluminous the membership rule book has</p> <p>13 become.</p> <p>14 My -- my staff also is involved in</p> <p>15 working with specific committees of the -- of 10:29</p> <p>16 the membership, again presidents, athletic</p> <p>17 directors, commissioners, faculty reps in -- in</p> <p>18 providing decisions on waivers or reinstatements</p> <p>19 of student athletes, and then it's also</p> <p>20 responsible for conducting investigations to any 10:30</p> <p>21 allegations of -- of impropriety or violation of</p> <p>22 rules. And then, finally, it's also responsible</p> <p>23 for the -- the organization of and support of</p> <p>24 the committee on infractions, which is also a</p> <p>25 group of -- of members and individual citizens 10:30</p>	<p>1 who come together whenever there is a call for a</p> <p>2 committee on infractions to meet, and they pass</p> <p>3 judgment on those decisions.</p> <p>4 Q. What --</p> <p>5 A. There's other ancillary functions, but 10:30</p> <p>6 those are the core functions.</p> <p>7 Q. When you became president -- I believe</p> <p>8 it was around 2010.</p> <p>9 A. Um-hum.</p> <p>10 Q. -- did you implement any changes, 10:30</p> <p>11 restructuring?</p> <p>12 I assume as a new president, you had</p> <p>13 your own goals, your own objectives.</p> <p>14 Did you institute any changes or,</p> <p>15 again, restructuring to -- to accomplish those 10:31</p> <p>16 goals or objectives?</p> <p>17 A. I made some initial personnel changes</p> <p>18 in key positions and some minor restructuring of</p> <p>19 the executive team, but not wholesale</p> <p>20 restructuring, if that's what you mean. 10:31</p> <p>21 I'm -- I'm not quite sure what you're</p> <p>22 asking me.</p> <p>23 Q. You just said you made some personnel</p> <p>24 changes. What --</p> <p>25 A. Um-hum. 10:31</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. What were those changes?</p> <p>2 A. I hired a new general counsel. I</p> <p>3 created the office of chief operating officer</p> <p>4 and moved an individual into a position of</p> <p>5 overseeing all of the championships. Those were 10:31</p> <p>6 the primary ones.</p> <p>7 Q. Was there any changes to the</p> <p>8 enforcement group?</p> <p>9 A. Not when I initially came in, no.</p> <p>10 There was -- there was a retirement that 10:31</p> <p>11 occurred, and I filled that position. Those</p> <p>12 were the -- those were the -- but they</p> <p>13 weren't -- those weren't structural changes.</p> <p>14 That was a retirement that was filled.</p> <p>15 Q. Who retired and who filled the 10:32</p> <p>16 position?</p> <p>17 A. David Price retired after, gosh, I</p> <p>18 don't know, a long -- a long career with the</p> <p>19 NCAA, and Julie Roe Price [sic] was hired as the</p> <p>20 new director or vice president for enforcement. 10:32</p> <p>21 MR. GARDNER: Julie Roe?</p> <p>22 THE WITNESS: Lach. Pardon me.</p> <p>23 Julie Roe Price, pardon me.</p> <p>24 BY MR. SEIBERLING:</p> <p>25 Q. What is your role, if any, with 10:32</p>	<p style="text-align: right;">Page 27</p> <p>1 investigations or enforcement?</p> <p>2 A. I had no role whatsoever in -- in the</p> <p>3 enforcement side and -- and the -- the</p> <p>4 decision-making around enforcement is -- is</p> <p>5 solely the province of the committee on 10:32</p> <p>6 infractions. Again, this body of members that</p> <p>7 the members themselves assign to those positions</p> <p>8 and the president of the Association has nothing</p> <p>9 to do with that.</p> <p>10 Q. The NCAA does have a role in the 10:32</p> <p>11 investigation side; is that correct?</p> <p>12 MR. GARDNER: Your question before was</p> <p>13 about his role as president, and now you're</p> <p>14 moving to the NCAA as a whole?</p> <p>15 MR. SEIBERLING: Yes. 10:33</p> <p>16 MR. GARDNER: Okay.</p> <p>17 THE WITNESS: So yes, the NC- -- well,</p> <p>18 so I'm sorry. When you say the "NCAA," to whom</p> <p>19 are you referring? Are you referring to the</p> <p>20 national office -- 10:33</p> <p>21 BY MR. SEIBERLING:</p> <p>22 Q. Yes.</p> <p>23 A. -- staff?</p> <p>24 Q. The national office staff.</p> <p>25 A. So the national office staff has been 10:33</p>
<p style="text-align: right;">Page 28</p> <p>1 asked by the members -- by the board and the</p> <p>2 members, to conduct investigations when there is</p> <p>3 credible evidence that a member institution or</p> <p>4 individuals have violated the rules.</p> <p>5 So the investigatory team will go out 10:33</p> <p>6 and gather information in conjunction with the</p> <p>7 university. So an investigation is conducted</p> <p>8 with the knowledge of an engagement with the</p> <p>9 university. They will together ascertain what</p> <p>10 facts there are surrounding any one case. 10:33</p> <p>11 Together they will then reach an agreement about</p> <p>12 what those facts are, and then those facts will</p> <p>13 be taken forward to a committee on infractions,</p> <p>14 which is an independent body of members and</p> <p>15 private citizens. 10:34</p> <p>16 So the staff's role, not mine -- and</p> <p>17 there is a firewall between me and that</p> <p>18 investigative arm. That -- that investigative</p> <p>19 group then will -- will conduct investigations,</p> <p>20 gather information from the university and from 10:34</p> <p>21 other involved individuals, and with the</p> <p>22 university itself typically in the room, conduct</p> <p>23 whatever interviews and inquiries that it has.</p> <p>24 And then, again, together with the university,</p> <p>25 which conclusion as to what the agreed-upon 10:34</p>	<p style="text-align: right;">Page 29</p> <p>1 facts in the case are, can then take those</p> <p>2 agreed-upon facts forward.</p> <p>3 Q. And in the 2011/2012 time frame, that</p> <p>4 investigative arm would have been led by Julie</p> <p>5 Roe Lach; is that correct? 10:34</p> <p>6 A. Yes. Um-hum.</p> <p>7 Q. Are you provided updates on these</p> <p>8 investigations as they're ongoing?</p> <p>9 A. Typically not. Occasionally if it's a</p> <p>10 high profile case, one that has a lot of 10:35</p> <p>11 interest and concern, they may well tell me what</p> <p>12 stage an investigation is in, but never the</p> <p>13 substance of those investigations, never what's</p> <p>14 going on. They may say, you know, we're --</p> <p>15 we're halfway through this investigation, I 10:35</p> <p>16 think it will be done by spring, you know,</p> <p>17 but -- but nothing substantive about those</p> <p>18 typically.</p> <p>19 Q. How often would you receive those</p> <p>20 updates? 10:35</p> <p>21 A. Rarely. They're -- they're not --</p> <p>22 they're not routine updates. It's not a</p> <p>23 standing meeting that I have with -- with the</p> <p>24 vice president or anything like that.</p> <p>25 Q. Who decides what matters you should 10:35</p>

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<p>1 receive the updates on?</p> <p>2 A. It's either a judgment call by that</p> <p>3 vice president or -- or I ask that person just</p> <p>4 what the status of a case is in terms of the --</p> <p>5 again, not in terms of where it's -- where it is 10:35</p> <p>6 substantively or what they're finding or</p> <p>7 discovering, but simply to know where -- how far</p> <p>8 along in an investigation they think they are.</p> <p>9 And it's always a -- it's always a guesstimate,</p> <p>10 because investigatory matters, as I'm sure 10:36</p> <p>11 you -- you well understand, are unpredictable</p> <p>12 processes. They -- they lead wherever the</p> <p>13 evidence leads them. So it's -- it's always</p> <p>14 historically been very difficult to say an</p> <p>15 investigation will be completed by X. It may 10:36</p> <p>16 take six months. More likely it will take</p> <p>17 18 months, but it's always hard to tell how long</p> <p>18 that will be.</p> <p>19 Q. Did you have any role in -- in -- or</p> <p>20 are you in an advisory role in the staffing of 10:36</p> <p>21 certain investigations as far as the number of</p> <p>22 people who are dedicated to that investigation?</p> <p>23 A. No, other than to -- to encourage</p> <p>24 the -- the vice president to make sure that they</p> <p>25 have the resources that they need. And I -- one 10:36</p>	<p>1 of my personal responsibilities is to make</p> <p>2 recommendations to the executive committee,</p> <p>3 which is a body of university presidents, as to</p> <p>4 the budgets of the -- of the Association and how</p> <p>5 we're going to staff ourselves and how we're 10:37</p> <p>6 going to dedicate resources.</p> <p>7 So one of the things that's occurred in</p> <p>8 my tenure is we've increased the staffing inside</p> <p>9 that office because many of the member</p> <p>10 universities were concerned about how slowly 10:37</p> <p>11 cases were moving. And when they drag on too</p> <p>12 long, people are concerned about that. It's</p> <p>13 been one of the major criticisms of the -- of</p> <p>14 the national office.</p> <p>15 And so my role has been to try and make 10:37</p> <p>16 sure they have enough staff in place so that</p> <p>17 they can move cases along in a fashion that</p> <p>18 serves the -- the university's interests that</p> <p>19 are being investigated.</p> <p>20 Q. Does the NCAA outsource any of these 10:37</p> <p>21 investigations to -- to third parties?</p> <p>22 A. No, not -- well, I'm not quite sure</p> <p>23 what you mean. Do they -- do we ever turn an</p> <p>24 investigation over to a third party? Is that</p> <p>25 what you're asking? 10:37</p>
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<p>1 Q. Well, that would be the first question.</p> <p>2 A. No, not -- not in my tenure. What</p> <p>3 happened previous to me, I can't say.</p> <p>4 Q. What about certain aspects of an</p> <p>5 investigation? 10:37</p> <p>6 A. Again, not that I'm aware of. I don't</p> <p>7 know the details of -- of investigations per se.</p> <p>8 So they may have occasionally hired outside</p> <p>9 experts to help them with issues. But, again, I</p> <p>10 don't get involved in any of the details of 10:38</p> <p>11 those investigations.</p> <p>12 Q. Who within the NCAA structure has a --</p> <p>13 a direct report to you?</p> <p>14 A. At the time that you're -- well, I'll</p> <p>15 describe the case right now. So today it is -- 10:38</p> <p>16 it is the executive vice president for</p> <p>17 championships, the executive vice -- vice</p> <p>18 president for -- and general counsel, executive</p> <p>19 vice president for legal affairs and policy, the</p> <p>20 senior vice president and CFO, the senior vice 10:38</p> <p>21 president who is essentially our external</p> <p>22 relations public relations person.</p> <p>23 Q. I'm sorry. Can you include the names</p> <p>24 of the people as you're rattling them off?</p> <p>25 A. Oh, sure. In the first case, Mark 10:38</p>	<p>1 Lewis, who is the executive vice president for</p> <p>2 championships; the executive vice president for</p> <p>3 legal affairs and policy, that's Donald Remy;</p> <p>4 the senior vice president for communications</p> <p>5 media and public relations, Bob Williams; the 10:39</p> <p>6 senior vice president and CFO, Kathleen McNeely.</p> <p>7 And I am searching right now for a new</p> <p>8 executive vice president for regulatory affairs</p> <p>9 to whom the enforcement and the membership</p> <p>10 affairs, what we call AMA, and the eligibility 10:39</p> <p>11 center will report.</p> <p>12 Q. You -- I think you qualified it</p> <p>13 initially by saying "now."</p> <p>14 Was that different in, say, the 2012</p> <p>15 time period? 10:39</p> <p>16 A. Yes, I had a chief operating officer</p> <p>17 position at that time in Jim Isch, so a</p> <p>18 number -- a number of those positions reported</p> <p>19 in to him for day-to-day managerial oversight.</p> <p>20 Q. So the COO position no longer exists 10:40</p> <p>21 within the corporate structure?</p> <p>22 A. That's right. So Jim Isch retired or</p> <p>23 is in the process of retiring, and rather than</p> <p>24 filling that position, I determined that I</p> <p>25 wanted to not fill that position and create a 10:40</p>

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1 different executive staff structure.

2 Q. In your role as president, who do you

3 directly report to, if anyone?

4 A. I report to the executive committee of

5 the -- of the Association, and that is a group 10:40

6 of 17 university presidents. Those university

7 presidents have among other things a

8 responsibility to hire and evaluate the -- the

9 president of the Association. So just like a

10 president of a university, I report to an 10:40

11 independent board.

12 Q. How often does that board meet?

13 A. It meets quarterly, and we talk on the

14 phone on an as-needed basis and have ad hoc

15 meetings whenever they're called for. 10:41

16 Q. Do you call the meetings or do they

17 call the meetings?

18 A. The quarterly meetings? There are

19 regularly scheduled quarterly meetings that are

20 established -- that they establish by their 10:41

21 bylaws.

22 Q. But you every once in a while may call

23 an ad hoc meeting?

24 A. Well, I don't have the authority to

25 call a meeting. Only the chair has the 10:41

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1 again, a decision of the presidents who serve on

2 the executive committee.

3 Q. Do you host presidential retreats every

4 year?

5 A. No. 10:42

6 Q. How often are presidential retreats?

7 A. There's only been one in my tenure as

8 president, but so I can't speak to my

9 predecessors.

10 Q. And when was that? 10:42

11 A. We held one in the summer of 2011. I

12 invited about 65 or so university presidents

13 from across just Division I, though I invited

14 the chairs of Divisions II and III as well,

15 those presidential chairs, but the bulk of them 10:42

16 were university presidents to come to

17 Indianapolis, to spend a couple of days talking

18 about the current state of collegiate athletics

19 and issues that they hoped that the NCAA would

20 address. 10:43

21 So it was the first year of my tenure.

22 I wanted to make sure that I understood the

23 general directions that university presidents

24 wanted college sports to go in. The board of

25 Division I at that time, which is a group of 10:43

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1 authority to call a meeting. And -- and so I

2 may tell the chair that -- that we have an issue

3 that would -- that may well deserve

4 conversation, and then that individual can call

5 a meeting. 10:41

6 Q. Who is currently the chair?

7 A. Currently the chair of the executive

8 committee --

9 Q. Yes.

10 A. -- is Lou Anna Simon, the president of 10:41

11 Michigan State University.

12 Q. And she's been the chair since August

13 of 2012; is that correct?

14 A. I think that's right, yes.

15 Q. And prior to her being chair, who was 10:41

16 the chair?

17 A. Ed Ray, the president of Oregon State

18 University.

19 Q. And do you know how long he was the

20 chair? 10:41

21 A. As long as I've been in office, but I

22 think he -- so I don't -- I don't know the -- I

23 don't know when he took that position, but

24 generally it's two-year, two and a half year,

25 sometimes a little bit longer term, but that's, 10:42

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1 about 20 university presidents from across the

2 division, those -- those presidents were very

3 encouraging of this idea. So we had two very

4 fruitful days of conversations.

5 Q. And generally, what was discussed 10:43

6 during those two days?

7 A. Most of the broad issues of college

8 sports. There was a significant discussion of

9 academic issues and the academic success of

10 student athletes and what steps could be taken 10:43

11 to continue to promote academic success. That

12 occupied a significant portion of the time.

13 There was a significant conversation

14 about the allocation of resources and how

15 athletic departments were using those resources 10:44

16 and concern that resources needed to be directed

17 in ways that were most supportive of student

18 athlete success and how might those questions

19 be -- be addressed.

20 There was significant conversation, as 10:44

21 I recall, about the -- the whole question of the

22 regulatory system and whether or not the rule

23 book was -- was -- had become too laborious and

24 too convoluted and too detailed and was --

25 whether it was focused on those things that were 10:44

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<p>1 of most importance and of greatest integrity, 2 the things that were the greatest threats to the 3 integrity of college sports. 4 There was discussion about the length 5 of time that was required to conduct 10:45 6 investigations or to handle any other issues and 7 how might those be improved. So it was a pretty 8 far reaching, broad -- broad conversation about 9 most everything that was going on in college 10 athletics, and then there was an agreement 10:45 11 afterwards to establish some presidentially led 12 working groups to address many of those subjects 13 that they -- that they were focused on. 14 Q. And how many working groups are you 15 aware of? 10:45 16 A. They were -- there was a working group 17 that was an extension of the committee on 18 academic performance, so one on -- one on 19 academics. There was one on resource 20 allocation. There was one on the rule book and 10:45 21 trying to streamline the rules. There was one 22 on the enforcement model and processes. Um... 23 if there was another one, I've forgotten. 24 Q. Was there an enforcement working group? 25 A. Yes. As I said, there was one on 10:46</p>	<p>1 enforcement, there was one on rules, there was 2 one on academics, there was on resource 3 allocation. 4 Q. During that retreat, do you remember 5 any discussions on strengthening accountability? 10:46 6 MR. GARDNER: Object to the form. 7 THE WITNESS: Tell me more what you're 8 asking. 9 BY MR. SEIBERLING: 10 Q. Was there a discussion of harsher 10:46 11 penalties for violators of the NCAA rules? 12 A. There was certainly a conversation 13 about the need to focus the rules and the 14 enforcement structure, whatever that would be, 15 because there was also an interest in 10:46 16 reconsidering the enforcement structure, as I 17 recall. 18 There was certainly an interest on 19 making sure that those behaviors that were the 20 biggest threat to the integrity of college 10:46 21 sports, those things that were most contrary to 22 the values of higher education would be -- would 23 be the focus of the enforcement process, and 24 there would be a diminution of -- there was a 25 desire to have a diminution of those things that 10:47</p>
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<p>1 were seen as less consequential to fundamental 2 issues of integrity and ethics. 3 And so the classic example would be 4 people, presidents and others were frustrated 5 with rules about food. You know, there were -- 10:47 6 there were rules about how you differentiate 7 between a snack and a meal and you wound up with 8 literally silly things like a bagel being a 9 snack, but if you put cream cheese on it, now it 10 became a meal, and somehow there had to be 10:47 11 differentiation between those things. 12 I mean, there were a variety of rules 13 that any commonsensical sort of approach would 14 look at them and say this is silliness, why do 15 we need a national body overseeing those kind of 10:48 16 issues and worrying much more, the presidents 17 wanted a much greater focus placed on those 18 things that were, again, seen as primary 19 challenges to ethics and integrity and -- and 20 that was the thrust of those conversations. 10:48 21 Q. Who was the chair of the enforcement 22 working group? 23 A. The -- let me see. So the chair of 24 the -- oh, there was another committee on 25 student well-being. So there was a committee on 10:48</p>	<p>1 student well-being. The committee on student 2 well-being was chaired by Graham Spanier. The 3 committee on resource allocation was chaired by 4 the president of Weaver State University, whose 5 name has just escaped me. 10:48 6 The student -- the academic committee 7 was chaired by the president of Hartford, 8 University of Hartford, Walt Harrison. The -- 9 and the ethics and enforcement were chaired by 10 Lou Anna Simon and Ed Ray, and I don't remember 10:49 11 which was which right now. 12 Q. Was there a timeline provided on when 13 any recommendations should come forth from these 14 working groups? 15 A. Yeah, they wanted to -- they wanted to 10:49 16 have a lot of input and gather a lot of 17 information and they wanted to do it in an 18 aggressive fashion. They certainly wanted to 19 have reports out by that following summer and be 20 ready to take legislative action and -- in 10:49 21 that -- at that following summer. So their 22 goals were -- in terms of a timeline were pretty 23 aggressive. 24 I think they did a very good job of 25 pulling together committees with representation 10:50</p>

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<p>1 from athletic directors and faculty athletic 2 reps and student athletes and commissioners and 3 of course presidents, and they held with my 4 staff serving as a coordinator facilitator role, 5 they held a lot of meetings and a lot of phone 10:50 6 calls and did a very good job of bringing their 7 recommendations forward in a relatively short 8 period of time.</p> <p>9 Q. If we could narrow in specifically on 10 the enforcement working group, what was your 10:50 11 understanding of the reforms or changes that 12 they were -- they were looking at?</p> <p>13 A. They were trying to do what I 14 described. They were trying to create a model 15 that clearly placed a higher emphasis on issues 10:50 16 of greater threat to integrity to ethics and 17 core values of intercollegiate athletics and 18 place more responsibility for -- for less 19 consequential issues with universities and with 20 conferences. 10:51</p> <p>21 The model of enforcement and -- of the 22 committee -- for the committee on infractions 23 before their work, for example, divided all 24 allegations against a university or an 25 individual into secondary and major, two broad 10:51</p>	<p>1 categories. There was great concern that those 2 categorizations were too coarse, too gross, that 3 they needed something that was a better 4 distribution of the level of an infraction.</p> <p>5 So they came up with a four-part 10:51 6 categorization for potential allegations. They 7 also wanted, inside of those four, even some 8 ability to have both mitigating or aggravating 9 considerations so that the work of the committee 10 on infractions could be more tightly defined and 10:52 11 focused and they were -- they were very, very 12 focused on that.</p> <p>13 The majority of their work, as I 14 recall, was spent on trying to ascertain what 15 would fall under each of those categories, how 10:52 16 would you create a model that fit those kinds of 17 charging models for potential allegations and 18 then -- and then going back and saying, okay, 19 and then what kinds of penalty structures ought 20 to be associated with each of those gradations 10:52 21 and what -- and what kind of factors could be 22 considered by committee on infractions by this 23 jury of your peers, if you will, for aggravating 24 or mitigating circumstances.</p> <p>25 So they're trying to -- they were 10:53</p>
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<p>1 trying to create a more nuanced system than the 2 one that existed and to place a greater 3 emphasis, again, on those things that were the 4 most dominant perceived threats to the integrity 5 of college sports. 10:53</p> <p>6 Q. To your knowledge, were most of these 7 reforms and recommendations ultimately 8 implemented?</p> <p>9 A. Well, their ultimate recommendations 10 were approved, yes. They worked through many 10:53 11 iterations of it. I wasn't -- I wasn't on the 12 committee, nor was I directly staffing it. So I 13 wasn't involved in all of their conversations, 14 but I know they went through a number of 15 iterations as they worked their way through it 10:53 16 to try and determine what was appropriate, and 17 then ultimately, their recommendations were made 18 to the board and the board, again, a group of 19 presidents from Division I adopted those, and I 20 believe they adopted them unanimously, though 10:53 21 I'm not completely sure of that.</p> <p>22 Q. Do you know how long after the working 23 groups were established that the final 24 recommendations were approved?</p> <p>25 A. I don't remember the precise meeting. 10:54</p>	<p>1 but it was a year or so.</p> <p>2 Q. Did you personally have any input with 3 the working groups and any of their 4 recommendations or proposed changes?</p> <p>5 A. Yeah, not much in -- especially in 10:54 6 the -- in the enforcement rules working group. 7 I assume you're most interested in --</p> <p>8 Q. Yeah.</p> <p>9 A. -- the enforcement working group.</p> <p>10 No, not particularly. 10:54</p> <p>11 Q. Did you meet with the working groups at 12 all?</p> <p>13 A. Just usually at their kick-off meeting, 14 but I was not involved in their ongoing 15 conversations. 10:54</p> <p>16 Q. It's my understanding that there was a 17 NCAA liaison or staff member that was part of 18 those working groups; is that correct?</p> <p>19 A. Sure.</p> <p>20 Q. With the enforcement working group, who 10:54 21 was that NCAA liaison?</p> <p>22 A. Ah, I think it was Julie Roe Lach, but 23 I'm not completely sure of that.</p> <p>24 Q. Did she provide updates to you on the 25 accomplishments or on the -- 10:55</p>

<p style="text-align: right;">Page 46</p> <p>1 A. Just on the progress. I mean, the 2 issue that the board wanted from me was they 3 wanted to make sure these working groups were 4 moving along. Again, it's important to step 5 back and remember the role of the national 10:55 6 office and of the Association. 7 This is a membership association. 8 They're the ones that are responsible for the 9 decision-making processes. The role of me and 10 my staff is to guide, but not decide, to use a 10:55 11 bad poem and so -- a bit of rhyming. 12 So -- so my staff was there to provide 13 them support, answer questions. Many of the 14 people on that working group aren't necessarily 15 -- weren't necessarily experts on all of the 10:55 16 policy, so they need people to provide them with 17 information and guidance, but the decisions are 18 entirely up to those members. 19 Q. Did the Penn State matter, which we're 20 going to get into shortly, impact or affect any 10:55 21 of the working groups? 22 MR. GARDNER: Object to the form. 23 THE WITNESS: Ah... 24 MR. GARDNER: Well -- well, just, you 25 know --</p>	<p style="text-align: right;">Page 47</p> <p>1 THE WITNESS: Tell me more what you're 2 asking. I'm not sure what you're asking. 3 BY MR. SEIBERLING: 4 Q. Either the Sandusky indictment or the 5 subsequent Freeh Report, did any of these 10:56 6 happenings with regard to Penn State have any 7 impact on what the working group was doing? 8 A. Not that I'm aware of. I don't 9 remember the sequencing of them, but I don't 10 remember -- I don't remember any changes that 10:56 11 were made in any of these working groups as a 12 result of any of the Penn State issues. 13 THE WITNESS: Do you mind if I grab a 14 cup of coffee? 15 MR. GARDNER: Oh, no. Sure. 10:56 16 Do you mind? 17 MR. SEIBERLING: Do you want to take a 18 quick break? 19 THE WITNESS: I don't need a break. I 20 just want to -- 10:56 21 MR. GARDNER: Yeah, we don't need to go 22 anywhere, but we can turn the camera off. 23 THE WITNESS: I have a bit of a cold 24 and -- 25 THE VIDEOGRAPHER: We are now going off 10:57</p>
<p style="text-align: right;">Page 48</p> <p>1 the record. The time is approximately 2 10:57 a.m. 3 (Recess taken from 10:57 a.m. 4 to 11:03 a.m. EST) 5 THE VIDEOGRAPHER: We are now going on 11:02 6 the record. The time is approximately 7 11:03 a.m. 8 BY MR. SEIBERLING: 9 Q. Dr. Emmert, I'm going to mark as Emmert 10 Exhibit I the Division I manual from 2011 to 11:03 11 2012. I don't have any specific questions right 12 now with regard to it. But if you feel the need 13 to reference it or look at it, we'll probably 14 have some questions later. 15 A. And we've established that it's overly 11:03 16 big. 17 Q. It's definitely voluminous. 18 A. The current one is smaller. 19 Q. Turning to the Penn State matter, when 20 was the first time you learned of -- of the 11:03 21 allegations related to Penn State? 22 A. When the grand jury indictment was made 23 public. And so that was November of '11; is 24 that right? 25 Q. Did you read the presentment? 11:03</p>	<p style="text-align: right;">Page 49</p> <p>1 A. I did eventually, yeah. I did -- I 2 mean, I didn't that minute. I was -- I was on 3 the road in fact when it was released. But yes, 4 I read the presentment. 5 Q. After learning of the allegations, 11:04 6 what -- what were the first steps that you took, 7 you personally, no necessarily the NCAA? 8 MR. GARDNER: Objection. Go ahead. 9 THE WITNESS: Okay. Well, yeah. Well, 10 obviously I read the presentment, and like I 11:04 11 think the whole world was pretty amazed by the 12 assertions that were made within it. We -- we 13 talked about it. I don't remember the details 14 of this but discussed it with my staff the 15 following week after the weekend, and we had 11:04 16 conversations about what if anything should be 17 done relevant to this -- this initial set of 18 issues and then of course the -- the responses 19 of the University came shortly thereafter. 20 Again, I don't remember the precise timeline. 11:04 21 And upon chatting with and talking 22 through with my staff the issues, rather than 23 launching an investigation based upon the -- the 24 presentments of the grand jury, we concluded and 25 I supported the notion of my simply sending a 11:05</p>

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<p>1 letter to the -- to the then president Rod 2 Erickson asking a few general questions about 3 this -- this matter as we -- you know, as we 4 moved into trying to understand what had -- what 5 had transpired there. 11:05 6 BY MR. SEIBERLING: 7 Q. If we could take a step back, you 8 mentioned you were on the road when the 9 presentment first came out? 10 A. Um-hum. I was at a football game the 11:05 11 first time I was asked about it -- the first 12 time I was aware of it. 13 Q. And did you make any public comments 14 that you remember? 15 A. No, not that I remember. 11:06 16 Q. Do you remember doing an ESPN interview 17 a couple days after the presentment came out? 18 A. No, not that I recall. I mean -- but 19 bear in mind that throughout this whole 20 experience, there's been an enormous number of 11:06 21 media inquiries. So I just don't remember. 22 (Emmert Exhibit 1 was marked 23 for ID.) 24 BY MR. SEIBERLING: 25 Q. I'll show you what's marked as Emmert 11:06</p>	<p>1 Exhibit 2. 2 (Emmert Exhibit 2 was marked 3 for ID.) 4 BY MR. SEIBERLING: 5 Q. If you could take a look at it. 11:06 6 Hopefully that refreshes your recollection. 7 A. (Reviewing document.) 8 Q. Specifically I wanted to ask you 9 about -- there's on the second page -- 10 MR. GARDNER: You'll let him finish 11:07 11 first, right? 12 MR. SEIBERLING: Yes. 13 MR. GARDNER: Thanks. 14 THE WITNESS: (Reviewing document.) 15 Okay. I'm sorry. 11:09 16 BY MR. SEIBERLING: 17 Q. If you can turn to the second page, 18 there's a specific question, "What is the role 19 of the NCAA?" 20 A. Um-hum. 11:09 21 Q. And you respond, "Well, we, of course, 22 don't get involved in criminal investigations, 23 and we will let the criminal investigation go 24 forward until all the facts are established. 25 And then we'll do an inquiry to see what actions 11:09</p>
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<p>1 should be determined." 2 Do you remember making that statement? 3 MR. GARDNER: You only read half the 4 statement, right? 5 MR. SEIBERLING: Well, I could continue 11:09 6 if you want. 7 "But certainly it's such a shocking 8 manner -- matter that we need determine what our 9 course of action is here." 10 THE WITNESS: Yes. And I'm sorry, what 11:09 11 was your question? 12 BY MR. SEIBERLING: 13 Q. Do you remember making that statement? 14 A. I don't remember that precisely, but 15 that was certainly my sentiment and belief. 11:09 16 Q. Do you remember referring to the 17 criminal investigations and letting the criminal 18 investigations go forward? 19 A. Yes. 20 Q. What is the NCAA's just general 11:09 21 position on criminal matters? 22 A. Ah... 23 MR. GARDNER: Object to the form. Go 24 ahead if you can. 25 THE WITNESS: Yeah. So criminal 11:10</p>	<p>1 matters are, as this comment says, historically 2 and based upon all of the rules of the 3 Association that the members have put in place 4 matters that are handled by the -- by the 5 judicial system and the criminal justice system 11:10 6 and not by the NCAA. The only -- the only times 7 that the NCAA to my knowledge has gotten 8 involved in a criminal matter is if the 9 institution was in some way -- well, first, if 10 the criminal matter involved an individual 11:10 11 involved in intercollegiate athletics and if the 12 institution then behaved in a manner that either 13 failed to stop or failed to uncover or failed to 14 follow its normal due process that might occur 15 with a -- with a student or a coach or someone 11:10 16 else in -- in a way that provided them with an 17 inappropriate benefit or -- or in fact didn't 18 allow a full following up of -- of those 19 investigations. 20 So the -- the NCAA's position, the 11:11 21 members' position historically has been we are 22 not going to become involved in criminal 23 matters. That's occasionally created great 24 angst out there in the world when someone is 25 convicted of something and they're -- and 11:11</p>

<p style="text-align: right;">Page 54</p> <p>1 they're allowed to participate or -- or the NCAA</p> <p>2 says, gee, you know, that's -- that's not our</p> <p>3 affair.</p> <p>4 What is the association's business, the</p> <p>5 members have consistently said, is whether or 11:11</p> <p>6 not a university or some other athletic-related</p> <p>7 entity had either been party to or failed to</p> <p>8 take action around some criminal matter. Then</p> <p>9 it becomes an issue for the NCAA.</p> <p>10 BY MR. SEIBERLING:</p> <p>11 Q. Do you know of an example of when that</p> <p>12 has happened?</p> <p>13 A. No. And again, my tenure with -- in my</p> <p>14 tenure with the NCAA, there -- there haven't</p> <p>15 been any of -- anything like that occur. 11:12</p> <p>16 There's obviously never been anything like the</p> <p>17 Penn State case. I mean, part of what was going</p> <p>18 on at this moment is nobody in college sports</p> <p>19 that -- that any of us had ever spoken to has</p> <p>20 ever seen anything as -- as horrific as this or 11:12</p> <p>21 as extraordinary as this.</p> <p>22 And so in every circumstance around</p> <p>23 this case, everyone that was involved in my</p> <p>24 conversations on the board, on the executive</p> <p>25 committee, would always step back and say, yes. 11:12</p>	<p style="text-align: right;">Page 55</p> <p>1 but this is such an extraordinary thing, we have</p> <p>2 to pause and say what -- what does all of this</p> <p>3 mean?</p> <p>4 And that -- so throughout all of this,</p> <p>5 the context has been this is a remarkable event 11:12</p> <p>6 that is -- that is so extraordinary in its scope</p> <p>7 and scale that we need to consider that as they</p> <p>8 move forward. That's always been the position</p> <p>9 of the -- of the membership.</p> <p>10 Here you had a case where a university 11:13</p> <p>11 following the presentments of the -- of the</p> <p>12 grand jury removed its president, its executive</p> <p>13 vice president, its athletic director, its</p> <p>14 football coach all in one fell swoop. It was --</p> <p>15 it was quite an amazing moment I think everyone 11:13</p> <p>16 would recognize.</p> <p>17 Q. The historical position that you --</p> <p>18 A. Um-hum.</p> <p>19 Q. -- just talked about, is that set forth</p> <p>20 specifically in the bylaws or is that just the 11:13</p> <p>21 practice of the NCAA over the years?</p> <p>22 A. I'm not sure what you're asking.</p> <p>23 Q. Are -- are the NCAA's handling of</p> <p>24 criminal matters specifically addressed within</p> <p>25 the bylaws? 11:13</p>
<p style="text-align: right;">Page 56</p> <p>1 MR. GARDNER: Objection to the form.</p> <p>2 THE WITNESS: Yeah, I -- I don't know</p> <p>3 the answer to that. I'm not -- I haven't</p> <p>4 memorized this book (indicating to document.)</p> <p>5 So -- so if -- if you're looking for a specific 11:14</p> <p>6 bylaw that talks about criminal matters, I</p> <p>7 can't -- I can't cite that for you.</p> <p>8 BY MR. SEIBERLING:</p> <p>9 Q. You had noted earlier that you met with</p> <p>10 people within the NCAA and decided to send a 11:14</p> <p>11 letter --</p> <p>12 A. Um-hum.</p> <p>13 Q. -- to Penn State. If we look back at</p> <p>14 your initial statement, you refer to it as a</p> <p>15 potential criminal matter. What -- what led you 11:14</p> <p>16 to then distinguish between it being a criminal</p> <p>17 matter? What -- what was the hook? I think you</p> <p>18 had mentioned there was -- the NCAA will get</p> <p>19 involved in criminal matters if there's some</p> <p>20 kind of intercollegiate athletic hook; is that 11:15</p> <p>21 right?</p> <p>22 A. Well, I wouldn't use that word at all.</p> <p>23 The -- the notion that I was trying to convey</p> <p>24 is -- again, to be really clear -- that the</p> <p>25 Association, the -- the members of the -- of the 11:15</p>	<p style="text-align: right;">Page 57</p> <p>1 Association, the universities, have never</p> <p>2 expressed an interest in having -- of being</p> <p>3 involved in criminal matters on individual</p> <p>4 campuses. So it's sadly common for criminal</p> <p>5 behavior to occur on university campuses. 11:15</p> <p>6 That's -- there's nothing -- unfortunately</p> <p>7 nothing distinctive about that. Perhaps of</p> <p>8 this -- of this magnitude, sure, but not in and</p> <p>9 of itself. And the member universities have --</p> <p>10 have historically said, we don't want to have 11:15</p> <p>11 our membership investigating a criminal matter</p> <p>12 on an individual campus. That's for the</p> <p>13 individual campus and their police and their law</p> <p>14 enforcement to -- to manage.</p> <p>15 What they have said is that we want 11:16</p> <p>16 college sports to reflect and that the core</p> <p>17 rationale behind the existence of the NCAA is to</p> <p>18 have sports reflect the values of integrity and</p> <p>19 honesty that are inherent in college sports,</p> <p>20 that college sports is ultimately about 11:16</p> <p>21 promoting those things. And therefore if a</p> <p>22 university is involved in a coverup, if a</p> <p>23 university is involved in not -- in -- in not</p> <p>24 handling a case with the same forthrightness or</p> <p>25 integrity they would if somebody else on their 11:16</p>

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<p>1 campus was involved in an activity, then that</p> <p>2 constitutes a kind of behavior that we, the</p> <p>3 Association, we the members want to be involved</p> <p>4 in.</p> <p>5 And that was the bait that was going on 11:16</p> <p>6 right now that's reflected in these words right</p> <p>7 here (indicating), is all right, it appears --</p> <p>8 again, at this stage we had allegations, nothing</p> <p>9 but allegations, right -- the University had</p> <p>10 taken -- the university's board, Penn State's 11:17</p> <p>11 university board had taken extraordinary action</p> <p>12 in removing its president, its executive vice</p> <p>13 president, its AD and its coach. So surely the</p> <p>14 board saw this of something of great</p> <p>15 consequence. And -- and we in the NCAA were 11:17</p> <p>16 left saying, all right, is there -- is there</p> <p>17 some obvious issue here since this is obviously</p> <p>18 about athletics, since it was the athletic</p> <p>19 director and the football coach who were removed</p> <p>20 and all of the allegations involved a coach -- 11:17</p> <p>21 former -- a former coach rather, pardon me -- a</p> <p>22 former coach and their facilities and their</p> <p>23 games, was there a role that the NCAA needed to</p> <p>24 play to look into this.</p> <p>25 And -- and the answer at that point 11:17</p>	<p>1 was, we're not sure, we don't know. And that's</p> <p>2 what led to -- rather than launching an</p> <p>3 investigation immediately, that's what led to me</p> <p>4 writing a letter to then President Erickson.</p> <p>5 Q. You had mentioned the removal of -- of 11:18</p> <p>6 the then President Graham Spanier.</p> <p>7 A. Um-hum.</p> <p>8 Q. Did you talk to him or communicate with</p> <p>9 him about his removal?</p> <p>10 A. I -- I did not talk to him at the time. 11:18</p> <p>11 I've known Graham for a very long time. And</p> <p>12 afterwards, after -- sometime -- at some time</p> <p>13 after his removal, he -- and I'm sorry, I don't</p> <p>14 remember the timing of these things, but it was</p> <p>15 quite a bit later as I recall. It might have 11:18</p> <p>16 even been after the Freeh Report -- he sent me</p> <p>17 an e-mail. But other than that, he didn't</p> <p>18 communicate with me.</p> <p>19 Q. You had mentioned earlier he was one of</p> <p>20 the chairs on -- for one of the working 11:18</p> <p>21 groups --</p> <p>22 A. Yes.</p> <p>23 Q. -- is that correct?</p> <p>24 A. Um-hum.</p> <p>25 Q. All right. Did you have to replace 11:19</p>
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<p>1 him? What --</p> <p>2 A. That committee had already finished its</p> <p>3 work and had disbanded at that stage.</p> <p>4 MR. GARDNER: Hand me -- I'll keep</p> <p>5 track of the exhibits for you if you want to 11:19</p> <p>6 just --</p> <p>7 THE WITNESS: Sure. Don't get a</p> <p>8 hernia.</p> <p>9 MR. GARDNER: If we need -- yeah,</p> <p>10 thanks. 11:19</p> <p>11 (Pause in proceedings.)</p> <p>12 (Emmert Exhibit 3 was marked</p> <p>13 for ID.)</p> <p>14 BY MR. SEIBERLING:</p> <p>15 Q. I'll show you what's now marked as 11:19</p> <p>16 Emmert Exhibit 3.</p> <p>17 A. (Reviewing document.) Okay.</p> <p>18 Q. After reading the e-mail -- the e-mail</p> <p>19 is dated November 11th, 2011, and it's a</p> <p>20 communication between you and Graham Spanier. 11:21</p> <p>21 After reading it, does it refresh your</p> <p>22 recollection?</p> <p>23 A. Only somewhat. I mean, to -- to be</p> <p>24 honest, I don't -- I don't recall this. I'm not</p> <p>25 denying its legitimacy. I'm just saying I 11:21</p>	<p>1 don't -- I don't recall this exchange.</p> <p>2 Q. Any idea why David Berst is copied on</p> <p>3 it?</p> <p>4 A. It seems to be referring to a panel</p> <p>5 that we must have been putting together for our 11:21</p> <p>6 national convention at which would have been</p> <p>7 January 11th, I assume is the date that</p> <p>8 Spanier's referring to. The -- the annual</p> <p>9 meeting always has a broad range of panel</p> <p>10 discussions on it, especially around Division I 11:22</p> <p>11 and Dave Berst is one of the people that would</p> <p>12 have been organizing that conversation, I</p> <p>13 suspect.</p> <p>14 Now, this is a supposition on my part,</p> <p>15 because I real- -- again, I really don't recall, 11:22</p> <p>16 but I'm guessing that that's why -- why Berst is</p> <p>17 copied on it, because he -- his -- Graham</p> <p>18 Spanier's communication, besides expressing some</p> <p>19 sentiment, is, you know, that he -- he won't be</p> <p>20 available for that 11th event. 11:22</p> <p>21 Q. And then after this e-mail, you don't</p> <p>22 remember any other communications?</p> <p>23 A. I remember -- as I said, I remember him</p> <p>24 sending me a note, I believe, around the time of</p> <p>25 the Freeh Report coming out, but -- but I -- and 11:22</p>

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<p>1 I remember that I responded, but I believe it 2 was -- as I recall, it was predominantly about, 3 again, a sentiment similar to this, that he was 4 providing reassurances that he wasn't involved 5 in any of this. 11:23 6 Q. You had mentioned the letter that you 7 sent to Penn State? 8 A. Um-hum. 9 Q. And the lead-up to that letter, I think 10 you had also mentioned there was some internal 11:23 11 meetings to discuss steps -- 12 A. Yes. 13 Q. -- or next steps? 14 A. Yes. 15 Q. To the extent you can, without 11:23 16 revealing any privileged communications, with 17 regard to those meetings, the internal 18 meetings -- 19 A. Um-hum. 20 Q. -- generally what was the top- -- what 11:23 21 were the topics of discussion? 22 A. Well, they were -- they were the -- 23 first of all, the nature of the circumstances, 24 right, you know, what was known and what wasn't 25 known, how did we ascertain what was fact and 11:23</p>	<p>1 what was emotion. This was, as you will recall, 2 such an amazingly shocking event, to have 3 allegations on this on a university, to have a 4 whole senior leadership team of a university 5 removed around issues of child abuse. I mean, 11:24 6 it's shocking to say the least. And so no one 7 had ever dealt with an issue like this. No 8 one's ever -- ever has and I hope never again 9 has to face an issue of this -- of this 10 consequence. 11:24 11 And so we talked about how to proceed, 12 what is the right way to parse out the role of 13 criminal -- of, you know, the criminal justice 14 system versus any potential role of the 15 Association and how would one go about doing it. 11:24 16 I think all of the pretty normal questions that 17 one would expect to have a discussion and a 18 debate about around -- around a table. 19 Q. What was your viewpoint? What did you 20 believe should be done? 11:25 21 A. I wasn't sure at that stage. You know, 22 the -- hence the conversation. 23 Q. Did you have any communications with 24 the Big Ten Conference around this time period? 25 MR. GARDNER: Sorry. 11:25</p>
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<p>1 THE WITNESS: Okay. 2 MR. GARDNER: I was -- he fixed it. So 3 I stopped. 4 THE WITNESS: Okay. 5 I'm sorry, would you repeat the 11:25 6 question? 7 BY MR. SEIBERLING: 8 Q. Did you have any conversations with the 9 Big -- with representatives from the Big Ten 10 Conference around this time period? 11:25 11 A. You know, I'm sure I -- first of all, I 12 don't recall specific conversations that I might 13 have had, but I -- I suspect I had conversations 14 was Lou Anna Simon and perhaps with Jim Delany, 15 the Commissioner. I talk to all the 11:25 16 commissioners on a pretty regular basis. So we 17 may well have talked, but I don't recall 18 specific -- specific conversations. 19 Q. Do you remember what was discussed, the 20 subject matter? 11:26 21 A. No. No. 22 Q. Let's -- 23 THE WITNESS: Could -- so we don't have 24 to take a break, could I call on my very 25 expensive coffee fetcher in Donald to get me 11:26</p>	<p>1 coffee? Am I allowed to do that? It's a full 2 -- he's a full service GC. 3 MR. REMY: I am not quite as expensive 4 as I once was. 5 MR. GARDNER: I'm going to reserve 11:26 6 comment on all that. 7 THE WITNESS: Oh, my gosh. I just 8 realized that was all on videotape. Sorry. I 9 just wanted a cup of coffee. 10 MR. VOSS: I'm going to have your 11:26 11 expensive coffee getter to transport some 12 documents now. 13 (Emmert Exhibit 4 was marked 14 for ID.) 15 BY MR. SEIBERLING: 11:27 16 Q. I'm going to show you now what's been 17 marked as Emmert Exhibit 4. 18 A. Thank you. (Reviewing document.) 19 Q. This is a November 16th, 2011 e-mail 20 from David Berst to Jim Delany at the Big Ten; 11:27 21 is that correct? 22 A. Yes, um-hum. That sure looks like it, 23 yeah. 24 Q. You're not on this e-mail, but I just 25 wanted to ask you if in the e-mail specifically 11:27</p>

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<p>1 references you?</p> <p>2 A. Yes.</p> <p>3 Q. It says "Mark E will call you re PSU</p> <p>4 and his plan to 'inquire' from an NCAA point of</p> <p>5 view." Do you remember making a call to Jim 11:28</p> <p>6 Delany?</p> <p>7 A. No. As I said, I don't, but I've also,</p> <p>8 as I've said, I believe that's a perfectly</p> <p>9 reasonable thing for me to have done at that</p> <p>10 time. I don't -- do I remember picking up the 11:28</p> <p>11 phone on that date and making a call? No. Do I</p> <p>12 accept that that was a reasonable thing that I</p> <p>13 would have done at that time? Sure.</p> <p>14 Q. Why would you be communicating with the</p> <p>15 Big Ten? 11:28</p> <p>16 A. Because Penn State's one of his member</p> <p>17 institutions. The relationship, again, in the</p> <p>18 Association is one of a member-based</p> <p>19 association. It works in a sort of federated</p> <p>20 model with individual schools and conferences in 11:28</p> <p>21 the national association.</p> <p>22 When you're dealing with any</p> <p>23 significant issue, you typically would want the</p> <p>24 commissioner to know about it, if it's</p> <p>25 dealing -- if it's dealing with their -- one of 11:29</p>	<p>1 their schools, but it -- again, there's nothing</p> <p>2 typical about this. This was -- this was easily</p> <p>3 the most extraordinary thing to happen in</p> <p>4 college sports in a long, long time, and so it</p> <p>5 would be perfectly sensible to talk to a 11:29</p> <p>6 commissioner about something going on with his</p> <p>7 school.</p> <p>8 Q. The conference would have its own</p> <p>9 separate bylaws and rules and constitution; is</p> <p>10 that correct? 11:29</p> <p>11 A. They have bylaws and each conference</p> <p>12 has bylaws and rules that are a subset of or</p> <p>13 consistent with the NCAA rules. So as member</p> <p>14 universities and as member associations, they</p> <p>15 are committed to their collective rules in the 11:29</p> <p>16 Association and then they can have rules that</p> <p>17 are peculiar to that particular conference as</p> <p>18 well. So it's a bit like states in a federal</p> <p>19 constitution, I suppose, in at least an</p> <p>20 analogous point of view. 11:29</p> <p>21 Q. Do the conferences penalize or sanction</p> <p>22 separate and apart from the NCAA?</p> <p>23 A. They can and do, yes, um-hum.</p> <p>24 Q. Do they conduct their own</p> <p>25 investigations separate and apart from the NCAA? 11:30</p>
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<p>1 A. Typically not, but some conferences do.</p> <p>2 It depends on individual conferences. So the</p> <p>3 Pac-10 when I was there, Pac-12 now, has always</p> <p>4 had an investigatory arm and they conducted</p> <p>5 their own investigations. Other conferences 11:30</p> <p>6 handle it in different ways.</p> <p>7 Their ability to penalize or not</p> <p>8 penalize a member school is a function of the</p> <p>9 authority that that group of presidents have</p> <p>10 vested in their conference office, and each 11:30</p> <p>11 collection of schools decides on that in</p> <p>12 different ways.</p> <p>13 Q. What about the Big Ten in particular,</p> <p>14 do they have an investigative arm that you're</p> <p>15 aware of? 11:30</p> <p>16 A. They don't have a specific</p> <p>17 investigative arm that I'm aware of. I don't</p> <p>18 know their staffing that well, but they</p> <p>19 certainly have, in a number of cases, imposed</p> <p>20 penalties on schools and individuals and, again, 11:31</p> <p>21 conferences are voluntary associations and they</p> <p>22 can conduct their business as they see fit.</p> <p>23 Q. Do you share -- does the NCAA share</p> <p>24 information with the conferences?</p> <p>25 A. It depends on the nature of the matter. 11:31</p>	<p>1 Q. Investigative matters, do they share</p> <p>2 information in regard to investigative matters?</p> <p>3 A. In a typical case, no, they would not.</p> <p>4 If the -- if the conference was involved because</p> <p>5 the institution wanted them involved in some 11:31</p> <p>6 fashion, then yes, they would be. So I guess</p> <p>7 the answer is it depends on the -- on the</p> <p>8 individual case.</p> <p>9 Q. The next sentence in this e-mail --</p> <p>10 sorry, to turn back to it. 11:31</p> <p>11 A. Sure.</p> <p>12 Q. "I have pushed back and have lost the</p> <p>13 argument so far, but call if you need to think</p> <p>14 through."</p> <p>15 Do you know what Berst is talking about 11:31</p> <p>16 "pushing back and losing the argument so far"?</p> <p>17 A. No.</p> <p>18 Q. He continues on, "I had a good</p> <p>19 conversation with Lou Anna on how to use it to</p> <p>20 look at the athletic culture, but Mark wants 11:32</p> <p>21 more."</p> <p>22 Any idea what Berst is talking about</p> <p>23 with "Mark wants more"?</p> <p>24 A. No. You'd have to ask him.</p> <p>25 Q. What was your understanding of David 11:32</p>

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<p>1 Berst's position with regard to the Penn State 2 matter?</p> <p>3 MR. GARDNER: Objection. 4 As of this time?</p> <p>5 MR. SEIBERLING: As of this time frame. 11:32 6 THE WITNESS: At this moment in time? 7 (Indicating to document) 8 BY MR. SEIBERLING: 9 Q. At this moment in time. 10 A. Oh, gosh. I don't know his mental 11:32 11 state in September of 2011. He was, along with 12 a number of people, part of a vigorous 13 conversation and discussion about how we should 14 proceed. I know where he and all of my senior 15 staff landed as this all transpired, and they 11:33 16 were fully supportive of the approach that the 17 office took. 18 Q. From the context of this e-mail, it 19 sounds like he was in the minority view if he's 20 pushing back. Does that make sense? 11:33 21 A. No. 22 MR. GARDNER: Well... 23 THE WITNESS: Actually, it doesn't. I 24 can't conclude that even slightly from this. It 25 sounds like he's expressing some ambiguous view 11:33</p>	<p>1 to someone that he -- that he's expressing, not 2 that he's in the minority or majority, but I -- 3 I'm not trying to be argumentative. I simply 4 can't ascertain this from here. I mean, again, 5 I would encourage you to ask him. 11:33 6 MR. GARDNER: If you're about to move 7 on, can we black out the phone number on the 8 official copy of this? I don't know if that's 9 an office or a cell, but I don't see any reason 10 to publish somebody's cell number. 11:33 11 MR. SEIBERLING: Oh, sorry. 12 MR. GARDNER: Okay. We'll do that, if 13 that's okay. 14 THE REPORTER: (Nodding.) 15 MR. SEIBERLING: Yeah. 11:34 16 THE WITNESS: Are we done with this? 17 MR. GARDNER: Yeah. 18 THE WITNESS: (Tendering document to 19 counsel.) 20 (Emmert Exhibit 5 was marked 21 for ID.) 22 BY MR. SEIBERLING: 23 Q. I'm going to show you what's marked as 24 Emmert Exhibit 5. 25 A. (Reviewing document.) 11:35</p>
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<p>1 Q. This appears to be an invitation to a 2 call with the Division I -- 3 A. Um-hum. 4 Q. -- board of directors? 5 A. Yes. 11:35 6 Q. Do you remember having a call with the 7 Division I board of directors around this time 8 period? 9 A. I do. 10 Q. To the extent you can, without 11:35 11 revealing any privileged communications, do you 12 remember what was discussed on that call? 13 A. Only in broad terms. It was an 14 opportunity to provide the board with a general 15 sense of where the -- I and the senior staff 11:35 16 thought we should move forward and how we should 17 move forward on this conversation. Again, I 18 don't remember the details of it. It was quite 19 sometime ago, but it was just as the memo says, 20 an opportunity to provide an update on the 11:36 21 information about the Penn State case. 22 Q. Did you discuss the letter that you 23 were intending to send to Penn State? 24 A. I suspect so, but again, I don't 25 remember the details of that. It would seem 11:36</p>	<p>1 logical that I did. 2 Q. Did you provide a draft of that letter 3 to the board prior to it being sent? 4 A. Don't think so, but I -- but I don't 5 recall. 11:36 6 (Emmert Exhibit 6 was marked 7 for ID.) 8 BY MR. SEIBERLING: 9 Q. I show you what's marked as Emmert 10 Exhibit 6. I believe this is the letter you're 11:36 11 referring to. 12 A. Um-hum. (Reviewing document.) 13 Q. This is a November 17th, 2011 letter 14 from you to President Erickson at Penn State. 15 A. Yes. 11:37 16 Q. The first sentence reads -- the first 17 phrase of the first sentence reads "As we have 18 discussed..." 19 Do you remember having a phone 20 conversation with President Erickson prior to 11:37 21 sending this letter? 22 A. I do. I, again, don't remember the 23 specific day or the exact substance of the 24 conversation, but I remember calling him in 25 advance to let him know that we would be sending 11:37</p>

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<p>1 this letter forward if the board supported such 2 a move.</p> <p>3 Q. Did you discuss the substance of what 4 the letter would be?</p> <p>5 A. I don't recall the exact details, but 11:37 6 I -- I -- I would have presumed that I gave him 7 a broad outline of it, but that's a presumption 8 on my part.</p> <p>9 Q. Do you remember how far in advance of 10 this letter that call happened? 11:38</p> <p>11 A. I'm sorry, I don't.</p> <p>12 Q. If you can scroll down a little bit, 13 about halfway through the first paragraph --</p> <p>14 A. Um-hum.</p> <p>15 Q. -- it reads "I am writing to notify you 11:38 16 that the NCAA will examine Penn State's exercise 17 of institutional control over it's 18 intercollegiate athletics program, as well as 19 the actions, and inactions, of relevant 20 responsible personnel." 11:38</p> <p>21 Was this a formal notice of inquiry to 22 Penn State?</p> <p>23 A. No, it was not. It was not intended as 24 such because we weren't at that stage in the 25 process. The -- the fact that it was a letter 11:38</p>	<p>1 from me rather than from the -- the -- the 2 advice -- senior vice president for -- for 3 investigations, Julie Roe Lach was intentional, 4 because we weren't issuing a letter of 5 allegation. We were at this stage still making 11:39 6 an inquiry, wanted to know more of what existed.</p> <p>7 I think, again, the salient point here 8 was that this was an extraordinary event. This 9 was not some young man swapping memorabilia for 10 tattoos. This wasn't someone taking extra 11:39 11 benefits, you know, for a dinner.</p> <p>12 This wasn't anything that anybody in 13 the NCAA or elsewhere had seen before. So the 14 constant discussion and debate was, given this 15 extraordinary set of circumstances, given that 11:40 16 this was a set of allegations being made by the 17 grand jury that no one had quite seen before, 18 the national office, myself, the national office 19 staff and the board were trying to determine, 20 all right, under these very, very unusual 11:40 21 circumstances, what's the right way to proceed?</p> <p>22 And it was agreed upon that the first 23 thing we needed to do was say, Look, we need to 24 have a conversation about this, President 25 Erickson, we need to understand more of the 11:40</p>
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<p>1 facts, what are you doing on your end to 2 understand the facts of this case, and these are 3 the kinds of questions that we will need to 4 explore as we move forward.</p> <p>5 It was -- it was not intended to be a 11:40 6 notice of allegations.</p> <p>7 Q. What would the difference be -- be 8 between, say, a formal notice of inquiry or a 9 formal notice of allegations and this letter?</p> <p>10 A. Yeah, a formal notice -- a formal 11:41 11 notice of allegation from my interpretation, 12 right? And, again, I'm not a vice president of 13 compliance or a member of the committee on 14 infractions but, you know, a formal notice of 15 allegations indeed says here is precisely what 11:41 16 we are going -- you are being charged with and 17 here is -- here is what you -- the charges that 18 you are going to have to defend yourself 19 against.</p> <p>20 This was an inquiry. This was, as my 11:41 21 language here says, we -- we need to understand 22 more, the -- the board, the -- the membership 23 wants to understand this more, please provide us 24 with information so that we can understand what 25 transpired and how the university was in fact 11:41</p>	<p>1 demonstrating institutional control when the 2 assertions that are being made here are quite 3 the contrary.</p> <p>4 And so we -- we struck on what is -- 5 what is clearly a novel approach to this, rather 11:42 6 than go right to a notice of allegations, rather 7 than ignoring it. So this was clearly a hybrid 8 approach to this -- again, I keep use the word 9 "extraordinary" because I don't have another 10 word to describe it, this -- this extraordinary, 11:42 11 deeply troubling problem.</p> <p>12 Q. You -- you were describing what sounds 13 like a notice of allegations, which is provided 14 for in -- in the bylaws. If I'm correct, the 15 bylaws also provide for a -- a notice of 11:42 16 inquiry, which is different than a notice of 17 allegations. Is my understanding right?</p> <p>18 A. I don't know about --</p> <p>19 MR. GARDNER: Let me get an objection 20 in here. I object to the form. 11:42</p> <p>21 Now you can go ahead.</p> <p>22 THE WITNESS: I -- I don't -- I don't 23 know the details of how the bylaws describe a 24 notice of inquiry. You -- it sounds like you 25 might know it better than I. 11:42</p>

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<p>1 BY MR. SEIBERLING:</p> <p>2 Q. At this point in time, had -- had you</p> <p>3 or your internal team discussed a potential</p> <p>4 enforcement investigation?</p> <p>5 A. Sure. We had -- we talked about a 11:43</p> <p>6 variety of things conceptually and concluded</p> <p>7 that at this stage it was -- it was too</p> <p>8 premature to do that. And, again, because this</p> <p>9 was such a remarkable and disturbing set of</p> <p>10 circumstances, the conclusion was that we needed 11:43</p> <p>11 to make some initial inquiries, that we needed</p> <p>12 to -- we needed to gather some more information,</p> <p>13 and we needed to know what the -- more of the</p> <p>14 facts were and -- and decided to move in this</p> <p>15 direction. 11:44</p> <p>16 So, of course, they were talking about</p> <p>17 a formal investigation.</p> <p>18 Q. At this point in time -- this would</p> <p>19 have been November 2011 --</p> <p>20 A. Um-hum. 11:44</p> <p>21 Q. -- was there any discussion of the</p> <p>22 executive committee exercising its jurisdiction</p> <p>23 over the matter?</p> <p>24 A. No, not that I remember.</p> <p>25 Q. The sentence I read earlier states, "I 11:44</p>	<p>1 am writing to notify you that the NCAA will</p> <p>2 examine Penn State's exercise of institutional</p> <p>3 control over its intercollegiate athletics</p> <p>4 program."</p> <p>5 What exactly were you planning to 11:44</p> <p>6 examine or what did you mean by "examine Penn</p> <p>7 State's exercise of institutional control"?</p> <p>8 A. The answers to the questions that I --</p> <p>9 that I posed in the following pages.</p> <p>10 Q. The four questions -- 11:45</p> <p>11 A. Um-hum.</p> <p>12 Q. -- at the end?</p> <p>13 A. Um-hum.</p> <p>14 THE REPORTER: Is that "yes"?</p> <p>15 THE WITNESS: I'm sorry? 11:45</p> <p>16 THE REPORTER: Is that "yes"?</p> <p>17 THE WITNESS: Yes. Thank you.</p> <p>18 BY MR. SEIBERLING:</p> <p>19 Q. Was this letter made public?</p> <p>20 A. I don't recall. Penn State being a 11:45</p> <p>21 public institution most -- not all but most</p> <p>22 documents that are sent to universities wind up</p> <p>23 in the public record and are subject to public</p> <p>24 records laws. But I don't -- I don't recall in</p> <p>25 this case. 11:45</p>
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<p>1 Q. What about inquiries by the NCAA,</p> <p>2 aren't they usually kept confidential?</p> <p>3 A. Yes. If something is going through a</p> <p>4 formal inquiry process, it is by us. But it can</p> <p>5 be released by the institution and often is. 11:45</p> <p>6 But again, that's not what this document</p> <p>7 constituted.</p> <p>8 Q. At this point in time was there any</p> <p>9 discussions of -- of whether what happened at</p> <p>10 NCAA or the allegations related to -- I'm sorry, 11:46</p> <p>11 at -- the allegations related to Penn State were</p> <p>12 either major or secondary violations?</p> <p>13 A. No. There -- there were a variety of</p> <p>14 discussions about, you know, what -- what the</p> <p>15 nature of the -- of the -- the allegations and 11:46</p> <p>16 assertions by the -- by the grand jury were.</p> <p>17 But at that stage they were -- as -- you know,</p> <p>18 as pointed out in my letter, you know, early</p> <p>19 on -- earlier on in this letter, I point out</p> <p>20 that, you know, all of these things are very 11:46</p> <p>21 disturbing if true, and at this point, of course</p> <p>22 no one knew what was true. There was -- there</p> <p>23 were no findings other than the presentments of</p> <p>24 a grand jury.</p> <p>25 So were there discussions of what would 11:47</p>	<p>1 be hypothetically a -- a major or a secondary</p> <p>2 violation? Of course, but everything was</p> <p>3 hypothetical at that stage. So you -- you</p> <p>4 didn't have -- you didn't have an investigation</p> <p>5 launched. So it would have been inappropriate 11:47</p> <p>6 to sit and make some presumption about what was</p> <p>7 secondary, what was -- what was a major, and</p> <p>8 there were -- but there were a variety of</p> <p>9 discussions about hypothetically what would and</p> <p>10 wouldn't be. 11:47</p> <p>11 And again, at this stage no one knew</p> <p>12 the facts. That's what this letter was about,</p> <p>13 was to try and get at some more information, not</p> <p>14 a formal notice of inquiry but, gee, help us</p> <p>15 understand this. This is a horrific -- if true, 11:47</p> <p>16 these are horrific behaviors. And if true,</p> <p>17 the -- the athletic department, according to the</p> <p>18 grand jury, seemed to be complicit in it.</p> <p>19 And the actions of the board of Penn</p> <p>20 State seemed to agree that those were the 11:47</p> <p>21 actions -- were -- of the athletic department</p> <p>22 were complicit in this, because you just fired</p> <p>23 your coach and your athletic director and the</p> <p>24 senior VP to whom the athletic department</p> <p>25 reported. Help us understand that. 11:48</p>

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<p>1 So I think, again, you -- you have to 2 keep everything in context here. No one that's 3 involved in college sports right now, that I've 4 ever talked to, has ever seen anything like 5 this. And -- and so the board that I -- when we 11:48 6 talked on the phone and I and the staff, we were 7 all trying to determine how do you move forward 8 under these circumstances in a way that is 9 responsible to all parties. And that's what 10 everyone was trying to do here. 11:48 11 So no, this doesn't fit into the normal 12 impermissible tattoo benefit rule. That's not 13 what we're talking about here. 14 Q. Would you agree that this letter itself 15 is unprecedented? 11:48 16 A. I -- 17 MR. GARDNER: I'm going to object to 18 the form. 19 You can go ahead. 20 THE WITNESS: Some day you've got to 11:49 21 tell me what that means. 22 But -- but -- well, I just don't know. 23 MR. SEIBERLING: You still have to 24 answer. 25 MR. GARDNER: It means that there's 11:49</p>	<p>1 something about his question I don't like -- 2 THE WITNESS: Okay. 3 MR. GARDNER: -- that I think is wrong. 4 THE WITNESS: All right. All right. 5 Well, it's -- 6 MR. SEIBERLING: You still have to 7 answer if he objects. Unless he directs you not 8 to, you still have to answer. 9 THE WITNESS: Okay, that's the salient 10 point here is I assume I still answer. 11 And it's a simple question to answer. 12 I don't know. It's certainly unprecedented for 13 me, and I've never seen anything like it. 14 Again, I'm not the historian of the NCAA, but I 15 think it is -- it certainly is in my -- in my 11:49 16 four-year experience. 17 BY MR. SEIBERLING: 18 Q. Prior to this time period, you had 19 never sent a letter such as this? 20 A. No, no. 11:49 21 Q. And since you haven't sent a letter 22 such as this? 23 A. No, and I hope to never again have to. 24 (Emmert Exhibit 7 was marked 25 for ID.) 11:50</p>
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<p>1 BY MR. SEIBERLING: 2 Q. I show you what's marked as Emmert 3 Exhibit 7. 4 A. (Reviewing document.) 5 Q. After sending the November 17th, 2011 11:50 6 letter to Penn State, do you remember scheduling 7 a conference call with President Erickson? 8 A. Yeah, I remember talking to him. I 9 don't remember that it was a conference call, 10 but it certainly appears that there were a 11:50 11 couple of other people on the call. 12 Q. Did you remember who else was on the 13 call? 14 A. Not specifically. But it -- I -- I see 15 who's -- who -- who this was sent to. So it 11:51 16 implies that Julie Roe Lach and Donald Remy were 17 on the call with me. 18 Q. Why were Julie Roe Lach and Donald Remy 19 also on the call with you? 20 A. As I said, I don't remember 11:51 21 specifically them being on the call, but I 22 assume that this was a call to answer whatever 23 questions he might have and to -- to provide him 24 with -- with assistance in figuring out how to 25 answer the questions. 11:51</p>	<p>1 I know that -- and you'll have to 2 forgive me for not remembering the precise 3 sequence, but at -- at some stage around this 4 period was when the board, the Penn State board 5 had indicated that they were retaining Judge 11:51 6 Freeh to conduct an investigation, and part of 7 the conversation with -- with President Erickson 8 was whether or not the -- the answers that 9 were -- excuse me, the -- yeah, the answers to 10 the questions that I had posed in my letter to 11:52 11 him could be left unanswered until after the 12 Freeh investigation. 13 And he had made that request, which 14 seemed like a perfectly sensible thing to me, 15 and I was -- I was fairly confident that my 11:52 16 board would find that satisfactory. And this -- 17 this conversation may -- and I'm underscoring 18 may because I don't recall -- may have been 19 about that. 20 Q. Do you remember anyone else from Penn 11:52 21 State being on the call? 22 A. No, I don't recall. I'm not -- again, 23 I'm not saying they weren't. I just simply 24 don't remember. 25 Q. Do you remember Cynthia Baldwin being 11:52</p>

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<p>1 on the call?</p> <p>2 A. No, I don't remember.</p> <p>3 Q. Do you remember having any</p> <p>4 conversations with Cynthia -- with Cynthia</p> <p>5 Baldwin around this time period? 11:53</p> <p>6 A. No, I don't -- I don't remember that I</p> <p>7 ever had a conversation with Cynthia,</p> <p>8 Miss Baldwin. I shouldn't call her by her first</p> <p>9 name. I've never met her.</p> <p>10 Q. So other than President Erickson, do 11:53</p> <p>11 you remember having any conversations with</p> <p>12 anyone from Penn State around this time period?</p> <p>13 A. No, I believe all my communications</p> <p>14 were with President Erickson.</p> <p>15 Q. On this call with President Erickson, 11:53</p> <p>16 do you remember discussing the possibility of</p> <p>17 reaching out to other individuals?</p> <p>18 A. I'm not sure what you're asking.</p> <p>19 Q. Ron Tomalis?</p> <p>20 A. I don't know who Ron Tomalis is. 11:53</p> <p>21 Q. Ken Frazier?</p> <p>22 A. Oh, on the board?</p> <p>23 Q. Yes.</p> <p>24 A. Yes, I did in fact talk to Ken Frazier,</p> <p>25 um-hum, by telephone. 11:54</p>	<p>1 Q. Did you talk about reaching out to</p> <p>2 Judge Freeh?</p> <p>3 A. No.</p> <p>4 Oh, I talked to Judge Freeh at -- at</p> <p>5 one point, but I don't remember whether we 11:54</p> <p>6 discussed it here. The -- the context of that</p> <p>7 conversation would have been that the university</p> <p>8 was asking that we -- that they not answer the</p> <p>9 questions in my letter of early in November</p> <p>10 until after the Freeh Report was concluded. 11:54</p> <p>11 And part of the exchange -- and again,</p> <p>12 forgive me for not remembering specifically</p> <p>13 which conversations. This all arose in -- was</p> <p>14 that the team that -- that Judge Freeh put in</p> <p>15 place would -- would provide regular updates of 11:54</p> <p>16 their progress, not their substantive</p> <p>17 information but updates on the -- on the</p> <p>18 progress they were making and how far along they</p> <p>19 were in the process to -- to Donald Remy, my</p> <p>20 general counsel. 11:55</p> <p>21 And you know, Rod may have -- may or --</p> <p>22 may have said, well, you know, I'll have -- I'll</p> <p>23 have Judge Freeh call you or something, but I</p> <p>24 don't -- but to be honest, I don't remember, but</p> <p>25 I know that -- I remember that I do have a -- 11:55</p>
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<p>1 did have a conversation with Judge Freeh about</p> <p>2 this -- the nature of his inquiry and that they</p> <p>3 were not going to be looking into whether or not</p> <p>4 there were any NCAA infractions -- that wasn't</p> <p>5 their job -- but they were going to conduct 11:55</p> <p>6 their investigation, and we agreed that that</p> <p>7 made perfect sense.</p> <p>8 (Emmert Exhibit 8 was marked</p> <p>9 for ID.)</p> <p>10 BY MR. SEIBERLING: 11:56</p> <p>11 Q. I show you what is marked as Emmert</p> <p>12 Exhibit 8.</p> <p>13 A. (Reviewing document.)</p> <p>14 Q. This appears to be an appointment</p> <p>15 invitation for a call with Ronald Tomalis, 11:56</p> <p>16 secretary in the Department of Education, PA.</p> <p>17 A. Um-hum.</p> <p>18 Q. Do you remember having a call with</p> <p>19 Ronald Tomalis?</p> <p>20 A. You know, I don't. I -- I may well 11:56</p> <p>21 have talked to him, but I -- but I don't recall</p> <p>22 talking to him. Was he at this stage on the</p> <p>23 board of Penn State?</p> <p>24 Q. Yes.</p> <p>25 A. Okay. 11:57</p>	<p>1 Q. You don't remember the substance of the</p> <p>2 call?</p> <p>3 A. I'm sorry, I don't, no.</p> <p>4 Q. Do you remember having a call with Ken</p> <p>5 Frazier -- 11:57</p> <p>6 A. Um-hum.</p> <p>7 Q. -- around this same time period?</p> <p>8 A. I do, yes.</p> <p>9 Q. Can you tell us what was discussed</p> <p>10 during that call? 11:57</p> <p>11 A. The -- the nature of what they intended</p> <p>12 to do. At -- at this stage I don't recall</p> <p>13 whether or not they'd hired Judge Freeh or not,</p> <p>14 but they -- but he made clear that they wanted</p> <p>15 to conduct their own internal inquiry, that it 11:57</p> <p>16 would be very far reaching, that it would</p> <p>17 include everyone involved from the board on</p> <p>18 down.</p> <p>19 He was quite adamant and very strong</p> <p>20 about the position that the university, not -- 11:57</p> <p>21 not because of NCAA issues but because of their</p> <p>22 deep concern about this matter overall for the</p> <p>23 health and well-being of the university, that</p> <p>24 they needed to understand everything that was</p> <p>25 there and that they need to make -- needed to 11:58</p>

23 (Pages 86 to 89)

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<p>1 make all that information public.</p> <p>2 And he -- he was just communicating to</p> <p>3 me their adamant belief that the only real</p> <p>4 solution for this mess for Penn State was a</p> <p>5 thorough, full open investigation and that he 11:58</p> <p>6 intended to make sure that that occurred.</p> <p>7 And I -- I believe at that time he was</p> <p>8 chair of the committee, the special -- a special</p> <p>9 committee at Penn -- I'm asking you a question.</p> <p>10 I shouldn't be asking you a question. 11:58</p> <p>11 I believe he was the chair of a special</p> <p>12 committee that the board had appointed to -- to</p> <p>13 oversee this process and hence our conversation.</p> <p>14 THE WITNESS: I guess I'm not allowed</p> <p>15 to ask questions. 11:58</p> <p>16 MR. GARDNER: You can ask him. I</p> <p>17 just -- I can't promise that he'll answer.</p> <p>18 THE WITNESS: All right.</p> <p>19 BY MR. SEIBERLING:</p> <p>20 Q. Around this same time period do you 11:59</p> <p>21 also remember having a call with Omar McNeill</p> <p>22 from the Freeh Group?</p> <p>23 A. No, I don't recall it.</p> <p>24 Q. Do you --</p> <p>25 A. I may have. I'm sorry. I just -- this</p>	<p>1 was a -- this -- first of all, this was a couple</p> <p>2 of years ago, I guess three years ago now,</p> <p>3 and -- and I made many, many phone calls. So I</p> <p>4 may -- I may well have talked to him. I just</p> <p>5 don't recall it. 11:59</p> <p>6 Q. Did Penn State ever respond to your</p> <p>7 November 17th letter?</p> <p>8 A. You know --</p> <p>9 MR. GARDNER: Objection to the --</p> <p>10 objection to the form. 11:59</p> <p>11 You can go ahead.</p> <p>12 THE WITNESS: The -- the -- when the --</p> <p>13 when the Freeh Report was released that</p> <p>14 subsequent summer, so however many months --</p> <p>15 BY MR. SEIBERLING:</p> <p>16 Q. I'm talking about -- I'm talking about</p> <p>17 your response in the November/December time</p> <p>18 frame.</p> <p>19 MR. GARDNER: Of?</p> <p>20 MR. SEIBERLING: Of 2011. 11:59</p> <p>21 THE WITNESS: No. President Erickson,</p> <p>22 as I recall verbally -- he may have communicated</p> <p>23 with me in writing, but I don't remember. But</p> <p>24 verbally he indicated and requested that the --</p> <p>25 the investigation that they were conducting on 12:00</p>
Page 92	Page 93
<p>1 campus be allowed to move forward before they</p> <p>2 responded because at that stage they didn't know</p> <p>3 what the facts were. And so, therefore,</p> <p>4 responding to my questions, asking for factual</p> <p>5 input didn't make a lot of sense. 12:00</p> <p>6 So he -- he may have provided me</p> <p>7 something in writing, but I don't recall.</p> <p>8 (Emmert Exhibit 9 was marked</p> <p>9 for ID.)</p> <p>10 BY MR. SEIBERLING: 12:00</p> <p>11 Q. I'll show you Emmert Exhibit 9, that</p> <p>12 letter.</p> <p>13 A. So he did. (Reviewing document.)</p> <p>14 Yes, this is consistent with my -- with</p> <p>15 my memory. I just don't remember this -- 12:00</p> <p>16 Q. The letter references a telephone call</p> <p>17 on November 23rd, 2011?</p> <p>18 A. Yeah, I believe that was the call that</p> <p>19 I talked about having President Erickson on, but</p> <p>20 I don't remember who he had on the phone. It 12:01</p> <p>21 would have been reasonable for him to have his</p> <p>22 general counsel on the phone with him, but so --</p> <p>23 but I don't recall who he had on the phone or</p> <p>24 who was in the room when he was making the call.</p> <p>25 Q. Were you aware of -- I'm sorry, strike 12:01</p>	<p>1 that.</p> <p>2 Why was Cynthia Baldwin responding to</p> <p>3 your letter, do you know why?</p> <p>4 A. No, I don't.</p> <p>5 Q. Were you aware of anyone within the 12:01</p> <p>6 NCAA providing input to Cynthia Baldwin's draft</p> <p>7 or to Cynthia Baldwin's response letter?</p> <p>8 MR. GARDNER: Object to the form.</p> <p>9 THE WITNESS: No, she was -- I'm sorry.</p> <p>10 This letter that you just showed me from -- from 12:02</p> <p>11 Ms. Baldwin? No.</p> <p>12 BY MR. SEIBERLING:</p> <p>13 Q. Were you aware that Cynthia Baldwin had</p> <p>14 sent a copy of this letter to Donald Remy asking</p> <p>15 if you had any input? 12:02</p> <p>16 A. No.</p> <p>17 (Emmert Exhibit 10 was marked</p> <p>18 for ID.)</p> <p>19 BY MR. SEIBERLING:</p> <p>20 Q. I show you what is marked as Emmert</p> <p>21 Exhibit 10.</p> <p>22 A. (Reviewing document.)</p> <p>23 Okay.</p> <p>24 Q. Do you remember receiving this letter</p> <p>25 from Jim Delany? 12:04</p>

<p style="text-align: right;">Page 94</p> <p>1 A. Not this specific letter, but I</p> <p>2 remember the -- you know, the substance of the</p> <p>3 letter, sure.</p> <p>4 Q. Do you have any context for why the</p> <p>5 letter was sent? 12:04</p> <p>6 A. Well, I -- I'm not sure what you're</p> <p>7 asking, because it seems self-evident. I'm not</p> <p>8 trying to be cute, but --</p> <p>9 Q. Were you having any discussions around</p> <p>10 this time frame with Jim Delany about them being 12:04</p> <p>11 involved in any investigation that you and/or</p> <p>12 the Freeh Group was performing?</p> <p>13 A. I remember -- I remember having some</p> <p>14 discussions with him about what, if anything,</p> <p>15 the Big Ten would do and I don't recall who 12:04</p> <p>16 initiated those conversations.</p> <p>17 Again, this is one of his 14 -- well,</p> <p>18 at that time 12 -- member schools. So it would</p> <p>19 be natural enough for him to want to be involved</p> <p>20 and, again, because conferences have the ability 12:05</p> <p>21 to impose sanctions on one of their member</p> <p>22 schools, if they determine that their behavior</p> <p>23 warrants it, it was a natural enough thing</p> <p>24 for -- for the commissioner to want to be</p> <p>25 involved in all of this, and I remember that 12:05</p>	<p style="text-align: right;">Page 95</p> <p>1 indeed they -- they, along with us, agreed with</p> <p>2 the university that rather than conducting three</p> <p>3 simultaneous inquiries, an appropriate course of</p> <p>4 action was to allow the university to conduct</p> <p>5 its own investigation that Judge Freeh and his 12:05</p> <p>6 staff was going to perform and then wait until</p> <p>7 we see what the results are before we move</p> <p>8 forward from there.</p> <p>9 MR. SEIBERLING: We can take a break</p> <p>10 there. 12:06</p> <p>11 MS. GRAGERT: Should we stop for lunch?</p> <p>12 THE VIDEOGRAPHER: This concludes DVD</p> <p>13 No. 1. We're now going off the record. The</p> <p>14 time's now approximately 12:06 p.m.</p> <p>15 (Recess taken from 12:06 p.m. to 12:53</p> <p>16 12:53 p.m. EST)</p> <p>17 THE VIDEOGRAPHER: This is the</p> <p>18 beginning of DVD No. 2 of the video deposition</p> <p>19 of Mark Emmert. We are now going on the record.</p> <p>20 The time is approximately 12:53 p.m. 12:53</p> <p>21 BY MR. SEIBERLING:</p> <p>22 Q. Good afternoon, Dr. Emmert. I want to</p> <p>23 turn to a discussion of the Freeh Group.</p> <p>24 Were you aware of a meeting in State</p> <p>25 College between the Freeh Group and NCAA 12:53</p>
<p style="text-align: right;">Page 96</p> <p>1 representatives?</p> <p>2 A. I knew there -- pardon me -- I knew</p> <p>3 they were communicating. I didn't know there</p> <p>4 had been a face-to-face meeting in State</p> <p>5 College. 12:54</p> <p>6 Q. So you weren't specifically aware of a</p> <p>7 December 7th meeting?</p> <p>8 A. I don't remember the December 7th date,</p> <p>9 but I do certainly know that the Freeh Group,</p> <p>10 with Penn State's encouragement, agreed with the 12:54</p> <p>11 Big Ten and the NCAA that they would keep the</p> <p>12 NCAA and the Big Ten briefed on the progress</p> <p>13 that they were making through their -- through</p> <p>14 their inquiry and that that was part of the</p> <p>15 university's hope and expectation, that the 12:54</p> <p>16 Freeh Report would serve the purposes of</p> <p>17 providing the information that both the Big Ten</p> <p>18 and the NCAA were asking about.</p> <p>19 So, yeah, that part of the agreement</p> <p>20 among all the parties was that the Freeh Group 12:54</p> <p>21 would routinely brief the NCAA. So I didn't</p> <p>22 know that there had been a meeting on</p> <p>23 December 7th, no. But did I know that they were</p> <p>24 meeting and communicating? Sure, of course.</p> <p>25 Q. Did you identify or appoint someone to 12:55</p>	<p style="text-align: right;">Page 97</p> <p>1 be the liaison for purposes of being --</p> <p>2 A. Well, our general counsel, Donald Remy</p> <p>3 was talking to them as a general point of</p> <p>4 contact, and others in the office may have been</p> <p>5 part of those conversations, but Donald was the 12:55</p> <p>6 person on point.</p> <p>7 Q. Who decided that Donald should be the</p> <p>8 liaison?</p> <p>9 A. Well, he was our general counsel, so of</p> <p>10 course I would want him to do it. 12:55</p> <p>11 Q. It's our understanding that Julie Roe</p> <p>12 also attended this December 7th meeting with the</p> <p>13 Freeh Group.</p> <p>14 Were you aware of that?</p> <p>15 A. No. But that doesn't surprise me. 12:55</p> <p>16 That would make good sense.</p> <p>17 Q. Why would that make good sense?</p> <p>18 A. Because as I said, part of what Penn</p> <p>19 State was looking for, as it was conveyed to me</p> <p>20 by President Erickson, was to have the Freeh 12:55</p> <p>21 Group report serve as a -- an</p> <p>22 information-gathering process that might allow</p> <p>23 them to answer the questions that I'd put before</p> <p>24 them back in November, and having Julie involved</p> <p>25 as the head of investigations, she would be able 12:56</p>

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<p>1 to provide them with guidance on the kinds of 2 questions that -- that the NCAA typically would 3 be asking.</p> <p>4 The -- the reality of the Freeh Group 5 was that they -- and Judge Freeh was very leery 12:56 6 with -- in his conversations with me about this. 7 We're not in any way going to be conducting a 8 NCAA investigation and they weren't asking NCAA 9 questions.</p> <p>10 What Donald and Julie or anybody else 12:56 11 in the senior staff that could provide Donald 12 with more information about would be somebody 13 that you would naturally want to have involved 14 in that conversation.</p> <p>15 Q. So it was your understanding that the 12:56 16 Freeh Group would not be looking into those four 17 questions for potential violations of NCAA 18 bylaws?</p> <p>19 A. No. They were looking into whatever 20 the facts were that they were looking into as 12:57 21 instructed by the Penn State Board of Regents or 22 Governors, but the Regents' assignment from Penn 23 State was their assignment, not ours.</p> <p>24 We had agreed with the University that 25 we would not expect any response to the letter 12:57</p>	<p>1 of November -- whatever the date was -- 17th, 2 that I sent to the president until after the 3 Freeh Report was finished, and so there wasn't 4 any expectation that the Freeh Group was doing 5 the NCAA's investigation, indeed they weren't. 12:57 6 and they weren't looking for specific NCAA 7 violations. They don't even know what those 8 are. They're -- but they were, in fact, 9 gathering information, some of which may have 10 well been relevant to any future NCAA 12:57 11 investigation.</p> <p>12 Q. So you were not aware of one of the 13 tracts of the NCAA investigation potentially 14 being NCAA bylaw violations?</p> <p>15 MR. GARDNER: Objection. 12:58 16 You might want to redo that.</p> <p>17 THE WITNESS: Well, I didn't understand 18 the question, so it's good that you try again.</p> <p>19 MR. SEIBERLING: I'm sorry.</p> <p>20 THE WITNESS: It's okay. 12:58 21 BY MR. SEIBERLING:</p> <p>22 Q. So you weren't aware of one of the 23 tracts of the Freeh Group investigation being 24 potential NCAA bylaw violations?</p> <p>25 A. No. 12:58</p>
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<p>1 Q. Was there any discussions of -- within 2 the NCAA of providing sample questions to the 3 Freeh Group?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Do you know of sample questions being 12:58 6 provided to the NCAA by the NCAA --</p> <p>7 A. No.</p> <p>8 Q. -- I'm sorry -- to the Freeh Group by 9 the NCAA?</p> <p>10 A. Not to my knowledge. 12:59 11 (Pause in proceedings.)</p> <p>12 BY MR. SEIBERLING:</p> <p>13 Q. I'm going to show you what's marked as 14 Emmert's Exhibits 11 and 12.</p> <p>15 A. Um-hum.</p> <p>16 (Emmert Exhibit 11 and 17 Emmert Exhibit 12 were marked 18 for ID.)</p> <p>19 MR. GARDNER: Which one's 11 and which 20 one's -- 13:00</p> <p>21 MR. SEIBERLING: The questions are 11. 22 The search terms are 12.</p> <p>23 MR. GARDNER: Thank you.</p> <p>24 THE WITNESS: (Reviewing document.)</p> <p>25 MR. GARDNER: Hey, Mark, do you want 13:00</p>	<p>1 him to read this whole thing or are you going 2 to --</p> <p>3 MR. SEIBERLING: No. I'm going to ask 4 you --</p> <p>5 MR. GARDNER: -- ask if he's ever seen 13:00 6 these proposed questions before?</p> <p>7 MR. SEIBERLING: Yeah.</p> <p>8 BY MR. SEIBERLING:</p> <p>9 Q. Have you ever seen these proposed 10 questions before? 13:01</p> <p>11 A. Not that I recall, no.</p> <p>12 Q. Were you aware of these questions being 13 provided to the Freeh Group?</p> <p>14 A. No. As I've said, I've -- not that I 15 recall. I haven't seen these and didn't know 13:01 16 that these were being provided. They are -- 17 just looking through them quickly, without 18 having read them, they are the kinds of 19 questions that in order to answer the first four 20 questions on the front page, the University 13:01 21 would want to have answers to before they could 22 respond to the four questions posed in my 23 letter. So I don't find anything in here 24 particularly surprising.</p> <p>25 Q. The first four questions would be the 13:01</p>

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<p>1 four questions --</p> <p>2 A. Yes.</p> <p>3 Q. -- within your November letter?</p> <p>4 A. Yes, right. The four questions within</p> <p>5 my November letter are -- were intentionally 13:01</p> <p>6 broad questions. And -- and then the -- as I --</p> <p>7 again, as I'm just glancing through this</p> <p>8 quickly, they -- these would seem to be -- the</p> <p>9 subsequent issues seem to be the ones that if</p> <p>10 Penn State were trying to prepare to answer 13:02</p> <p>11 those questions, what -- what would satisfy</p> <p>12 those -- provide a satisfactory answer to those</p> <p>13 four questions, and most of them seem to be</p> <p>14 these subsidiary issues.</p> <p>15 So again, I don't find anything in here 13:02</p> <p>16 surprising.</p> <p>17 Q. If the NCAA had provided those</p> <p>18 questions to the Freeh Group, would you have had</p> <p>19 had any problem with that?</p> <p>20 A. It certainly depends on the context and 13:02</p> <p>21 what the use of them were. If the -- if the</p> <p>22 Freeh Group -- and I don't know the specific</p> <p>23 instructions that the -- that the regents gave</p> <p>24 to the -- the Freeh Group. But if part of the</p> <p>25 intention for the Freeh Group's report was to 13:02</p>	<p>1 allow the university to answer these four</p> <p>2 questions, then this would make perfectly good</p> <p>3 sense. And if I were the president of Penn</p> <p>4 State or a board member or someone else at Penn</p> <p>5 State, I would want to know the answers to those 13:02</p> <p>6 questions.</p> <p>7 Q. If you could look at the search terms,</p> <p>8 have you ever seen that document or those search</p> <p>9 terms before?</p> <p>10 A. (Reviewing document.) 13:03</p> <p>11 Ah, no, don't believe so. No.</p> <p>12 Q. If the NCAA had provided the Freeh</p> <p>13 Group with search terms, would you have a</p> <p>14 problem with that?</p> <p>15 A. Again, it completely depends on the 13:03</p> <p>16 context and the use. The -- the Freeh Group --</p> <p>17 looking at these things, first of all, I</p> <p>18 wouldn't find them particularly informative. I</p> <p>19 mean, it's not exactly surprising that a search</p> <p>20 term like "Sandusky" ought to be used or 13:03</p> <p>21 "shower" or "pedophile."</p> <p>22 So I -- I don't see anything in here</p> <p>23 that anyone wouldn't come to the conclusion to</p> <p>24 look at regardless, so --</p> <p>25 Q. What about the suggested interviewees 13:04</p>
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<p>1 on the bottom?</p> <p>2 A. You know, for someone who's not</p> <p>3 familiar with intercollegiate athletics overall,</p> <p>4 I think again to say the compliance staff is</p> <p>5 somebody that you would want to talk to is -- is 13:04</p> <p>6 hardly shocking news. Football camp employees</p> <p>7 where Sandusky was with minors, again, I think</p> <p>8 that's a pretty obvious thing for someone to</p> <p>9 look at when they're conducting this</p> <p>10 investigation. 13:04</p> <p>11 So I don't -- I don't -- again, I</p> <p>12 haven't seen this before, but I don't see this</p> <p>13 as particularly problematic.</p> <p>14 Q. I believe we established earlier that</p> <p>15 you had at least one phone call with Judge 13:04</p> <p>16 Freeh?</p> <p>17 A. Um-hum.</p> <p>18 Q. In that phone call, did you discuss the</p> <p>19 NCAA potentially providing suggested questions</p> <p>20 or search terms? 13:04</p> <p>21 A. No, not that I recall at all.</p> <p>22 Q. Did -- did you have a similar</p> <p>23 conversation with President Erickson?</p> <p>24 A. No, not that I recall.</p> <p>25 THE WITNESS: Want this? 13:05</p>	<p>1 MR. GARDNER: (Nodding.)</p> <p>2 THE WITNESS: (Tendering document to</p> <p>3 counsel.)</p> <p>4 (Emmert Exhibit 13 was marked</p> <p>5 for ID.) 13:05</p> <p>6 BY MR. SEIBERLING:</p> <p>7 Q. I show you what's marked as Emmert</p> <p>8 Exhibit 13.</p> <p>9 A. (Reviewing document.)</p> <p>10 Q. This is what purports to be a 13:05</p> <p>11 PowerPoint presentation --</p> <p>12 A. Um-hum.</p> <p>13 Q. -- that had been prepared by Julie Roe?</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever seen this presentation 13:05</p> <p>16 before?</p> <p>17 A. I remember it. I don't recall the</p> <p>18 details of it, but yes, sure, it's obviously</p> <p>19 voluminous. But this is, I assume, part of the</p> <p>20 ongoing conversation about -- pardon me -- the 13:05</p> <p>21 whole issue of institutional control and</p> <p>22 unethical conduct that is constantly in debate</p> <p>23 among the -- the leadership and -- of the NCAA,</p> <p>24 not the national office, but among the members.</p> <p>25 So the member universities have -- have 13:06</p>

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1 long -- for a long time debated and discussed
 2 how best to define and understand the construct
 3 of institutional control, and it's a debate that
 4 rages today among the member universities.
 5 Q. You mentioned you had seen this 13:06
 6 presentation?
 7 A. I think so. You know, again, the --
 8 the issue of institutional control and head
 9 coaches' control and -- I don't remember any of
 10 these cases per se, but a variety of them is -- 13:06
 11 is part of conversations that have gone on.
 12 I don't know where this -- I don't
 13 remember where this particular deck was used,
 14 but it -- it certainly is part of the ongoing
 15 discussion among the members, again, about how 13:06
 16 do you establish institutional control and how
 17 do you know it when you see it and how do you
 18 know it when it's not present.
 19 Even today there's a group of athletic
 20 directors that constantly are working on this 13:07
 21 question, because it's the one that members are
 22 most concerned about, hence the concern about
 23 the Penn State situation, because again, from
 24 the original filing of the grand jury through
 25 the Freeh Report, the -- the greatest concern 13:07

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1 Freeh Group and the NCAA and the Big Ten, all of
 2 which was agreed upon by the University as a way
 3 to try and provide as much focus on one
 4 investigation rather than three simultaneous
 5 investigations, and we had agreed that at the 13:08
 6 end of the Freeh investigation, we would then
 7 make a determination as to whether or not we
 8 needed to go forward with an investigation as
 9 would the Big Ten.
 10 So there's nothing you're describing 13:09
 11 here that was inconsistent with what had been
 12 agreed by the University and was clearly
 13 understood by everyone involved before the
 14 process began.
 15 Q. You again mentioned the updates being 13:09
 16 provided.
 17 What was your understanding of what
 18 those updates constituted or what were the
 19 updates?
 20 MR. GARDNER: You really want him to go 13:09
 21 through this again? Because I know we've heard
 22 that at least two or three times already. I
 23 mean, I guess he can answer it again.
 24 MR. SEIBERLING: Sorry.
 25 BY MR. SEIBERLING: 13:09

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1 that -- that everyone in the Association had
 2 was, you know, is this -- has the institution
 3 lost control of its athletic department and was
 4 there unethical conduct going on here.
 5 That was right at the core of what the 13:07
 6 Penn State question was all about. And again, I
 7 don't know specifically what this deck was
 8 about, but it is -- it is one of the most
 9 important conversations that the universities
 10 have about -- about self governance. 13:07
 11 Q. Were you aware of this PowerPoint
 12 presentation being provided to the Freeh Group?
 13 A. Ah, no, I wasn't.
 14 Q. Did you have a discussion with Julie
 15 Roe at all about her presenting this slide 13:08
 16 show -- or this PowerPoint presentation to the
 17 Freeh Group?
 18 A. Not that I recall.
 19 Q. So as far as you know, you were not
 20 aware of the Freeh Group being either educated 13:08
 21 or provided a copy of this slide show
 22 presentation?
 23 A. I -- I can't speak to what they were or
 24 weren't educated about. Again, there were
 25 regular communications and updates between the 13:08

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1 Q. What was the substance of -- check
 2 that.
 3 How often were the updates?
 4 A. Well, first of all, I wasn't involved
 5 in them, nor should, in my opinion, the 13:09
 6 president have been involved in those -- the
 7 president of the NCAA been involved in those
 8 updates, and I -- I don't know who was on for
 9 the other three or other two organizations, but
 10 I -- I believe they were monthly or quarterly or 13:09
 11 something like that.
 12 And they were about the progress of
 13 the -- of the investigation going forward, not a
 14 reporting back of here's what we're finding,
 15 here's what we see, here's what we think is 13:10
 16 going on here.
 17 I -- I received no information other
 18 than the fact that they're continuing to move
 19 forward with their investigation. So the first
 20 time I had any knowledge, for example, of the 13:10
 21 substance of the Freeh Report was when the Freeh
 22 Report was issued.
 23 Q. Would Donald Remy report back to you on
 24 the substance of those updates?
 25 MR. GARDNER: Ah... 13:10

<p style="text-align: right;">Page 110</p> <p>1 MR. SEIBERLING: It's yes or no.</p> <p>2 THE WITNESS: Yes, but not on the</p> <p>3 substance of the investigation; on the fact that</p> <p>4 there were updates going on and that the Penn</p> <p>5 State investigation was moving forward and 13:10</p> <p>6 everything seemed to be moving at pace, nothing</p> <p>7 about what they were finding, what the nature of</p> <p>8 the inquiry was, where they were going with</p> <p>9 their investigation, none of the substantive</p> <p>10 issues that were -- that were part of the -- the 13:11</p> <p>11 investigation itself or the report. That was</p> <p>12 never part of any of our conversations.</p> <p>13 BY MR. SEIBERLING:</p> <p>14 Q. Were witnesses who were interviewed,</p> <p>15 were they identified in those updates? 13:11</p> <p>16 A. No, not -- not updates to me, no.</p> <p>17 Q. And you would have been receiving the</p> <p>18 information secondhand?</p> <p>19 MR. GARDNER: Well, yeah, I mean --</p> <p>20 sure. That's fine. 13:11</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. SEIBERLING:</p> <p>23 Q. Those meetings you identified involved</p> <p>24 NCAA representatives, Big Ten representatives</p> <p>25 and a representative from the Freeh Group; is 13:11</p>	<p style="text-align: right;">Page 111</p> <p>1 that -- is that correct?</p> <p>2 MR. GARDNER: Ob- -- ob- --</p> <p>3 THE WITNESS: I --</p> <p>4 MR. GARDNER: You're just asking what</p> <p>5 his understanding was? 13:11</p> <p>6 MR. SEIBERLING: Yes.</p> <p>7 THE WITNESS: Yeah, I was never</p> <p>8 present. So my understanding was that they</p> <p>9 involved, yes, all three legal counsel from --</p> <p>10 from the NCAA and from the Big Ten. And -- but 13:12</p> <p>11 I don't know specifically who from those other</p> <p>12 organizations or the Freeh Group were involved.</p> <p>13 BY MR. SEIBERLING:</p> <p>14 Q. Why was there no representative from</p> <p>15 Penn State involved in those updates? 13:12</p> <p>16 A. I --</p> <p>17 MR. GARDNER: Objection.</p> <p>18 You mean other than the Freeh Group?</p> <p>19 BY MR. SEIBERLING:</p> <p>20 Q. Why wasn't Cynthia Baldwin involved in 13:12</p> <p>21 those?</p> <p>22 MR. GARDNER: Objection.</p> <p>23 THE WITNESS: I -- I don't have any</p> <p>24 reason to tell Penn State how they should or</p> <p>25 shouldn't staff themselves. 13:12</p>
<p style="text-align: right;">Page 112</p> <p>1 BY MR. SEIBERLING:</p> <p>2 Q. Was there any discussion of -- of a</p> <p>3 timeline of when the Freeh's investigation would</p> <p>4 be complete?</p> <p>5 MR. GARDNER: Objection. 13:12</p> <p>6 THE WITNESS: No. No, not --</p> <p>7 MR. GARDNER: That's okay. You can go</p> <p>8 ahead.</p> <p>9 THE WITNESS: No, not -- I never heard</p> <p>10 of any hard deadline or anything of the sort. 13:12</p> <p>11 We certainly didn't have any input into what</p> <p>12 that timeline would be or how long it was going</p> <p>13 to take.</p> <p>14 It was clear from the resources that</p> <p>15 they had involved it was a very extensive 13:13</p> <p>16 debate. It had been made clear publicly that --</p> <p>17 by the regents that they wanted as exhaustive a</p> <p>18 study as could be done, and it would take as</p> <p>19 long as it took. And as far as I can tell,</p> <p>20 that's exactly how it played out. 13:13</p> <p>21 BY MR. SEIBERLING:</p> <p>22 Q. When did you first learn that the Freeh</p> <p>23 Group investigation report would be released?</p> <p>24 A. Oh, I don't remember but almost</p> <p>25 immediately beforehand. I had no pre-knowledge 13:13</p>	<p style="text-align: right;">Page 113</p> <p>1 of it coming forward in any -- with any</p> <p>2 consequential lead time. I don't even recall.</p> <p>3 Q. You were provided notice, though, as to</p> <p>4 when it would be released?</p> <p>5 MR. GARDNER: Object. 13:13</p> <p>6 THE WITNESS: Um, it -- you know, I</p> <p>7 don't recall specifically. I remember sitting</p> <p>8 watching the report provided by Judge Freeh,</p> <p>9 just like the entire world watched, and that was</p> <p>10 the first time that I knew of any substance of 13:14</p> <p>11 the report.</p> <p>12 So you know, if I -- if I had</p> <p>13 pre-notice, it wasn't very long.</p> <p>14 (Emmert Exhibit 14 and Emmert</p> <p>15 Exhibit 15 were marked</p> <p>16 for ID.)</p> <p>17 BY MR. SEIBERLING:</p> <p>18 Q. I'll show you what's marked as Emmert</p> <p>19 Exhibit 14 and Emmert Exhibit 15.</p> <p>20 MR. GARDNER: Just give us a second. 13:15</p> <p>21 We don't have our copies yet. Please.</p> <p>22 MR. VOSS: (Tendering documents to</p> <p>23 counsel.)</p> <p>24 MR. GARDNER: Thanks.</p> <p>25 MR. SEIBERLING: Yeah. If we could 13:15</p>

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<p>1 establish for the record, I believe that -- I</p> <p>2 think everyone will agree that the Freeh Report</p> <p>3 was released July 12th.</p> <p>4 THE WITNESS: I don't remember the</p> <p>5 date, but okay, I believe you. 13:15</p> <p>6 BY MR. SEIBERLING:</p> <p>7 Q. The -- the two documents in front of</p> <p>8 you are -- are meeting invites for July 10th and</p> <p>9 July 11th.</p> <p>10 A. Um-hum. 13:15</p> <p>11 Q. Do you remember having internal</p> <p>12 meetings prior to the release of the Freeh</p> <p>13 Report regarding the Penn State matter?</p> <p>14 A. I -- I remember that we -- we knew that</p> <p>15 there was likely to be some release. I don't 13:15</p> <p>16 remember the -- this specific meeting that --</p> <p>17 that you're -- that's being referenced here if</p> <p>18 that's what you mean at that particular hour.</p> <p>19 But obviously this was a -- an issue of</p> <p>20 extraordinary importance and was the focus of an 13:16</p> <p>21 enormous amount of attention. And we were -- we</p> <p>22 were obviously anxiously awaiting the Freeh</p> <p>23 Report, again because we didn't know what</p> <p>24 direction it was going to go. And so as soon as</p> <p>25 we had awareness that it was coming out, we 13:16</p>	<p>1 began talking about it.</p> <p>2 And as I said and I just -- and I think</p> <p>3 as these documents make clear, if we had advance</p> <p>4 notice, I don't remember exactly when we heard.</p> <p>5 It would have been immediately before as 13:16</p> <p>6 these -- these suggest.</p> <p>7 Q. If this was prior to the Freeh Report</p> <p>8 being released --</p> <p>9 A. Yes, 24 hours prior, yes.</p> <p>10 Q. -- what would you have been discussing 13:16</p> <p>11 in those meetings?</p> <p>12 A. Probably how to -- how to proceed and</p> <p>13 what -- you know, what we would do when the</p> <p>14 Freeh -- Freeh Report was released and how we</p> <p>15 would analyze the data. 13:16</p> <p>16 And again, this is -- it's critical to</p> <p>17 recognize this is one of the most consequential</p> <p>18 events in intercollegiate athletic history. It</p> <p>19 would have been irresponsible for me to not get</p> <p>20 my staff together and say, okay, it looks like 13:17</p> <p>21 we're -- we're going to have this report now and</p> <p>22 where do we think this is going to lead us.</p> <p>23 Q. In this time -- in this same time</p> <p>24 period prior to the release of the Freeh Report,</p> <p>25 do you remember having a conversation with 13:17</p>
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<p>1 President Erickson?</p> <p>2 A. Ah, no, but that doesn't mean I didn't.</p> <p>3 But I don't recall having one with him at that</p> <p>4 time. Again, I chatted with him a number of</p> <p>5 times throughout this -- this period. 13:17</p> <p>6 THE WITNESS: (Tendering document to</p> <p>7 counsel.)</p> <p>8 MR. GARDNER: Thanks.</p> <p>9 BY MR. SEIBERLING:</p> <p>10 Q. So on -- when the Freeh Report was 13:18</p> <p>11 released on July 12th, did you review the Freeh</p> <p>12 Report?</p> <p>13 A. Yes.</p> <p>14 Q. What were your thoughts on the Freeh</p> <p>15 Report? 13:18</p> <p>16 A. I was shocked by it.</p> <p>17 Q. Did you have internal meetings to</p> <p>18 discuss the Freeh Report?</p> <p>19 A. Sure.</p> <p>20 Q. How many? 13:18</p> <p>21 A. Oh, I don't remember. You know, again,</p> <p>22 this is such an enormous issue, the results of</p> <p>23 that investigation were -- were shocking and</p> <p>24 pointed to some extraordinary bad behavior.</p> <p>25 And again, we're not talking about 13:18</p>	<p>1 tattoos here. We're talking about young men</p> <p>2 being raped in a shower room. This is -- this</p> <p>3 is not like something that the NCAA deals with</p> <p>4 on a normal basis, thank God. And so we had --</p> <p>5 we had meetings about it constantly. Everyone 13:19</p> <p>6 was, you know, absorbing the material.</p> <p>7 You have to try very hard to stay</p> <p>8 unemotional about a highly emotional issue. I</p> <p>9 don't think anybody could read the -- I don't</p> <p>10 know anybody that could read the Freeh Report 13:19</p> <p>11 and not be shocked and moved by all of it.</p> <p>12 So of course we were -- we were meeting</p> <p>13 and talking about it. And how many meetings? I</p> <p>14 don't know. We met and talked about it a lot.</p> <p>15 (Emmert Exhibit 16 was marked</p> <p>16 for ID.)</p> <p>17 BY MR. SEIBERLING:</p> <p>18 Q. I show you Emmert Exhibit 16.</p> <p>19 A. (Reviewing document.)</p> <p>20 Q. This is an e-mail from the day 13:20</p> <p>21 July 12th, 2012, which is the day the Freeh</p> <p>22 Report was released, and you are e-mailing Bob</p> <p>23 Williams, Jim Isch, Donald Remy, David Berst,</p> <p>24 Julie Roe, Kevin Lennon and Crissy Schluep,</p> <p>25 "Let's begin the review immediately. There's 13:20</p>

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<p>1 obviously -- obviously much to digest and 2 consider in this."</p> <p>3 Why did you select these people who are 4 in the "to" and the "cc" line to review the 5 Freeh Report immediately? 13:20</p> <p>6 A. Because it's the senior leadership team 7 responsible for these issues. And Jim Isch -- 8 Jim Isch is the chief operating officer; Donald 9 Remy is the general counsel; David Berst is the 10 VP for our Division I governance under which 13:20 11 this occurs; Julie Roe Lach is the vice 12 president for enforcement; Kevin Lennon is the 13 vice president for AMA and -- and the most 14 knowledgeable person on the Division I rules; 15 and Crissy Schluep was my personal assistant at 13:21 16 the time who was coordinating the meetings for 17 me.</p> <p>18 And if anything, I think my statement 19 is calmer than I would have looked at it today. 20 I mean, to say "there's obviously much to digest 13:21 21 and consider in this," I think is the gross 22 understatement of the day.</p> <p>23 Q. Other than your internal staff, who 24 else outside of the NCAA did you discuss the 25 Freeh Report with? 13:21</p>	<p>1 A. You mean who -- who did I have 2 telephone conversations with?</p> <p>3 Q. Yes.</p> <p>4 A. I don't recall. I would have expected 5 probably the -- the chairs of the executive 13:21 6 committee and the D-I board, but I don't -- but 7 I don't remember those conversations today. But 8 I was talking to lots of people about this.</p> <p>9 Q. Were they individual calls?</p> <p>10 A. Probably. I don't remember having a 13:21 11 conference call with all of them at that stage.</p> <p>12 Q. Do you remember which presidents or 13 members of the executive committee were reaching 14 out to you or that you were having discussions 15 with? 13:22</p> <p>16 A. No, not specifically, but again, my 17 assumption is that at that moment, I would have 18 talked to the chairs of the D-I board and the 19 executive committee. Those are the membership 20 bodies that are the most responsible characters 13:22 21 for association actions.</p> <p>22 Q. Do you remember discussing the Freeh 23 Report with Ed Ray?</p> <p>24 A. He was one of the two people I'm 25 referring to. So the chair of the executive 13:22</p>
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<p>1 committee at that time was Ed Ray, president of 2 Oregon State University, and the chair of the 3 D-I board was Lou Anna Simon, the president of 4 Michigan State University, and they're both 5 still in those positions. 13:22</p> <p>6 Q. If you can, describe your conversations 7 with Ed Ray.</p> <p>8 A. I can't because I don't recall it. As 9 I just mentioned, I am assuming I would have 10 talked to them during this time, but I don't 13:22 11 recall the specific conversations.</p> <p>12 Q. Do you remember what Ed Ray's position 13 was during the Freeh Report?</p> <p>14 A. No, I don't.</p> <p>15 MR. GARDNER: Can you be -- given how 13:23 16 fast things moved -- and I apologize for 17 interrupting.</p> <p>18 MR. SEIBERLING: Yeah.</p> <p>19 MR. GARDNER: -- if you can be more 20 specific with the time of your questions, then 13:23 21 you guys won't get crossed up.</p> <p>22 BY MR. SEIBERLING:</p> <p>23 Q. Did you discuss the Freeh Report with 24 anyone from the Freeh Group after the Freeh 25 Report was released? 13:23</p>	<p>1 A. Hum.</p> <p>2 MR. GARDNER: You're excluding 3 privileged conversations?</p> <p>4 MR. SEIBERLING: Yeah.</p> <p>5 MR. GARDNER: Right. 13:23</p> <p>6 Okay.</p> <p>7 THE WITNESS: Not that I recall. I 8 don't -- I don't remember -- I don't remember 9 doing so.</p> <p>10 BY MR. SEIBERLING:</p> <p>11 Q. Do you know if Donald Remy had any 12 conversations with the Freeh Group after the 13 Freeh Report was released?</p> <p>14 A. I don't know, but I would have found 15 that pretty normal, given that they had this 13:23 16 ongoing communication as agreed upon by Penn 17 State.</p> <p>18 (Emmert Exhibit 17 was marked 19 for ID.)</p> <p>20 BY MR. SEIBERLING: 13:24</p> <p>21 Q. I'll show you what's marked as Emmert 22 Exhibit 17.</p> <p>23 A. (Reviewing document.)</p> <p>24 Okay.</p> <p>25 Q. The e-mail references you having a 13:25</p>

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<p>1 meeting with Judge Freeh.</p> <p>2 Does that -- again, I know it sounds</p> <p>3 like you don't remember, but do you remember</p> <p>4 even discussing the possibility of having a</p> <p>5 meeting with Judge Freeh? 13:25</p> <p>6 A. Yeah, I'm sorry, I don't. This would</p> <p>7 hardly be to me an unusual thing, but I don't --</p> <p>8 I don't remember it.</p> <p>9 (Emmert Exhibit 18 was marked</p> <p>10 for ID.) 13:25</p> <p>11 BY MR. SEIBERLING:</p> <p>12 Q. Showing you Emmert Exhibit No. 18.</p> <p>13 A. (Reviewing document.)</p> <p>14 Okay.</p> <p>15 Q. This is an e-mail dated July 12th, 2012 13:26</p> <p>16 from Ed Ray to Julie Roe, cc'ing you and Jim</p> <p>17 Isch.</p> <p>18 After reading the e-mail, do you</p> <p>19 remember --</p> <p>20 A. Yeah. 13:26</p> <p>21 Q. -- being copied on this e-mail?</p> <p>22 A. I remember -- I remember it vaguely. I</p> <p>23 don't remember the specific e-mail, of course.</p> <p>24 Q. Do you remember discussing any of these</p> <p>25 issues that Ed Ray raises in here with Ed Ray? 13:27</p>	<p>1 A. Well, I certainly talked to, again,</p> <p>2 the -- at this point he was chair of the</p> <p>3 executive committee and as I said, I remember</p> <p>4 talking to he and the -- I'm sure I would have</p> <p>5 at this moment talked to he and Lou Anna Simon, 13:27</p> <p>6 the chair of the executive committee, and I</p> <p>7 certainly would have informed them as to how we</p> <p>8 were proceeding and what we were thinking about</p> <p>9 doing and, again, this is literally the -- this</p> <p>10 is the 12th, correct, the day the Freeh Report 13:27</p> <p>11 was issued?</p> <p>12 Q. The day of.</p> <p>13 A. And it was concomitant with the other</p> <p>14 note that you had me read, where I told all my</p> <p>15 people that we needed the people involved in 13:27</p> <p>16 this, that we needed to look at this and digest</p> <p>17 it and be ready to provide recommendations to</p> <p>18 the board and surely Ed Ray and I suspect all</p> <p>19 the members of the board. Indeed, all of higher</p> <p>20 education in America was sitting wondering what 13:28</p> <p>21 does the Freeh Report mean and is the NCAA going</p> <p>22 to do anything here.</p> <p>23 MR. GARDNER: Can I -- I apologize.</p> <p>24 Can I make one clarification? Was the chair of</p> <p>25 the D-I board at that time Lou Anna Simon or was 13:28</p>
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<p>1 it the USF president, Judy --</p> <p>2 THE WITNESS: Oh, I beg your pardon.</p> <p>3 It was -- it was Judy Genshaft. You're quite</p> <p>4 right, It was Judy Genshaft, president of the --</p> <p>5 thank you -- South Florida, yeah. 13:28</p> <p>6 BY MR. SEIBERLING:</p> <p>7 Q. In the second paragraph, Ed Ray</p> <p>8 mentions "sweeping changes in enforcement</p> <p>9 culture and penalties."</p> <p>10 A. Yes. 13:28</p> <p>11 Q. Were these the changes that were going</p> <p>12 to come out of the working groups we discussed</p> <p>13 earlier?</p> <p>14 A. Yes. Out of the -- he was -- as I</p> <p>15 said, he was chair of the enforcement working 13:28</p> <p>16 group and so the changes that they were trying</p> <p>17 to put in place are the ones that he was</p> <p>18 referring to and their implementation that would</p> <p>19 occur over a -- over a two-year period.</p> <p>20 (Emmert Exhibit 19 was marked</p> <p>21 for ID.)</p> <p>22 BY MR. SEIBERLING:</p> <p>23 Q. I'm going to show you what's marked</p> <p>24 Exhibit 19. This is just a continuation of the</p> <p>25 previous e-mail. 13:29</p>	<p>1 A. (Reviewing document.)</p> <p>2 Yes.</p> <p>3 Q. The top e-mail is July 13th, 2012, Jim</p> <p>4 Isch to you stating "Mark, I wonder if you</p> <p>5 shouldn't call Ed and explain our plans." 13:29</p> <p>6 What plans is he referring to in that</p> <p>7 e-mail?</p> <p>8 A. How we planned on proceeding.</p> <p>9 Q. So at this point, on July 13th, 2012,</p> <p>10 you already had a plan? 13:29</p> <p>11 A. We had certainly an intention to spend</p> <p>12 enough time digesting the Freeh Report and then</p> <p>13 bringing to the board and the executive</p> <p>14 committee the options that might be available to</p> <p>15 them at that point. 13:30</p> <p>16 So we -- we weren't sitting around</p> <p>17 saying, gee, I don't know what to do, if that's</p> <p>18 what you mean by a "plan," but we most certainly</p> <p>19 didn't have a plan to say, here's precisely how</p> <p>20 we want to proceed, if that's what you mean, in 13:30</p> <p>21 terms of imposing sanctions and doing a consent</p> <p>22 decree over a variety of other things. I'm not</p> <p>23 quite sure I understand what your interpretation</p> <p>24 of "plan" is.</p> <p>25 Q. I just want to understand. As of July 13:30</p>

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<p>1 13, 2012 what were the options on the table?</p> <p>2 MR. GARDNER: And let me -- just as</p> <p>3 we're getting into this period --</p> <p>4 MR. SEIBERLING: Yeah.</p> <p>5 MR. GARDNER: And I know you know where 13:30</p> <p>6 I'm going, Mark.</p> <p>7 MR. SEIBERLING: Yeah.</p> <p>8 MR. GARDNER: -- we need to be careful</p> <p>9 that we don't divulge the substance of</p> <p>10 privileged communications -- 13:30</p> <p>11 THE WITNESS: Sure.</p> <p>12 MR. GARDNER: -- about planning and</p> <p>13 discussing legal options.</p> <p>14 What you understood the options to be</p> <p>15 or thought you had or anything like that is 13:30</p> <p>16 certainly fine and I think we can --</p> <p>17 MR. SEIBERLING: Yeah.</p> <p>18 MR. GARDNER: -- get at what you want</p> <p>19 that way.</p> <p>20 MR. SEIBERLING: Yeah. 13:31</p> <p>21 MR. GARDNER: But communications that</p> <p>22 Donald Remy was directing as counsel --</p> <p>23 THE WITNESS: Got it. Okay.</p> <p>24 MR. GARDNER: -- we need to stay away</p> <p>25 from.</p>	<p>1 THE WITNESS: Well, first of all, this</p> <p>2 is 24 hours after the Freeh Report's been</p> <p>3 released. So at that stage, the -- the plan</p> <p>4 that I -- first of all, that's Jim -- those are</p> <p>5 Jim Isch's words, not mine. I can't interpret 13:31</p> <p>6 how he uses a particular word, but the plan was</p> <p>7 about how to proceed with a conversation about</p> <p>8 this, not about here are specific options, here</p> <p>9 are the things you need to choose from.</p> <p>10 It was -- it was rather at that very 13:31</p> <p>11 early going, here's how we should think about</p> <p>12 this and here is a plan for engaging on this</p> <p>13 issue, not here's the plan, let's -- let's</p> <p>14 impose a penalty, let's consider a consent</p> <p>15 decree, you know, let's move to any one action. 13:31</p> <p>16 BY MR. SEIBERLING:</p> <p>17 Q. That same day, July 13th, 2012, do you</p> <p>18 remember having a call with President Erickson?</p> <p>19 A. I don't recall that particular day, but</p> <p>20 again, I wouldn't be surprised if I talked to 13:32</p> <p>21 him on that day.</p> <p>22 Q. Do you remember how many calls or</p> <p>23 conversations you had with President Erickson</p> <p>24 between the time of the Freeh Report and the</p> <p>25 consent decree? 13:32</p>
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<p>1 A. A handful. I can't say with precision</p> <p>2 it was three or five, but it was a handful.</p> <p>3 MR. SEIBERLING: I promise, we're not</p> <p>4 going to go through this entire thing.</p> <p>5 (Emmert Exhibit 20 was marked</p> <p>6 for ID.)</p> <p>7 BY MR. SEIBERLING:</p> <p>8 Q. Emmert Exhibit No. 20, what I'm showing</p> <p>9 you is a transcript from the August 12th, 2012</p> <p>10 Penn State Board of Trustees meeting. The only 13:33</p> <p>11 part I'm going to ask questions about is the</p> <p>12 testimony of President Erickson at that meeting,</p> <p>13 which I believe begins on page 25.</p> <p>14 MR. GARDNER: Testimony?</p> <p>15 MR. SEIBERLING: I'm sorry, his -- not 13:33</p> <p>16 his testimony, his --</p> <p>17 MR. GARDNER: Remarks.</p> <p>18 MS. DOBLICK: Thank you.</p> <p>19 MR. GARDNER: I think his testimony is</p> <p>20 going on right now. 13:33</p> <p>21 MR. SEIBERLING: And probably the rest</p> <p>22 of the afternoon.</p> <p>23 THE WITNESS: And would you like me to</p> <p>24 read this? Is that --</p> <p>25 BY MR. SEIBERLING:</p>	<p>1 Q. Well, actually, we'll just walk through</p> <p>2 it if that's okay with you.</p> <p>3 A. Well, um...</p> <p>4 MR. GARDNER: If you want to kind of</p> <p>5 read it ahead of time, you certainly can. 13:33</p> <p>6 MR. SEIBERLING: Yeah.</p> <p>7 THE WITNESS: Well, let me see where</p> <p>8 it's going, first of all, if I could, please.</p> <p>9 (Reviewing document.)</p> <p>10 BY MR. SEIBERLING: 13:35</p> <p>11 Q. And so you understand, I'm only going</p> <p>12 to ask about the calls that he elaborates on in</p> <p>13 the remarks.</p> <p>14 A. Yes. Okay. Thank you. (Reviewing</p> <p>15 document.) 13:36</p> <p>16 Okay. Go ahead. I haven't finished,</p> <p>17 but pretty close.</p> <p>18 Q. If we could start on page 25, on line</p> <p>19 number 9, it says "I received a message to call</p> <p>20 President Emmert on Friday, July 13th as I was 13:37</p> <p>21 leaving the Scranton campus after the Board of</p> <p>22 Trustees meeting. Mark Emmert indicated that</p> <p>23 now that the Freeh Report had been issued, the</p> <p>24 University should begin to work to respond to</p> <p>25 the letter we received last November 17th from 13:37</p>

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<p>1 the NCAA following the grand jury presentment. 2 Dr. Emmert indicated that we would have until 3 the first week or so of August to develop our 4 response to the November 17th letter." 5 Do you remember communicating to 13:37 6 President Emmert [sic] that you wanted a 7 response to the November 17th letter and that 8 they had until the first week in August to 9 provide that response? 10 A. You said "Dr. Emmert." You meant 13:37 11 Dr. Erickson, I know -- 12 Q. Oh, I'm sorry. 13 A. -- but it's quite all right. 14 Q. I've been doing a lot of that today. 15 A. It's all right. 13:38 16 So, yeah, I remember that. I don't 17 remember the specific date that it was 18 requested, but the initial conversation among my 19 senior staff was that okay, they've got the 20 information now, they've been given until that 13:38 21 period -- until the period at the end of the 22 report to provide this information had been 23 delayed until then. So now let's -- let's have 24 them provide something in writing. 25 Q. So as of July 13th, your response -- 13:38</p>	<p>1 or your communications with President Emmert 2 [sic] were related to you need to respond to our 3 November 11, 2011 letter? 4 A. Yes, that's probably right. 5 Q. If you continue on, it says "Dr. Emmert 13:38 6 called me back after the weekend and indicated 7 that both the NCAA Division I board and the NCAA 8 executive committee were shocked by the Sandusky 9 trial as well as the facts that was provided in 10 the Freeh Report and that an overwhelming 13:39 11 majority of the boards wanted blood, to shut 12 down Penn State's football program for multiple 13 years." 14 July 13th would have been a Friday. 15 According to President Erickson's remarks, he 13:39 16 said he spoke to you then after the weekend, 17 which presumably would have been Monday or 18 Tuesday of the following week. Does -- 19 A. Could be. 20 Q. -- that sound correct? 13:39 21 A. Could be. I don't recall the date. 22 Q. Do you remember discussing with 23 President Erickson how the Division I board and 24 the NCAA executive committee were shocked by the 25 Sandusky trial and that "an overwhelming 13:39</p>
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<p>1 majority of the boards wanted blood, to shut 2 down Penn State's football program for multiple 3 years"? 4 MR. GARDNER: The -- you were going to 5 finish reading that. You said -- you skipped 13:39 6 "as well as the facts that were provided in the 7 Freeh Report." 8 THE WITNESS: Yes, so at this point -- 9 if I may, it's a compound question. 10 MR. SEIBERLING: Yeah. 13:40 11 THE WITNESS: I'll answer it in two 12 pieces. 13 Was the board and the executive 14 committee shocked by the Freeh Report on the 15 Sandusky trial? Yeah. And I think they were as 13:40 16 taken aback as anyone could be about both of 17 those -- those events. 18 The Sandusky trial, of course, 19 elaborated pretty clearly what criminal behavior 20 had gone on and the evidence behind it, and then 13:40 21 the Freeh Report speaks for itself and the fact 22 that the -- the Board of Regents of Penn State 23 had accepted that report as a basis for fact I 24 think had -- yeah, "shocked" is the right 25 word -- a shocking effect on -- on many people 13:40</p>	<p>1 including all the university presidents on those 2 two bodies. 3 When we talked about -- "we" being 4 myself and the presidents that were on the 5 executive committee and the board -- about what 13:41 6 potential penalties would be appropriate in this 7 particular case if the Sandusky -- excuse me, 8 the -- the Freeh Report was accepted, rather 9 than conducting an independent investigation, a 10 part that seems to be skipped here, yeah, they 13:41 11 were -- the -- the consensus on the board, 12 strong consensus on the phone call was that this 13 was something where the -- I -- I don't 14 typically use terms like "out for blood," but -- 15 so I'll leave those for President Erickson's 13:41 16 words -- but there certainly was a very strong 17 sentiment to -- to do -- impose the death 18 penalty and for multiple years on the first 19 conversation among the -- among the board and 20 the executive committee. 13:41 21 BY MR. SEIBERLING: 22 Q. At the time you were relaying this 23 information to President Erickson -- 24 A. Yes. 25 Q. -- had you spoken to the board and the 13:42</p>

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1 executive committee as a whole or individually?
 2 A. On a conference call.
 3 MR. GARDNER: When you get to a good
 4 breaking point, I could use five minutes. When
 5 you get to one. 13:42
 6 MR. SEIBERLING: Yeah.
 7 MR. GARDNER: I'm not trying to
 8 interrupt.
 9 BY MR. SEIBERLING:
 10 Q. If we could read the -- read the next
 11 sentence. "He then said that you should put the
 12 November 17th letter aside, that things were
 13 moving fast and not in a good direction for Penn
 14 State."
 15 Why did you advise President Erickson 13:42
 16 to put aside the November 17th letter?
 17 A. Well, let's -- let's back up to parts
 18 that aren't in this conversation that are part
 19 of the narrative as well.
 20 So in my conversations with President 13:42
 21 Erickson after the -- the Freeh Report was
 22 released -- and frankly, I don't remember who
 23 called whom. But in -- in those conversations,
 24 those initial conversations, we had a
 25 conversation, a discussion about whether or not 13:43

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1 sort of "summary judgment." We'd never entered
 2 into a consent decree model, so we were using
 3 relatively loose language. I keep putting
 4 quotes around "summary judgment" because I don't
 5 know what that means in a legal sense, that 13:44
 6 there wasn't any -- there wasn't any need for
 7 him to respond to the letter of the 17th and
 8 that he was -- he was not unhappy at all with
 9 the prospect that he didn't have to sit down and
 10 provide a response to the letter of the 17th. 13:45
 11 And he was certainly anxious to try and find a
 12 way to not go through an NCAA investigation into
 13 the report -- into -- excuse me -- into the
 14 behavior of the campus around all of this issue.
 15 Q. So it was -- you -- you relayed to 13:45
 16 President Emmert [sic] that --
 17 MR. GARDNER: Erickson.
 18 MR. SEIBERLING: I'm sorry.
 19 MR. GARDNER: It's okay.
 20 MR. SEIBERLING: I keep doing that. 13:45
 21 MR. GARDNER: We're with you.
 22 BY MR. SEIBERLING:
 23 Q. So you relayed to President Erickson
 24 that Penn State should contemplate accepting the
 25 findings of the Freeh Report? 13:45

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1 the Freeh Report could be used as the basis for
 2 the -- the national office working with the
 3 board or the executive committee as established
 4 fact, or whether or not indeed we should go
 5 ahead and launch an investigation and begin to 13:43
 6 conduct an independent investigation as the --
 7 the infractions -- excuse me -- the office of
 8 infrac- -- office of enforcement typically would
 9 do.
 10 President Erickson was quite clear that 13:43
 11 he thought that would be really difficult and
 12 inappropriate for the -- for the university.
 13 The idea of spending another year or two
 14 conducting another investigation on top of what
 15 was going on at the -- at the university with 13:44
 16 the Freeh Report was a very unattractive option
 17 to him.
 18 So part of what we talked about was the
 19 willingness of the University to stipulate that
 20 the -- as the board had already done in 13:44
 21 accepting the Freeh Report, that the facts of
 22 the Freeh Report were the facts of this
 23 particular case. And in that circumstance, if
 24 you were going to move toward a -- I think the
 25 language we were using at this time was some 13:44

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1 MR. GARDNER: Objection, misstates what
 2 you just heard.
 3 But go ahead.
 4 THE WITNESS: First of all, the Board
 5 of Regents had already accepted the Freeh 13:45
 6 Report. And the question before my board and
 7 executive committee was do we pursue a
 8 traditional enforcement route or do we craft a
 9 different approach to this unprecedented
 10 problem. 13:46
 11 And President Erickson understood
 12 clearly that those were some of the options that
 13 were being contemplated. He certainly did not
 14 want to go through another year or two of
 15 investigation. 13:46
 16 He -- and based upon his comments, his
 17 executive committee of his board believed that
 18 it was in the university's best interest to move
 19 forward with alacrity and to find a way to put
 20 resolution to this on the campus. This was -- I 13:46
 21 don't remember the day of the week, but this was
 22 also the period around which they removed Joe
 23 Paterno's statue, for example.
 24 I think it was that weekend as my
 25 memory recalls, and -- and so they were looking 13:46

<p style="text-align: right;">Page 138</p> <p>1 for a way to put this behind them. One of the</p> <p>2 ways to do that was to say, look, the Freeh</p> <p>3 investigation was as thorough as -- an</p> <p>4 investigation as you're going to get done in</p> <p>5 this time frame. 13:47</p> <p>6 And in talking to the -- my board and</p> <p>7 executive committee, there was an understanding</p> <p>8 that the Freeh Report provided more than</p> <p>9 sufficient evidence to make a decision about</p> <p>10 whether or not there had been inappropriate 13:47</p> <p>11 behavior at Penn State University.</p> <p>12 So in that context and what's left out</p> <p>13 of this narrative that's being provided here is</p> <p>14 that that whole discussion occurred between</p> <p>15 those dates while we were having this 13:47</p> <p>16 conversation. So yes, we did indeed say -- I</p> <p>17 did indeed say, well, look, if we're going to</p> <p>18 move toward a summary judgment model, which</p> <p>19 wound up becoming the consent decree, you don't</p> <p>20 need to answer this November 17th letter. That 13:48</p> <p>21 wasn't a command "Thou shouldn't respond to it."</p> <p>22 It's "You don't need to do that if you don't</p> <p>23 want to." Had he been interested in responding</p> <p>24 to that, I'm sure I and the committee would have</p> <p>25 been -- executive committee would have been more 13:48</p>	<p style="text-align: right;">Page 139</p> <p>1 than happy to hear his response.</p> <p>2 But at that point the conclusion was</p> <p>3 you don't need to do that if you don't want to.</p> <p>4 BY MR. SEIBERLING:</p> <p>5 Q. You had mentioned several times that 13:48</p> <p>6 the Penn State board accepted the Freeh Report.</p> <p>7 What was your understanding of how that was</p> <p>8 done?</p> <p>9 MR. GARDNER: Ob --</p> <p>10 THE WITNESS: I -- I'm not sure what 13:48</p> <p>11 you mean.</p> <p>12 BY MR. SEIBERLING:</p> <p>13 Q. You said the Board of Regents of Penn</p> <p>14 State accepted the Freeh Report?</p> <p>15 A. Yes. 13:48</p> <p>16 Q. Was there a board vote?</p> <p>17 A. I -- I don't know. I just know that at</p> <p>18 the -- at the press conferences around it, the</p> <p>19 chairman of the board said they did. How -- how</p> <p>20 the university conducts its business I have to 13:49</p> <p>21 leave to the university.</p> <p>22 Q. You're not aware of a vote by the board</p> <p>23 accepting the Freeh Report, were you?</p> <p>24 A. Again, I -- how the university decides</p> <p>25 to conduct its business is its business. That's 13:49</p>
<p style="text-align: right;">Page 140</p> <p>1 not something the NCAA tells someone how to do.</p> <p>2 Q. So your characterization of accepting</p> <p>3 the Freeh Report is based on the president or</p> <p>4 the chair of the board making a public</p> <p>5 statement? 13:49</p> <p>6 A. I think that would be the appropriate</p> <p>7 person to make such a statement, yes.</p> <p>8 Q. We've deposed several individuals from</p> <p>9 Penn State, and one in particular, the general</p> <p>10 counsel, represented that Penn State has never 13:49</p> <p>11 accepted the Freeh Report.</p> <p>12 MR. GARDNER: That -- that -- no, I</p> <p>13 don't agree with that characterization. It was</p> <p>14 far more nuanced than that.</p> <p>15 But go ahead. 13:49</p> <p>16 BY MR. SEIBERLING:</p> <p>17 Q. His characterization was that for the</p> <p>18 purposes of the consent decree, Penn State</p> <p>19 accepted the findings of the Freeh Report but it</p> <p>20 was limited to that scope? 13:50</p> <p>21 A. Well, since that's --</p> <p>22 MR. GARDNER: As a -- give me just a</p> <p>23 second. As a matter of formal board governance,</p> <p>24 he didn't disavow anything that Ken Frazier said</p> <p>25 publicly. 13:50</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. SEIBERLING: No, he didn't disavow</p> <p>2 any public statements made by them, yes.</p> <p>3 MS. DOBLICK: Is there a question</p> <p>4 pending?</p> <p>5 MR. SEIBERLING: Yes. 13:50</p> <p>6 BY MR. SEIBERLING:</p> <p>7 Q. Was that your understanding of the --</p> <p>8 of the scope or the purposes for which Penn</p> <p>9 State was accepting the Freeh Report?</p> <p>10 MR. GARDNER: Object to the form. 13:50</p> <p>11 THE WITNESS: When the chairman of the</p> <p>12 board of a university stands up and makes a</p> <p>13 pronouncement, I think it would be odd in the</p> <p>14 extreme for me or anyone in the NCAA to call up</p> <p>15 that chairman and say, did you really mean it? 13:50</p> <p>16 Did you have authority to say that? Do you --</p> <p>17 are you following your governance rules?</p> <p>18 Those are internal matters for a</p> <p>19 university. I -- I can't imagine the</p> <p>20 circumstances under which I would call up a 13:50</p> <p>21 president -- a chairman of a board and say,</p> <p>22 gosh, I'm not sure that you're following your</p> <p>23 own rules.</p> <p>24 So of course we -- we and all of the</p> <p>25 other presidents who were involved in this 13:51</p>

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<p>1 decision -- so you had 20 university presidents 2 sitting there, none of whom had ever heard a 3 chairman of the board mislead the public about 4 something. So I -- I guess we got duped, if 5 that's what you're implying. I'm sure I 13:51 6 understand your point. 7 BY MR. SEIBERLING: 8 Q. The general counsel 9 characterized the -- 10 A. I -- I'm sorry, I can't speak for the 13:51 11 general counsel from Penn State. 12 Q. Well, I -- 13 A. He -- his opinion is his opinion. I'm 14 simply telling you what we heard, what we saw, 15 what I heard from the president of the 13:51 16 University. So those are pretty reliable 17 sources in my book. 18 Q. Was the acceptance of the Freeh 19 findings a condition of the consent decree? 20 MR. GARDNER: Object to form. You -- 13:51 21 you know it's in there. 22 MR. SEIBERLING: Yeah. 23 MR. GARDNER: So you're asking him if 24 it's in there? 25 BY MR. SEIBERLING: 13:52</p>	<p>1 Q. Was it a requirement in order for -- 2 A. It's -- 3 Q. -- for the NCAA to enter into the 4 consent decree? 5 A. It is included in the consent decree, 13:52 6 yes. 7 MR. GARDNER: Can I have that break? 8 MR. SEIBERLING: Yes, yeah. 9 THE VIDEOGRAPHER: We are now going off 10 the record. The time is now approximately 13:52 11 1:52 p.m. 12 (Recess taken from 1:52 p.m. 13 to 2:10 p.m. EST) 14 THE VIDEOGRAPHER: We're now going back 15 on the record. The time's approximately 14:09 16 2:10 p.m. 17 BY MR. SEIBERLING: 18 Q. Dr. Emmert, when we broke briefly, we 19 were discussing the Penn State's acceptance of 20 the Freeh findings. 14:10 21 A. Um-hum. 22 Q. And I just want to try to understand 23 what that acceptance of the Freeh findings meant 24 with respect to the November 2011 letter. 25 Is it my understanding that by 14:10</p>
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<p>1 accepting the Freeh findings, there wouldn't -- 2 it would not be necessary for Penn State to 3 respond to the November 2011 letter. 4 MS. DOBLICK: Objection. 5 THE WITNESS: No, that's not -- 14:10 6 MS. DOBLICK: Objection to form. 7 THE WITNESS: That's not the way the 8 events went at all, actually. 9 So the -- the fundamental notion about 10 the November letter and the response to the four 14:10 11 questions were not per se related to the Freeh 12 Report, they were related to whether or not the 13 university wanted to move forward with -- a 14 summary judgment again hadn't crafted a consent 15 decree at this point in the -- in the timeline 14:11 16 or whether or not we would pursue a traditional 17 investigation over a multimonth, maybe multiyear 18 period, and President Erickson clearly indicated 19 that they would much rather pursue a summary 20 judgment model than a conventional investigation 14:11 21 process. 22 And so at that stage, if we were going 23 to pursue a summary judgment model, it didn't 24 require that they respond to the November 17th 25 letter. Indeed that seemed like a redundant 14:11</p>	<p>1 effort. It would have been, I'm sure, welcomed 2 by the executive committee to have had their 3 response, but it seemed redundant. 4 It was nothing more than trying to 5 minimize the effort that was being put into this 14:12 6 by Penn State and by others. We'd reach a stage 7 where there wasn't a need for them to respond 8 specifically to this, to that now nine-month old 9 letter, nothing more than that. 10 BY MR. SEIBERLING: 11 Q. So accepting the Freeh findings would 12 forgo the need for the NCAA to undertake its own 13 investigation? 14 A. No, that's not what I said. What I 15 said was that the -- the investigation, the 14:12 16 Freeh investigation had been completed. At that 17 stage, the board and executive committee were 18 beginning to have conversations about whether or 19 not to move toward a summary judgment model 20 rather than to go forward with a conventional 14:12 21 investigation. 22 That decision was still -- had not been 23 made at that stage, but given that President 24 Erickson was hopeful that we could find a 25 summary judgment style solution, there wasn't a 14:13</p>

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<p>1 need to pursue answering a specific question -- 2 the specific questions that were in the November 3 letter. 4 So that's part of what you were reading 5 in there, was President Erickson and I talked 14:13 6 about the fact that for them to take time at 7 this point and have their counsel sit and work 8 on crafting a response to that now nine-month 9 old letter was a redundant exercise and not 10 necessary. 14:13 11 Q. But if President Erickson had opted not 12 to go the summary judgment route, then a 13 response to those four questions or that letter 14 would have been necessary? 15 A. Possibly. But had we decided to move 14:13 16 forward with an investigation, then, you know, 17 we would have -- it's a hypothetical. I don't 18 know the answer to that, but that's not the 19 direction we went. So that's not the direction 20 he wanted to go. So it's a hypothetical. 14:14 21 Q. So at this point in time, there's 22 really two options. There's this summary 23 judgment model or there's an enforcement action? 24 A. An investigation, yes. 25 Q. Investigation. 14:14</p>	<p>1 Any other options on the table at that 2 time? 3 A. No. Those are always the two options 4 that were on the table. 5 Q. Doesn't the investigation process 14:14 6 provide for a type of summary judgment result? 7 MR. GARDNER: Object to the form. 8 THE WITNESS: It can after the 9 conclusion of an investigation, yes. So in a -- 10 a more typical circumstance -- again, we -- I 14:14 11 don't mean to sound redundant, but you -- you 12 always have to, in discussing this, put it back 13 in context. This is and was the most 14 extraordinary thing that's happened to an 15 athletic department in the NCAA's history and so 14:14 16 everybody, Penn State, us, Big Ten, everybody is 17 trying to find a resolution to this problem that 18 is appropriate to these extraordinary 19 circumstances. 20 But if this had been a -- you know, an 14:15 21 impermissible benefits case where a booster had 22 given a kid \$5,000, then, sure, you'd go through 23 the facts of that case, you'd do an 24 investigation. At the conclusion of the 25 investigation, the university and the NCAA 14:15</p>
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<p>1 enforcement staff can agree that here's the 2 facts, we all agree to it, you want to go in 3 front of the committee on infractions or do you 4 just want to agree that this happened and then 5 take whatever the penalty is that we agree on. 14:15 6 and universities have that option at that point. 7 That's certainly not what occurred in this 8 particular circumstance. 9 BY MR. SEIBERLING: 10 Q. The next sentence in -- 14:15 11 A. I'm sorry, could you remind me what 12 page we're on? I closed my book here. 13 Q. We're on page 26, beginning on line 6. 14 It states "He indicated that the nature of the 15 violations were such that sanctions would not go 14:16 16 through the normal committee on infractions 17 route, as Gene just indicated, but rather be 18 taken up directly by the board in this case and 19 that the board had the power to go that route." 20 Do you remember advising President 14:16 21 Erickson that the board was going to take this 22 up directly? 23 A. We discussed as I -- as I've just said, 24 President Erickson and I discussed on several 25 occasions, as we were having these 14:16</p>	<p>1 conversations -- I can't -- again, I'm sorry, I 2 can't remember the specific phone calls or 3 whether it was three or five or -- but -- but we 4 discussed the desirability of not going back 5 through a conventional investigation, that the 14:16 6 University wished to avoid going back and going 7 through a conventional investigation, they 8 sought closure to this issue and that one of the 9 options available to the board -- and the board 10 discussed this at length -- was to allow a 14:17 11 conventional process to go forward or to pursue 12 some form of summary judgment. 13 And the agreement that President 14 Erickson sought and that the board sought 15 collectively was that moving forward by the time 14:17 16 he gave this -- this testimony (indicating to 17 document), moving forward with a consent decree 18 was the most appropriate way to proceed. It was 19 a mutual understanding. It wasn't something 20 that the -- that the board said this is your 14:17 21 only option. My board, not his board. I'm 22 sorry, I need to be more explicit. 23 Q. When you say your "board," do you mean 24 the -- 25 A. The executive committee. 14:17</p>

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<p>1 Q. The executive committee. 2 What is your understanding of where the 3 executive committee has the -- the power to -- 4 to take this action? 5 MR. GARDNER: Object to the form. 14:17 6 Are you -- well, I'm not -- I'm 7 objecting to the form, because I don't think I 8 understand what you're asking. 9 MR. SEIBERLING: I'm trying to put it 10 in the context of President Erickson's 14:18 11 statements. He said that "the board in this 12 case" and "the board had the power to go that 13 route." 14 BY MR. SEIBERLING: 15 Q. What is your understanding of the 14:18 16 power, the authority of your executive committee 17 to go that route? 18 A. Yeah -- 19 MR. GARDNER: Let me just caution 20 you -- everybody knows, but to the extent you 14:18 21 can answer the question without revealing 22 privileged conversations with Mr. Remy outlining 23 all the available options, I would caution you 24 to be careful. 25 THE WITNESS: Okay. 14:18</p>	<p>1 I sought the opinion of our -- of our 2 legal counsel about what the authority of the 3 executive committee was and wasn't, whether or 4 not the -- under the bylaws of the association, 5 the executive committee had this authority and 14:18 6 was assured based upon their analysis that the 7 board did indeed have that authority, and all 8 the assurances since then have been consistent, 9 that this is perfectly within the purview of the 10 executive committee and the board with the 14:19 11 board's concurrence. 12 BY MR. SEIBERLING: 13 Q. Can you pull out the bylaws? 14 A. I've already said I'm not an expert on 15 the bylaws, and you have many people that you 14:19 16 can talk to who are experts. I don't pretend to 17 be an expert on that book. 18 Q. I just want to ask you about one 19 specific bylaw. It's 4.1.2. 20 A. My scrivener is looking for it. 14:19 21 MR. GARDNER: Slowly. 22 (Tendering document to witness.) 23 BY MR. SEIBERLING: 24 Q. If you can look at subsection (c)... 25 A. I'm sorry. I'm -- what page are you 14:20</p>
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<p>1 on? 2 Q. It's page 20, 4.1.2, "Duties and 3 Responsibilities." 4 A. Yes. 5 Q. And there's subsection (e), "The 14:20 6 executive committee shall: 'Act on behalf of 7 the Association by adopting and implementing 8 policies to resolve core issues and other 9 Association-wide matters;'" 10 Is that the provision from which the 14:20 11 executive committee has authority to act with 12 regard -- 13 MR. GARDNER: Give me just one second. 14 And I would caution you again, having 15 already stated where you got your understanding 14:20 16 of what authority the executive committee had, 17 to not -- be careful not to reveal privileged 18 communications with your counsel. 19 THE WITNESS: Well, I was going to 20 simply repeat my answer. 14:21 21 One -- I'm going to amend my answer to 22 say, one, I'm not a lawyer and don't pretend to 23 be and don't make legal decisions, and two, I'm 24 not the expert upon which I relied on for advice 25 to the -- to the executive committee, I relied 14:21</p>	<p>1 on the advice of counsel. 2 BY MR. SEIBERLING: 3 Q. If we can continue on in the -- 4 A. Um-hum. 5 Q. -- the transcript, "Emmert indicated 14:22 6 that our only chance to avoid a death penalty 7 along with sanctions might be to opt for a 8 consent decree that would have unprecedented 9 penalties but would allow us to keep our program 10 running." 14:22 11 Do you remember stating that to -- to 12 President Erickson? 13 A. No, I wouldn't have said that because I 14 don't believe it was the case. The option 15 was -- was whether or not to enter into the 14:22 16 consent decree or to go through a traditional 17 infractions process with the accompanying 18 extended investigation, the outcome of which was 19 unknown. It could have been worse, it could 20 have been better, it could have -- I -- I 14:22 21 don't -- I'm not involved on the committee on 22 infractions and decision-making process. So I 23 can't predict what that outcome would have been. 24 Q. The next sentence reads, "He noted a 25 hefty fine, which actually became larger 14:22</p>

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<p>1 following discussions with the board during the</p> <p>2 week. Lots of scholarships and a ban on post</p> <p>3 season play of several years."</p> <p>4 Do you remember discussing penalties</p> <p>5 with President Erickson? 14:23</p> <p>6 A. Yes.</p> <p>7 Q. Do you remember the fine increasing</p> <p>8 during the week?</p> <p>9 A. I remember that there'd been various</p> <p>10 conversations about what an appropriate fine 14:23</p> <p>11 should be and that part of the -- the</p> <p>12 fundamental principle that was struck upon was</p> <p>13 the notion that it would be a year's worth of</p> <p>14 revenue from the football team, and it turns out</p> <p>15 that was \$60 million approximately. In 14:23</p> <p>16 actuality it's more than that we learned later,</p> <p>17 but that was the best guess that could be</p> <p>18 created at the time.</p> <p>19 Q. Do you remember initially advising it</p> <p>20 would be 30 million? 14:23</p> <p>21 A. There was discussions about a -- a</p> <p>22 variety of ranges.</p> <p>23 Q. Do you remember a discussion of the</p> <p>24 post season bans?</p> <p>25 A. I do, yes. There -- there were a lot 14:24</p>	<p>1 of conversations about what was -- if there was</p> <p>2 going to be a post season ban, what was</p> <p>3 appropriate. There was conver- -- there were</p> <p>4 conversations about what had happened in the</p> <p>5 past with other institutions. The original 14:24</p> <p>6 conversation as I remember -- as I recall it</p> <p>7 with President Erickson was that the executive</p> <p>8 committee had been talking about five years</p> <p>9 rather than four.</p> <p>10 The relationship between previous 14:24</p> <p>11 multiyear bowl bans for impermissible benefits</p> <p>12 versus, you know, the issues of child</p> <p>13 molestation in the Freeh Report were -- were</p> <p>14 being balanced off. And so if -- if a two-year</p> <p>15 ban is what you get for impermissible benefits, 14:24</p> <p>16 what do you get for this circumstance?</p> <p>17 And -- and so it was -- it was a --</p> <p>18 trying to find the right solution that was</p> <p>19 consistent with past precedent and this again</p> <p>20 unprecedented extraordinary case. 14:25</p> <p>21 Q. Was the initial proposed ban one year?</p> <p>22 A. I don't remember any initial proposals</p> <p>23 at all. There was always an ongoing</p> <p>24 conversation about what the right combination</p> <p>25 was, so it's -- it's not as if there was a 14:25</p>
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<p>1 bidding process that went on here. It was how</p> <p>2 do we craft something that fits and that the</p> <p>3 executive committee agreed with.</p> <p>4 Q. Who was crafting these penalties? Was</p> <p>5 it the executive committee? 14:25</p> <p>6 A. No, it was my staff and I putting</p> <p>7 suggestions in front of the executive committee</p> <p>8 and saying here are options from -- for you to</p> <p>9 consider and look at and having them have</p> <p>10 conversations about it. 14:25</p> <p>11 Q. Was the post season ban one of those</p> <p>12 penalties that you presented options to the</p> <p>13 executive committee on?</p> <p>14 A. Yes, it was.</p> <p>15 Q. Do you remember having a discussion 14:26</p> <p>16 about the vacation of wins?</p> <p>17 A. With whom?</p> <p>18 Q. With President Em- -- or with President</p> <p>19 Erickson.</p> <p>20 MR. GARDNER: He's been doing a lot of 14:26</p> <p>21 talking to himself during this dep.</p> <p>22 MR. SEIBERLING: I keep doing this</p> <p>23 constantly.</p> <p>24 THE WITNESS: I --</p> <p>25 MR. SEIBERLING: I apologize.</p>	<p>1 THE WITNESS: I don't remember</p> <p>2 specifically talking about that. Since it was</p> <p>3 part of the package that was under</p> <p>4 consideration, I assume I did. But I don't</p> <p>5 remember the details of that. 14:26</p> <p>6 The -- the fundamental notion around</p> <p>7 that that the -- that was discussed with the</p> <p>8 board and executive committee was that by</p> <p>9 failing to deal with the child abuse issues, the</p> <p>10 sex abuse issues back in '98, that postponed the 14:26</p> <p>11 scandal that had occurred now and therefore</p> <p>12 created a competitive advantage that needed to</p> <p>13 be recognized in some punitive fashion while</p> <p>14 trying to not punish the current students that</p> <p>15 were there that had -- student athletes that 14:27</p> <p>16 were there that had nothing to do with this.</p> <p>17 So there was a -- there was a search</p> <p>18 for how can you recognize the magnitude of</p> <p>19 this -- this behavior while -- while not</p> <p>20 inflicting any more impact on folks that weren't 14:27</p> <p>21 involved than -- than was necessary.</p> <p>22 BY MR. SEIBERLING:</p> <p>23 Q. You mentioned the 1998 allegations.</p> <p>24 A. Um-hum.</p> <p>25 Q. Weren't those allegations reported to 14:27</p>

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<p>1 the police and investigated?</p> <p>2 MR. GARDNER: Objection.</p> <p>3 THE WITNESS: All of those --</p> <p>4 MR. GARDNER: Go ahead.</p> <p>5 THE WITNESS: All of those facts were 14:27</p> <p>6 reported in the Freeh Report, and I'm not going</p> <p>7 to second-guess them.</p> <p>8 BY MR. SEIBERLING:</p> <p>9 Q. Have you read any of the critiques of</p> <p>10 the Freeh Report? 14:28</p> <p>11 A. Ah, some, yes.</p> <p>12 Q. Any thoughts on the -- the completeness</p> <p>13 or the thoroughness of the Freeh Report?</p> <p>14 A. They spent nine months, eight and a</p> <p>15 half million dollars, interviewed hundreds of 14:28</p> <p>16 people, reviewed millions of e-mail. I -- it's</p> <p>17 kind of hard to imagine them doing a more</p> <p>18 thorough job than that.</p> <p>19 Q. Were you aware that several of the</p> <p>20 individuals specifically identified in the Freeh 14:28</p> <p>21 Report weren't -- were not interviewed?</p> <p>22 MR. GARDNER: Objection to the form.</p> <p>23 THE WITNESS: If -- if you're asking me</p> <p>24 do I want to pass judgment on the Freeh Report,</p> <p>25 that's not my responsibility to do. 14:28</p>	<p>1 BY MR. SEIBERLING:</p> <p>2 Q. If we can continue on in the</p> <p>3 transcript.</p> <p>4 A. Okay.</p> <p>5 Q. We're at line 20. "He indicated then 14:28</p> <p>6 that the only reason Penn State might be given</p> <p>7 this option was the actions that the board of</p> <p>8 trustees and administration had taken during the</p> <p>9 past eight plus months to replace the</p> <p>10 individuals that were relieved of their duties 14:29</p> <p>11 last November commissioning the Freeh</p> <p>12 investigation and the fact, as Gene said, that</p> <p>13 the University had no previous major</p> <p>14 infractions" -- so -- "with its football</p> <p>15 program." 14:29</p> <p>16 Do you remember stating that to -- to</p> <p>17 President Erickson at all?</p> <p>18 A. Not in those words at all. I certainly</p> <p>19 remember and -- and know that the executive</p> <p>20 committee and the board, as I was -- I as well, 14:29</p> <p>21 were impressed with the actions of the</p> <p>22 University, their Board of Regents and the</p> <p>23 seriousness with which they took this whole --</p> <p>24 this whole awful incident. And that certainly</p> <p>25 carried weight in the board as they discussed 14:29</p>
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<p>1 especially a variety of issues like the -- the</p> <p>2 death penalty. And as they considered all of</p> <p>3 this moving forward, the -- the views of the --</p> <p>4 of the executive committee were mitigated by --</p> <p>5 by those actions of the board. 14:30</p> <p>6 So in that part of the sentence I think</p> <p>7 he's absolutely right. The notion that that's</p> <p>8 the -- that this -- that they were given this</p> <p>9 option was only because of that I think is -- is</p> <p>10 inaccurate, and I don't think that's the case at 14:30</p> <p>11 all. But again, you're asking me to answer a</p> <p>12 hypothetical -- he's asking me a hypothetical</p> <p>13 question here by saying, well, you know, if the</p> <p>14 board hadn't done these things, what would you</p> <p>15 have done? And I -- I don't know what the 14:30</p> <p>16 executive committee would have done had Penn</p> <p>17 State not done anything about all this. That's</p> <p>18 a -- I -- I can't even contemplate that right</p> <p>19 now. I mean, that's hard to imagine.</p> <p>20 Q. If you continue on, it says, "Our legal 14:30</p> <p>21 team then began discussions with NCAA legal</p> <p>22 counsel on Monday, July 16th, and it was clear</p> <p>23 that the NCAA was not interested in negotiating</p> <p>24 the terms of the consent decree."</p> <p>25 Do you agree with President Erickson's 14:31</p>	<p>1 characterization that the NCAA was not</p> <p>2 interested in negotiating the terms of the</p> <p>3 consent decree?</p> <p>4 A. Was -- I'm not quite sure what he's --</p> <p>5 he's describing this. If the characterization 14:31</p> <p>6 is did we enter into a negotiation with the</p> <p>7 university? No, we did not enter into a</p> <p>8 negotiation with the university. Did the</p> <p>9 executive committee consider the concerns and</p> <p>10 issues expressed by President Erickson? Yes, of 14:31</p> <p>11 course they did. And the nature of the penalty</p> <p>12 structure changed significantly over time from a</p> <p>13 multiyear death penalty with other sanctions on</p> <p>14 top of it to the one that it wound up with that</p> <p>15 is significantly different. 14:31</p> <p>16 So it -- it certainly was the case that</p> <p>17 there was extensive thought and consideration</p> <p>18 given to what made sense in this process. But</p> <p>19 no, there wasn't a negotiation, you know,</p> <p>20 sitting down, well, will you take five years, 14:32</p> <p>21 will you take four years, will you -- and so in</p> <p>22 -- in one -- in one sense he's right, this</p> <p>23 wasn't a negotiating session in a conventional</p> <p>24 sense. But there was certainly a lot of</p> <p>25 conversation and adjustments were made in this 14:32</p>

<p style="text-align: right;">Page 162</p> <p>1 process as it moved along.</p> <p>2 Q. Continuing on, it's -- continuing on,</p> <p>3 it says, "It was a take-it or leave-it</p> <p>4 proposition. And despite our attempts to push</p> <p>5 back on the sanctions as we learned about them, 14:32</p> <p>6 we didn't, as Gene indicates, receive the draft</p> <p>7 consent decree in writing until the early hours</p> <p>8 of Saturday morning."</p> <p>9 Would you agree again with President</p> <p>10 Erickson's characterization that it was a 14:32</p> <p>11 take-it or leave-it proposition?</p> <p>12 A. There were always options before Penn</p> <p>13 State including to go through the traditional</p> <p>14 investigation route, one that they had expressed</p> <p>15 a clear disinterest in pursuing. That was 14:33</p> <p>16 always available to them. They were always in a</p> <p>17 position to refuse to accept the -- the</p> <p>18 authority of the executive committee to engage</p> <p>19 in these actions. They always had options</p> <p>20 available to them. 14:33</p> <p>21 The -- was the university in a</p> <p>22 difficult place? Well, of course they were.</p> <p>23 They had again the most horrific thing that's</p> <p>24 ever happened in and around an athletic program</p> <p>25 happened on their campus. There's -- there's no 14:33</p>	<p style="text-align: right;">Page 163</p> <p>1 way that that winds up a happy situation.</p> <p>2 So of course they felt like they were</p> <p>3 in a difficult place because they were in a</p> <p>4 difficult place. Any university would have</p> <p>5 been. But no one was saying this was take it or 14:33</p> <p>6 leave it. At the time that the -- that the</p> <p>7 consent decree was settled upon, as I mentioned,</p> <p>8 there had been significant changing and -- and</p> <p>9 movement of the -- of the penalties that were</p> <p>10 put in that structure. And they were the result 14:34</p> <p>11 in part of our conversations with the university</p> <p>12 trying to find a model that made sense out of</p> <p>13 all of this.</p> <p>14 So I disagree with the characterization</p> <p>15 that it's take it or leave it, there were no 14:34</p> <p>16 other options for the university. That's not</p> <p>17 accurate. There were options available to the</p> <p>18 university had they chosen to pursue them. They</p> <p>19 pursued what they believed at the time,</p> <p>20 according to my conversations with Erickson and 14:34</p> <p>21 that he was being advised by others, was the</p> <p>22 best option for the university. And that's what</p> <p>23 he had to do. That was his choice.</p> <p>24 Q. If Penn State had rejected the consent</p> <p>25 decree, could the executive committee have 14:34</p>
<p style="text-align: right;">Page 164</p> <p>1 unilaterally imposed penalties?</p> <p>2 MR. GARDNER: Now, first let me object.</p> <p>3 You're -- are you asking for his interpretation</p> <p>4 of the bylaws?</p> <p>5 MR. SEIBERLING: I think we've 14:34</p> <p>6 established he's not very familiar with the</p> <p>7 bylaws.</p> <p>8 MR. GARDNER: Well, that's why I'm</p> <p>9 objecting to your question.</p> <p>10 I caution you about the privileged 14:35</p> <p>11 communications that you've already outlined</p> <p>12 occurred.</p> <p>13 THE WITNESS: Well, I -- even with the</p> <p>14 caution, it doesn't change my answer. I -- I</p> <p>15 would have -- I would have sat down with my 14:35</p> <p>16 counsel, and we would have considered what our</p> <p>17 options were at that stage.</p> <p>18 BY MR. SEIBERLING:</p> <p>19 Q. Did you do that?</p> <p>20 A. We didn't -- we didn't reach a point 14:35</p> <p>21 where that was necessary. We talked about,</p> <p>22 well, what if and considered the fact that,</p> <p>23 well, we can launch an investigation, we can see</p> <p>24 what other legal options we have, we -- we</p> <p>25 talked about scenarios by which, you know, we 14:35</p>	<p style="text-align: right;">Page 165</p> <p>1 would wind up asking people to pursue whether or</p> <p>2 not to expel the university from the NCAA. I</p> <p>3 mean, all those things were considered over the</p> <p>4 course of -- of that period of time, just as my</p> <p>5 understanding is the Big ten talked about 14:35</p> <p>6 whether they would expel them from the Big Ten.</p> <p>7 I mean, all -- the -- the range of issues and</p> <p>8 penalties that were being considered covered the</p> <p>9 gamut, again because of the extraordinary nature</p> <p>10 of these circumstances. 14:36</p> <p>11 So since -- since none of us had ever</p> <p>12 found ourselves in this position and never want</p> <p>13 to again, we -- we crafted the best available</p> <p>14 options while always recognizing that there</p> <p>15 could be other directions that we may wind up 14:36</p> <p>16 going because of this issue.</p> <p>17 Q. Was unilateral imposition of sanctions</p> <p>18 by the executive -- executive committee one of</p> <p>19 the options discussed?</p> <p>20 A. It -- it wasn't discussed thoroughly 14:36</p> <p>21 enough that anyone reached a full, clear</p> <p>22 conclusion what was or wasn't possible, at least</p> <p>23 not to my memory.</p> <p>24 Q. The -- the next paragraph reads,</p> <p>25 "President Emmert and the NCAA staff indicated 14:36</p>

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<p>1 throughout the week that it was not at all clear 2 that the NCAA board members would accept the 3 consent decree without involving the death 4 penalty or penalties even more severe. And we 5 didn't know until late Saturday that the NC was 14:37 6 willing to go along with the consent decree 7 option. It was late Saturday we learned that." 8 Do you agree with President Erickson's 9 characterization of the position of the 10 executive committee? 14:37 11 A. I -- I think that's generally 12 consistent with my memory, yes. 13 Q. Continuing on to the next page, "Once 14 we had the consent decree in writing, we pushed 15 back again on the sanctions but we were given 14:37 16 only very limited latitude on some 17 clarifications. 18 During the week I had kept the board of 19 trustees leadership, Chairman Peetz and Vice 20 Chairman Masser briefed that there were 14:37 21 discussions at the NCAA that were moving along 22 very quickly, that the sanctions were going to 23 be severe in any case and that the NCAA had said 24 emphatically that any leak of these discussions 25 by Penn State would take any deal off the 14:38</p>	<p>1 tabling and the NCAA would go the other route." 2 Did you discuss with President Erickson 3 the leak of any of their -- of your discussions 4 with him? 5 A. I don't recall that I did, but I'm -- I 14:38 6 know we had those conversations probably through 7 counsel that the negotiations needed to be 8 confidential negotiations, that the -- again, 9 they weren't negotiations in a traditional sense 10 but that these were confidential considerations 14:38 11 and discussions. And they -- they would have 12 been impossible had they been -- been public 13 conversations especially given the -- the media 14 attention that was being given to this 15 particular issue. 14:38 16 So having those conversations remained 17 confidential was -- was essential to their 18 success. 19 Q. So I think you may have explained this. 20 Why -- why the need to maintain confidentiality? 14:39 21 A. I -- I think if you -- if you think 22 back again to that moment in time in the days 23 following the -- the release of the Freeh 24 Report, the university's removal of Joe 25 Paterno's statue, the unrest that was going on 14:39</p>
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<p>1 throughout the -- the campus community around 2 that time, the media storm I think is a -- a 3 good -- a good descriptor that was going on 4 around it -- to try and carry on those 5 conversations in a public forum would have been 14:39 6 if not -- if not impossible, extraordinarily 7 difficult and very unlikely to be successful. 8 And again, the -- the goal here was to 9 reach some successful conclusion of this 10 circumstance. There -- there was never any 14:40 11 expectation that I heard from anyone that -- 12 that this was going to be a happy, amicable 13 ending to a very difficult circumstance. That 14 was not the intention. It was to find a 15 solution that served the best interests of all 14:40 16 parties here and preserved the values of 17 intercollegiate athletics. That's what the 18 executive committee was pursuing. And to do 19 that through public lobbying back and forth 20 would -- would certainly have been very, very 14:40 21 difficult, to be -- to be charitable. 22 Q. Did you have a discussion with 23 President Erickson about the deal being off the 24 table if the discussions were made public? 25 A. I don't remember saying words of that 14:40</p>	<p>1 sort, but I probably said something much like I 2 just said to you, that, you know, if this is a 3 public conversation, we won't be able to 4 conclude it successfully. 5 Q. Why -- again, I -- I believe you 14:41 6 probably answered this but why not? Why would 7 the public nature of it impede it? 8 A. I think I -- I think I answered it. I 9 mean, it -- I answered the question. 10 Q. And -- and that was your request that 14:41 11 the discussions remain confidential; is that 12 correct? 13 A. Oh, the executive committee and 14 everyone understood that these were confidential 15 conversations, yes. 14:41 16 Q. The -- the next paragraph reads -- 17 A. And by the way, the University made no 18 objection whatsoever to that. The University 19 seemed perfectly agreeable that they be kept 20 confidential, and I believe it would have 14:41 21 been -- in fact, I'm quite confident it would 22 have been at least as problematic for them as it 23 was for -- for the NCAA's executive committee to 24 have this be a public debate. 25 Q. The next paragraph reads "I indicated 14:42</p>

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<p>1 to the executive committee of the board late in 2 the week where we stood and then later on 3 Sunday, I, along with legal counsel, spelled out 4 the difficult full terms of the consent decree. 5 At that call, there was a strong consensus on 14:42 6 the executive committee that the alternative to 7 the consent decree was far worse and that we 8 should take the deal, which I signed then late 9 on Sunday evening." 10 Who drafted the consent decree? 14:42 11 MR. GARDNER: Let me object to the 12 form, because I think you could have asked that 13 question without the -- reading of the 14 paragraph, but ask your question. 15 THE WITNESS: Well, I'm not sure I 14:42 16 understand the connection between the -- 17 BY MR. SIEMERLING: 18 Q. There really isn't a connection. I'm 19 asking -- I'm moving along. 20 A. Oh, okay. 14:43 21 MR. GARDNER: That I don't object to. 22 THE WITNESS: I think, by the way, the 23 paragraph accurately reflects the circumstance, 24 that President Erickson and the board 25 executive -- their board executive committee 14:43</p>	<p>1 found themselves in. I think they understood 2 that they were in a very, very difficult 3 position here, that no one had any illusions 4 that these sanctions were anything other than 5 severe. They were quite severe and everyone 14:43 6 understood that. But they also determined -- 7 "they," their executive committee and President 8 Erickson determined that this course forward was 9 in the best interest of the University and that 10 was a thoughtful decision that they made and 14:43 11 that they -- an agreement that they entered into 12 as -- pretty much precisely as he outlines it. 13 As for who drafted it, it was drafted 14 by our legal counsel over the course of that -- 15 this time period under discussion. 14:44 16 One thing is true, I don't write 17 consent decrees; I don't write legal documents. 18 BY MR. SEIBERLING: 19 Q. Did President Erickson ever request to 20 meet with you one-on-one in person? 14:44 21 A. I don't recall. He and I were not -- 22 had not -- we'd met apparently years ago as 23 younger academics, but I hadn't -- hadn't met 24 him until this all occurred and he found himself 25 in these difficult circumstances. So we -- we 14:44</p>
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<p>1 talked extensively and we -- I don't remember 2 the first time we met, frankly. I suspect it 3 was at a Big Ten event, but I don't recall. We 4 had plenty of conversations. 5 (Emmert Exhibit 21 was marked 14:45 6 for ID.) 7 MR. GARDNER: I can take that. 8 MR. SEIBERLING: I think we're done 9 with that. 10 THE WITNESS: (Tendering document to 14:45 11 counsel.) 12 MR. GARDNER: Thanks. 13 BY MR. SEIBERLING: 14 Q. I show you what's marked as Emmert 15 Exhibit 21. 14:45 16 A. (Reviewing document.) 17 Q. I want to now turn to the discussions 18 that you had with your executive committee. 19 A. Um-hum. 20 Q. It's my understanding that there was at 14:46 21 least two executive committee meetings between 22 the time of the Freeh Report and the consent 23 decree. 24 A. Yes. 25 Q. Is that accurate? 14:46</p>	<p>1 A. Yes. 2 Q. The first meeting, I believe, was on or 3 about July 17th. 4 To the extent you can, without 5 revealing any privileged or attorney-client 14:46 6 communications, what was discussed generally at 7 the first meeting? 8 A. As -- as I recall, we talked broadly 9 about the nature of the -- the circumstances, 10 the Freeh Report, the evidence brought forward 14:46 11 in the Sandusky trial, the options before the 12 NCAA, whether to go forward with the traditional 13 investigation, whether or not to pursue some 14 alternative solutions, including some kind of 15 summary judgment model. The -- then we talked 14:47 16 at length about what that might look like if we 17 went in that direction, answered questions about 18 some of the -- the broad issues of the -- of the 19 Freeh Report, as I recall. 20 The members on the -- the people on the 14:47 21 call expressed their shock and dismay at the 22 facts of the case and what was going on at Penn 23 State, and then we wound up at some point, I 24 think toward the end of the conversation, but 25 I'm not quite sure exactly where, talking about 14:47</p>

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<p>1 if there was a move toward a summary judgment, 2 what would that look like.</p> <p>3 And there was, as I recall, a very 4 strong consensus among the people on the call 5 that circumstances this egregious warranted the 14:47 6 death penalty, the heinous nature of the 7 criminal behavior obviously being abetted in 8 some fashion by -- as the Freeh Report points 9 out, by an athletic department and the -- the 10 comparison between other cases that the NCAA has 14:48 11 found warranted punishments were made and, you 12 know, it was always this comparison of, well, 13 look, here's what we do when someone's receiving 14 impermissible benefits, money or the use of a 15 car or something, and over here we have sexual 14:48 16 assault of children. How do we -- how do we -- 17 you know, and the failure to respond 18 appropriately to that, how do you compare those 19 two, and I think that the -- it's fair to say 20 that the board and the executive committee, all 14:48 21 those members on the phone felt very powerfully 22 about that.</p> <p>23 Q. The discussion of the death penalty, 24 was that in the context of this being included 25 within this summary judgment idea? 14:49</p>	<p>1 A. Yeah, if we were going to -- well, we 2 wound up -- we wound up saying the board 3 asking -- the executive committee -- pardon 4 me -- asking that I have my staff put together 5 options for them, and we had to consider, well, 14:49 6 what would those options be.</p> <p>7 And one of them that they immediately 8 went to was, well, we want to see multiyear -- 9 and I don't remember the language precisely, but 10 we want to see what a multiyear death penalty 14:49 11 would look like, how would that be shaped, what 12 would it look like. We did it once in the case 13 of Southern Methodist University years ago, and 14 that was around the case of impermissible 15 benefits and essentially a cover-up of that by 14:49 16 university. This is -- this is, in their mind, 17 worse. How do you craft that?</p> <p>18 I talked with them at length about 19 the -- the -- making sure they understood the 20 impact of what a so-called death penalty means 14:50 21 for not just a football team, but for a 22 community and the impact that has on people in 23 the community, not just a football team or an 24 athletic department but, you know, a marching 25 band and the mom-and-pop T-shirt store and the 14:50</p>
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<p>1 restaurants that this would -- you know, that it 2 would inflict extraordinary damage on, not just 3 on an athletic department and even not just the 4 university, but much more beyond that.</p> <p>5 And there was an understanding of that, 14:50 6 but nonetheless, they wanted to consider what -- 7 what models might look like that included death 8 penalty plus other things. I mean, there was an 9 interest in making clear that the sanctions fit 10 the incredible nature of this incident. 14:51</p> <p>11 Q. At this July 17th meeting, were you 12 discussing the options or were you asked to come 13 up with some options and bring them back to us?</p> <p>14 A. The latter. We talked about -- but 15 again, I was -- thank you -- I was looking for 14:51 16 some guidance as to what parameters were, 17 where -- you know, I needed to know where their 18 views ranked. Did they think that this 19 warranted probation or did they think this 20 warranted a death penalty? You know, where on 14:51 21 this list of sanctions were they and they were 22 clearly on the far edge of the continuum.</p> <p>23 Q. So you would say that a majority of the 24 board at this July 17th meeting was in favor of 25 a death penalty sanction? 14:51</p>	<p>1 A. Yes, but they understood that they 2 weren't making a decision. They were just 3 talking out options, and they understood that, 4 you know, we wanted to spend more time on this. 5 This wasn't -- they weren't going to make the 14:52 6 decision right then and there, but yeah, there 7 was a strong sentiment for it.</p> <p>8 Q. If you can remember, which board 9 members were advocating for a death penalty 10 sanction? 14:52</p> <p>11 A. I can't remember that.</p> <p>12 Q. Was Ed Ray?</p> <p>13 A. I'm not trying to be oblique. I really 14 don't remember which ones of -- wound up on 15 which side of the issue, other than that I do 14:52 16 remember clearly that it was the vast majority 17 of them. So you can pick the vast majority of 18 them and go from there, but it was the majority 19 of them.</p> <p>20 Q. And you can correct me if I'm wrong, 14:52 21 but it sounds like you personally were not in 22 favor of that extreme sanction?</p> <p>23 A. I was deeply concerned about, as I 24 said, the impact it would have on people who 25 were in no way involved in this. You know, the 14:52</p>

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<p>1 marching band, you know, okay, so if you accept</p> <p>2 the Freeh Report, there were a whole array of</p> <p>3 administrative failures, but it didn't have</p> <p>4 anything to do with the marching band and it</p> <p>5 didn't have anything to do with the hotels in 14:53</p> <p>6 town, it didn't have anything to do with the</p> <p>7 restaurants in town, it didn't have anything to</p> <p>8 do with the current football players.</p> <p>9 So -- so I was cautioning them to be,</p> <p>10 you know, thoughtful about making sure that the 14:53</p> <p>11 sanctions did two things: One, they were</p> <p>12 punitive, because that's what sanctions are all</p> <p>13 about, but also that they could be constructive</p> <p>14 and they could help the university move forward,</p> <p>15 and the notion of crafting, at that time it had 14:53</p> <p>16 never been done, but something akin to corporate</p> <p>17 integrity agreement, only as an athletic</p> <p>18 integrity agreement that would insist upon</p> <p>19 the -- the application of the recommendations of</p> <p>20 the Freeh Report, and best practices around 14:53</p> <p>21 athletics integrity made great sense.</p> <p>22 And so it was both how do you -- how do</p> <p>23 you put in place an appropriate set of punitive</p> <p>24 measures and how do you put in place a process</p> <p>25 by which the University could move forward, and 14:54</p>	<p>1 that's how we wound up where we were. Had the</p> <p>2 death penalty been imposed, I think it would</p> <p>3 have been extremely difficult to move forward</p> <p>4 with the athletic integrity agreement and a</p> <p>5 variety of those things that were intended to be 14:54</p> <p>6 helpful.</p> <p>7 And indeed, I think history has shown</p> <p>8 that they were helpful. The University has been</p> <p>9 incredibly responsive. The current</p> <p>10 administration, Rod Erickson's administration 14:54</p> <p>11 and as far as I can tell, the current</p> <p>12 administration are doing a very good job of</p> <p>13 responding to it. And more important, in my</p> <p>14 opinion, George Mitchell, who was put in as a</p> <p>15 media- -- the person to oversee the impli- -- 14:54</p> <p>16 the application of that agreement has done a --</p> <p>17 I believe they've done a spectacular job.</p> <p>18 Q. Following this July 17th meeting, the</p> <p>19 next meeting would have been, I believe, four</p> <p>20 days later on July 21st. Does that sound right? 14:55</p> <p>21 A. Sounds right, yes.</p> <p>22 Q. Showing you an e-mail dated July 21st,</p> <p>23 2012 from Ed Ray to you --</p> <p>24 A. Um-hum.</p> <p>25 MR. SEIBERLING: Probably now's a good 14:55</p>
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<p>1 time to break so he can read it.</p> <p>2 MR. GARDNER: That's fine. Sure.</p> <p>3 THE WITNESS: Yeah.</p> <p>4 MR. GARDNER: Is that all right?</p> <p>5 THE WITNESS: That's fine. 14:55</p> <p>6 THE VIDEOGRAPHER: This is the end of</p> <p>7 DVD No. 2. We are now going off the record.</p> <p>8 The time is approximately 2:56 p.m.</p> <p>9 (Recess taken from 2:56 p.m.</p> <p>10 to 3:14 p.m. EST) 15:11</p> <p>11 THE VIDEOGRAPHER: This is the</p> <p>12 beginning of DVD No. 3 of the deposition of Mark</p> <p>13 Emmert. We're now going back on the record.</p> <p>14 The time is approximately 3:14 p.m.</p> <p>15 BY MR. SEIBERLING: 15:13</p> <p>16 Q. Dr. Emmert, I've provided you a copy of</p> <p>17 a July 21st, 2012 e-mail from Ed Ray to you.</p> <p>18 You've had a chance to review it now?</p> <p>19 A. Um-hum.</p> <p>20 Q. Do you remember receiving this e-mail? 15:13</p> <p>21 A. Yes, vaguely. I don't remember the</p> <p>22 precise language, but I remember his</p> <p>23 communications.</p> <p>24 Q. Was this e-mail sent to you in advance</p> <p>25 of the scheduled executive committee meeting? 15:14</p>	<p>1 A. Um, I don't know precisely when it</p> <p>2 arrived. It looks like it came in at 3:23 p.m.,</p> <p>3 but the answer is I don't recall whether it came</p> <p>4 in before or after.</p> <p>5 Q. In the -- 15:14</p> <p>6 A. I assume he intended it to come in</p> <p>7 before.</p> <p>8 Q. In the e-mail, particularly I'm looking</p> <p>9 at the second paragraph --</p> <p>10 A. Um-hum. 15:14</p> <p>11 Q. -- and I'll -- I'll read it into the</p> <p>12 record.</p> <p>13 A. Sure.</p> <p>14 Q. "I suggest you tell people on the call</p> <p>15 that this is your decision but you want their 15:14</p> <p>16 input regarding a summary disposition of the</p> <p>17 case."</p> <p>18 I assume the "people on the call" would</p> <p>19 have been the executive committee call?</p> <p>20 A. Yes, I assume that's what he's 15:14</p> <p>21 referring to.</p> <p>22 Q. "Tell them there are two options that</p> <p>23 are harsher than what one would -- what one</p> <p>24 could expect out of the current enforcement</p> <p>25 process but either would offer the school 15:15</p>

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<p>1 closure now rather than in two years. Describe 2 plan A and plan B, with plan B including lesser 3 penalties than every category in A but including 4 the additional penalty we discussed." 5 Can you describe what plan A and plan B 15:15 6 were? 7 A. No, I'm sorry, I can't. 8 Q. All right. Do you remember presenting 9 two options to the executive committee? 10 MR. GARDNER: At this meeting? 15:15 11 MR. SEIBERLING: At this meeting, yeah. 12 THE WITNESS: No, I don't. 13 BY MR. SEIBERLING: 14 Q. It continues on, "Both plans attempt to 15 impose harsher penalties than staff believe can 15:15 16 be gained through the standard enforcement 17 process." 18 Do you agree with Ed Ray's view that 19 the penalties being proposed to the executive 20 committee were harsher than what could have been 15:15 21 obtained through the standard enforcement 22 process? 23 A. No, I -- I don't know that he or anyone 24 at that stage could have made that judgment with 25 any -- with any clarity. Again, as I've said a 15:16</p>	<p>1 number of times, the committee on infractions 2 that hears these cases is an independent group 3 that includes representatives of the membership 4 across colleges and universities in America. 5 Neither President Ray or I or anybody on this 15:16 6 e-mail chain are involved in -- in making those 7 decisions. 8 So it's -- it's a supposition that -- 9 that he's asserting that I -- it's obviously his 10 opinion, and you can ask him about those 15:16 11 opinions. But the part that I -- I certainly do 12 agree with is this notion that the -- the 13 university, Penn State, had an opportunity to 14 bring closure to this process rather than in two 15 years. And the university clearly found that a 15:17 16 desirable option in front of them, and they had 17 those two choices. And I think this memoranda 18 makes clear that the university had a choice 19 here. They could -- they could move forward 20 with -- with the summary judgment model in the 15:17 21 form of the consent decree or they could go 22 through a regular enforcement process that would 23 take a year or two and see what the outcome was. 24 But at this stage and at any point in 25 this no one could have predicted with certainty 15:17</p>
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<p>1 what the committee on infractions would have 2 done, certainly not me and I -- I know not Ed. 3 Again, he can make his own determinations and 4 his own judgements and guesses, but no one knew 5 that -- the -- the reality of what the outcome 15:17 6 might have been. 7 Q. He goes on to say, "Clearly, I prefer a 8 plan B because it puts you in the strongest 9 position, whether or not it is accepted." 10 Was -- was plan B the death penalty? 15:17 11 A. I -- I really honestly don't remember 12 what plan A or plan B was. 13 (Emmert Exhibit 22 was marked 14 for ID.) 15 BY MR. SEIBERLING: 15:18 16 Q. I show you Emmert Exhibit No. 22. 17 A. Are we -- are we done with this? 18 Q. No. You can put it aside -- 19 A. Okay. 20 Q. -- and we'll go back to it because I 15:18 21 think Ed Ray actually changes the subject matter 22 he's talking about. 23 A. Okay. 24 Q. Specifically this is -- this is an ESPN 25 Q&A with Ed Ray. Specifically I was going to 15:18</p>	<p>1 look at page 3. 2 A. May I -- may I read through this very 3 quickly so I remember the context? (Reviewing 4 document.) 5 Okay. I'm sorry, what -- where are 15:20 6 you? 7 Q. I was focusing in on -- there's a 8 question on the third page about halfway down -- 9 A. Yes. 10 Q. -- that begins, "Was there any 15:20 11 discussion for a television ban or a reduction 12 in home games for Penn State?" 13 And Ed Ray responds, "What we talked 14 about were two sets of options. One is the set 15 of actions that you learned about today." 15:21 16 I believe this statement or this 17 interview happened after the -- 18 A. It did, yes. 19 Q. -- consent decree? 20 A. At least I saw the -- 15:21 21 Q. And then he goes on to say, "That got 22 unanimous consent. We also talked about 23 suspension of play for some or all of the other 24 actions but maybe to a lesser degree to get the 25 balance right. In the end, there was 15:21</p>

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<p>1 overwhelming support for the actions reported 2 today."</p> <p>3 Again, here he talks about two sets of 4 options. Could this have been the A and the B 5 option that he was talking about in an e-mail? 15:21</p> <p>6 A. Yeah, it -- it could -- it could well 7 have been. I mean, we were still in the second 8 phone call talking about a variety of -- of 9 potential penalties. There -- there wasn't just 10 a -- a single item, as I recall it. 15:21</p> <p>11 We said, okay, here's the set, vote on 12 it or not. And so there was in the second call 13 of -- a conversation about a variety of things. 14 So there -- there had, for example, in the early 15 conversations been a discussion about a 15:22 16 television ban or, you know, some kind of other 17 financial implications and, of course, the issue 18 with the television ban has an impact on -- on 19 other schools and on other people in the 20 conference. 15:22</p> <p>21 And so, you know, how do you -- how do 22 you craft a set of sanctions that are best 23 suited for this particular set of circumstances 24 that have the intended punitive impact versus 25 minimizing unintended consequences. And so that 15:22</p>	<p>1 was part of the discussion and, yeah, they were 2 still talking about whether or not the 3 suspension of play, the so-called death penalty 4 was appropriate going into this, but I don't 5 recall that we said, look, here's A and 15:22 6 here's B.</p> <p>7 I remember talking about this as a 8 range of issues, and Ed may have well seen this 9 as one or the other, but I don't remember the -- 10 the exact position that he was taking on this. 15:23 11 (indicating to document), if that's what you're 12 asking. I'm not quite sure what you're asking 13 about.</p> <p>14 Q. Well, I guess in the -- in his 15 discussion with the ESPN, he remarks about two 15:23 16 sets of options and the first appears to be the 17 consent decree --</p> <p>18 A. Right.</p> <p>19 Q. -- that was agreed to?</p> <p>20 A. Right. 15:23</p> <p>21 Q. And then the second option appears to 22 be the death penalty plus some or all of the 23 other actions.</p> <p>24 MR. GARDNER: Okay. I --</p> <p>25 BY MR. SEIBERLING: 15:23</p>
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<p>1 Q. Is that --</p> <p>2 MR. GARDNER: Object to the form.</p> <p>3 You're not really asking -- you've 4 gotten his recollection.</p> <p>5 MR. SEIBERLING: Yeah. 15:23</p> <p>6 MR. GARDNER: And he doesn't know what 7 Ed was thinking for -- or exactly what he meant, 8 but I'm confident somebody will go to Corvallis 9 and ask it.</p> <p>10 BY MR. SEIBERLING: 15:23</p> <p>11 Q. We can turn back now to the --</p> <p>12 A. Sure.</p> <p>13 Q. -- to the original Ed Ray e-mail.</p> <p>14 The second half of this e-mail appears 15 to switch gears and talk about Penn State. Are 15:24 16 you following?</p> <p>17 A. Are we -- we're on (indicating to 18 document) --</p> <p>19 Q. Yes, about halfway --</p> <p>20 A. The e-mail of the 21st? 15:24</p> <p>21 Q. Yes.</p> <p>22 A. Which sentence are you on?</p> <p>23 Q. It's one, two, three... the fourth 24 paragraph down, "Once you have decided on the 25 summary judgment, present it as such and 15:24</p>	<p>1 indicate that they can accept that or go through 2 a year or two of process to find out if they can 3 get a lesser judgment from the current 4 enforcement process, which you did not create 5 and you are reforming at the direction of the 15:24 6 Association members."</p> <p>7 It appears that the "they" in that 8 would be Penn State; is that correct?</p> <p>9 A. Probably.</p> <p>10 MR. GARDNER: Object to form. 15:24</p> <p>11 THE WITNESS: Again, I assume so, but I 12 don't know that that's who he's talking about. 13 That seems like a reasonable assumption.</p> <p>14 BY MR. SEIBERLING:</p> <p>15 Q. The next paragraph begins "If they 15:24 16 accept the summary judgment, we are done and you 17 are in the strongest leadership position 18 possible, and you can announce the specifics in 19 the press conference on Monday.</p> <p>20 "If they reject the summary judgment, 15:25 21 you should indicate in the press conference on 22 Monday that you offered a summary judgment that 23 is harsher than one might expect from the 24 current enforcement process and they rejected 25 that so we will go through the normal one or 15:25</p>

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<p>1 two-year process. Either way, you are on the 2 record as having offered closure at a stiff 3 penalty price and it was accepted or rejected. 4 And, by the way, we continue to move toward much 5 tougher penalties for future cases." 15:25 6 Based on that paragraph was -- the 7 press conference was scheduled before Penn State 8 executed the consent decree? 9 A. The -- I don't remember what day of the 10 week this was, but at this stage, as I recall, 15:25 11 there had been -- already been conversations 12 with Penn State through -- through legal counsel 13 about pursuing a consent decree as a potential 14 solution when we talked about this summary 15 judgment model. 15:26 16 So there was the rough -- again, my 17 recollection of this several years late -- two 18 years later -- more than two years later, I 19 guess, now, is that the Penn State had -- we had 20 discussed with Penn State through legal counsel 15:26 21 the rough outline of what a consent decree would 22 be, what would be the vehicle for a summary 23 judgment, how would we get there. 24 And a consent decree seemed like a 25 reasonable tool to us, and Penn State agreed 15:26</p>	<p>1 that that was the right approach. So while 2 there wasn't an agreement on what the sanction 3 structure should be at that point, there was an 4 agreement of what a framework would look like if 5 you were going to go forward on that. 15:26 6 Q. Were you prepared to go forward with 7 the press conference even if Penn State rejected 8 this summary judgment process? 9 A. No, I wasn't. 10 Q. Did you discuss that with Ed Ray? 15:27 11 A. Probably -- well, I don't know, but I 12 probably did on the phone call. I don't re- -- 13 I don't recall exactly but, you know, this is, 14 as the Subject line points out, my two cents 15 worth. This is -- I read this and I'm sure read 15:27 16 it at the time as Ed providing his thoughts and 17 his views and his opinion. 18 I was not prepared to go forward with 19 the press conference on Monday without -- 20 without a consent decree, because I don't -- the 15:27 21 only thing we would have done was -- at that 22 stage, probably announced that we were opening 23 an investigation. 24 It would have been a brief -- well, we 25 don't -- we don't do that. So we would have 15:27</p>
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<p>1 just said we wouldn't have had a press 2 conference. I don't know what you would have 3 had a press conference about at this stage. 4 Q. Was this e-mail unsolicited? 5 A. Yeah, I assume so. I mean, it says "my 15:27 6 two cents worth," so I assume this was just Ed 7 offering his views. 8 Q. Do you remember talking to Ed Ray about 9 any of these issues other than what's set forth 10 in this e-mail? 15:28 11 A. Well, as I've said, I talked to him 12 about all of these -- all of the issues and the 13 process throughout the -- this whole time 14 period. So I talked to him many times about a 15 number of these issues, and occasionally he 15:28 16 would dash off thoughts like this and this is 17 one of his -- one of his think pieces, and I 18 can't speak to his specifics, because I wasn't 19 the author. 20 THE WITNESS: I'm sorry, are we done -- 15:28 21 are we done with these documents? 22 MR. SEIBERLING: Yeah, we are. 23 THE WITNESS: (Tendering to counsel.) 24 MR. GARDNER: Thanks. 25</p>	<p>1 (Emmert Exhibit 23 was marked 2 for ID.) 3 BY MR. SEIBERLING: 4 Q. Showing you what's marked Emmert 5 Exhibit 23. 15:29 6 A. (Reviewing document.) 7 MR. GARDNER: Do you have the final? 8 MR. SEIBERLING: This isn't the final. 9 All the ones we have, I believe, are marked 10 "draft" on them. 15:30 11 MR. GARDNER: Okay. 12 MR. SEIBERLING: If you have a final, I 13 would like to see it, you know. 14 MR. GARDNER: You know, I'd be the last 15 one to know whether -- I just saw the big 15:30 16 "draft" stamp across it. 17 MR. SEIBERLING: Yeah. 18 THE WITNESS: Okay. 19 BY MR. SEIBERLING: 20 Q. Have you had a chance to review? 15:30 21 A. Yes. 22 Q. I believe what you're being shown right 23 now is the meeting minutes from the -- the 24 July 21st executive committee meeting; is that 25 correct? 15:30</p>

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<p>1 A. Yes, the best of my knowledge. It's a 2 draft, but I assume it's not inconsistent with 3 the final version.</p> <p>4 Q. The first paragraph, the first 5 multisentence paragraph begins "NCAA President 15:30 6 Mark Emmert discussed the most recent 7 information related to Pennsylvania State 8 University, including the findings as outlined 9 in the Freeh Report, the Sandusky criminal 10 trial, as well as the information provided by 15:31 11 the University."</p> <p>12 Do you remember having that discussion 13 with the executive committee?</p> <p>14 A. Yes.</p> <p>15 Q. It goes on, "Emmert reviewed several 15:31 16 proposed actions and penalties with the 17 committee and requested the authority to move 18 forward with a consent decree between the NCAA 19 and the University."</p> <p>20 If you can remember, what proposed 15:31 21 actions and penalties did you present to the 22 executive committee on this date?</p> <p>23 A. Well, again, we talked about -- as I 24 said just a little bit ago, we talked about a 25 series of potential actions, including 15:31</p>	<p>1 suspension of play, the so-called death penalty, 2 actions related to all of the sanctions that 3 wound up in place and the nature of what those 4 penalties could be as elucidated in the 5 authorization that's underneath it. So it was 15:32 6 the kind of conversations I've been describing.</p> <p>7 Q. Actually, if we can go back to the 8 prior exhibit, it's the Q&A with Ed Ray.</p> <p>9 A. Okay.</p> <p>10 Q. During this executive committee 15:32 11 meeting, do you remember again a discussion of 12 the death penalty?</p> <p>13 A. Yes.</p> <p>14 Q. If you could look at the Q&A with Ed 15 Ray, I'm particularly looking at page 2. 15:32 16 There's a question that begins "What were the 17 discussions like regarding penalties for Penn 18 State?"</p> <p>19 A. Um-hum.</p> <p>20 Q. And Ray in the second paragraph begins, 15:33 21 "The only potential penalty that we had some 22 extended discussion around was suspension of 23 play, whether that ought to be part of a basket 24 of punitive and corrective measures. There were 25 people that felt that was appropriate, but the 15:33</p>
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<p>1 overwhelming position of members of both the 2 executive committee and the Division I board was 3 not to include suspension of play and, 4 therefore, we moved quickly to a consideration 5 that the actions you heard about today and that 15:33 6 had unani- -- unanimous support from both 7 groups."</p> <p>8 Do you agree with Ed Ray's 9 characterization that the overwhelming position 10 of members of both the executive committee and 15:33 11 the Division I board was not to include 12 suspension of play?</p> <p>13 MR. GARDNER: Objection to the form. 14 You've got -- you got to put it in the context 15 that you just read. You can't just pluck it 15:33 16 out.</p> <p>17 THE WITNESS: The -- the conversation 18 included -- this was the second meeting of the 19 executive committee, and as I've said earlier, 20 the -- during the first meeting that we had, 15:34 21 there was a very strong majority who were in 22 favor of the death penalty, and I also said we 23 had some significant conversation of which I and 24 others -- not me alone, but I certainly 25 encouraged them to think about the real 15:34</p>	<p>1 implications of suspension of play and what that 2 really meant.</p> <p>3 By the time we had this second 4 conversation and looked at the options that were 5 available to them again, President Ray is 15:34 6 exactly right, that there -- there was a clear 7 consensus to move forward -- if we can jump back 8 to the second document, this document -- to 9 endorse the actions and provide the authority to 10 me that's voted upon and was passed unanimously, 15:34 11 as is written in this paragraph, which included 12 the sanctions that wound up in the -- in the 13 consent decree.</p> <p>14 So I -- my recollection and his are 15 exactly the same, I think. 15:35</p> <p>16 BY MR. SEIBERLING:</p> <p>17 Q. The next sentence in the committee 18 meeting minutes states "He noted that should the 19 University not agree to this resolution, the 20 NCAA would be prepared to take action without 15:35 21 consent."</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember advising the board of 24 that?</p> <p>25 A. Sure, that there were other options 15:35</p>

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<p>1 available to them, including as Ed Ray has made 2 clear in his statements in this document 3 (indicating to document), and I made clear in 4 many places that the investigative team could 5 have immediately launched an investigation on 15:35 6 campus and moved forward. We didn't need 7 consent in that regard. 8 I think it's clear from many of the 9 other documents that -- including the transcript 10 from President Erickson's testimony that he 15:35 11 understood that that was the case. Everybody 12 understood that that was the case. I don't 13 think that that was in question. 14 MR. GARDNER: I have been told, because 15 of course I didn't know it myself, I have a 15:36 16 Bates number for the final if you want it. But 17 I assume you don't have it -- 18 MR. SEIBERLING: Yeah, I. 19 MR. GARDNER: -- with you. 20 MR. SEIBERLING: Unless you guys can 15:36 21 pull it out. 22 MR. GARDNER: Well, Just -- just for 23 the record, it's NCAAJC00048204-05. I assume 24 that's 04 through 05, just for future reference. 25 MR. SEIBERLING: I assume it doesn't 15:36</p>	<p>1 differ -- 2 MR. GARDNER: Well -- 3 MR. SEIBERLING: -- materially from 4 this. 5 MR. GARDNER: Well, the only way to 15:36 6 know would be lay them side-by-side. 7 MS. GRAGERT: Yes, it does regarding 8 the vote count. 9 MR. SEIBERLING: Oh, is that the 12-0 10 vote count? 15:36 11 MS. GRAGERT: Yes. 12 MR. SEIBERLING: Okay. Well, we can 13 talk about it. That seems to be the only 14 difference. 15 BY MR. SEIBERLING: 15:36 16 Q. In the document that's in front of you, 17 it lists a vote by the executive committee. 18 A. Yes. 19 Q. Do you see that? 20 A. (Nodding.) 15:36 21 Q. And it lists it as "10 for, zero 22 against, zero abstentions." 23 Do you remember the vote being 24 unanimous? 25 A. Yes, I do. 15:36</p>
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<p>1 Q. Do you remember any abstentions? 2 A. No, I don't. 3 Q. Do you know if the -- or do you 4 remember if the president of Michigan State 5 recused herself? 15:37 6 A. I don't remember her as being on the 7 call and, again, I don't -- I only have a draft 8 material here, but I don't -- I don't recall 9 whether she did or not. If she did, I don't 10 remember it. 15:37 11 Q. On the second page, it lists her as 12 being an attendee. 13 A. Okay. 14 Q. But the best of your recollection, you 15 don't remember her abstaining or recusing 15:37 16 herself? 17 A. I don't. I don't remember one way or 18 the other whether she did or did not. 19 Q. And I believe we had discussed this 20 between counsel, there's a second, what appears 15:37 21 to be the final copy of this that reflects a 22 12-0 vote. Again, it doesn't, to my knowledge, 23 reflect any abstentions or recusals. 24 A. Okay. 25 Q. Did the Division I board of directors 15:38</p>	<p>1 also vote? 2 A. They did not. The authority was to 3 take this action as vested in the executive 4 committee, which includes all three divisions, 5 not just Division I. So the Division I board, 15:38 6 while they were involved in the conversation and 7 the discussion only members of the executive 8 committee -- of which there's great overlap -- 9 were those who actually were permitted to vote. 10 Q. The Division I board of directors were 15:38 11 on this November -- or I'm sorry -- July 21st 12 conference call or meeting? 13 A. Some were, yes. 14 Q. Okay. 15 A. But again, there's -- there's a very 15:38 16 high level of overlap between the Division I 17 board and the executive committee, which just 18 for clarification's sake, the executive 19 committee renamed itself at the last board 20 meeting to the governing board. 15:39 21 So if in future documents or 22 conversations somebody refers to the 23 governing -- the board of governors -- pardon 24 me -- the board of governors is, in fact, the 25 old executive committee. It's complicated. 15:39</p>

<p style="text-align: right;">Page 202</p> <p>1 Q. Did you have any discussions with 2 President Erickson about his authority to 3 execute the consent decree? 4 A. I certainly, in moving forward with the 5 consent decree process, talked to our counsel to 15:39 6 make sure that they did indeed have the 7 authority to enter into this consent decree, and 8 we received assurances back -- I received 9 assurances back from my counsel that they did. 10 I don't know the nature of the 15:40 11 conversations between general counsels or 12 between the two -- both internal and outside 13 counsels, but I was given the assurances that 14 that he did indeed have that authority. 15 Q. Did you suggest to President Erickson 15:40 16 that he obtain board approval? 17 A. Certainly wanted to make sure that he 18 had the authority. Universities, having been a 19 university president, universities have 20 different bylaws and governing rules that 15:40 21 delegate or impose different powers and 22 authorities on university presidents, and again, 23 not being familiar with Penn State or the state 24 of Pennsylvania, I didn't know. 25 So one of the questions you'd want to 15:40</p>	<p style="text-align: right;">Page 203</p> <p>1 know is let's make sure that people have 2 authority to sign and make commitments, and we 3 were assured that he did. 4 Q. Did you receive those assurances from 5 President Erickson or from your own counsel? 15:41 6 A. Ah, I -- 7 MR. GARDNER: Object to the form. 8 You -- you're talking about orally, not 9 what's warranted and represented in the consent 10 decree itself. 15:41 11 MR. SEIBERLING: Um-hum. 12 THE WITNESS: Correct. Right? So is 13 that the way the question -- yeah. So you're 14 asking me did anyone orally communicate that to 15 me or in writing? 15:41 16 BY MR. SEIBERLING: 17 Q. Did -- 18 A. Well, both. I mean, obviously in the 19 consent decree it's stated that everybody 20 entering into this agreement has the authority 15:41 21 to do so, and President Erickson signed it. So 22 that's -- that's pretty significant evidence 23 that President Erickson believed he had that 24 authority. 25 But I also relied upon the advice of my 15:41</p>
<p style="text-align: right;">Page 204</p> <p>1 counsel, because I wanted to make sure that we 2 understood everybody had appropriate authority 3 here to enter into this agreement since it 4 was -- once again, we have -- I have to 5 constantly go back to the extraordinary nature 15:41 6 of these circumstances and that this was an 7 agreement that the association had never crafted 8 before in this forum. So we wanted to make sure 9 that we were doing it the right way and that 10 everybody had appropriate authority. 15:42 11 MR. SEIBERLING: Could we take a break? 12 MR. GARDNER: Sure. 13 MR. SEIBERLING: I just want to make 14 sure -- I think we're almost done. 15 MR. GARDNER: Yeah. 15:42 16 THE VIDEOGRAPHER: We are now going off 17 the record. The time is now approximately 18 3:43 p.m. 19 (Recess taken from 3:43 p.m. 20 to 4:05 p.m. EST) 16:04 21 THE VIDEOGRAPHER: We are now going 22 back on the record. The time is approximately 23 4:05 p.m. 24 (Emmert Exhibit 24 was marked 25 for ID.) 16:05</p>	<p style="text-align: right;">Page 205</p> <p>1 BY MR. SEIBERLING: 2 Q. Dr. Emmert, I'm going to show you 3 what's marked as Exhibit 24. 4 A. (Reviewing document.) 5 Okay. 16:06 6 Q. The first e-mail in the chain is 7 November 18th, 2011 from Kathy Redmond -- 8 A. Yes. 9 Q. -- to you. 10 Do you know who Kathy Redmond is? 16:06 11 A. Yes. I don't know her well. She is an 12 individual who works on issues of campus sexual 13 abuse. She has -- she runs training programs 14 around the country to support particularly 15 athletic departments, but universities in 16:06 16 general around sexual abuse issues. 17 One of the -- not one of -- the first 18 summit I held after taking the job was on campus 19 violence and sexual abuse, and we brought in a 20 variety of experts, including Kathy, to talk 16:06 21 about those issues, and she's very well known as 22 an advocate. She hasn't worked, that I'm aware 23 of at least, around child sexual abuse, but has 24 worked around issues of sexual abuse of women, 25 in particular around athletic departments. So 16:07</p>

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<p>1 that's the only familiarity I have with her is 2 in that professional context.</p> <p>3 Q. In her e-mail, she's recommending that 4 you reach out to Vicky Triponey?</p> <p>5 A. Yes. 16:07</p> <p>6 Q. As we discussed earlier, I believe you 7 said you never reached out to her?</p> <p>8 A. Yeah, no. I have no recollection of 9 reaching out to Vicky. She sent me a note 10 during this time period, but we hadn't had other 16:07 11 communications prior to that.</p> <p>12 Q. The next e-mail is your response to 13 Ms. Redmond. If we could focus in on the first 14 three sentences. The first sentence reads 15 "Thank you for your note and your ongoing 16:07 16 commitment to this issue. It has risen to a 17 higher level of attention for the most 18 unfortunate of reasons, however, we cannot miss 19 the opportunity to leverage the moment."</p> <p>20 Can you explain what you meant by 16:08 21 "leverage the moment"?</p> <p>22 A. Yeah, absolutely. I think as I pointed 23 out, this is -- Kathy Redmond is an individual 24 who works hard to bring attention to issues of 25 sexual violence, and I think we would all agree 16:08</p>	<p>1 that the issue of sexual violence on campus in 2 this -- in the Penn State case particularly 3 around students and around an athletic 4 department were indeed brought to the high level 5 of attention because of extraordinarily 16:08 6 unfortunate circumstances.</p> <p>7 I think that's, again, a gross 8 understatement, but I -- I was hoping that just 9 as we were trying to, the board and I, executive 10 committee and I and others were trying to do 16:08 11 with the 60 million-dollar fine was try to bring 12 as much good thought and good attention to the 13 issue of sexual abuse on campuses as we could.</p> <p>14 And so we had -- I think the nation had 15 an opportunity at that moment, much like the 16:09 16 NFL's finding right now with relationship abuse 17 to say, okay, look, we've got this problem, this 18 is a real issue, it sadly occurs more than 19 anyone would like, and so let's -- while we have 20 the world's attention to this problem, let's see 16:09 21 if we can make sure that folks deal with it.</p> <p>22 And, you know, that was -- that was the 23 intention of all of that and I -- I still hope 24 that -- that while we have the \$60 million tied 25 up in litigation and a variety of other issues, 16:09</p>
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<p>1 we can find a way to get \$60 million out to 2 people where it's going to leverage some good, 3 and that was exactly what we were talking about, 4 how do you make something positive out of 5 something that was horrific. 16:09</p> <p>6 Q. If I'm correct, there was approximately 7 11 days between when the Freeh Report was issued 8 on July 12th and the consent decree was executed 9 on July -- on or about July 23rd. Does that 10 sound accurate? 16:10</p> <p>11 A. That sounds about right.</p> <p>12 Q. Any reason for the truncated timeline 13 between when the report came out and the 14 execution of the consent decree?</p> <p>15 A. Simply that the -- the facts were well 16:10 16 established by the Freeh Report and the other 17 materials that the University had provided, that 18 the executive committee had reached a conclusion 19 that they would rather move forward with a 20 summary judgment. The University had agreed 16:10 21 that they'd rather move forward with a summary 22 judgment. The details of that -- of that 23 consent decree were already agreed upon as to a 24 frame and format, and there was -- there was no 25 particular reason to not conclude it at that 16:11</p>	<p>1 time.</p> <p>2 So it was -- it was a process that was 3 obviously relatively speedy, but it was also one 4 where all the facts were already established. 5 You didn't have to go into a two-year discovery 16:11 6 period because the University said we agree 7 these are the facts.</p> <p>8 Q. Do you remember discussing with 9 President Erickson the need to have a final 10 product before the executive committee met in 16:11 11 August?</p> <p>12 A. We talked about it as desirable but, 13 you know, that -- we didn't -- I didn't, nor did 14 anyone that I recall ever say here's a specific 15 date where something has to be done. 16:11</p> <p>16 Q. Did the --</p> <p>17 A. Please bear in mind that the University 18 was anxious to get this done as well. So you 19 had, again, at this moment a university that was 20 struggling under really unimaginable 16:12 21 circumstances with the -- first of all, with the 22 transition that had occurred when it fired the 23 president and the executive VP and the AD and 24 the coach, and they'd gone through that first 25 trauma in November. 16:12</p>

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<p>1 There'd been a riot, there'd been all 2 the other issues on the campus leading up to the 3 Sandusky -- excuse me -- the Freeh Report being 4 released, the Sandusky trial, the removal of the 5 statue, et cetera, et cetera. So the University 16:12 6 understandably was anxious to bring closure to 7 this issue and move forward, and so no one was 8 interested in having a long, drawn out process 9 at this point, and we were fortunately able to 10 resolve this in an expeditious fashion. I think 16:12 11 that was beneficial to all parties.</p> <p>12 Q. Did the working groups or the changes 13 that were going to come about from the working 14 groups play any role in the timeline?</p> <p>15 A. No, none whatsoever. 16:13</p> <p>16 Q. Were the working groups scheduled to 17 make announcements in early August of 2012?</p> <p>18 A. They were -- they'd been making 19 announcements throughout the year. So in the 20 October meeting, the group that was working on 16:13 21 academic reforms was able to bring to the board 22 a series of changes around our academic initial 23 eligibility requirements.</p> <p>24 The initial report that -- of the 25 Graham Spanier's committee came forward in 16:13</p>	<p>1 January and was deliberated on in January. The 2 enforcement group and the rules working group 3 had more complex problems, and they were trying 4 to bring their work forward in August, because 5 that's what the presidents from the previous 16:13 6 year had wanted to do, if possible.</p> <p>7 So they were working on that timetable, 8 but there was not a hard and fast timetable. 9 Everybody recognized that those changes were 10 going to be complicated and required a lot of 16:14 11 deliberation. So they were working around an 12 August timetable, but the -- the overlap with 13 the Penn State case was nothing other than shear 14 coincidence. Those timelines were established 15 in the previous summer and at the Oct- -- 16:14 16 reinforced at the October meeting of '11, long 17 before the indictments of Jerry Sandusky came 18 forward and the University fired its leadership 19 team, and so those were just shear coincidence.</p> <p>20 (Emmert Exhibit 25 was marked 21 for ID.)</p> <p>22 BY MR. SEIBERLING:</p> <p>23 Q. I show you Emmert Exhibit 25.</p> <p>24 A. (Reviewing document.)</p> <p>25 Okay. 16:16</p>
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<p>1 Q. Actually, first of all, sir, this is an 2 e-mail from Gene Marsh to representatives from 3 Penn State. You're not copied or a recipient of 4 this e-mail.</p> <p>5 Who is Gene Marsh? 16:17</p> <p>6 A. Gene Marsh is an attorney, an outside 7 attorney that Penn State University hired. He's 8 somebody with exceptional knowledge of NCAA 9 compliance and enforcement issues. He, as I 10 understand it, chaired the committee on 16:17 11 infractions for a number of years. He's highly 12 regarded as one of the most thoughtful guys in 13 outside legal counsel dealing with 14 intercollegiate athletic issues.</p> <p>15 Q. Did you have any discussions with Gene 16:17 16 Marsh during -- between the time of the Freeh 17 Report through the consent decree?</p> <p>18 A. No, none that I recall. I'm not sure 19 that I've ever had a conversation with Gene.</p> <p>20 Q. Was Donald Remy communicating with Gene 16:17 21 Marsh during that time frame?</p> <p>22 A. Yes, of course. He was representing 23 Penn State University.</p> <p>24 Q. It seems there was -- and you can 25 correct me if I'm wrong -- there was two tracts 16:18</p>	<p>1 or two separate discussions going on, one tract 2 involving you and President Erickson and a 3 second tract between Gene Marsh and Donald Remy. 4 Is that a fair characterization?</p> <p>5 A. No. The conversations between 16:18 6 President Erickson and I were broad-based 7 discussions about -- about potentialities. We 8 were both -- well, I can't speak for what 9 President Erickson was doing. I know what I was 10 doing. I was turning to my general counsel to 16:18 11 have him try and begin to start to translate the 12 language of the executive committee and the 13 ideas of the executive committee into a consent 14 decree and what the details of that consent 15 decree might -- might be, and this was all a 16:18 16 very dynamic process.</p> <p>17 So you -- and I can only assume that 18 President Erickson was relying upon his legal 19 counsel as well and that indeed that's why they 20 hired Mr. Marsh. So it would seem logical and 16:19 21 prudent that if two leaders were having 22 philosophical and conceptual conversations, that 23 then people representing their legal counsels 24 would be having a parallel conversation about 25 how to translate that into -- into actuality 16:19</p>

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<p>1 instead of conceptual ideas.</p> <p>2 So no, I wouldn't characterize them as</p> <p>3 two-tract. I would characterize them as</p> <p>4 parallel and informed.</p> <p>5 Q. If you can explain that a little more, 16:19</p> <p>6 you were -- is it fair to say that you were</p> <p>7 working out the policies or the substance of</p> <p>8 what a consent decree would say, and then Gene</p> <p>9 Marsh and Donald Remy were hammering out the</p> <p>10 legalities of it? 16:19</p> <p>11 A. I was working with the executive</p> <p>12 committee to make sure I understood where this</p> <p>13 group of university presidents stood on these</p> <p>14 issues and what their expectations were in this</p> <p>15 regard, and I -- I was trying -- while 16:20</p> <p>16 maintaining appropriate confidentiality and</p> <p>17 trying to maintain the -- trying to make sure I</p> <p>18 didn't overpromise something that I couldn't</p> <p>19 deliver with an executive committee, was trying</p> <p>20 to communicate to President Erickson where I 16:20</p> <p>21 thought the board could be and would be and</p> <p>22 where they -- and what the boundaries of action</p> <p>23 were.</p> <p>24 And to my knowledge, then, the legal</p> <p>25 counsels -- again, I can't speak for Penn State, 16:20</p>	<p>1 so I don't know what Gene Marsh or any other</p> <p>2 member of their team was doing -- but they were</p> <p>3 then talking about how one would operationalize</p> <p>4 those kinds of notions, and I'm sure they had</p> <p>5 many conversations that involved a variety of 16:21</p> <p>6 potential outcomes as those conversations went</p> <p>7 on. Again, over this period of time, it was a</p> <p>8 very dynamic process.</p> <p>9 Q. Turn to the e-mail that's in front of</p> <p>10 you. I just want to ask you with the one, two, 16:21</p> <p>11 three -- the fourth paragraph down, the last two</p> <p>12 sentences of that paragraph.</p> <p>13 It states "They also said these</p> <p>14 dramatic penalties are consistent with the</p> <p>15 philosophy of the working group that is about to 16:21</p> <p>16 come out with some major changes to impact the</p> <p>17 culture on campus. In some respects, the PSU</p> <p>18 case will 'jump start' the work of the working</p> <p>19 groups. Their words."</p> <p>20 Do you disagree with Gene Marsh's 16:21</p> <p>21 characterization there?</p> <p>22 A. I think when taken in the context of</p> <p>23 the previous sentences and the previous</p> <p>24 paragraph, he sums it up fairly well.</p> <p>25 You know, the -- the -- while again I 16:21</p>
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<p>1 wasn't privy to these conversations, you -- you</p> <p>2 see him saying, look, the majority of the</p> <p>3 sentiment of the board of directors -- it was</p> <p>4 actually the executive committee -- is the death</p> <p>5 penalty should be imposed. 16:22</p> <p>6 They returned to the idea numerous</p> <p>7 times to make sure the discussion group was not</p> <p>8 being oversold. They also assured me that in</p> <p>9 the discussion all the arguments and ideate were</p> <p>10 weighed and that we -- that was clearly part of 16:22</p> <p>11 the consideration. And they reiterated that</p> <p>12 this was the worst case ever of loss of</p> <p>13 institutional control and a cultural problem</p> <p>14 that warrants the death penalty.</p> <p>15 They said it's not about individuals 16:22</p> <p>16 involved; it's about the culture. They will,</p> <p>17 meaning the executive committee, will accept</p> <p>18 less than the death penalty or so it ended</p> <p>19 today. They also said these dramatic penalties</p> <p>20 were consistent with the philosophy of the 16:22</p> <p>21 working group.</p> <p>22 And as I -- as I said earlier in the</p> <p>23 beginning of -- of the deposition, the working</p> <p>24 group on both rules and on enforcement -- and</p> <p>25 I'm not sure to which one they're referring here 16:23</p>	<p>1 because there were two working groups. One was</p> <p>2 working on how do you take that voluminous rule</p> <p>3 book and eliminate extraneous things and focus</p> <p>4 on those things that are of most important value</p> <p>5 to intercollegiate athletics, those things that 16:23</p> <p>6 are threats to the integrity of college sports,</p> <p>7 institutional control and ethical conduct being</p> <p>8 central among those. And -- and the enforcement</p> <p>9 working group was also saying, as I'd also said</p> <p>10 earlier, they were trying to create new 16:23</p> <p>11 categorizations of infractions so that the</p> <p>12 particular emphasis was on those things that</p> <p>13 were the most egregious kinds of activities and</p> <p>14 not worrying about trivial impermissible</p> <p>15 benefits, you know, somebody getting a meal or 16:23</p> <p>16 somebody getting a tattoo when you have other</p> <p>17 cases like the Penn State case that were such</p> <p>18 affronts to the core principles of</p> <p>19 intercollegiate athletics.</p> <p>20 So in that sense I think this makes 16:24</p> <p>21 perfectly good sense. And yes, indeed, it was</p> <p>22 in fact consistent with the philosophy that was</p> <p>23 being espoused at that time of both of those</p> <p>24 working groups, that -- and indeed a reflection</p> <p>25 of what the presidents had said at the -- at the 16:24</p>

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1 retreat the summer of '11, which included the
 2 Penn State president by the way. And -- and
 3 everyone was saying, look, we need to focus the
 4 work of the association on those things that are
 5 most egregious affronts to -- to the values 16:24
 6 and -- and standards of intercollegiate
 7 athletics.
 8 So I think -- I think it makes complete
 9 sense in that context.
 10 Q. Do you remember any of the -- the 16:24
 11 presidents on the executive committee raising
 12 concerns about the -- the speedy timeline in --
 13 in which the proposed sanctions were being
 14 considered or just in general the 11 days
 15 between the Freeh Report and the consent decree? 16:25
 16 A. I remember -- I remember conversations
 17 about making sure that, first of all, the
 18 appropriate authority was in place, that there
 19 was appropriate knowledge of and acknowledgment
 20 of the facts and that -- and that the -- that 16:25
 21 the board and the executive committee was
 22 considering all of that as they moved forward.
 23 Their comfort level as is reflected by their
 24 unanimous vote in the minutes that we looked at
 25 earlier was in fact a reflection that they 16:25

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1 don't remember that distribution list, but --
 2 Q. This e-mail is dated October 29th,
 3 2012 --
 4 A. Um-hum.
 5 Q. -- which would have been approximately 16:29
 6 three months after --
 7 A. Yes.
 8 Q. -- the consent decree.
 9 The point -- if I can direct your
 10 attention to point No. 6, you can skip ahead to 16:29
 11 the -- about halfway through, beginning, "Most
 12 concerning comment came from Rice University
 13 President David Leebron (he was on the phone)
 14 who responded to my statement that there was
 15 a -- that there was strong support from 16:29
 16 executive committee and board on penalties that
 17 he was on the calls with Mark and that they
 18 really did not have time to fully vet the
 19 penalties and that the timeline did not allow
 20 for his thoughtful consideration as he would 16:30
 21 have liked. This is the first I've heard from
 22 another president who recapped his involvement
 23 in this way."
 24 Did President Leebron raise those
 25 concerns with you? 16:30

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1 were -- their comfort level was very, very high
 2 that they had done this appropriately comma.
 3 Q. Do you remember Rice University
 4 President David Leebron raising concerns about
 5 the -- the truncated timeline? 16:25
 6 A. I do. This was his -- perhaps even his
 7 first meeting as a -- as a board member, and --
 8 and he had expressed those concerns. But again,
 9 as reflected by the -- by the unanimous vote, in
 10 the end the -- the board felt -- the executive 16:26
 11 committee felt quite comfortable with their
 12 position.
 13 (Emmert Exhibit 26 was marked
 14 for ID.)
 15 BY MR. SEIBERLING: 16:26
 16 Q. Let me show you Emmert Exhibit 26.
 17 A. (Reviewing document.)
 18 Okay.
 19 Q. The first e-mail in this chain appears
 20 to be an e-mail from Kevin Lennon to the Senior 16:28
 21 Management Group, SMG: David Berst, Julie Roe,
 22 Tom Hosty, and Rachel Newman.
 23 I -- I assume you would have been a
 24 recipient of the senior management group, SMG?
 25 A. Probably. I assume so. I mean, I 16:29

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1 A. Well, he did but quite some time later.
 2 So I -- I think the -- first of all, I would --
 3 I would look at the entire context of Item No. 6
 4 in which he's also saying that -- he talked
 5 about "the executive committee's authorization, 16:30
 6 my communication and engagement with the
 7 executive committee and the board, the sanctions
 8 themselves. Some" -- referring to his
 9 presidents -- "wondered if not death penalty,
 10 then when would we use it because of the nature 16:30
 11 of those -- those issues. More raised issues
 12 regarding jurisdiction but seemed to understand
 13 the uniqueness of the situation and need for
 14 response."
 15 You know, there again, as -- as I've 16:31
 16 said throughout this and many have said
 17 throughout this, this was an extraordinary
 18 circumstance. No one had any expectation that
 19 this was going to be something that everybody
 20 felt good about. 16:31
 21 The -- the position of the executive
 22 committee was reflected in a unanimous vote in
 23 favor of this position. And while President
 24 Leebron obviously personally would have liked
 25 more time to consider it, I think the end result 16:31

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<p>1 spoke for itself when the presidents on the 2 executive committee all voted unanimously in 3 favor of the position that they'd struck. 4 Q. The -- the next e-mail in this chain is 5 from Jim Isch to you. 16:31 6 I'm sorry, I think I skipped one. 7 There's a forward, it looks like, or -- from 8 Kevin Lennon to Jim Isch. And in the first 9 substantive e-mail it states -- and again, it's 10 from Jim Isch to you. 16:31 11 A. Yes. 12 Q. "Mark, I've asked Kevin to visit with 13 Britton about President Leebron's comments and 14 (bottom of Kevin's e-mail) whether Britton could 15 provide more context. Depending upon what we 16:32 16 hear from Kevin, you may need to call Leebron to 17 educate him on the process." 18 Did you ever reach out to President 19 Leebron? 20 A. I -- I talked to him at a subsequent -- 16:32 21 I'm sorry, I don't remember which one -- but at 22 a subsequent meeting of the board. President 23 Leebron, as I mentioned, was just joining the 24 board. And we -- we talked about it in very 25 general terms. But you know, he understood the 16:32</p>	<p>1 process, and we discussed it. And he has his 2 positions, and you can certainly talk to him 3 should you want to. 4 (Pause in proceedings.) 5 BY MR. SEIBERLING: 16:33 6 Q. Did you ever discuss the removal of the 7 Paterno statue with President Erickson? 8 A. He -- he brought it up to me in one 9 conversation and indicated that they were -- 10 were doing so and so that I knew about it. It 16:33 11 was a conversation about timing about when the 12 press conference would be, when they were 13 thinking about doing that. So I was aware that 14 it was going to happen I -- I think just maybe 15 the day before it actually occurred. 16:33 16 Q. Did you communicate any position on 17 behalf of the NCAA -- 18 A. No. 19 Q. -- to -- 20 A. No. No, the NCAA does not have a 16:33 21 position on statues. 22 Q. Around the time of the execution of the 23 consent decree, do you remember receiving an 24 e-mail from Graham Spanier? 25 A. I did, yes. 16:33</p>
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<p>1 (Emmert Exhibit 27 and Emmert 2 Exhibit 28 were marked 3 for ID.) 4 BY MR. SEIBERLING: 5 Q. I'll show you Emmert Exhibit 27 and 28. 16:34 6 A. (Reviewing document.) 7 Okay. 8 Q. What was your understanding of why 9 former President Spanier was reaching out to 10 you? 16:35 11 MR. GARDNER: Object to the form. 12 THE WITNESS: Well, I -- obviously 13 you'd have to ask him what his motivation was. 14 I think his -- his e-mail speaks for itself. 15 You know, the -- the university community is -- 16:35 16 the higher education community is relatively 17 small. Dr. Spanier is very, very widely known. 18 He -- as I mentioned, he'd been chairing one of 19 the workings groups of -- of the Division I 20 presidents. He attended the retreat in the 16:36 21 summer of -- of '11? He was a -- he was part of 22 the press conference at the end of that talking 23 about the need for focus on ethics and 24 accountability. 25 And so he is someone who many, many of 16:36</p>	<p>1 us know very well, as -- again, as he points out 2 in his -- in his comments. 3 BY MR. SEIBERLING: 4 Q. The last paragraph starts -- 5 A. Of -- of his e-mail? 16:36 6 Q. Yes, of his e-mail. 7 A. Um-hum. 8 Q. It states, "I am thus writing to urge 9 caution in whatever comments the NCAA makes 10 about me." 16:36 11 Did you view that as a -- a potential 12 threat of a lawsuit depending on what public 13 statements the NCAA made? 14 A. No. 15 Q. Do you remember responding to former 16:37 16 President Spanier's e-mail? 17 A. Well, I -- you -- you have attached to 18 it my response that I copied to -- copied Ed Ray 19 on that Ed -- Ed Ray had responded on the first 20 page that you -- Exhibit 27, sorry. 16:37 21 And then in Exhibit 28, I -- I said "My 22 sentiments are much the same as Ed's. We did 23 not -- we do not intend to single out any 24 individuals either in the media discussions or 25 our statements," and -- which we didn't. We 16:37</p>

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<p>1 didn't single out any individuals, whether it 2 was Coach Paterno or President Spanier or anyone 3 else. We're trying hard to maintain perspective 4 and not let the emotions of this situation drive 5 any conclusions. And that's precisely what we 16:37 6 were trying to do and said as much in our -- in 7 our comments. Both -- both President Ray and I 8 said as much in our comments during the -- 9 during the press briefing.</p> <p>10 Q. Has the NCAA drawn any conclusions with 16:38 11 regard to the individuals involved in this case?</p> <p>12 A. No, it has not and has said so on many 13 occasions. There's been much hyperbole and 14 speculation to the contrary, but the facts just 15 don't bear that out? We have -- we have all 16:38 16 carefully not discussed any one individual's 17 involvement in any of this affair.</p> <p>18 Q. Why not?</p> <p>19 A. We -- we have simply been looking at 20 the responsibility of the Association for the 16:38 21 institution's involvement in this. In the case 22 of the -- the three individuals that are still 23 under criminal indictment, they're about to be 24 tried. We don't have anything to do with 25 criminal proceedings. It would be in my opinion 16:38</p>	<p>1 grossly inappropriate for someone to comment on 2 something like that before a trial.</p> <p>3 MS. DOBLICK: Mark, if you're moving 4 on, can I make the same request that Allen made 5 before, that President Spanier's phone number -- 16:39</p> <p>6 MR. SEIBERLING: Oh, yeah.</p> <p>7 MS. DOBLICK: -- be redacted from 8 Exhibit 27 --</p> <p>9 MR. GARDNER: We'll do --</p> <p>10 MS. DOBLICK: -- on the record. 16:39</p> <p>11 MR. GARDNER: We'll do that right now.</p> <p>12 MS. DOBLICK: Thank you.</p> <p>13 MR. GARDNER: That's a good catch.</p> <p>14 Donna, can I write mine down on here in 15 case anybody ever wants it? 16:39</p> <p>16 MS. DOBLICK: Absolutely.</p> <p>17 MR. GARDNER: Okay.</p> <p>18 THE WITNESS: As long as you put your 19 name on it.</p> <p>20 BY MR. SEIBERLING:</p> <p>21 Q. I just have one last question.</p> <p>22 A. Of course.</p> <p>23 Q. I think we established pretty early 24 that your familiarity with the bylaws is -- is 25 not -- you really don't have a grasp or -- 16:39</p>
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<p>1 that's probably the wrong word too.</p> <p>2 A. I don't have a -- if I might, if I 3 might.</p> <p>4 Q. Yeah.</p> <p>5 A. I don't have expertise on the bylaws or 16:39 6 the regulatory manual. We are -- in the 7 national office lucky that we have many people 8 who have incredible working expertise. So 9 whenever I have questions about interpretations 10 or understanding of the -- of the manual or a 16:40 11 legal interpretation of something in the manual, 12 I turn to the -- the professional experts and I 13 don't consider myself one of those.</p> <p>14 Q. And that was the exact question that I 15 wanted to ask, who specifically are those 16:40 16 individuals that you turn to for guidance?</p> <p>17 A. Kevin Lennon, David Berst, Steven 18 Malani. If it's a legal consideration, I turn 19 to -- sorry -- I turn to my legal counsel, 20 Donald Remy or his staff for those 16:40 21 interpretations.</p> <p>22 MR. SEIBERLING: I have nothing 23 further.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MS. DOBLICK: The University has no 16:40</p>	<p>1 questions for you, Dr. Emmert. Thank you.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 MR. GARDNER: I assume we want to read 4 and sign. We'll read and sign. We're finished.</p> <p>5 THE VIDEOGRAPHER: Okay.</p> <p>6 MR. GARDNER: Thanks.</p> <p>7 THE VIDEOGRAPHER: This concludes the 8 video deposition of Mark Emmert. We are going 9 off the record. The time is approximately 10 4:41 p.m. 16:41 11 (Deposition concluded at 4:41 p.m. EST)</p>

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JAKE CORMAN, in his official)
capacity as Senator from the)
34th Senatorial District of)
Pennsylvania and Chair of the)
Senate Committee on)
Appropriations, and ROBERT M.)
McCORD, in his official)
capacity as Treasurer of the) Case No.
Commonwealth of Pennsylvania,) I.M.D. 2013

)
Plaintiffs,)

vs.)

)
NATIONAL COLLEGIATE ATHLETIC)
ASSOCIATION,)

)
Defendant,)

vs.)

)
PENNSYLVANIA STATE UNIVERSITY,)

)
Defendant.)

I hereby certify that I have read the
foregoing transcript of my deposition given at the
time and place aforesaid, consisting of pages 1 to
229, inclusive, and I do again subscribe and make
oath that the same is a true, correct, and
complete transcript of my deposition so given as
aforesaid and includes changes, if any, so made by
me.

MARK EMMERT

SUBSCRIBED AND SWORN TO
before me this ____ day
of _____, A.D. _____.

Notary Public

STATE OF ILLINOIS)

) ss:

COUNTY OF COOK)

I, Deborah Habian, a Certified
Shorthand Reporter within and for the State of
Illinois, do hereby certify:

That previous to the commencement of the
examination of the witness, the witness was duly
sworn to testify the whole truth concerning the
matters herein;

That the foregoing deposition was reported
stenographically by me, was thereafter reduced to
printed transcript by me, and constitutes a true
record of the testimony given and the proceedings
had;

That the said deposition was taken before me
at the time and place specified;

That the reading and signing by the witness
of the deposition transcript was agreed upon as
stated herein;

That I am not a relative or employee
of attorney or counsel, nor a relative or employee
of such attorney or counsel for any of the parties
hereto, nor interested directly or
indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my
hand this 3rd day of December, 2014.

DEBORAH HABIAN, CSR, RMR, CRR, CLR
Notary Public
CSR No. 084-02432

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Jake Corman v. NCAA

Dep. Date: December 2, 2014

Deponent: Dr. Mark Emmert

Pg.	Ln.	Now reads	Should Read	Reason
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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 20__.

(Notary Public) MY COMMISSION EXPIRES: _____

A				
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EXHIBIT J

From: Erickson, Rodney
Sent: Friday, July 20, 2012 9:54 AM
To: Mark Dambly
Subject: RE: Statue decision

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks, Mark. I really appreciate your cool head and clear perspectives—as well as your support.

Best regards,
Rod

From: Mark Dambly [mailto:mdambly@pennrose.com]
Sent: Friday, July 20, 2012 9:45 AM
To: Erickson, Rodney
Subject: RE: Statue decision

Sorry to go off a bit last night, just don't know how else to get folks to listen. We need to observe the appropriate lines of responsibility between BOT and Administration. Having board members talk to coaches, comment on NCAA, talk to press not helpful.

Let me know if I can do anything to help.

Mark

From: Erickson, Rodney [mailto:RAE@psu.edu]
Sent: Friday, July 20, 2012 9:42 AM
To: PVS
Cc: Mark Dambly; 'Silvis'; karen.peetz@bnymellon.com; kmasser@masserspuds.com
Subject: RE: Statue decision

That's precisely what I'm trying to do, Paul. Was on the phone earlier this morning with Mark Emmert.

From: PVS [mailto:pvs6565@gmail.com]
Sent: Friday, July 20, 2012 9:33 AM
To: Erickson, Rodney
Cc: Mark Dambly; 'Silvis'; karen.peetz@bnymellon.com; kmasser@masserspuds.com
Subject: Statue decision

Rod,

Just wanted to add to my e-mail to you from last night concerning the Paterno Statue. Do whatever you need to do to keep the NCAA from giving us the "Death Penalty". I don't care if you have to bring your own bulldozer over and drag it to your farm, do it! That has to be your top priority because of the ramifications of an adverse decision from the NCAA and the far reaching effects of that decision far outweigh any other issues facing the University from our students, alumni, press, public or Paterno supporters. Thanks for all you do.

Paul