IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of the ESTATE and FAMILY of JOSEPH PATERNO;

RYAN MCCOMBIE, ANTHONY LUBRANO, AL CLEMENS, PETER KHOURY, and ADAM TALIAFERRO, members of the Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER, SPENCER NILES, and JOHN O'DONNELL, members of the faculty of Pennsylvania State University;

WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO, former football coaches at Pennsylvania State University; and

ANTHONY ADAMS, GERALD CADOGAN, SHAMAR FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI, ANWAR PHILLIPS, and MICHAEL ROBINSON, former football players of 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

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

Civil Division

Docket No. 2013-2082

PLAINTIFFS' STATEMENT IN SUPPORT OF ENTRY OF AGREED PROTECTIVE ORDER

Pursuant to the parties' Joint Motion for Entry of a Protective Order, all plaintiffs, by their undersigned counsel, submit this statement in support of the agreed protective order, attached as Exhibit B to the Joint Motion, and also attached hereto as Exhibit 1.

Introduction

The parties have agreed on terms of a protective order which would enable them to designate as confidential "non-public information . . . which qualifies for protection from disclosure consistent with Pennsylvania Rule of Civil Procedure 4012." The parties have not agreed, however, on one issue: whether the use of *all* documents and information produced in discovery – regardless of whether they are confidential – should be restricted as defendants urge. Plaintiffs submit that such a restriction cannot be justified under the "good cause" requirement of Rule 4012 and is contrary to both public policy and the public's right to know what really happened during the investigation of Jerry Sandusky's criminal conduct at Penn State by the Freeh Firm and the NCAA.

Defendants have proposed and plaintiffs have consistently rejected the addition of a paragraph in the protective order that would provide as follows:

> **Protection of Documents and Information - General Protections**. All pretrial discovery materials in this litigation (including materials that are not designated as constituting Confidential Information or Highly Confidential –Attorneys' Eyes Only – Information) shall be used solely for the purpose of preparing and prosecuting the Parties' respective cases, and shall not be disclosed for any other purpose.[1]

Stated simply, this is a back-door effort to obtain a blanket "gag order" to prevent the disclosure of all information in this case, including information that *by definition* is not properly considered as confidential in any way. Because other agreed provisions adequately govern the use of confidential or highly confidential information, and restrict its disclosure to third parties (*see* Exh. 1 at paragraphs 5(a)-(b), 6(a)-(b)), the practical effect of defendants' proposal would be an

[1] The balance of the disputed provision would state: "Nothing in this Order, however, limits: (i) the Parties' use of materials not designated as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information that the Parties, in good faith, have made part of the judicial record in this case; or (ii) the use of information a Party legitimately obtained through public sources.

extension of the rigorous restrictions on confidential materials to other documents and information produced in discovery even though they do not qualify as confidential.

1. Public Interest In The Events At Issue In This Case

It would be hard to imagine a case in which such a blanket restriction would be less appropriate. The public has both a keen interest in what happened in the investigations at Penn State and a right to access to the public process of court proceedings. Indeed, both Penn State (through its agents and attorneys at the Freeh Firm) and the NCAA were quick to publicize the Freeh Report, which was released to great media fanfare on July 12, 2012, and the NCAA's announcement on July 23, 2012 that, based on its wholesale adoption of the Freeh Report, it was imposing unprecedented sanctions on Penn State. The Consent Decree between Penn State and the NCAA, in fact, went far beyond anything in the Freeh Report by publicly stating that Coach Paterno and others had violated NCAA rules and regulations in their conduct with regard to the matters surrounding Jerry Sandusky, while offering scant evidence and no recourse to those publicly smeared.

The public's interest in and right to know what really happened does not arise solely from the July 2012 announcements, but the events surrounding the Sandusky's indictment and the horrific crimes he committed. Media coverage of Sandusky's crimes was intense from the time Sandusky was charged in November 2011, through his trial and conviction in June 2012, and continues to this day. It was this highly charged atmosphere that made the public release of the Freeh Report and the announcement of the Consent Decree such high profile events, and made the conclusions that Coach Paterno and others had willfully participated in a cover-up of Sandusky's conduct so devastating.

Now, however, the prospect of public scrutiny of the information underlying their "rush to judgment" is not nearly so appealing to the NCAA and other defendants as was the press coverage they orchestrated in 2012. It is perhaps understandable, for example, that the NCAA does not want the public to know the nature and extent of its contacts with the Freeh Firm before the release of the Freeh Report, or the flimsy bases for certain conclusions of the Report.

This lawsuit was filed ten months after the Freeh Report was issued and the Consent Decree announced. And while no longer at the fever pitch of 2011-2012, there is no reason to conclude that public interest in the events at issue has waned. Indeed, it is precisely *because* of the continued public interest in the underlying events that defendants are concerned that dissemination of non-confidential information related to the claims in this action could be harmful to their "white knight" image, and have proposed to restrict plaintiffs' use of *non-confidential* information. As the NCAA has come to learn, it is far easier to throw the first stone than it is to explain why you threw it. But the restrictions of the additional paragraph defendants want in the protective order would unfairly and unreasonably restrict plaintiffs from addressing the publicly announced conclusions of the Freeh Report and the Consent Decree other than in formal court filings. Plaintiffs therefore respectfully request that the Court refuse to impose such burdensome restrictions on the parties' use of materials that do not meet the standard of Rule 4012.

2. Blanket Protective Orders Are Disfavored

Court proceedings are generally open to public scrutiny. *See* Constitution of the Commonwealth of Pennsylvania, Article 1, sec. 1 ("All courts shall be open[.]"); *Katz v. Katz*, 356 Pa. Super. 461, 468, 514 A.2d 1374, 1378 (Pa. Super. Ct. 1986) ("The common law rule, which also confers a public right of access to court records, is that every person is entitled to

access [to civil proceedings]. . . . This is also the present state of the common law right of access to civil proceedings in Pennsylvania."). The Rules of Procedure reflect a policy of full disclosure in discovery except for privileged matters. "[A] party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]" Pa. R. Civ. P. 4003.1(a). Restrictions on discovery are at odds with the policy of openness. They are imposed only upon a showing of good cause, and should be limited in scope to protect the particular interest involved.

The general presumption in favor of openness is also at odds with an effort by one party to obtain a protective order that would encompass non-confidential materials. In *Shetler v. Zeger*, 1989 Pa. Dist. & Cnty. Dec. LEXIS 142, 14 Pa. D. & C.4th 564 (Pa. C.P. June 1, 1989), the petitioner newspaper moved for a protective order governing all materials, not just those that might identify a confidential source and would thus be governed by the Pennsylvania reporter shield law. The court rejected that request, ruling that only *confidential* material – in that context material that would identify a source – should be covered by a protective order. The court concluded that if it "were to grant the protective order, it would, in effect, be giving the newspapers blanket protection of all gathered information whether or not that information would reveal its source." *Id.* at *12-*13, 572-73. Similarly, extension of the proposed protective order in this case to restrict plaintiffs' use of non-confidential material would give defendants blanket protection of material without the requisite showing of good cause.

In *Ornsteen v. Bass*, 1988 Pa. Dist. & Cnty. Dec. LEXIS 132, 50 Pa. D. & C.3d 371 (Pa. C.P. Oct. 12, 1988), the court denied the defendants' request for a blanket protective order despite allegations of harm and citations to Rule 1.6 of the Rules of Professional Responsibility

prohibiting a lawyer from "revealing information relating to the representation of a client" because they could not show that there was good cause for such an order:

> Defendants have provided this court with no evidence upon which to base a determination that "good cause" has been shown and that a blanket protective order would be proper in this case. The only evidence put forth by defendants is counsel's allegations that client confidences and secrets will be disclosed if pretrial proceedings are not sealed from the public. These allegations are not sufficient in light of the prevailing law on this issue.

Id. at *6, 375. The court held that the requisite showing of good cause requires some evidence upon which a court can make a determination that harm will result from disclosure. "A claim for such relief must be supported by 'particularization demonstrating that such relief is warranted.' *Ramada Inns Inc. v. Drinkhall*, 490 A.2d 593, 599 (1985). 'The mere fact that a case has achieved notoriety which may attract attention to information is not sufficient ground for protection.'" *Id.*

Similarly, defendants have offered no evidence that harm will result from disclosure of non-confidential information, apparently relying instead on the general notoriety of the underlying events. Nevertheless, they seek to have the Court impose blanket restrictions on all non-confidential information, in addition to the agreed restrictions on confidential material under Rule 4012. The Court should reject this proposal as the *Ornsteen* court did, because there is not good cause for such restrictions. *See Fanelli v. Independence Blue Cross*, 2005 Phila. Ct. Com. Pl. LEXIS 611, 16-17, 75 Pa. D & C.4th 10 (Pa. C.P. Oct. 11, 2005) ("The unsupported contentions of counsel, that a 'chilling effect' will result if this court does not grant defendants' motion for a protective order, are not sufficient to support defendants' burden of proof. Furthermore, litigants should expect that almost any discovery request causes some annoyance, embarrassment, oppression, burden or expense.") (citations omitted).

3. No Legal Authority Supports A Blanket Protective Order In This Case

The only legal support defendants offered for the inclusion of the additional paragraph in the protective order does not in any way justify abandoning the normal rule or adopting the extraordinary restriction on non-confidential information in the circumstances of this case. In discussions with plaintiffs, the NCAA has relied on two cases to support its assertion that Pennsylvania law imposes an obligation on litigants to limit their use of non-public documents obtained through discovery only for purposes of preparing and prosecuting the litigants' case. Neither case supports the restriction proposed.

The one Pennsylvania case offered to plaintiffs, *Markwest Liberty Midstream & Res., LLC v. Clean Air Council*, 71 A.3d 337 (Pa. Commw. Ct. 2013), involved protection of trade secrets or confidential business information. The case arose on cross-appeals from an order of the Environmental Hearing Board ("EHB") requiring production of discovery by a natural gas company to the Clean Air Council ("CAC"), and imposing some restrictions on CAC's use of the information. MarkWest, the natural gas company, had sought a protective order for trade secrets and confidential business information, but the EHB disagreed with the designation of certain documents as either trade secrets or confidential business information. MarkWest appealed the EHB's order as it related to those documents, and also the order that certain documents should be produced to CAC without any restrictions.

The discussion in *MarkWest* of what documents should be designated trade secrets under Rule 4012 (9) is wholly inapposite to consideration of the disputed paragraph in the instant case which purports to restrict information that by definition does not involve trade secrets. The NCAA has focused instead on the *MarkWest* court's statement in a footnote, disagreeing with the EHB's statement that "discovery is a public process," 71 A.3d at 345 n.15, and asserting its right

to impose restraints on discovered information, citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 104 S.Ct. 2199 (1984). But the *Markwest* court *did not actually do so* and instead simply remanded the case to the EHB to specify which documents contain trade secrets or confidential information. *Id.* at 345 ("We decline to rule on the issue of protective orders regarding CAC's use, disclosure, and retention of MarkWest's documents produced during discovery. The Board has not yet ruled on these issues, and reserved jurisdiction to issue post litigation protective orders at the completion of the proceeding below, and it will do so in accordance with the legal standard adopted herein.") The court's assertion of its undisputed authority to control discovery is not the same as an order requiring that non-confidential materials nevertheless be treated as confidential where a party unilaterally decides they should be.

In the 1984 *Seattle Times* case which the NCAA also cited as support for its position, the Supreme Court rejected a newspaper's contention that it had a First Amendment right to publish financial information about the subject of its stories which it had obtained from the plaintiff organization in a defamation case only through litigation and *under the terms of a protective order*. The plaintiff religious foundation had resisted the Times' request for financial information, and produced it only once a protective order had been entered applicable to the financial information. The newspaper argued that it had a First Amendment right to publish that information notwithstanding the protective order. The Supreme Court disagreed that the newspaper had a right to disseminate financial information obtained pursuant to a court order that both granted it access to that information and placed restraints on the way in which the information might be used. 467 U. S. at 32, 104 S.Ct. 2207.

Unlike the *Seattle Times* case, where a party sought to override the restrictions of a protective order limiting its use of financial information produced in discovery, defendants in

this case want the court to insert a provision into an otherwise-agreed protective order that would apply to *all* pretrial discovery materials, not just to confidential information. The ruling of the *Seattle Times* does not support imposition of such a restriction in the circumstances of this case, nor does the *MarkWest* court's recognition of its authority to impose restrictions on the use of materials produced in discovery bear on the provision at issue here.

4. Effects Of The Restriction Defendants Propose

In reviewing the factors to be considered in deciding whether to enter a confidentiality order under Fed. R. Civ. P. 26 (the rule on which Pa. R. Civ. P. 4012 is modeled), the Third Circuit recognized that such orders are intended to offer litigants a measure of privacy balanced against the public's right to obtain information concerning judicial proceedings, and that good cause must be demonstrated to justify the order. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994). The court noted that privacy interests are diminished when the party seeking protection is a public person subject to legitimate public scrutiny. *Id.* at 787.

The additional provision defendants propose would effectively impose an unjustified gag order on plaintiffs in a case that involves a public university, a national regulatory body for collegiate sports, and the estate of a public figure. It does not involve trade secrets or confidential financial information that might warrant the limitations defendants proposed. Moreover, the scope of the restrictions in the proposed provision is unworkably vague. The limits of "preparing and prosecuting" are unclear when the underlying events have been the subject of such extensive publicity and reporting. Defendants would thereby limit plaintiffs' reference to any information obtained through discovery other than in a judicial filing.

Further, because the restriction would apply only to parties to the case and signatories to the protective order, it would not apply to the author of the Freeh Report, a non-party. Thus,

plaintiffs would be restricted in their use or mention of anything produced in discovery that relates to the conclusions of the Freeh Report, while Mr. Freeh can speak publicly about his conduct of the investigation and his conclusions. This is not merely a hypothetical concern, as Mr. Freeh has frequently discussed the Report in interviews with national publications such as *Fortune* magazine. *See, e.g.*, "Louis Freeh, Private Eye," Fortune, July 25, 2013, attached as Exh. 2. He has posted a response to the *Critique* of the Freeh Report on the website of his investigative firm; and his colleagues at his new law firm, Pepper Hamilton, LLP, offer a webinar during which they discuss – and implicitly reinforce the NCAA's position regarding – the conduct of such an investigation.

Just as importantly, the defendant NCAA, a national sports regulatory body that commands extensive media interest and attention, would not be restricted in discussing the terms of the Consent Decree or anything it learned about the conclusions of the Freeh Report outside of this litigation. It would be particularly unfair after defendants have publicly assigned blame for enabling the sexual abuse of minor children for years through the Consent Decree to prevent plaintiffs from disclosing *non-confidential* information to the contrary developed during the course of discovery in this case, unless it is for "purposes of preparing and prosecuting this case." The strictures of the disputed provision would serve to hobble only one side of this litigation, because defendants already have access to much of the information plaintiffs seek through discovery.

Conclusion

For the foregoing reasons, plaintiffs respectfully requests that the Court enter the agreed protective order attached hereto as Exhibit 1, and also attached as Exhibit B to the Joint Motion

for Entry of a Protective Order, and deny defendants' request to insert the additional restriction they propose into the protective order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PLAINTIFFS' JOINT STATEMENT IN SUPPORT OF AGREED PROTECTIVE ORDER** was served on the 3rd day of July, 2014 by first class mail and email to the following:

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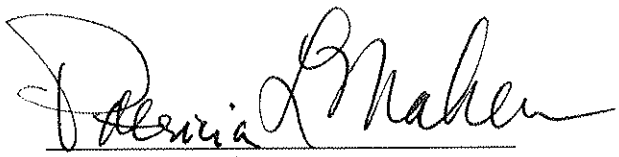

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EXHIBIT 1

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of the ESTATE and FAMILY of JOSEPH PATERNO; RYAN MCCOMBIE, ANTHONY LUBRANO, AL CLEMENS, PETER KHOURY, and ADAM TALIAFERRO, members of the Board of Trustees of Pennsylvania State University; PETER BORDI, TERRY ENGELDER, SPENCER NILES, and JOHN O'DONNELL, members of the faculty of Pennsylvania State University; WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO, former football coaches at Pennsylvania State University; and ANTHONY ADAMS, GERALD CADOGAN, SHAMAR FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI, ANWAR PHILLIPS, and MICHAEL ROBINSON, former football players of 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 THE PENNSYLVANIA STATE UNIVERSITY, Nominal Defendant.	Civil Division Docket No. 2013-2082

STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

WHEREAS, the Parties may seek discovery of documents, information, or other materials that qualify for protection from public disclosure or are otherwise required to be maintained as confidential;

WHEREAS, Rule 4012 of the Pennsylvania Rules of Civil Procedure provides for the issuance of protective orders limiting the disclosure and use of certain discovered information;

NOW, THEREFORE, the Parties to this Stipulated Confidentiality Agreement and Protective Order (the "Order") stipulate and agree to the terms of this Order as set forth herein:

1. Scope. All documents, the information contained therein, and all other information produced or disclosed in the course of discovery, including responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (collectively "documents"), shall be subject to this Order and may be designated as "Confidential Information" or "Highly Confidential – Attorneys' Eyes Only – Information" pursuant to the provision set forth herein. This Order is subject to the Pennsylvania Rules of Civil Procedure on matters of discovery procedure and calculation of time periods.

2. Confidential Information.

(a) As used in this Order, "Confidential Information" means information or tangible things that the designating Party reasonably believes constitutes, contains or discloses non-public information that (i) is required by law or agreement or the National Collegiate Athletic Association Constitution, Operating Bylaws, or Administrative Bylaws to be maintained as confidential, or (ii) is proprietary, personal, financial, or other information which qualifies for protection from public disclosure consistent with Pennsylvania Rule of Civil Procedure 4012.

(b) As used in this Order, "Highly Confidential – Attorneys' Eyes Only - Information" means non-public information the disclosure of which would create a substantial risk of serious irreparable injury to the designating Party or another that cannot be avoided by less restrictive means, including but not limited to non-public personally identifiable information (*i.e.*, social security number, place of birth, or home address), confidential medical records or medical information, or other sensitive personal information. Information or documents that are otherwise available to the public may not be designated as Highly Confidential - Attorneys' Eyes Only - Information.

3. Designation.

(a) A Party may designate a document as (i) Confidential Information for protection under this Order by placing or affixing the words "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" on the document and on all copies; or as (ii) Highly Confidential Information for protection under this Order by placing or affixing the words "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER -- ATTORNEYS' EYES ONLY" on the document and on all copies. As used in this Order, "copies" includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information.

(b) A non-party to the litigation that has agreed to be bound by the terms of the Agreement and Protective Order by executing Attachment A hereto may designate documents containing Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information for protection under this Order so that such information is subject to the terms of this Order and that producing non-party shall then be a producing Party under this Order.

(c) Parties may designate documents containing Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information produced by other Parties or non-parties.

(d) For Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information produced by a non-party or a Party other than the designating Party, a Party seeking a designation of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information pursuant to the terms of this Order may do so by serving on all Parties a log containing the Bates numbers or other description of the documents or information that it seeks to designate Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information Confidential within thirty (30) days of receiving copies of the documents or information. Should any Party object to this designation, such Party shall proceed in accordance with paragraph 10 of this Order.

4. Designation of and procedure for any deposition testimony. The following procedures shall be followed if Confidential or Highly Confidential- Attorneys' Eyes Only - Information is discussed or disclosed in any deposition permitted in this proceeding.

(i) The designating Party shall have the right to exclude from attendance at the deposition, during such time the designating Party reasonably believes Confidential or Highly Confidential Information will be discussed or disclosed, any person other than the deponent, the court reporter, and persons entitled to access to the Confidential or Highly Confidential - Attorneys' Eyes Only - Information.

(ii) At any time on the record during a deposition a Party may designate any portion of the deposition and transcript thereof to contain Confidential Information or Highly Confidential-Attorneys' Eyes Only Information. If such a request is made on the recording during the deposition, the reporter shall later indicate on the cover page of the transcript that the transcript

contains Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information by affixing the words "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER -- ATTORNEYS' EYES ONLY" and list the pages and line numbers of the transcript in which Confidential or Highly Confidential - Attorneys' Eyes Only - Information is contained.

(iii) Alternatively, a designation of deposition confidentiality may be made in writing within thirty (30) days after counsel receives a copy of the transcript of the deposition. The designation shall contain a list of the numbers of the pages and lines of the transcript that are being designated as containing Confidential Information. Such designation shall be provided in writing to all counsel of record. All counsel of record shall treat all deposition transcripts as if Confidential for the first thirty (30) days after receipt of such deposition transcripts.

5. Protection of Documents and Information.

(a) Limited Third Party Disclosures. The Parties and counsel for the Parties shall not disclose or permit the disclosure of any documents or information designated as Confidential Information under this Order to any third person or entity except as set forth in subparagraphs (i)-(ix). Subject to these requirements, documents or information designated as Confidential Information under this Order may be disclosed to the following categories of persons:

(i) **Counsel**. Internal or external counsel for the Parties and employees of counsel who have responsibility for the preparation and trial of the action;

(ii) **Parties**. Individual Parties and employees of a Party but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed;

(iii) **The Court and its personnel**;

(iv) **Court Reporters and Videographers**. Court reporters and videographers engaged for depositions but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

(v) **Contractors**. Those persons specifically engaged for the limited purpose of making copies of documents, or organizing, processing, or hosting documents but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

(vi) **Consultants and Experts**. Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

(vii) **Witnesses at depositions**. During their depositions, witnesses in this action to whom disclosure is reasonably necessary, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. If a non-party witness refuses to execute the certificate in Attachment A, the parties agree to urge the non-party witness to execute Attachment A such that examination of the witness with respect to Confidential Information may proceed. Witnesses shall not retain a copy of documents containing Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts. Pages of transcribed deposition testimony or exhibits to

depositions that are designated as Confidential Information pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order;

(viii) **Authors and Recipients.** Any person who is shown through testimony or documentary evidence to have prepared, received or reviewed the document or information; and

(ix) **Others by Consent or Order**. Other persons only by written consent of the producing Party or upon order of the Court and on such conditions as may be agreed or ordered.

(b) Control of Documents. Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of three years after the termination of the case.

6. Protection of Highly Confidential - Attorneys' Eyes Only - Information.

(a) Access to documents and information designated as Highly Confidential - Attorneys' Eyes Only - Information under this Order shall be limited to the persons identified in Paragraphs 5(b)(i) and 5(b)(iii)-(ix).

(b) Control of Documents. Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Highly Confidential - Attorneys' Eyes Only - Information. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of three years after the termination of the case.

7. Preliminary Designation of Documents Being Inspected. If a Party elects to produce documents and things for inspection, it need not label the documents and things in

advance of the initial inspection. For purposes of the initial inspection, all documents within the produced files will be considered as having been designated as Highly Confidential - Attorneys' Eyes Only – Information. Thereafter, on selection of specified documents for copying by the inspecting Party, the producing Party shall mark the original documents and/or the copies of such documents with the appropriate confidentiality marking at the time the copies are produced to the inspecting Party.

8. **Inadvertent Failure to Designate.** Inadvertent failure to designate Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information as such may be corrected by supplemental written notice given as soon as practicable. An inadvertent failure to designate documents or information shall not constitute a waiver of a Party's right to so designate such documents or information. As soon as the receiving Party becomes aware of the inadvertent production, the documents or information must be treated as though they had been timely designated as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, whichever claimed, under this Order, and the receiving Party must endeavor in good faith to obtain all copies of the documents that it distributed or disclosed to persons who are not authorized by paragraph 5(b) or 6(a). If the receiving Party is unable to obtain the return of all such documents or information, it shall inform the designating Party of those to whom the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information has been disclosed, and the designating Party may undertake to obtain the return of the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information.

9. **Filing of Confidential Information and Highly Confidential Information.** A party wishing to use any Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, or any papers containing or making reference to such information, in any pleading

or document filed with the Court in this action, such pleading or document shall be redacted to conceal the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information or shall be filed under seal. The Court may under any circumstances by provided with an unredacted copy of any pleading or documents that is filed.

10. Challenges by a Party. The designation of any information as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information is subject to challenge by any Party. The following procedure shall apply to any such challenge.

(a) Meet and Confer. A Party challenging the designation of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information must do so in good faith and must begin the process by conferring directly with counsel for the designating Party. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, the designating party must explain the basis for the designation.

(b) Judicial Intervention. A Party that elects to challenge a confidentiality designation may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The burden of persuasion of justifying that there is good cause for the confidentiality designation will remain on the designating Party. Until the Court rules on the challenge, all Parties shall continue to treat the materials as they were designated under the terms of this Order. A party will not be obligated to challenge the propriety of a Confidential or

Highly Confidential designation at the time made, and failure to do so will not preclude later challenges.

11. Use of Confidential Documents or Information at Hearings, Pretrial Conferences, or Other Public Court Appearances. Nothing in this Order shall be construed to affect the admissibility of any document, material, or information at any hearing, pretrial conference, or other public court appearance. Nor shall anything in this Order be construed to prejudice a party's right to use at trial or in a hearing before the Court any Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information. A Party that intends to present, or which anticipates that another Party may present, Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information at a hearing, pretrial conference, or other public court appearance shall first seek to reach an agreement with the other Parties regarding the treatment of such materials. If an agreement is not possible, the Party shall bring that issue to the Court's attention by motion or in a pretrial memorandum without publicly disclosing the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at a hearing, pretrial conference, or other public court appearance.

12. Confidential Information or Highly Confidential Information Subpoenaed, Ordered Produced or Requested in Other Proceedings.

(a) If a receiving Party is served with a subpoena, an order issued in other civil, criminal or administrative proceedings, or any other form of compulsory process that would compel disclosure of any material or document designated in this action as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, the receiving Party

must so notify the designating Party in writing, immediately and in no event more than seven (7) court days after receiving the subpoena, order, process or request. Such notification must include a copy of the subpoena or court order.

(b) The receiving Party also must immediately inform in writing the person or entity that caused the subpoena, order, process or request to issue that some or all of the material covered by the subpoena or order is the subject of this Order. In addition, the receiving Party must deliver a copy of this Order promptly to the person or entity that caused the subpoena, order, process or request to issue.

(c) The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the designating Party in this case an opportunity to seek protection of its Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information in the court or tribunal from which the subpoena or order issued. The designating Party shall bear the burden and the expense of seeking protection in that court of its Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, and nothing in these provisions should be construed as authorizing or encouraging a receiving Party in this action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the Party has in its possession, custody or control Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information by the other Party to this case.

13. Obligations on Conclusion of Litigation.

(a) Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) Unless otherwise ordered or agreed to in writing, within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all persons in receipt

of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information shall use reasonable efforts to either return such materials and copies thereof to the producing Party or destroy such Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information and certify that fact. Such reasonable efforts shall not require the return or destruction of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information from (i) disaster recovery or business continuity backups, (ii) data stored in system-generated temporary folders or near-line storage, (iii) unstructured departed employee data, and/or (iv) material that is subject to legal hold obligations or commingled with other such material. Backup storage media will not be restored for purposes of returning or certifying destruction of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, but such retained information shall continue to be treated in accordance with the Order. Counsel for the Parties shall be entitled to retain copies of court papers (and exhibits thereto), correspondence, pleadings, deposition and trial transcripts (and exhibits thereto), legal memoranda, expert reports and attorney work product that contain or refer to Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, provided that such counsel and employees of such counsel shall not disclose such Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information to any person, except pursuant to court order. Nothing shall be interpreted in a manner that would violate any applicable canons of ethics or codes of professional responsibility.

14. Inadvertent production of privileged material. If a Party inadvertently produces or provides information subject to the attorney-client privilege, attorney work product doctrine, or other applicable privilege or immunity, the disclosure of the inadvertently disclosed information is not and will not be construed or deemed to be a general or specific waiver or

forfeiture of any such privilege, immunity or work product protection that the producing Party would otherwise be entitled to assert with respect to the inadvertently disclosed information and its subject matter. Where the producing Party informs the receiving Party that privileged or other protected information has been disclosed, the receiving Party or Parties (i) must, within ten (10) business days, return or destroy the specified information and any copies thereof, (ii) must not use or disclose the information until the claim of privilege or other protection is resolved, (iii) must take reasonable steps to retrieve any such information that was disclosed or distributed before the receiving Party was notified of the claim of privilege or other protection and prevent any further dissemination of the information. Notwithstanding the above, in lieu of promptly returning or destroying the specified document or information, the receiving Party may, within five (5) business days, seek leave of Court to file the specified document or information under seal and request a determination of the claim of privilege or other protection while still complying otherwise with paragraphs (ii) and (iii). However, the receiving Party cannot assert as a basis for the relief it seeks the fact or circumstance that such privileged documents were produced. The producing Party also must preserve the information until the claim is resolved.

15. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

16. No Admissions or Waiver of Objections. Producing, designating or receiving Confidential or Highly Confidential - Attorneys' Eyes Only - Information, or otherwise complying with the terms of this Order, shall not: (a) be construed to affect in any way the admissibility of any document, testimony, or other evidence at any hearing in or trial of the action; (b) prejudice the rights of a Party to object to the production of information or material

that the Party does not consider to be within the proper scope of discovery or protected from discovery by virtue of the attorney-client privilege, the work product doctrine, or any other privilege or immunity from discovery; (c) prejudice the rights of a Party to apply to the Court for further protective orders and for additional protection for that Party's Confidential or Highly Confidential - Attorneys' Eyes Only - Information; or (d) prevent the Parties from agreeing in writing to alter or waive the provisions or protections provided for herein with respect to any particular information or material.

17. **Order Subject to Modification.** This Order shall be subject to modification or amendment by agreement of the Parties or by order of the Court.

18. **Enforcement.** A breach of the terms of this Order is subject to the full powers and jurisdiction of the Court, including but not limited to the powers of contempt and injunctive relief, and shall entitle the non-breaching Party to appropriate sanctions, including but not limited to all attorneys' fees and other costs incurred in the enforcement of this Order.

19. **Trial**. Nothing herein shall govern the procedures to be used at trial, which will be set by the Court prior to the commencement of trial.

SO ORDERED.

Dated: _____

_____
John B. Leete, Senior Judge
Specially Presiding

ATTACHMENT A

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of the ESTATE and FAMILY of JOSEPH PATERNO; RYAN MCCOMBIE, ANTHONY LUBRANO, AL CLEMENS, PETER KHOURY, and ADAM TALIAFERRO, members of the Board of Trustees of Pennsylvania State University; PETER BORDI, TERRY ENGELDER, SPENCER NILES, and JOHN O'DONNELL, members of the faculty of Pennsylvania State University; WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO, former football coaches at Pennsylvania State University; and ANTHONY ADAMS, GERALD CADOGAN, SHAMAR FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI, ANWAR PHILLIPS, and MICHAEL ROBINSON, former football players of 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 THE PENNSYLVANIA STATE UNIVERSITY, Nominal Defendant.	Civil Division Docket No. 2013-2082

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order (the "Order") dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the Court of Common Pleas of Centre County, Pennsylvania in matters relating to the Order and understands that the terms of the Order obligate him/her to use materials designated as "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER – ATTORNEYS' EYES ONLY" in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

_____

_____

Date: _____ _____

Signature

ATTACHMENT A

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

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Job Title: _____

Employer: _____

Business Address: _____

_____

_____

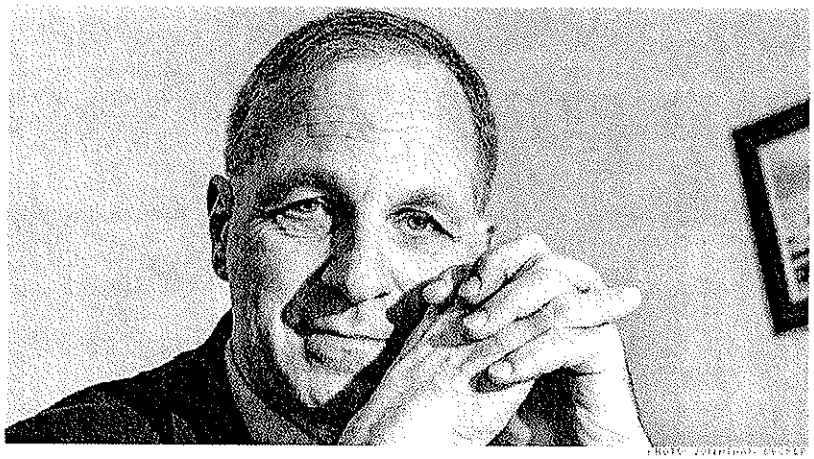
Date: _____ _____

Signature

EXHIBIT 2

Louis Freeh, private eye

By Daniel Roberts, writer-reporter @FortuneMagazine July 25, 2013: 7:26 AM ET



Freeh found that he craved the nitty-gritty of casework.

(Fortune)

If there is such a thing as the Platonic ideal of a G-man, it would have to resemble Louis Freeh. Even today, 12 years after retiring as director of the Federal Bureau of Investigation, Freeh favors what look like government-issue gray suits with an American flag pin on the lapel. His factual, flat speaking style conjures an FBI agent on the witness stand. Five-foot-nine and trim at age 63, he still looks as if he could sprint down the street after a perp if he had to.

Needless to say, it's been decades since Freeh chased those sorts of perps. These days most of his targets tend to wear white collars, and Freeh has assumed a new mantle: corporate America's most prominent private investigator. In July he was assigned to probe alleged irregularities in the BP oil-spill claims process. That comes on the heels of investigations or oversight roles for Daimler, MF Global, Wynn Resorts, and FIFA, the organization that governs world soccer. Freeh's most headline-grabbing report excoriated Penn State University officials for failing to oversee Jerry Sandusky, the former assistant football coach now in prison for sexually abusing boys.

Business is booming for Freeh Group International Solutions, the consultancy he founded in 2007 and sold last year to law firm Pepper Hamilton. Freeh's team has 22 professionals, but clearly he's the draw. There simply aren't many former FBI directors out there, much less ones who've also been an agent, a prosecutor, and a judge -- and who've personally investigated everyone from Sicilian mobsters to the Unabomber to international terrorists.

That's appealing to corporate clients, who often hire investigators to uncover wrongdoing or to untangle a disaster that is bringing unwanted attention. As Chevron general counsel Hew Pate puts it, "If you're in a situation that is being commented on or played out in public, you want to have someone who is seen as credible ... and has pretty high values."

If there's one thing that exceeds Freeh's sterling investigative pedigree, it's his reputation for probity. "I think his personal life is without flaw," says Tom Sheer, who spent 25 years in the FBI. "There's no incidents, no women, no sex, no problems, no nothing." According to Ali Soufan, a former FBI agent who worked on terrorism cases, including the attack on the U.S.S. *Col* Freeh placed particular emphasis on the bureau's "bright line" ethical policy. "Under Louis," he says, "it was made more brigl than usual."

Some have found his Manichaean moralism off-putting. And having private clients presents challenges Freeh didn't face in government, including the conflict of interest that could arise if a current or prospective Pepper Hamilton client hires Freeh's investigative outfit. Would he shade findings to improve the law firm's chances of getting or keeping business? Unthinkable, say people who know him.

Still, Freeh's work has kicked up a lot of dust lately. His conclusions in the Penn State and Wynn reports prompted people criticized by Freeh to hire their own distinguished former federal officials, who then prepared counter reports that lacerated Freeh's work as incomplete. Similar doubts were raised about Freeh's conclusions in the FIFA case.

Speaking in rare and exclusive interviews with *Fortune*, Freeh says that fear of making a mistake keeps him up at night -- but he staunchly denies any errors in these cases. Criticism, he says, is "an occupational hazard of what we do. So if you decide, 'Well, I won't take any controversial cases, and that way if I make a mistake, it's going to be confidential' -- well, we assume nothing is confidential. My kids always used to say, 'Dad, you know all the secrets!' And I would say, 'There aren't any secrets!' "

Freeh ought to know. These days he can be found, yellow legal pad in hand, grilling witnesses at the scene of a corporate or institutional disaster. He'll deliver a report and it will reach strong conclusions. Still, that might not be the end. Freeh may be the ultimate boy scout, but where he operates, turbulence tends to follow.

In many ways, Freeh -- his name is pronounced "Louie Free" -- seems like a figure from a different era. He's serious and formal, though there's warmth and kindness in his droopy expressive eyes. He's disciplined, almost ascetic, in his habits. He often skips lunch. His worst vice is excessive drinking ... of coffee.

Freeh's upbringing was modest. His father, of German and Irish heritage, was at various times a truck dispatcher and union organizer; his mother's parents were Italian immigrants. Freeh shared a bedroom in the family's North Bergen, N.J., home with his two brothers. The family took in boarders to make ends meet.

His biography reads like something J. Edgar Hoover's PR operation might have crafted. Young Louis was an altar boy, worked a paper route, and read to children at a school for the blind. There was even a telling hint of things to come: Freeh headed the student disciplinary board at his Catholic high school. "I was the presiding judge," he once noted, "whenever the Christian Brothers would recommend some miscreant to us."

The 1960s reached their full flower during Freeh's teenage years. But while others protested the Vietnam War, he nurtured dreams of attending West Point. Freeh didn't have the grades, so he had to settle for New Jersey's state university, Rutgers, where he stayed for law school.

From there, Freeh sought out the FBI, which he saw as a noble bastion of authority. As an agent in Manhattan, he spent long hours listening to wiretaps and sitting in parked cars on stakeouts. "The FBI job is a great job if you're a 25-year-old agent in New York City working organized crime," he says.

Still, Freeh was ambitious. He made an unusual leap, becoming a prosecutor in the office of Rudy Giuliani, the U.S. attorney who was striking terror in the hearts of Mafiosi and inside traders alike.

Freeh led the "Pizza Connection" prosecution, a landmark case that would launch his career. The 1985 trial concerned a cocaine and heroin operation run by the Sicilian mob out of pizza parlors; 22 defendants, more than 40 defense lawyers, and 24 jurors were stuffed into the courtroom for 17 months. "Louis worked nonstop," says Giuliani. "He worked so nonstop that several of his children were brought up in the U.S. attorney's office."

Freeh secured convictions for all but one of the defendants and even earned admiration from his opponents. "Louis was the breath of fresh air on the government side," says Larry Schoenbach, a defense lawyer in the case. "He was pleasant, he was honest, and he didn't pull any punches. Everybody respected him."

In 1991, President George H.W. Bush tapped Freeh to be a federal judge. Two years later Bill Clinton persuaded him to become FBI director. Relations between the two would quickly sour. Freeh found himself investigating Clinton, first over the Whitewater scandal, then over alleged contributions from China to the 1996 Clinton-Gore campaign.

The two would later snipe at each other in dueling memoirs. Clinton accused him of adopting "an adversarial position" in order to "please the Republicans." Countered Freeh: "If Bill Clinton's memoir is an accurate reflection of his inner life, he came to believe that I was trying to undo his presidency. That's bunk."

Critics detected a strain of self-righteousness. Freeh was so concerned with appearing apolitical and pure that he rebuffed an invitation to a White House movie screening with the Clintons and Tom Hanks.

Yet Freeh wasn't always so rigid. He discarded an FBI policy barring anybody who had ever smoked marijuana from becoming an agent -- not because Freeh was an aficionado (he certainly wasn't), but because he hated the idea that the FBI was encouraging new agents, many of whom had presumably tried pot at some point and would have to deny it, to begin their bureau careers with a lie.

Freeh even showed a personal touch. He was known for the handwritten notes he sent to agents upon, say, a death in the family. He met every new class of agents at Quantico and ran a few miles with them.

His directorship would prove controversial. For every big success -- Freeh played a key role in catching the Unabomber -- there seemed to be some fiasco or accusation of hasty judgment. In 1996 the FBI suspected security guard Richard Jewell of the fatal bombing at Atlanta's Olympic Games. Jewell's name leaked to the press, and his reputation was trashed -- but he turned out to be innocent. In 1999 the feds charged atomic scientist Wen Ho Lee with 59 counts of violating the Espionage Act and other laws, only to see the case collapse. Lee later pleaded guilty to one count of mishandling classified data, but received an apology from the federal judge in the case, who told him the executive branch had "embarrassed our entire nation." Does Freeh see mistakes in those pursuits? "Not in those two cases," he says. "I felt the criticism, but I didn't feel like it was good criticism. I mean, Wen Ho Lee was convicted of a felony."

The worst disaster for the FBI -- 9/11 -- occurred two months after Freeh retired as director. He had paid significant attention to terrorism and done so in typical hands-on fashion: Freeh traveled to Saudi Arabia four times to personally investigate the 1996 terrorist bombing at the Khobar Towers, which killed 19 U.S. servicemen. He would later tell the national commission investigating 9/11 that he "share[d] in the responsibility" for not protecting the nation while also arguing that "the FBI was intensely focused on its CT [counterterrorism] needs" but lacked sufficient funding.

After leaving the FBI, Freeh took the type of lucrative corporate position you'd expect for a person who had spent years on a government salary: He became general counsel and "ethics officer" for the credit card issuer MBNA, joining a small colony of former FBI agents who had landed there.

Freeh stayed until MBNA was sold to Bank of America in 2006 and then made plans to join a law firm in New York. But his sons, whom he had moved from New Jersey to New York to Virginia to Delaware, begged not to be displaced again. He yielded. Friends say he is unusually devoted to his wife, Marilyn, and six sons, all but two of whom are now grown up. Family is the only off-hours activity Freeh will admit to. "I don't play golf. I don't hang out with friends," he says. Every year his former prosecutor buddies meet up in Las Vegas; Freeh stays home. (He does, however, make an annual pilgrimage to Palermo to honor a Sicilian prosecutor on the Pizza Connection case who was later murdered.)

The former FBI director began his latest chapter almost by happenstance. He hadn't figured out his next move when a Wilmington contact, then DuPont CEO Chad Holliday, asked Freeh if he was available to do some consulting for the company. Freeh took the project on and was reminded of his love for the nitty-gritty of casework.

In 2007, Freeh created two sibling firms: his investigative group and a six-attorney law firm. Former Saudi ambassador Prince Bandar (a contact in the Khobar Towers case) became one of Freeh's first controversial clients. Corruption had been alleged in the sale of billions in arms by the U.K.'s BAE Systems to the Saudi government. Bandar was suspected of receiving $2 billion in allegedly inappropriate payments, but Freeh proclaimed his client's innocence, and the Saudi was never charged with any crimes.

Freeh began a string of prominent assignments. In 2010 he was named the monitor of Daimler in Germany. The company had consented to a deferred-prosecution agreement with the Justice Department in which it admitted that executives had paid bribes. It was the corporate equivalent of probation, and Freeh was effectively Daimler's probation officer, delivering periodic assessments on its compliance with the agreement. He believes his firm's work helped transform Daimler: "Paying bribes to sell buses and trucks was [its] M.O. and the model for business. It's clearly and irrefutably not the model anymore."

He took on a handful of sports-related cases. In addition to FIFA and Penn State, last year the New Orleans Saints hired him to look into allegations that general manager Mickey Loomis had wiretapped rival coaches a decade ago. (Loomis denied doing so.) Freeh won't discuss the matter but says he delivered his report to the team last summer. Around the same time, state police announced they'd found no evidence of wrongdoing.

He was also named one of two trustees in the bankruptcy of commodities-trading firm MF Global. Freeh prepared a report, which blasted management for "negligent conduct," and worked to help MF's creditors recover as much as possible. (The other trustee gathered assets for former customers.) Freeh's plan should recover a third of the assets for bondholders, and 76% for holders of bank debt.

Last august, Freeh sold his businesses to Philadelphia law firm Pepper Hamilton. Freeh acknowledges that it's highly uncommon for an investigative unit to be owned by a law firm -- "We don't know of any other organization that operates that way" -- but the result is that Freeh can tap Pepper attorneys for investigations. In theory, that should allow his group to compete with much larger competitors, such as Kroll, and giant audit firms, such as PwC and KPMG.

Of course, the risk is that law firms -- the entities that often hire investigators -- will avoid Freeh because they don't want to give business to a rival law firm. So far, he says, that hasn't been an issue. Meanwhile, in February, Pepper Hamilton named him its chairman. He calls it his "Pepper hat" and sees no conflict in being chairman of both the law firm and its "independent" squad of private eyes.

When it comes to investigations, Freeh says his process is more targeted than those of his rivals. A classic investigation begins slowly with months of gathering emails and data, after which interviews are mapped out like a decision tree. By contrast, Freeh's method is a form of triage. Michael Marquardt, who worked for him for five years, compares a new assignment to a football field covered with filing cabinets. "If you're a large law firm or audit firm," he says, "you look at it and say, 'We're going to take 10 partners and 80 associates and they're going to sift through, and if it takes a year, it takes a year.' Louis and the people at Freeh Group look at it more like a chess player would ... realizing that three-quarters of those filing cabinets can be put off to the side for now."

Freeh embraces the speedy, on-the-ground approach of an FBI agent. "We like to go out early and interview people right away, even before we have all the data," he says. "In most of our cases ... we show up on day three and tell someone, 'Okay, you've retained us, and now we'd like to interview you.' And they say, 'Already?' "

That's what happened with Penn State: One day after taking the assignment from the university's board, Freeh was on the scene with his yellow legal pad. "We haven't seen all the emails [or] data, but sitting down, eyeball to eyeball, asking questions -- it's amazing the information that you get," he says.

Speed is a key selling point. It's also the aspect of Freeh's work that critics tend to pounce on. His team wrapped up the Penn State report in eight months and was searing in portraying a profound failure by the administration and the late football coach Joe Paterno to take adequate action in Sandusky's case. Paterno's family hired its own team, including former U.S. attorney general and Pennsylvania governor Dick Thornburgh, which then blasted Freeh's work as a "rush to injustice" with "inaccurate and unfounded" parts.

Responds Freeh: "Could we have done another 50 interviews? Of course. Could we have done another six months of work? Yes. But we felt we had all the necessary facts that the board needed to make their decisions." Most important, Freeh adds, the Paterno family has not accused him of making a single factual error. (In July former Penn State president Graham Spanier, who was lambasted in Freeh's report, filed notice of a defamation suit against Freeh.) For all the continuing charges and countercharges, his assessment has proven consistent with those of prosecutors and the press.

Freeh's report for Wynn Resorts also drew a strong response. In late 2011, Wynn's board hired Freeh to investigate Kazuo Okada, a director and owner of 20% of the company, relating to a planned casino in the Philippines. Freeh concluded that Okada had used front companies, contrary to Filipino law, and paid bribes to officials -- one of whom checked into an opulent suite at Wynn Macau as "Mr. Incognito" on the company's dime. Freeh's report led to Okada's ouster from the Wynn board and the forced repurchase of his shares. Okada protested his innocence and hired Michael Chertoff, former secretary of homeland security, who delivered a paper concluding that Freeh's work was "not credible." (In July, Filipino authorities recommended charging Okada for using front companies to hide his ownership but also stated, "The facts and evidence gathered thus far are insufficient to justify the filing of bribery charges.")

In 2011, Freeh was hired to investigate whether bribery had occurred at FIFA, and concluded it had. As a result, the organization banned an executive for life. The Court of Arbitration for Sport overturned the ban -- it claimed Freeh's findings were inconclusive -- but FIFA later banned him again on new grounds after further investigation by Freeh and others.

Despite the heat, Freeh's work has emerged unscathed. He hasn't been forced to concede an error in any report. (Most, it should be noted, reached predictable conclusions.) It all adds up to a paradox: A noted straight arrow -- whose work is regularly challenged. Perhaps it's just a reflection of the contentious, high-profile cases and subjects he has taken on. You have to expect to draw some return fire, and certainly he has taken plenty, both at the FBI and today. But for all the hue and cry -- or perhaps because of it -- Freeh is still getting plenty of new assignments.

This story is from the August 12, 2013 issue of Fortune. ■

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