IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

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.

Civil Division

Docket No. 2013-2082

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO MODIFY THE PROTECTIVE ORDER

Filed on Behalf of the Plaintiffs' Counsel of Record:
Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers (admitted *pro hac vice*)
L. Joseph Loveland (admitted *pro hac vice*)
Mark A. Jensen (admitted *pro hac vice*)
Patricia L. Maher (admitted *pro hac vice*)
Ashley C. Parrish (admitted *pro hac vice*)
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500
Email: wsollers@kslaw.com
jloveland@kslaw.com
mjensen@kslaw.com
pmaher@kslaw.com
aparrish@kslaw.com

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO MODIFY THE PROTECTIVE ORDER

Plaintiffs submit this supplemental memorandum in support of their Motion to Modify the Protective Order. In opposing the motion, none of the defendants address — or even acknowledge — what has occurred since the September 11, 2014 entry of the Stipulated Confidentiality Agreement and Protective Order in this case. In particular, none of them offers any response to the fact that although the NCAA justified the need for the protective order's subparagraph 5(a) based on its purported concern that this case should not be litigated through the media, the NCAA itself has subsequently done exactly that in connection with the *Corman v. NCAA* litigation, where no protective order prohibits the NCAA from disclosing discovery materials. As a result of these changed circumstances, subparagraph 5(a) is imposing unfair, asymmetrical burdens and has become highly prejudicial to plaintiffs. Striking subparagraph 5(a) would not eliminate the protections provided for materials designated confidential, but it would restore the parties to an even playing field and ensure that, with respect to non-confidential materials, all sides are placed in the same position.

ARGUMENT

The Court should lift the restrictions imposed on the protective order's subparagraph 5(a) for the straightforward reason that the NCAA cannot reasonably insist on restrictions on the use of discovery materials in this case that they do not live by in *Corman.* Defendants have no meaningful response to that basic point; their arguments in favor of maintaining this unfair provision are meritless.

Defendants Cannot Dispute That Circumstances Have Changed. A month after this Court entered a protective order in this case, the Commonwealth Court in *Corman v. NCAA* declined to enter a protective order because the defendants there had not shown any specific

injury that would result from publicly disclosing materials produced in discovery. *See* Memorandum and Order, *Corman v NCAA*, No. 1 M.D. 2013 (Oct. 15, 2014 Pa. Commw. Ct.) Ex. A. This case and *Corman* involve many of the same underlying events related to the Consent Decree between Penn State and the NCAA, and there has been extensive overlap in the discovery in the two cases. *See* Mem. in Support of Mot. to Modify at 3. In *Corman*, however, the parties are not subject to restrictions in their use of documents and information produced in discovery.

The NCAA has taken advantage of this situation to do exactly what it told this Court subparagraph 5(a) was needed to protect against — litigate its position in the media. For example, the NCAA has selectively disclosed non-public discovery materials on its website in an effort to move public opinion and justify its extraordinary misconduct in connection with imposing the Consent Decree on Penn State. According to the NCAA, its own disclosures of extensive discovery materials on its website is necessary to "provide [] context" and to "correct the record," but it has condemned comparable disclosures by plaintiffs as "totally inappropriate" and "unnecessary and improper." NCAA Opp. at 2, 8.[1] This attempt by the NCAA in *Corman* to sway public perceptions, while preventing plaintiffs in this case from responding, has rendered the protective order an instrument of injustice. In short, because the NCAA and Penn State are defendants in the *Corman* action as well as this case, they can publicize any discovery materials from *Corman*. But subparagraph 5(a) of the protective order in this case, which provides that

[1] Although the NCAA now characterizes the *Corman* plaintiffs' use of discovery materials in support of its filings seeking *in camera* review of privilege designations as "totally inappropriate," it did not make that accusation to the Commonwealth Court. On the contrary, the NCAA itself relied on discovery materials in opposing *in camera* review. The Commonwealth Court apparently did not consider such filings inappropriate because it granted the relief the *Corman* plaintiffs sought and is currently reviewing *in camera* several hundred documents the NCAA has withheld as privileged. *See* Memorandum and Order, *Corman v. NCAA*, No. 1 M.D. 2013 (Nov. 7, 2014 Pa. Commw. Ct.) (granting plaintiffs' motion for *in camera* review of privileged documents), Ex. B; Memorandum and Order (granting plaintiffs' second motion for *in camera* review) (December 18, 2014 Pa. Commw. Ct.), Ex. C.

"all discovery materials shall . . . be used solely for the purpose of preparing and prosecuting the Parties' respective cases, and shall not be used or disclosed for any other purpose," prevents plaintiffs from being able to respond even with non-confidential discovery materials. That is manifestly unfair.

Striking Subparagraph 5(a) Will Not Affect Confidential Materials. Penn State argues that the protective order should not be modified because it has a continued interest in protecting confidential documents, including ensuring that private emails and other documents authored with an expectation of privacy are not publicized. Penn State Opp. at 2. But that purported concern is entirely beside the point. The modification plaintiffs have requested — striking subparagraph 5(a) — would not do anything to lessen the protections afforded materials designated Confidential or Highly Confidential - Attorneys Eyes' Only. As a practical matter, striking subparagraph 5(a) from the protective order would eliminate only the restrictions imposed on the parties' use of materials that have *not* been designated confidential. Other provisions applicable to the treatment of confidential materials would remain in effect, including paragraphs 2-4, 5(b), 6-9, and 11.

The Case Cited By Defendants Is Inapposite. In support of its position, the NCAA cites *Poliquin v. Garden Way, Inc.*, 989 F.2d 527 (1st Cir. 1993), a case in which a federal court of appeals affirmed a lower court's discretionary decision to maintain post-trial restrictions on documents produced in discovery pursuant to a protective order even though the documents might have been obtained from other courts where they had been publicly filed. NCAA Opp. at 4. In doing so, the appellate court recognized the district court's broad discretion to fashion protections to promote discovery, including extending the protections post-trial, and refused to second guess its rulings in that regard despite the potential burden on litigants in future cases. *Id.*

at 535. The court concluded: "The futility of a protecting a 'public' document might persuade a court to deny protection. But we see no basis for a blanket rule forbidding Rule 26 protection in all instances where the 'public' document is obtained through discovery under an otherwise justified protective order." *Id.* at 534.

The *Poliquin* court's denial of a post-trial request to lift the restrictions of a discovery protective order for the benefit of the plaintiff's counsel provides no support for the NCAA's advocacy for one standard applicable to its own conduct, while pressing for enforcement of a more restrictive standard for plaintiffs in this case. The *Poliquin* court did not uphold a restriction on plaintiffs' use of discovery materials to which the defendants had unrestricted access in another case. In fact, the *Poliquin* court recognized the futility of protecting public documents, but deferred to the trial court's discretion to do so in certain circumstances. The circumstances that this Court cited as the basis for including subparagraph 5(a) in the protective order have changed, and as a result many of the documents produced in discovery in this case have also been produced in another case where their use by defendants is unrestricted.

Defendants' Arguments About Jury Contamination Are Meritless. Defendants continue to argue that striking subparagraph 5(a) could result in public disclosures that might taint the jury pool. But those arguments only confirm that defendants are attempting to have it both ways. The NCAA's selective website disclosures in connection with the *Corman* litigation are just as likely to influence potential jurors for this case as any comparable disclosures that could be made of non-confidential materials by plaintiffs in this case. *See, e.g.,* NCAA Motion for Partial Summary Judgment, *Corman v. NCAA*, Ex D.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in their initial memorandum in support of their Motion to Modify the Protective Order, plaintiffs respectfully request that the Court grant its Motion and strike subparagraph 5(a) from the protective order.

Date: January 15, 2015

By: _____

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 201
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Mark A Jensen
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO MODIFY THE PROTECTIVE ORDER** was served this 15th day of January, 2015 by first class mail and email to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Email: tscott@killiangephart.com

Everett C. Johnson, Jr.
Brian Kowalski
Sarah Gragert
Latham & Watkins LLP
555-11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Email: everett.johnson@lw.com
brian.kowalski@lw.com
sarah.gragert@lw.com

Daniel I. Booker
Jack Cobetto
Donna Doblick
Reed Smith LLP
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
Email: dbooker@reedsmith.com
jcobetto@reedsmith.com
ddoblick@reedsmith.com

Joseph P. Green
Lee Green & Reiter Inc.
115 East High Street
Lock Drawer 179
Bellefonte, PA 10823-0179
Email: jgreen@lmgrlaw.com

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Mark A. Jensen
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

EXHIBIT A

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 Commonwealth of Pennsylvania, Plaintiffs	:	
v.	:	
The National Collegiate Athletic Association, Defendant	:	
v.	:	
Pennsylvania State University, Defendant	:	No. 1 M.D. 2013

MEMORANDUM AND ORDER

AND NOW, this 15th day of October, 2014, upon consideration of Defendants Pennsylvania State University (PSU) and the National Collegiate Athletic Association's (NCAA) Motion for Entry of A Protective Order Regarding the Confidentiality of Certain Discovery Materials (Motion) and Plaintiff Senator Jake Corman's Answer in Opposition thereto, and wherefore:

Defendants PSU and NCAA seek a protective order from this Court identical to the protective order in the case of *Paterno, et al. v. National Collegiate Athletic Association, et al.*, No. 2013-2082, currently pending in the Centre County Court of Common Pleas.

Pennsylvania Rule of Civil Procedure No. 4012(a) provides that "[u]pon motion by a party or by the person from whom discovery or deposition is sought, **and for good cause shown**, the court may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense . . . ." Pa. R.C.P. No. 4012(a) (emphasis added). In *Dougherty v. Heller*, 97 A.3d 1257 (Pa. Super. 2014), our Superior Court explained:

> No Pennsylvania appellate court has addressed what constitutes 'good cause' in this context. *But see Seattle Times*, 467 U.S. [20,] 26 [(1984)] (referencing the state court's requirement of a factual showing of good cause); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. (Pa.) 1994) ('**Good cause is established on a showing that disclosure will work a clearly[-]defined and serious injury to the party seeking closure. The injury must be shown with specificity. Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing.**'); *Constand v. Cosby*, 229 F.R.D. 472, 479 (E.D.Pa. 2005) (applying the *Pansy* standard); *Ornsteen v. Bass*, 50 Pa. D. & C.3d 371, 374-75 (Phila. [Cnty.] 1988) ('The law is clear that the determination of whether good cause does or does not exist must be based upon appropriate testimony and other factual data, not the unsupported contentions and conclusions of counsel.') (quotation omitted).
>
> . . . .
>
> We have previously observed that '[t]he questions of whether disclosure is to be allowed, if protection is to be afforded, and the form of such protection, are matters to be determined according to the discretion of the court.' *Crum [v. Bridgestone/Firestone North American Tire, LLC]*, 907 A.2d [578,] 586 [(Pa. Super. 2006)]. Further, the *Seattle Times* Court approved of the broad discretion afforded trial courts by the rules:
>
> > [S]uch discretion is necessary[.] . . . The trial court is in the best position to weigh fairly the competing needs and interests of the parties affected by discovery. The unique character of

> the discovery process requires that the trial court have substantial latitude to fashion protective orders.
>
> *Seattle Times*, 467 U.S. at 36.
>
> Though we need not impose a rigid standard of analysis, it is self-evident that **a party seeking a protective order must, at the very least, present some evidence of substance that supports a finding that protection is necessary. Such evidence must address the harm risked, and not merely an unsubstantiated risk of dissemination[.]**

Dougherty, 97 A.3d at 1267 (emphasis added).

Defendants assert in their Motion that "[t]he Plaintiffs . . . seek discovery of documents, information, and other materials that qualify for protection from public disclosure or are otherwise required to be maintained as confidential in the ordinary course of the University's business." Motion at 4. Defendants have demonstrated no specific injury that would occur in the absence of a protective order, and have presented no evidence that this Court's protection is necessary. They have done nothing other than make a general, sweeping, non-specific and unsupported statement that the information "qualif[ies] for protection from public disclosure" or is "required to be maintained as confidential in the ordinary course of [PSU's] business." *Id.* Their assertions fall far short of the required legal standard.

Defendants specifically request this Court to enter a protective order identical to the "Stipulated Confidentiality Agreement and Protective Order" (Paterno Protective Order) entered in the *Paterno* case[1] because "[d]iscovery in this action and *Paterno* involve overlapping documents and similar concerns regarding confidentiality and privilege[.]" Motion at 4. Contrary to Defendants' assertion, the action before this Court is distinctly different from the *Paterno* case. That case

[1] A copy of the Paterno Protective Order was attached to the Motion.

involves different parties seeking different relief. Further, in the *Paterno* case, the parties stipulated to the entry of the Paterno Protective Order, with the exception of one provision which was imposed by the trial court based upon concerns not present in the instant matter.[2] Thus, after review of the 15-page Paterno Protective Order, this Court declines to apply its terms to the instant action.

For all the foregoing reasons, Defendants' Motion is denied.

Anne E. Covey

ANNE E. COVEY, Judge

Certified from the Record

OCT 15 2014

and Order Exit

[2] The plaintiffs in the *Paterno* case claimed that because there was public interest in the case, the public had a right to non-confidential information. However, the trial court concluded that "dissemination of pre-trial documents would be an abuse of the discovery process" and "the risk to contaminate the potential jury pool is high[.]" *Paterno v. NCAA*, No. 2013-2082 (Centre County, Sept. 11, 2014) (opinion and order granting Paterno Protective Order provision). In the instant action, there is no allegation that the Plaintiffs seek to disseminate discovery information, nor is there a jury pool to contaminate.

EXHIBIT B

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 Commonwealth of Pennsylvania, Plaintiffs	:	
v.	:	
The National Collegiate Athletic Association, Defendant	:	
v.	:	
Pennsylvania State University, Defendant	:	No. 1 M.D. 2013

MEMORANDUM AND ORDER

On October 8, 2014, Plaintiffs Senator Jake Corman (Corman) and Treasurer Robert M. McCord (collectively, Plaintiffs) filed a Motion to Compel Defendant the National Collegiate Athletic Association (NCAA) to Attend Depositions and Produce Previously Withheld Documents (Motion) to which the NCAA filed its Opposition on October 16, 2014. On October 22, 2014, Plaintiffs filed a Reply Brief, wherein, "Plaintiffs respectfully request[ed] that the Court . . . conduct an *in camera* review of the purportedly privileged documents[.]" Plaintiffs' Reply Br. at 7. Thereafter, the NCAA filed an Application to file a Sur-Reply Memorandum. This Court, on October 24, 2014, granted the NCAA's Application to file a Sur-Reply Memorandum, and ordered the parties to meet and confer in a good

faith attempt to resolve the disputes regarding the production of all documents identified in the NCAA's October 16, 2014 revised privilege log (Privilege Log) and file a joint status report with the Court which identifies the documents in the Privilege Log for which agreement has been reached and those which remain in dispute.

On October 31, 2014, Corman and the NCAA filed a Joint Status Report Regarding Plaintiffs' Motion to Compel (Joint Status Report) which stated therein: "As a result of the meet and confer discussions, the total number of documents in dispute has been reduced by 1,740. The parties, however, are at an impasse over 544[1] documents. Those documents are listed in Exhibit A." Joint Status Report at 2. Also on October 31, 2014, the NCAA filed a Statement Regarding the Privileged Documents Still Disputed by Corman (NCAA Statement) explaining that although "its privilege log entries for these documents do not identify an attorney in the 'to' or 'from' line of the top-level email[,] . . . [such] is an insufficient reason to justify the intrusion [of *in camera* review] into the NCAA's privileged communications or justify the significant burden on the Court." NCAA Statement at 2. On November 2, 2014, Corman filed a Response to the NCAA's Supplemental "Statement" Regarding Documents Still In Dispute (Corman Response), wherein he contended that an "*in camera* review is necessary here to clarify various ambiguities in the privilege assertions[.]" Corman Response at 4.

Our Supreme Court has recognized "a particularized need for trial court involvement in determining the appropriate scope of discovery in individualized circumstances." *Cooper v. Schoffstall*, 905 A.2d 482, 492-93 (Pa. 2006). In addition, "*[i]n camera* review of disputed claims of privilege is often necessary and

[1] "Over the weekend of November 1-2, [Corman] engaged in further review of [the] disputed documents, and in turn further reduced the number of documents in dispute to 477." Corman's Response to the NCAA's Supplemental "Statement" Regarding Documents Still In Dispute at 2.

appropriate." *Berg v. Nationwide Mut. Ins. Co.*, 44 A.3d 1164, 1179 (Pa. Super. 2012). Further, the explanatory comment to Pennsylvania Rule of Civil Procedure No. 4003.3 provides: "[D]iscovery and inspection should be permitted *in camera* where required to weed out protected material." Pa.R.C.P. No. 4003.3, Explanatory Comment at ¶ 5 (italics added).

> Moreover, in the context of discovery in civil matters, the Superior Court has consistently held that *in camera* review is a vital means by which to analyze whether a document is covered under a privilege. *See, e.g., T.M. v. Elwyn, Inc.*, 950 A.2d 1050, 1063 (Pa.[]Super.[]2008) (stating that the 'court may conduct *in camera* review of documents identified [ ] to be subject to a privilege, to better analyze the privilege issues, as needed.'); *Gocial v. Independence Blue Cross*, 827 A.2d 1216, 1223 (Pa.[]Super.[]2003) (concluding that given the record as it existed on appeal, remand was necessary for the trial court to review discovery requests in light of the privileges raised by the plaintiff and that '[i]n some instances, *in camera* review may be required.'); *In re Estate of Wood*, 818 A.2d 568, 573 (Pa.[]Super.[]2003) ('[W]e instruct the trial judge to review the material *in camera* to determine if protection under the work product doctrine is warranted.'); *McGovern v. Hosp[.] Serv[.] Ass['']n*, 785 A.2d 1012, 1018 (Pa.[]Super.[]2001) ('While it remains to be seen if indeed the underlying materials fall under the protection of the attorney-client privilege, the trial court at the very least must conduct an *in camera* inspection of the documents to determine this contention.').

Office of Open Records v. Ctr. Twp., 95 A.3d 354, 367 n.16 (Pa. Cmwlth. 2014).

Based upon our own review of the NCAA's Privilege Log and the sample disputed documents, and after consideration of the parties' arguments in their various filings pertaining to the instant Motion, this Court finds that an *in camera* inspection of the remaining disputed documents is "necessary and appropriate" to establish privilege. *Berg*, 44 A.3d at 1179.

AND NOW, this 7th day of November, 2014, Plaintiffs' Motion for an *in camera* review is GRANTED. The Court decrees that the NCAA shall deliver a true and accurate copy, and complete email chain, without any redactions, of the 477 disputed documents identified in Exhibit A of Corman's Response under seal to the Clerk of the Commonwealth Court on or before 12:00 p.m. on November 14, 2014.

The sealed documents shall be accompanied by a cover letter, a flash drive containing the Privilege Log modified to delineate the 477 disputed documents and a separate list of the name and job title of each individual who is identified as sender, recipient or copied on said documents. The cover letter, flash drive and list shall be filed in accordance with this Memorandum and Order, and copies of which shall be served on all other parties.

The Clerk shall deliver the sealed documents to the Honorable Anne E. Covey for *in camera* review. The sealed documents shall not be opened except by the Court.

Anne E. Covey

ANNE E. COVEY, Judge

EXHIBIT C

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 Commonwealth of Pennsylvania, Plaintiffs	:	
v.	:	
The National Collegiate Athletic Association, Defendant	:	
v.	:	
Pennsylvania State University, Defendant	:	No. 1 M.D. 2013

MEMORANDUM AND ORDER

On December 5, 2014, Plaintiffs Senator Jake Corman and Treasurer Robert M. McCord (collectively, Plaintiffs) filed a Second Motion for *In Camera* Review (Second Motion). On December 10, 2014, this Court ordered the National Collegiate Athletic Association (NCAA) to file its Response to the Second Motion on or before December 16, 2014. On December 16, 2014, the NCAA filed its Memorandum in Opposition to the Second Motion. On December 17, 2014, Plaintiffs filed their Reply in further support of the Second Motion.

Pursuant to its November 7, 2014 Memorandum and Order, this Court is currently reviewing 304[1] documents, *in camera*, to determine the validity of the NCAA's privilege claims. In their Second Motion, Plaintiffs contend that since that time, the NCAA has produced thousands of pages of additional documents, in some cases redacting documents, and later lifting those redactions. Plaintiffs maintain that "in several instances where the NCAA lifted redactions, what was originally redacted should never have been withheld, which leads Plaintiffs to seriously question all of the redactions." Second Motion at 5. After further discussions by the parties, a dispute remains regarding the NCAA's assertion of privilege as to 163 of the additional documents.

As explained in this Court's November 7, 2014 Memorandum and Order, "*in camera* review is a vital means by which to analyze whether a document is covered under a privilege." *Office of Open Records v. Ctr. Twp.*, 95 A.3d 354, 367 n.16 (Pa. Cmwlth. 2014). "[D]iscovery and inspection should be permitted *in camera* where required to weed out protected material." Pa.R.C.P. No. 4003.3, Explanatory Comment at ¶ 5 (italics added). Our Supreme Court has stated that "*in camera* judicial review and the boundaries ascribed to the privilege . . . provide essential checks" to potential abuses including those instances where "ordinary business matters are disguised as relating to legal advice." *Gilliard v. AIG Ins. Co.*, 15 A.3d 44, 58 (Pa. 2011).

After consideration of the parties' arguments in their respective filings, this Court finds that an *in camera* inspection of the remaining disputed documents is warranted.

---

[1] This Court ordered the NCAA to produce under seal 477 documents for *in camera* review. The NCAA advised this Court that upon preparing the 477 disputed documents, it determined that one of the documents was duplicative and 172 of the disputed documents were not protected by the attorney-client privilege or work product doctrine.

AND NOW, this 18th day of December, 2014, the Second Motion is hereby GRANTED and *in camera* review is ORDERED. The Court decrees that the NCAA shall deliver under seal to this Court a true, accurate and complete copy, including complete email chain, without any redactions, of the 163 disputed documents identified in Exhibit A of the Plaintiffs' Second Motion on or before December 29, 2014.

The sealed documents shall be accompanied by a cover letter, a flash drive containing the Privilege Log to delineate the 163 disputed documents and if different than what was previously furnished to the Court, a separate list of the name and job title of each individual who is identified as sender, recipient or copied on said documents. The cover letter, flash drive and list shall be filed in accordance with this Memorandum and Order, and copies of which shall be served on all other parties.

The Clerk shall deliver the sealed documents to the Honorable Anne E. Covey for *in camera* review. The sealed documents shall not be opened except by the Court.

Anne E. Covey

ANNE E. COVEY, Judge

EXHIBIT D

Received 11/13/2014 Commonwealth Court of Pennsylvania

Filed 11/13/2014 Commonwealth Court of Pennsylvania
1 MD 2013

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 Commonwealth of Pennsylvania,	
Plaintiffs,	NO. 1 MD 2013
v.	
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	
Defendant,	
THE PENNSYLVANIA STATE UNIVERSITY,	
Additional Defendant.	

ORDER

AND NOW, this _____ day of _____, 2014, upon consideration of Defendant The National Collegiate Athletic Association's motion for partial summary judgment, and any response thereto, it is hereby ORDERED that Defendants' motion is GRANTED.

NOW THEREFORE, it is ORDERED and DECREED as follows:

1. JUDGMENT IS ENTERED IN FAVOR OF DEFENDANT THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION to the extent that Plaintiffs contest the validity of the Consent Decree by asserting that the Consent Decree was entered into under duress, *see, e.g.*, Answer and New Matter, ¶¶ 137-40; Treasurer McCord's Resp. and Objec. to the NCAA's First Set of Interrogatories 4-5.

2. IT IS DECLARED that the Consent Decree is not the product of duress as a matter of law.

_____

ANNE E. COVEY, Judge

Received 11/13/2014 Commonwealth Court of Pennsylvania

Filed 11/13/2014 Commonwealth Court of Pennsylvania
1 MD 2013

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 Commonwealth of Pennsylvania,

Plaintiffs,

v.

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Defendant,

v.

PENNSYLVANIA STATE UNIVERSITY,

Defendant.

Case No.: 1 MD 2013

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, the National Collegiate Athletic Association ("NCAA") hereby moves for partial summary judgment because, as a matter of law, the Consent Decree cannot be invalidated on the grounds that it was "entered into under duress."

PRELIMINARY STATEMENT

In its April 2014 order, the court raised questions about the validity of the Consent Decree between the NCAA and Penn State and made clear that it believes a hearing on those questions is necessary to resolution of this case. To date, however, neither Plaintiff has made entirely clear whether he seeks to invalidate the Consent Decree, and if so, on what grounds. When asked to clarify their position in interrogatories, Senator Corman refused to provide a clear answer, and Treasurer McCord provided a laundry list of potential infirmities, including the allegation that the Consent Decree was entered into under duress. *See* McCord's Responses and Objections to NCAA's First Set of Interrogatories, dated July 10, 2014 at p. 4-5; Corman's Answers and Objections to NCAA's First Set of Interrogatories, dated July 10, 2014 at pp. 3-4. But, to focus the list of potential issues at trial (including the number of witnesses and length of their testimony),[1] the Court should rule now that any challenge to the Consent Decree based on

[1] This Court appears to have acknowledged the usefulness of narrowing the issues to be addressed at the January 2015 hearing when it entered partial judgment on the pleadings as to the constitutionality of the Endowment Act. *See* October 31, 2014 Opinion & Order.

duress is unavailable as a matter of law.

It is black letter law in Pennsylvania that there can be no claim of duress when a party has an opportunity to consult with counsel before entering into a contract. It is not even necessary that the party actually consults with counsel—so long as it could have done so. The rule makes good sense: a party who has the opportunity to weigh the merits of a hard choice with legal counsel should not later be heard to claim that his or her "will" was "overcome." *Irwin v. Weikel*, 282 Pa. 259, 264 (Pa. 1925). *See also Carrier v. William Penn Broadcasting Co.*, 426 Pa. 427, 431, 233 A.2d 519, 521 (1967) . Thus, where the facts clearly establish the opportunity to consult with counsel, summary judgment on the issue of duress is appropriate.

Here, Penn State not only had the opportunity to consult with counsel before executing the Consent Decree, it assembled a team of no fewer than ***five*** experienced lawyers with expertise in every area relevant to the University's decision-making process. Among others, they were advised by counsel with deep expertise in the NCAA's rules and infractions process—including one who had served as the Chair of the NCAA Committee on Infractions. They were advised by experienced litigators who could expertly assess the risks and benefits of challenging the NCAA in court. And they were advised by a General Counsel that had served as Chairman of one of the world's largest law firms and as general

counsel at two other universities. These lawyers understood the issues, understood Penn State's options, and advised the University accordingly. At the end of the day, fully advised by this legal team, the University made the decision it viewed as the best available: it executed the Consent Decree, choosing speedy resolution and certainty over an opportunity to "roll the dice" and contest sanctions in a multi-year process. Ex. M, September 7, 2013 email (NCAAJC00000552). Some may disagree with the University's decision, but under Pennsylvania law, Penn State's undisputed consultation with its legal team precludes a finding of duress.[2]

ARGUMENT

I. UNDER PENNSYLVANIA LAW, THERE CAN BE NO DURESS WHERE THE CONTRACTING PARTY IS FREE TO CONSULT WITH COUNSEL

In *Carrier v. William Penn Broadcasting Co.*, the Pennsylvania Supreme Court established the rule that "if a party is able to freely consult with their counsel

---

[2] Any challenge to the Consent Decree based on alleged duress fails for several other grounds as well. First, the facts here fall far short of the standard for duress under Pennsylvania law, even setting aside the dispositive impact of Penn State's consultation with legal counsel. *See, e.g., Degenhardt v. Dillon Co.*, 543 Pa. 146, 149 (Pa. 1996). Second, only Penn State can assert a claim of duress—Senator Corman and Treasurer McCord have no standing to do so. *See Schuster v. Pa. Tpk. Comm'n*, 149 A.2d 447, 452 (Pa. 1959) (one who is not a party to a contract lacks standing to argue that the contract is invalid). Third, Penn State's continued compliance with the Consent Decree and Board resolutions this year make clear that even if the Consent Decree had been a product of duress, the University has ratified the Consent Decree such that no duress claim is viable. *See* Ex. A, Resolution of the Board of Trustees of Penn State dated August 13, 2014; Ex. B, Minutes of the Meetings of the Board of Trustees of Penn State dated August 13, 2014. To be clear, however, consideration of these alternative grounds for rejecting any duress argument is unnecessary to resolve the NCAA's motion, which rests on the well-established Pennsylvania authority precluding any finding of duress when a party can consult with legal counsel.

regarding a proposed contractual agreement," the contract cannot later be invalidated on the grounds of duress. *Degenhardt v. Dillon Co.*, 543 Pa. 146, 149, 669 A.2d 946, 948 (1996); *see also Carrier*, 426 Pa. at 431, 233 A.2d at 521 ("[I]n the absence of threats of actual bodily harm there can be no duress where the contracting party is free to consult with counsel."). Following the principles set forth in *Carrier*, "the *courts have uniformly rejected duress as a defense to the agreement*" where "'a party has been free to consult with counsel before signing an agreement.'" *Hamilton v. Hamilton*, 404 Pa. Superior Ct. 533, 537, 591 A.2d 720, 722 (1991) (emphasis added); *Bata v. Cent.-Penn Nat. Bank of Philadelphia*, 423 Pa. 373, 381, 224 A.2d 174, 180 (1966) (experienced litigant who was represented by counsel may not claim duress); *Simeone v. Simeone*, 525 Pa. 392, 404, 581 A.2d 162, 167 (1990) (no duress when bride was presented with a prenuptial agreement on the day of wedding, in part, because the bride had "more than sufficient time to consult with independent legal counsel if she had so desired").[3]

---

[3] *See also Adams v. Adams*, 414 Pa. Super. 634, 639, 607 A.2d 1116, 1119 (1992) ("In the matter before us there is no evidence of physical threats made to Appellant by her husband, so her contention that her husband played on her guilt and threatened her job, without more, is insufficient to void the agreement when she was free to retain independent counsel at all times during the proceedings."); *Sofronski v. Civil Serv. Comm'n, City of Philadelphia*, 695 A.2d 921, 926 (Pa. Commw. Ct. 1997) ("Since Sofronski consulted his attorney, weighed his options and decided to enter into the settlement agreement, his claim that his resignation pursuant the agreement was involuntary [due to "financial hardship or duress"] is without merit.")

In *Degenhardt*, two parties agreed to share the profits of a development project, but when one party (plaintiff) began to experience financial difficulties, the other party demanded that he be assigned the plaintiff's entire interest in the project or else he would withdraw altogether. Plaintiff later challenged the assignment on the grounds that his counterparty had "forc[ed] [him] under conditions of extreme economic coercion and duress to sign documents purported to take away most of [his] rights." 543 Pa. at 152, 669 A.2d at 949. The Supreme Court disagreed, holding that "[b]ecause the evidence amply demonstrates that appellee here was able to freely consult with counsel before executing the contract in question, that there were no threats of actual bodily harm, and that appellee did in fact consult with counsel four days prior to singing the contractual agreement, economic duress *was not a valid defense to the contract at issue*." *Id.* at 149 (emphasis added) (noting that plaintiff "remained free to refuse to sign the Assignment Agreement and the release and to seek whatever legal redress was available to him for appellant's threatened withdrawal from the project").

This rule has been routinely applied even in cases involving threats of criminal or civil prosecution—with Pennsylvania courts routinely holding that when a party had the opportunity to consult with counsel, there can be no finding of duress in those circumstances. *See, e.g.*, *Miller v. Miller*, 23 Pa. D. & C.4th 554, 558 (Com. Pl. 1993) (holding that a threat of criminal prosecution for rape does not

constitute duress "as a matter of law" because party consulted with counsel regarding the negotiation of the agreement); *Thomas v. Sandstrom*, 459 F. App'x 93, 95 (3d Cir. 2012) (holding that under Pennsylvania law, there was no duress in signing a settlement agreement because there were no threats of bodily harm and the party was represented by counsel throughout the mediation process). In *Young v. Pileggi*, the Superior Court applied this rule to bar a claim of duress where a party was subject to threats by a counterparty to initiate legal action to "put [him] in bankruptcy," even when such threats were allegedly in "bad faith" because the claims were "barred by the statute of limitations." 309 Pa. Super. 565, 571, 455 A.2d 1228, 1231 (1983). In rejecting the duress argument as a matter of law, the Court found it "unnecessary to consider whether the debts were barred in fact, for, in any event, it is clear that [Plaintiff] was free to consult his own attorney regarding the validity of the ... claims." *Id.*

Under the *Carrier* rule, where there is clear evidence that a party "was free to consult with counsel," there is no question of duress to submit to a finder of fact, and entry of summary judgment is required. *See, e.g., Gregory v. Derry Twp. Sch. Dist.*, 418 F. App'x 148, 152 (3d Cir. 2011) (summary judgment proper where the party claiming duress "was free to consult with counsel or to take the [contract] home and review it further"); *see also Strickland v. Univ. of Scranton*, 700 A.2d 979, 986 (Pa. Super. Ct. 1997) (affirming summary judgment for defendants

because plaintiff "has not created a genuine issue of material fact as to the invalidity of the [contract]" on duress grounds because the contract was negotiated and the party was free to consult with counsel); *Acad. Elec. Contractors, Inc. v. Nason & Cullen Grp.*, Inc., 03252 JULY TERM 2001, 2004 WL 95181, at *2 (Pa. Com. Pl. Jan. 14, 2004) (granting summary judgment, in part, because "when a party has an *opportunity* to consult legal counsel no claim of duress can be sustained") (emphasis in original).

II. AT LEAST FIVE LAWYERS REPRESENTING PENN STATE WERE INVOLVED IN THE DRAFTING, CONSIDERATION, NEGOTIATION, AND EXECUTION OF THE CONSENT DECREE

The principles established in *Carrier* are binding on this Court, and make clear that there is no legal basis for concluding that the Consent Decree is invalid because Penn State entered into it "under duress." Not only did Penn State have the "opportunity to consult with counsel" before executing the Consent Decree, it was in fact advised by a team of no fewer than ***five*** experienced lawyers.

In its responses to Senator Corman's interrogatories, Penn State represented that the following legal counsel were "involved in the 'drafting, consideration, negotiation, and execution' of the Consent Decree":

- "**Stephen S. Dunham, Esq.**, Vice President and General Counsel," who "provided legal advice with respect to the drafting, consideration, negotiation, and execution of the Consent Decree." Ex. A to Statement of Undisputed Material Facts in Supp. of Mot. for Partial Summ. J. ("Statement of Facts"). A graduate of Yale Law School in 1969, Mr. Dunham "served as the firmwide managing partner of Morrison & Foerster from 1990 to 1992,

and as Chair of the firm from 1996 to 2000." *See* Ex. C, Stephen S. Dunham, Biography. He has taught as a law professor at the University of California, Davis School of Law and the University of Minnesota Law School, where he taught courses in "contracts, trial practice, complex litigation, and higher education law." *Id.* Mr. Dunham has served as the General Counsel of the University of Minnesota and the Johns Hopkins University. *Id.*

- "**Gene Marsh, Esq.**, formerly of Lightfoot, Franklin & White LLC, presently with Jackson Lewis P.C." Ex. A to Statement of Facts. Mr. Marsh was a member of the NCAA Division I Committee on Infractions from 1999 through 2008 and was named Chair of the Committee on Infractions from 2004 to 2006. *See* Ex. D, Gene Marsh Bio. During this time, he also served on the NCAA Ad Hoc Committee on Financial Penalties and Forfeitures and served on an NCAA subcommittee reviewing infractions penalties. *Id.* Mr. Marsh regularly represents institutions, coaches and athletes in NCAA matters, and regularly speaks and publishes on "NCAA investigations and the infractions process." *Id.*

- "**William King, Esq.**, Lightfoot, Franklin & White LLC." Ex. A to Statement of Facts. Mr. King has "handled dozens of investigations involving NCAA compliance issues and has appeared numerous times before the Committee on Infractions." *See* Ex. E, William King Bio. "He has worked extensively and regularly with the NCAA Enforcement Staff on many different issues," and also has "extensive experience in drafting contracts for head coaches and assistant coaches in revenue sports and regularly provides advice and representation in employment-related issues." *Id.*

- "**Frank Guadagnino, Esq.**, formerly of Reed Smith LLP; presently Associate General Counsel of Penn State." Ex. A to Statement of Facts. Prior to joining Penn State's Office of General Counsel, Mr. Guadagnino was a "senior partner in the Financial Services Group at Reed Smith LLP in Pittsburgh," where "[f]or over 30 years," his practice concentrated on "corporate transactional matters, including mergers and acquisitions, financing transactions and general corporate matters." *See* Ex. F, Frank T. Guadagnino Biography.

- "**Joseph O'Dea, Jr.**, Saul Ewing LLP." Ex. A to Statement of Facts. Mr. O'Dea is the "chair of Saul Ewing's Commercial Litigation Practice" and

has "almost 25 years of experience representing clients in high exposure commercial litigation matters." *See* Ex. G, Joseph O'Dea, Jr. Bio.

As a matter of law, Penn State's admission in its interrogatory responses that it was advised by these five experienced lawyers prior to executing the Consent Decree is alone sufficient to foreclose any possibility that the Consent Decree was a product of duress.

Under *Carrier*, no other evidence need be considered on the issue of duress. But here, the evidence unequivocally establishes much more than the mere opportunity to "consult with counsel"—it establishes that Penn State's team of lawyers were expert in all of the issues relevant to Penn State's decision to execute the Consent Decree, were intimately involved in the process, and advised on all of the critical issues. As a former Chair of the Committee on Infractions, it is difficult to imagine a counselor more expert on NCAA rules and process than Mr. Marsh, including the penalties that could be imposed or any questions about the NCAA's "authority." *See, e.g.* Ex. O, Deposition of David Berst ("Berst Dep.") 181:19-22] ("I considered Gene Marsh to be exceptionally familiar with NCAA processes and bylaws and the like, and he had represented a number of institutions."). The evidence is clear that Mr. Marsh was in constant contact with NCAA personnel during the period leading up to the Consent Decree's execution, and had President Erickson's "full support" and "authority" in the process. Ex. H, July 18, 2012 email (NCAAJC00001392); *see also* Ex. I, July 19, 2012 email

(NCAAJC00001352); Ex. J, July 20, 2012 email (NCAAJC00006980). While acknowledging that "[i]t is fair that PSU would pay a heavy price," Mr. Marsh advocated on Penn State's behalf, pushed back on NCAA requests, and advised Penn State on the choices it faced. *See* Ex. K, July 19, 2012 email (NCAAJC00000685). As Mr. Marsh explained shortly after the Consent Decree was announced:

> "I had to weigh accepting this outcome versus what might come with a traditional infractions process in an opinion. I laid it all out and gave my opinion, but the call was not mine. I think they made the right choice."

Ex. L, July 23, 2012 email (NCAAJC00001144).[4] There is no doubt that Mr. Marsh understood the issues in play and the choices facing PSU, and advised them accordingly. PSU decided against "roll[ing] the dice," on the "traditional infractions process," and instead accepted the Consent Decree. Ex. M; Ex. K; *see also* Ex. N, July 22, 2012 PSU Executive Committee Notes (PSUCOR00731) at PSUCOR00732 (indicating that the Board was advised that Penn State "[c]ould have turned NCAA ruling down & gone to the Committee on Infractions").[5]

---

[4] *See also* Ex. O, Berst Dep. at 197:23-198:13 ("Q. Is the first time conceptually what became the consent decree was discussed among anyone was when you discussed it as a possibility, regardless of what it was called?... A. I believe that to be the case. It may not have been the first conversation where that would occur. But the idea certainly surfaced in that, in a call with Gene. *And he became very interested in whether there was some possible process that could be quicker than going through what I call, I'm sure I used the word, I have everywhere else, the hard slog of trying to go through infractions.*") (emphasis added).

[5] *See also* Ex. O, Berst Dep. at 208:18-209:11 ("Q. Did you believe that Gene Marsh on behalf of Penn State had the right to reject a proposal that involved executive committee

Messrs. Dunham and Guadagnino were equally aware of the issues and choices facing Penn State and provided their counsel accordingly. As Mr. Marsh explained, "both Frank Guadagnino at Reed Smith and their new general counsel, Steve Dunham, have been just superb in this process – raising all the issues that come naturally to them as great lawyers – and they are great lawyers who have served their client well – but also recognizing that in the end it must be a decision made by the new leadership that weighs many, many factors." Ex. L.

In dealing with the NCAA after the release of the Freeh Report, Penn State assembled a legal team that advised the University on the full spectrum of issues—NCAA rules and infractions process, litigation risk, and collateral issues.

---

consideration and instead opt for the infractions process? A. At every step. And I believe -- I don't know that he could do that unilaterally. His obligation I would expect would be to go back to Erickson or whoever else he was reporting to at the institution and any or all of them could take that step at any juncture. Q. And had that step been taken assuming appropriate authority from president Erickson, would NCAA to your knowledge have honored that request and instead used the traditional infractions process? ...A. I believe that it would have, yes."); See also id. at 263:1-9 ("Q. In Remy's email to Gene Marsh, he writes, ... '[C]communication by David Berst or me did we ever threat the so-called death penalty would be imposed if we did not agree to the consent decree.' Is that a true statement from your perspective? A. That's a true statement."); 212:17-213:1 ("[D]id the words you used to express that sentiment ... that Gene, you are likely to get the death penalty if you go the infractions route or, Gene, it's on the table if you go the infractions route? A. It was probably closer to the latter, that the so-called death penalty comes into play. And there would be those that would advocate for it."); 223:16-23 ("Q. [Y]ou testified that there was discussion about the perceived difficulty of proving a case on the enforcement side. And that was at least Gene Marsh's suggestion to you that there would be problems with that case, right? A. He recognized the same impediments that I did."); 201:19-202:2 ("We [NCAA Staff and Mr. Marsh] talked through all the other options and he said what ifs. Talked about stipulated agreements or the summary disposition and talk about a normal infractions investigation, how that might go, are there, you know, are there those that are motivated to go that way. The answer to that was yes. And are there other options. I think he was just trying to find other options himself, as was I.").

Fully advised, the University leadership "weigh[ed] many, many factors" and made its decision. *Id.* Pennsylvania courts have declined to find duress where a bride who received a pre-nuptial agreement on the day of her wedding day *could* have talked to (but did not) a lawyer before signing. Certainly, therefore, Pennsylvania law does not permit a finding of duress where it is undisputed that one of the largest research institutions in the world has been advised by a team of at least five lawyers with expertise in every area relevant to its decision.

CONCLUSION

For the forcgoing reasons, the Court should enter partial summary judgment on behalf of the NCAA and hold that because Penn State undisputedly consulted with a team of at least five lawyers before executing the Consent Decree, duress is not a viable challenge to the Consent Decree as a matter of law.

Respectfully submitted,

/Thomas W. Scott

Thomas W. Scott (No. 15681)
KILLIAN & GEPHART, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Telephone: (717) 232-1851
Email: tscott@killiangephart.com

Everett C. Johnson, Jr. (*PHV,* DC No. 358446)
J. Scott Ballenger (*PHV*, DC No. 465252)
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004-1304
Telephone: (202) 637-2200
Email: everett.johnson@lw.com

Attorneys for Defendant National

scott.ballenger@lw.com *Collegiate Athletic Association*

Dated: November 13, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document has on this date been forwarded electronically to the individuals listed below:

Matthew H. Haverstick, Esquire
Mark E. Seiberling, Esquire
Andrew K. Garden, Esquire
CONRAD O'BRIEN, PC
1500 Market Street, Centre Square
West Tower, Ste. 3900
Philadelphia, PA 19102-1916
mhaverstick@conradobrien.com
mseiberling@conradobrien.com
agarden@conradorien.com

Joshua J. Voss, Esquire
Stephen C. MacNett, Esquire
CONRAD O'BRIEN, PC
240 North Third Street, 5th Floor
Harrisburg, PA 17101
jvoss@conradobrien.com
smacnett@conradobrien.com

Attorneys for Senator Jake Corman

Victoria S. Madden, Chief Counsel
Department of the Auditor General
224 Finance Building
Harrisburg, PA 17120-0018
VMadden@auditorgen.state.pa.us

Attorneys for Department of Auditor General

Daniel I. Booker, Esquire
Donna M. Doblick, Esquire
Jack B. Cobetto, Esquire
William J. Sheridan, Esquire
REED SMITH, LLP
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222-2716
dbooker@reedsmith.com
jcobetto@reedsmith.com
ddoblick@reedsmith.com
wsheridan@reedsmith.com

Michael T. Scott, Esquire
REED SMITH, LLP
Three Logan Square
1717 Arch Street, Ste, 3100
Philadelphia, PA 19103
mscott@reedsmith.com

Matthew M. Haar, Esquire
SAUL EWING, LLP
2 N. Second Street, 7th Floor
Harrisburg, PA 17101
mhaar@saul.com

Attorneys for the Pennsylvania State University

Christopher B. Craig, Esquire
Craig S. Schwartz, Esquire

Pennsylvania Treasury
Office of Chief Counsel
127 Finance Building
Harrisburg, PA 17120
csschwartz@patreasury.gov
ccraig@patreasury.gov

Attorneys for Treasurer Robert M. McCord

Date: November 13, 2014

/s/ Thomas W. Scott
Thomas W. Scott, Esquire
Attorney I.D. #15681
KILLIAN & GEPHART, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
TEL: (717) 232-1851
FAX: (717) 238-0592
tscott@killiangephart.com

Attorney for Defendant the NCAA

Received 11/13/2014 Commonwealth Court of Pennsylvania

Filed 11/13/2014 Commonwealth Court of Pennsylvania
1 MD 2013

EXHIBIT A

Resolution of the Board of Trustees of The Pennsylvania State University dated August 13, 2014

1. Litigation was initiated in 2013 in the Commonwealth Court of Pennsylvania, Corman v. National Collegiate Athletic Association (the "Litigation"), regarding the enforcement and validity of the Pennsylvania Institution of Higher Education Monetary Penalty Endowment Act (the "Act"). The Litigation seeks as a remedy that, under the terms of the Act, the University should pay to the Commonwealth a $60 million fine imposed on the University by the NCAA in the Consent Decree entered into between the NCAA and the University in July, 2012. Since early in the Litigation, the University has urged the parties to try to reach an amicable settlement. The University has recently been added as a party to this Litigation.

2. A federal court action between the NCAA and certain Commonwealth parties also related to the Act and the $60 million fine is pending in the United States District Court for the Middle District of Pennsylvania. The University is not a party to this litigation.

3. The NCAA and the Commonwealth parties have expressed to the University their interest in settling both the Commonwealth Court Litigation and the federal action. Although the University is not a party in the federal action, the NCAA and the Commonwealth parties have requested the University to participate in the settlement discussions.

4. The parties in the Litigation have had preliminary discussions through counsel but have not reached agreement on any terms. The University understands that in all of the possible settlement scenarios that have been discussed by counsel for the Commonwealth parties, the NCAA and the University, the University would pay the $60 million fine to the Commonwealth under the terms of the Act as requested in the Litigation by the Commonwealth parties. As part of such a settlement, both lawsuits would be dismissed. Pursuant to the terms of the Act and any such settlement, a central term is that the monies would be spent in Pennsylvania to assist victims of child sexual abuse and prevent future child sexual abuse.

5. The University believes such a settlement would advance and support the University's mission and be in the best interest of the University. It would also provide the Commonwealth parties the relief they are requesting in the Litigation. No amendment to the Consent Decree is necessary to achieve such a settlement. Perhaps most importantly, such a settlement would allow the fine money to be put to the purpose for which it was intended, protection of children in Pennsylvania. Such a settlement would be a win for the Commonwealth, a win for the University and a win for the children of Pennsylvania. The University urges the NCAA and the Commonwealth parties to join with it to pursue a settlement on such terms.

6. The full Board of Trustees repeatedly has been briefed on and has discussed legal issues related to the Consent Decree, the Act and the Litigation, including at the Board meetings on May 8-9, 2014. These briefings were updated in a privileged executive session with

the full Board earlier this morning. The University administration welcomes further advice and counsel from the Trustees as to the terms of a possible settlement.

7. The Commonwealth parties have requested that the Board of Trustees consider and express its position on a possible settlement. The Commonwealth parties and the NCAA have also informed the University, through their counsel, of their desire to reach a settlement, if one is possible, by the end of August, 2014. Although action by the Board is not necessary for the University to agree to a settlement of the litigation, nevertheless, to accommodate these requests, the Board has convened this special meeting and adopts this Resolution as a statement of the Board's position.

8. Specifically, the Board would support a settlement in which the University, acting through its President, pursuant to his duly authorized and delegated authority under the University's governing documents, agrees that the $60 million fine would be paid to the Commonwealth in compliance with the Act and with the Consent Decree for distribution in Pennsylvania for the benefit of Pennsylvania children. For the past two years, the University, with appropriate vigor, has complied with the terms of the Consent Decree, and the University remains committed to full compliance with the Consent Decree as amended from time to time. Any settlement should be consistent with this commitment.

EXHIBIT B

PENNSTATE

Meetings of the Board of Trustees August 13, 2014

Minutes

280-1

MINUTES OF MEETING

BOARD OF TRUSTEES

VOLUME 280

August 13, 2014

A special meeting of the Board of Trustees was held telephonically on Wednesday, August 13, 2014, beginning at 8:48 a.m.

The following Trustees were present: Masser (chairman), Casey (vice chairman), Barron, Benson, Brown, Cotner, Dambly, Dandrea, Doran, Eckel, Ferretti, Frazier, Goldstein, Greig, Harpster, Hintz, Huber, Jubelirer, Lord, Lubrano, McCombie, Mead, Oldsey, Peetz, Pope, Rakowich, Rucci, Shaffer, and Taliaferro.

Also present by invitation were staff members Dunham, Guadagnino, and Poole.

Chairman Keith Masser's opening remarks are included as follows:

> "The Board met this morning in executive session to discuss this matter in a privileged session with our general counsel and outside counsel. The sole subject of the meeting today is to discuss a possible settlement of the litigation between the NCAA and certain Commonwealth parties related to the $60-million fine in the NCAA Consent Decree.
>
> "The University is a party in one of the two cases between the NCAA and the Commonwealth parties. We have convened a special meeting because the parties have asked for the Board's position in the settlement discussions. We distributed a draft resolution late yesterday that provides further background.
>
> "Let me say at the outset that there is no agreement on the terms of a possible settlement. I invite the Trustees to provide any advice and counsel on what those terms should be. Let me note that we all, including the Trustee plaintiffs in the Paterno case, have in the meetings been appropriately sensitive to conflict issues that are presented by participation of those plaintiff Trustees in any Board action that relates to the University's position or in defense of the Paterno litigation. The resolution we have in front of us as to the Corman lawsuit has no connection to the Paterno litigation, which continues unaffected by this resolution. If we were to go into any Board action that relates to the issues in the Paterno litigation, then a vote on any such action by the plaintiff Trustees would raise issues of a conflict of interest.
>
> "We are now ready to proceed with the public deliberations of a proposed resolution. A draft of the resolution was sent to all members of the Board yesterday afternoon. For the convenience of the public and the media, the text of the draft resolution is available on the University's website at http://www.psu.edu/trustees/agenda/scheduleaugust132014.html
>
> "A possible settlement in the Endowment Act litigation has been discussed in the Legal Subcommittee, so I call on Rick Dandrea, as Chair of the Subcommittee, to make a brief introduction and move the resolution. After we have a second, we will open it up for discussion by any Trustee.

Trustee Anthony Lubrano called for a point of order, asking if Trustees would have an opportunity to present a resolution. Chairman Masser confirmed that a motion would be put on the floor, and that the discussion, at this public meeting, would be limited to the aforementioned motion and that amendments or substitutes could be introduced provided they were germane to the subject. Chairman Masser gave the floor to Trustee Rick Dandrea, Chair of the Legal Subcommittee.

Trustee Dandrea's remarks are included as follows:

"Pennsylvania Senator Jake Corman and Treasurer Rod McCord have filed a lawsuit against the NCAA that relates to the $60-million fine that is part of the NCAA Consent Decree. The parties to the lawsuit have had preliminary settlement discussions, and the Commonwealth parties have asked for an expression of the Board's position on a possible settlement. That's the reason that we convened this special meeting on short notice today.

"The resolution distributed to the Board yesterday basically expresses two positions: first, the resolution endorses settling on terms that would result in payment of the $60-million fine to the Commonwealth for distribution in Pennsylvania for the benefit of Pennsylvania children. Secondly, the resolution provides that any settlement should be consistent with the University's continuing commitment to full compliance with the Consent Decree.

"And with that introduction, I move that the Board adopt the resolution before us:"

1. Litigation was initiated in 2013 in the Commonwealth Court of Pennsylvania, Corman v. National Collegiate Athletic Association (the "Litigation"), regarding the enforcement and validity of the Pennsylvania Institution of Higher Education Monetary Penalty Endowment Act (the "Act"). The Litigation seeks as a remedy that, under the terms of the Act, the University should pay to the Commonwealth a $60 million fine imposed on the University by the NCAA in the Consent Decree entered into between the NCAA and the University in July, 2012. Since early in the Litigation, the University has urged the parties to try to reach an amicable settlement. The University has recently been added as a party to this Litigation.

2. A federal court action between the NCAA and certain Commonwealth parties also related to the Act and the $60 million fine is pending in the United States District Court for the Middle District of Pennsylvania. The University is not a party to this litigation.

3. The NCAA and the Commonwealth parties have expressed to the University their interest in settling both the Commonwealth Court Litigation and the federal action. Although the University is not a party in the federal action, the NCAA and the Commonwealth parties have requested the University to participate in the settlement discussions.

4. The parties in the Litigation have had preliminary discussions through counsel but have not reached agreement on any terms. The University understands that in all of the possible settlement scenarios that have been discussed by counsel for the Commonwealth parties, the NCAA and the University, the University would pay the $60 million fine to the Commonwealth under the terms of the Act as requested in the Litigation by the Commonwealth parties. As part of such a settlement, both lawsuits would be dismissed. Pursuant to the terms of the Act and any such settlement, a central term is that the monies would be spent in Pennsylvania to assist victims of child sexual abuse and prevent future child sexual abuse.

5. The University believes such a settlement would advance and support the University's mission and be in the best interest of the University. It would also provide the Commonwealth parties the relief they are requesting in the Litigation. No amendment to the Consent Decree is necessary to achieve such a settlement. Perhaps most importantly, such a settlement would allow the fine money to be put to the purpose for which it was intended, protection of children in Pennsylvania. Such a settlement would be a win for the Commonwealth, a win for the University and a win for the children of Pennsylvania. The University urges the NCAA and the Commonwealth parties to join with it to pursue a settlement on such terms.

6. The full Board of Trustees repeatedly has been briefed on and has discussed legal issues related to the Consent Decree, the Act and the Litigation, including at the Board meetings on May 8-9, 2014. These briefings were updated in a privileged executive session with the full Board earlier this morning. The University administration welcomes further advice and counsel from the Trustees as to the terms of a possible settlement.

7. The Commonwealth parties have requested that the Board of Trustees consider and express its position on a possible settlement. The Commonwealth parties and the NCAA have also informed the University, through their counsel, of their desire to reach a settlement, if one is possible, by the end of August, 2014. Although action by the Board is not necessary for the University to agree to a settlement of the litigation, nevertheless, to accommodate these requests, the Board has convened this special meeting and adopts this Resolution as a statement of the Board's position.

8. Specifically, the Board would support a settlement in which the University, acting through its President, pursuant to his duly authorized and delegated authority under the University's governing documents, agrees that the $60 million fine would be paid to the Commonwealth in compliance with the Act and with the Consent Decree for distribution in Pennsylvania for the benefit of Pennsylvania children. For the past two years, the University, with appropriate vigor, has complied with the terms of the Consent Decree, and the University remains committed to full compliance with the Consent Decree as amended from time to time. Any settlement should be consistent with this commitment.

A motion to approve the foregoing resolution was seconded by Trustee Karen Peetz.

Trustee Lubrano cited concerns about paragraph 8 of the resolution, which he read aloud, and requested that the motion be tabled in order to provide the Trustees an opportunity to have sufficient time to review and deliberate the terms of the resolution with regard to the Board's acceptance of the Consent Decree. Trustee Lord requested that Trustee Ryan McCombie be permitted to read into the record comments related to issues that should be recognized by the Board with respect to the acceptance of the resolution.

Trustee McCombie read aloud the following comments:

"Whereas, litigation initiated in 2013 in the Commonwealth Court Of Pennsylvania, Corman et al. vs. the National Collegiate Athletic Association, the litigation, to determine that under the terms of the Higher Education Monetary Penalty Endowment Act, the Act, the $60-million fine imposed on the University by the NCAA pursuant by the July 2012 Consent Decree must be paid to the Commonwealth.

"Whereas, after disputed issues of fact arose regarding the validity of the Consent Decree that underlines all the other issues in the litigation, the Court ordered that the University be added as party to protect the University's interest in that regard;

"Whereas, the parties in the litigation have had preliminary discussion, through counsel, but have not reached agreement on any terms;

"Whereas, a Federal Court action between the NCAA and certain Commonwealth parties also related to the Act is pending in the United States District Court for the Middle District of Pennsylvania, although the University is not a party in the federal action, the NCAA and the Commonwealth parties have requested the University to participate in the settlement discussions intended to achieve a global resolution in the litigation and the federal action;

"Whereas, the Commonwealth parties have requested that the Board of Trustees consider and express its position on a possible settlement;

"Whereas, no meaningful discovery has yet occurred in the litigation, the University has not yet fulfilled its obligation, and the mandate for the Pennsylvania Commonwealth Court of Appeals to resolve disputed factual issues regarding the validity of the Consent Decree, including, for example: Was the Freeh Report accepted or discussed by the Board? If yes, was it done in a public meeting or in executive discussion? Was it discussed or accepted by the full Board or by the Executive Committee? Who specifically crafted the Consent Decree? Was a Consent Decree discussed or accepted by the Board? If yes, was it done in a public meeting or an executive session? Was it discussed or accepted by the full Board or by the Executive Committee? Did the general counsel advise the Board to accept the Consent Decree? Did the general counsel advise the Board to accept the Freeh Report? What were the substance of the communications between and among Louis Freeh, Freeh Sporkin & Sullivan, and the NCAA? Has the Board seen all such communication? Did the Board see those communications prior to agreeing to a Consent Decree?;

"Whereas, the Board would support a settlement in which the University agrees that provided the Consent Decree is voided in its entirety, and agreement is put in place that recognizes the legal and factual defects as a Consent Decree as set forth below, a $60-million fine would be paid to the Commonwealth in compliance with the Act?;

"It is, therefore, resolved that the University should pursue a settlement of the litigation that, A., acknowledges the insufficiency of the Freeh Report for purposes of the Consent Decree. All remaining sanctions imposed on the University by the NCAA, returns penalty funds paid into escrow by the University and rescinds further obligation under that penalty; authorizes and requests that, consistent with the University's commitment to transparency, NCAA to release all of its communications between and among the University, Freeh Sporkin & Sullivan, the Freeh Group, and/or Louis Freeh; acknowledges Jerry Sandusky's sole responsibility for the crimes he committed; acknowledges the NCAA accepted and publicize the University's acceptance of the Consent Decree, notwithstanding the fact that the NCAA knew that the University Board of Trustees had not yet conducted a vote regarding its validity; acknowledges and regrets

crimes committed on this University property; acknowledges settlements made with victims and University's compassion by those harmed by its former employee, Jerry Sandusky; agrees the University will not pursue the NCAA for tens of millions of dollars of forgone revenue caused by the sanctions imposed on the University more than two years ago; recommends that the Commonwealth acknowledges this and further agree to forego any further litigation against the NCAA with respect to the Consent Decree's validity; and recognizes that parties forego further action against signers of the Consent Decree except as set forth in this agreement."

Chair Masser stated that the motion, in its current form, is the resolution intact.

Trustee Robert Jubelirer stated that this is the first time that the Board of Trustees has had to review the consent agreement, and that he believes that much more time is required to do so. He moved that paragraph 8 of the resolution be deleted and asked for a roll call vote. A second was provided by Trustee Oldsey.

Trustee Allison Goldstein asked if the Chairman would honor the opportunity for some discussion to occur prior to taking the vote. She further stated that the removal of the final two sentences would satisfy the suggested objective. Trustee Jubelirer concurred, and agreed to amend his motion to delete only the last two sentences of paragraph 8. Trustee Oldsey seconded the amended motion. Trustee Kathleen Casey stated that the removal of language in paragraph 8 would suggest that we are backing away from the continued commitment to full compliance with the consent agreement.

Chairman Masser called for a roll call vote on the removal of the last two sentences of resolution paragraph 8 as proposed by Trustee Jubelirer. The vote to amend the original resolution was defeated, 8-18. Two Trustees abstained.

Chairman Masser called for a roll call vote on the resolution as it was originally presented. The vote to accept the original resolution passed, 19-8. Two Trustees abstained.

The meeting adjourned at 9:53 a.m.

Respectfully submitted,

Janine S. Andrews
Associate Secretary,
Board of Trustees

EXHIBIT C

StephenS.Dunham

Vice President and General Counsel

Office of General Counsel
The Pennsylvania State University
227 West Beaver Avenue
Suite 507
State College, PA16801

Email: ssd13@psu.edu

Office Phone: (814) 867-4088
Download as vCard

Biography:

Stephen S. Dunham

Mr. Dunham received his B.A. degree from Princeton University in 1966 and a J.D. from Yale Law School in 1969, where he was a member of the *Yale Law Journal* and graduated Order of the Coif.

Following his graduation from law school, Mr. Dunham served as a law clerk to United States District Court Judge Stanley A. Weigel in San Francisco and taught as a law professor at the University of California, Davis School of Law and in Taiwan. In 1972, Mr. Dunham joined Morrison & Foerster in San Francisco where his practice focused on commercial litigation. He became a partner in 1976. In 1979, Mr. Dunham joined the faculty of the University of Minnesota Law School. At Minnesota, Mr. Dunham taught courses in contracts, trial practice, complex litigation, and higher education law. From 1982 to 1988, Mr. Dunham was also General Counsel of the University (Vice President and General Counsel from 1985 to 1988).

Mr. Dunham returned to Morrison & Foerster as a litigation partner in the Denver office in 1988. In addition to his litigation and counseling practice, Mr. Dunham served as a firmwide managing Partner of Morrison & Foerster from 1990 to 1992, and as Chair of the firm from 1996 to 2000.

From December 2005 until July 2012, Mr. Dunham served as Vice President and General Counsel of The Johns Hopkins University. He was appointed Vice President and General Counsel at Penn State in July 2012.

Mr. Dunham is a member of the California, Minnesota, and Colorado bars (inactive), the Maryland Bar, and the Pennsylvania Bar (Limited In-House Counsel License). He has taught courses in Professional Responsibility and Federal Jurisdiction at the University of Denver College of Law. He has been Chair of the California State Bar Special Committee on Pro Bono Legal Services, a member of the Board of Directors and a Fellow of the National Association of College and University Attorneys, Co-Chair of the San Francisco Bar Association Committee on Quality of Life, a member of the California State Bar Committee on Women in the Law, a member of the Board of Directors and Chair of the Executive Committee of the Colorado lawyers' Committee, a member of the American law Institute, a member of the Board of Directors of the American Judicature Society, a member of the Board of Visitors for J. Reuben Clark Law School, Brigham Young University, a member of the Board of Trustees for Mills College (1994-2003), Chair of the Board of Trustees for Soka University of America, a member of the ALI-ABA Committee on Continuing Professional Education, and an instructor at various state and national programs of continuing legal education.

EXHIBIT D

jackson lewis
all we do is work

GENE A. MARSH
Of Counsel

First Commercial Bank Building800 Shades Creek Parkway, Suite 870 Birmingham, AL 35209P: (205) 332-3100F: (205) 332-3131

Birmingham office

Gene A. Marsh is Of Counsel in the Birmingham, Alabama office of Jackson Lewis P.C.

Mr. Marsh has focused on collegiate sports work since 1996, with an emphasis on NCAA compliance matters relating to college athletics programs. He represents institutions, coaches and athletes.

Mr. Marsh, a Professor Emeritus at the University of Alabama's School of Law, was the University of Alabama Faculty Athletics Representative to the Southeastern Conference and the NCAA from 1996 through 2003, where he served as Chair of the University Compliance Committee, the University Committee on Intercollegiate Athletics and the NCAA Certification Committee and Self-Study Project.

Mr. Marsh was a member of the NCAA Division I Committee on Infractions from 1999 through 2008 and was named Chair of the Committee on Infractions from 2004 to 2006. He was also a member of the NCAA Business/Finance Cabinet and the NCAA Ad Hoc Committee on Financial Penalties and Forfeitures and served on an NCAA subcommittee reviewing infractions penalties. He was a member of the Working Group of the Six Major Athletic Conferences and served on the Working Group Subcommittee on Incentive Clauses in Employment Contracts. Mr. Marsh has also served on several committees for the Southeastern Conference, including work on the Executive Committee, the Task Force on Compliance and Enforcement, and the Commissioner Search Advisory Committee.

Mr. Marsh has published two law review articles on NCAA investigations and the infractions process. He is a frequent speaker on college campuses in undergraduate and law school classes, as well as athletic compliance meetings. He has made presentations for NCAA regional compliance seminars, the National Association of Collegiate Directors of Athletics, the Faculty Athletics Representative Fall Forum, the Knight Commission on Intercollegiate Athletics, Street and Smith's Intercollegiate Athletics Forum, the Sports Lawyers Association, the National Association of College and University Attorneys, and the National Association for Athletics Compliance.

Mr. Marsh received his B.S. and M.S. from Ohio State University (1978) and his J.D. from Washington and Lee University (1981). He served three years in the U. S. Army Infantry with the Presidential Honor Guard at Fort Myer in Arlington, Virginia.

---

practices

Collegiate and Professional Sports

---

education

Washington and Lee University School of Law

J.D., 1981

Ohio State University

B.S. / M.S., 1978

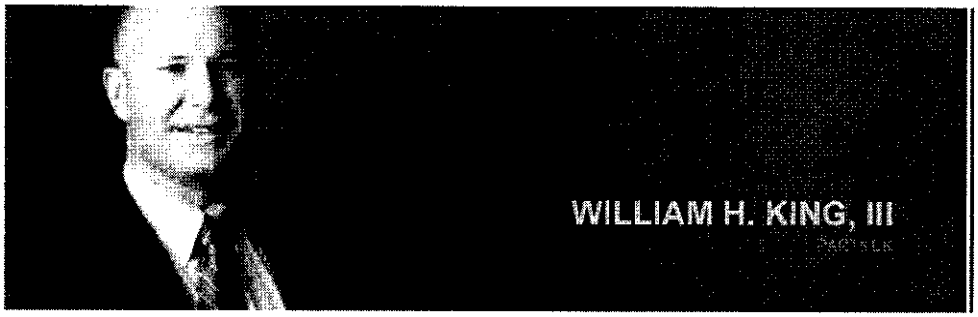
---

admitted to practice

Alabama

1981

EXHIBIT E



Find an Attorney

List all Alphabetically
Find By Practice Area

Recently Viewed

William H. King, III

PRACTICE AREAS

NCAA Compliance and Investigations
Business Litigation
Employment Law
Personal Injury

EDUCATION

B.A., Washington and Lee University, 1986 *magna cum laude*

J.D., Vanderbilt University Law School, 1989 *The Order of the Coif*

ADMITTED

Alabama, 1989

William was the first attorney "hired" by the firm, starting February 1, 1990, two weeks after the firm was formed. An avid college sports fan, William has incorporated this interest into his daily law practice on an expanding basis. William has represented universities from the Southeastern, Atlantic Coast, Big 10, Big 12, and Pacific 12 Conferences. He has also represented and consulted with collegiate coaches and administrators in NCAA-compliance matters over the past decade.

In the past decade, William's practice in the area of NCAA compliance has taken off. William has handled dozens of investigations involving NCAA compliance issues and has appeared numerous times before the Committee on Infractions. He has worked extensively and regularly with the NCAA Enforcement Staff on many different issues and has gained the reputation of being honest, thorough and effective in representing his clients. In addition to NCAA compliance work, William also has extensive experience in drafting contracts for head coaches and assistant coaches in revenue sports and regularly provides advice and representation in employment-related issues.

William is a frequent speaker on compliance issues and since 2008 has spoken at the Southeastern Conference annual meeting and on campus at Auburn, Southern California, West Virginia, LSU, Tennessee, Alabama, Georgia, Kentucky, Memphis, Vanderbilt, Ole Miss, Troy and UAB.

The other primary area of William's practice is employment law. He has successfully defended employers in employment-related issues in both state and federal courts for more than two decades. The focus of this work has been defending federal employment discrimination suits and claims in court and before the EEOC. He also has extensive experience in state law employment issues such as retaliatory discharge claims and joint employment issues.

In addition to collegiate sports and employment law, William also handles business, consumer fraud and personal injury matters for an array of clients.

William has been a member of the Alabama Bar since 1989. Prior to joining the firm, he was a judicial clerk for the Honorable Robert S. Vance on the U.S. Court of Appeals for the Eleventh Circuit. He has been recognized in the 2008, 2009, and 2010 editions of *Alabama Super Lawyers* for his Entertainment and Sports work, and in the 2007 "Best of the Bar" edition of the Birmingham Business Journal for his Employment work.

William's interests outside work are his family and his church. He and his wife have three children, and his family is active in their

Direct Dial:
205-581-0746

Email:
[redacted]

Fax:
205-380-9146

Send VCard

NEWS

about William

Thirty-Three Lightfoot Attorneys Recognized by Super Lawyers
William King Speaks at NACDA Symposium
William Key Speaks at Professional Sports Law Symposium
Lightfoot Announces Partner Additions in Atlanta, Boston
Lightfoot Attorneys Partners Ranked in 2014 Super Lawyers

Lightfoot, Franklin & White, LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203
205-581-0700 (phone)
205-581-0799 (facsimile)

church. William has served as senior warden at his church twice, taught a senior high Sunday school class and was a member of his church's pastor search committee. He and his family are active in local charities for the homeless.

EXHIBIT F

FrankT. Guadagnino

Associate General Counsel

Office of General Counsel
The Pennsylvania State University
108 Old Main
University Park, PA16802

Email: ftg2@psu.edu

Office Phone: (814) 867-4088
Download as vCard

Biography:

Frank T. Guadagnino is Associate General Counsel at The Pennsylvania State University ("University"). Prior to joining the Office of General Counsel, Frank was a senior partner in the Financial Services Group at Reed Smith LLP in Pittsburgh, Pennsylvania. For over 30 years, Frank's practice has concentrated on corporate transactional matters, including mergers and acquisitions, financing transactions and general corporate matters. In addition to representing the University, Frank has represented clients in the financial services industry, professional sports, restaurants, and manufacturers. Frank served for more than a decade as counsel to Reed Smith in connection with its combinations with several national and international law firms and in connection with its banking and financing arrangements.

Frank received his B.S. in Marketing from The Pennsylvania State University and his J.D., *cum laude*, from The University of Pittsburgh School of Law, where he was a Symposium Editor of the Law Review.

Frank is a former member of the Board of Trustees of the Pittsburgh Public Theatre and the YMCA of Greater Pittsburgh.

EXHIBIT G

Saul Ewing LLP

Joseph F. O'Dea, Jr.
Partner

Philadelphia
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA
19102-2186

T: (215) 972-7109
F: (215) 972-1877
Email vCard

Joe O'Dea is the chair of Saul Ewing's Commercial Litigation Practice. A Princeton University educated civil engineer, Joe has almost 25 years of experience representing clients in high exposure commercial litigation matters.

Joe has worked extensively for several of the nation's largest defense/aerospace companies. He has led teams of professionals in numerous other complex civil litigation matters, including currently serving as national coordinating counsel for a Pennsylvania-based global manufacturer in products liability litigation.

Joe was recently engaged by a global security and technology company to represent it in a high exposure litigation pending in the Court of Chancery in Delaware. He also recently defended a national facilities maintenance company in a three week trial in the Commerce Program of the Philadelphia Court of Common Pleas. Joe has represented many other companies in various industries in complex commercial litigation over his career. Other representative cases include serving as lead counsel for the nation's leading horticultural products manufacturer in a seven year litigation involving claims of breach of a distributorship agreement, an asset purchase agreement, and an agreement of sale and antitrust violations. Joe also has served for decades as lead counsel for one of the nation's largest environmental services company in litigation pending throughout the northeastern United States.

More About Joseph F. O'Dea, Jr.'s Experience In The Following Areas

- White Collar and Government Enforcement

News

Trouble on Campus symposia offers higher education clients guidance on crisis management
October 22, 2014

Saul Ewing named a "Pennsylvania Powerhouse" by Law360
June 30, 2014

Diversity Marks Area's Public Companies
May 20, 2004

Events

Trouble on Campus: Playbook for Government Investigations and Crisis Management

O'Dea to speak on in-house counsel privilege at DELVACCA conference

Saul Ewing heads west for ACC's 2013 Annual Meeting

Law Practice Management Section's Marketing & Technology Fall Meeting

Association of Corporate Counsel's 2012 Annual Meeting

DELVACCA program: More Than Just Cod Air - Hot Topics for U.S. Companies Doing Business in Canada

DELVACCA Ethics and Compliance Institute

Areas of Practice

Business and Finance

Commercial Litigation

Energy, Environment and Utilities

Environment and Natural Resources

Government Contracts

Higher Education

Life Sciences

White Collar and Government Enforcement

Industries

Life Sciences

Firm Management Positions

Commercial Litigation, Chair

Honors and Awards

Named a "State Litigation Star" in Pennsylvania by *Benchmark Litigation*, 2011 to present

Recipient, First Judicial District's Roll of Honor, First Judicial District's Pro Bono Committee, 2007

Named one of "America's Leading Lawyers in Environmental and Litigation Law," 2005-2006, and "Commercial Litigation Law," 2007 to present, by *Chambers USA*

Selected for inclusion in Pennsylvania *Super Lawyers*, 2004 to present

Distinguished Service Award, *Villanova Law Review*

Association of Corporate Counsel's 2010 Annual Meeting

DELVACCA In-House Counsel Conference

Association of Corporate Counsel's 2009 Annual Meeting

An Ebbing Tide May Sink All Your Boats: Minimizing the Threat of and Defending Veil Piercing

Association of Corporate Counsel's 2008 Annual Meeting

Villanova Law Minority Alumni Society's Roundtable Discussion

Minority Corporate Counsel Association Northeast Region Diversity Dinner

Law Practice Management Section's Marketing & Technology Fall Meeting

Press Releases

Saul Ewing LLP And 16 of the Firm's Attorneys Recognized in Benchmark Litigation 2015

15 Saul Ewing Partners Named 2014 Pennsylvania Super Lawyers; Eight Attorneys Named "Rising Stars"

Thirty-Three Saul Ewing Attorneys Recognized for Excellence

Twenty-Nine Saul Ewing Partners Recognized for Excellence

Benchmark Nominates Saul Ewing for Diversity Award and Maryland Firm of the Year; Saul Ewing Offices in Four States And Nine Attorneys Included in Litigation Guide

28 Saul Ewing Attorneys Recognized for Excellence by Chambers USA 2012

Ten Saul Ewing Attorneys in Five Markets Recognized in Benchmark Litigation 2012

Twenty-Five Saul Ewing Partners Recognized for Excellence

22 Saul Ewing Attorneys Recognized for Excellence by Chambers USA

Saul Ewing LLP Partner Named to Firm's Executive Committee

Alerts & Newsletters

Government Enforcement Litigation Newsletter, 1st Quarter 2006

Articles

Wherever the Evidence Leads
May 31, 2004

Thinking Ahead: Diversity Initiatives at Saul Ewing LLP
February 1, 2004

Tools

Meet Our Construction and Government Contracts Attorneys

10 Steps to Take When Government Agents Knock on the Company's Door

Memberships and Affiliations

Member, American Bar Association

Member, Pennsylvania Bar Association

Member, Philadelphia Bar Association

Education

J.D., Villanova University School of Law, 1986

B.S., Civil Engineering, Princeton University, 1982

Bar Admission(s)

Pennsylvania

Clerkships

Judge Joseph L. McGlynn, Jr., U.S. District Court for the Eastern District of Pennsylvania

EXHIBIT H

Message

From: Gene Marsh [redacted]
Sent: 7/18/2012 3:43:54 PM
To: Remy, Donald [redacted]; Berst, David [redacted]
Subject: Update

Donald and David-

I just got off the phone with Pres. Erickson, PSU lawyers, etc. I gave him a full briefing, a lot of which he had heard in his discussion with Mark Emmert last evening. It was a very constructive and good call with Pres. Erickson just now. He said to tell you he is fully invested in the process and that I have his full support in and authority in going forward.

So can we get on the phone again? ASAP. You say when.

Gene M.

LIGHTFOOT

Gene Marsh

[redacted]

EXHIBIT I

Message

From: Gene Marsh [redacted]
Sent: 7/19/2012 1:30:04 AM
To: Remy, Donald [redacted] Berst, David [redacted]
Subject: PSU Update

Donald and David-

My conference call today with Pres. Erickson and the other folks involved was very positive and encouraging. I think we will very quickly get to a point where PSU agrees with the ideas that have been put forward - perhaps with a little windage, but not much - so that Mark Emmert will be able to make a presentation to the NCAA Board that can be defended.

Later tonight or in the morning I will send out to you two an agenda for what I would like to talk through tomorrow. Pres. Erickson clearly understands Penn State's position and I gave them my take on what they should do.

Given the recent criticism regarding the Penn State board being too passive and not adequately informed, he will need to have a good plan to air these ideas while trying to maintain confidentiality - not an easy thing to do - but it must be done.

I look forward to getting your input and thoughts tomorrow.

Gene

LIGHTFOOT

Gene Marsh
[redacted]

EXHIBIT J

Message

From: Remy, Donald [redacted]

Sent: 7/20/2012 2:26:54 AM

To: Mark Emmert [redacted] Williams, Bob [redacted]

Subject: Fwd: Update

FYI

Sent from my iPhone

Begin forwarded message:

From: Gene Marsh [redacted]

Date: July 19, 2012 8:20:06 PM EDT

To: "Remy, Donald" [redacted] "Berst, David" [redacted]

Subject: Update

I hope that when this thing gets to a public announcement, Mark Emmert will clearly describe the strength of feeling on the board regarding the possible application of the death penalty etc., and point out that the actions of Penn State in hiring Freeh and on the corrective side were fully considered ... along with some of the other factors we discussed.

In bringing the "community" along in buying in to this - way beyond Penn State - folks need to have that understanding. And the folks who are trying to do things right deserve and are due that clear explanation.

LIGHTFOOT

Gene Marsh

[redacted]

EXHIBIT K

Message

From: Gene Marsh [redacted]
Sent: 7/19/2012 8:04:32 PM
To: Remy, Donald [redacted]
CC: Berst, David [redacted]
Subject: RE: One more thing

I just checked -the call tonight is not on the NCAA matter. That was a miscommunication.

What PSU would like to have weighed in this discussion in light of today's information -

1. PSU commissioned the Freeh Report. The Board made that move. there were no limits to the inquiry.

2. PSU accepts the Freeh Report and will implement all recommendations.

3. The individuals at the center of this problem are no longer at PSU.

4. Can we discuss the issue of the post season ban and $60 million before you send a draft with numbers attached? The school needs to be able to assess the finances.

5. Separate from the horrible criminal acts, the overriding them of the Freeh Report is CULTURE

a. PSU has embraced all the recommendations of the Freeh Report re culture.

b. PSU will embrace every recommendation coming out of the Integrity Agreement - which is a process aimed at the culture.

Thank you for your consideration of these.

Gene

[redacted]

[redacted]

From: Remy, Donald [redacted]
Sent: Thursday, July 19, 2012 2:28 PM
To: Gene Marsh
Cc: Berst, David
Subject: Re: One more thing

What time is your board call tonight?

Sent from my iPhone

On Jul 19, 2012, at 2:15 PM, "Gene Marsh" <[redacted]>> wrote:

These are just my own views. Just mine. And they are staying inside my head.

It is fair that PSU would pay a heavy price. It is not fair that folks on the NCAA board would try to reform college athletics through one case. It's starting to feel like that. David - you know I am not wimpy on penalties and the ramifications of folks losing their ethic and priorities. My family and I paid a dear price for that back in time - carrying the NCAA banner. I paid a personal and professional price - and so did my family. It still follows me around here in Tuscaloosa.

How many institutions represented on the NCAA board could stand scrutiny on whether athletics is the tail wagging the dog?

Have people lost sight of the fact that PSU will be paying out tens of millions of dollars to the victims? How can people go from 30 million to 60 million in 48 hours?

This is just my own personal rant - and so is this - at some point an institution may be better off under a traditional infractions process. But that is just inside my head and going nowhere else for now.

I will relay the info to PSU.

<lfwlogo>

Gene Marsh

[redacted]

http://www.lightfootlaw.com<http://www.lightfootlaw.com/>

From: Remy, Donald [redacted]
Sent: Thursday, July 19, 2012 12:41 PM
To: Gene Marsh
Cc: Berst, David
Subject: One more thing

Gene –

I apologize, but I neglected to mention on additional penalty:

Vacation of football wins from 1998 forward

Donald M. Remy | Executive Vice President & General Counsel
[redacted]

"The pursuit of excellence in both academics and athletics"

<image001.png>

EXHIBIT L

Message

From: Gene Marsh [redacted]
Sent: 7/23/2012 2:43:26 PM
To: Berst, David [redacted]
CC: Remy, Donald [redacted]
Subject: RE: NCAA PRESS CONFERENCE

David -

Mark's statements regarding Erickson were good. The most helpful part was saying that were the death penalty to be imposed, there also would have been additional penalties. I believed that to be the case from the start. The comments re Erickson were also terrific.

I appreciate your comments very much. I have not slept much in the past week, but hope to now ... but not right now.

The hardest part of this has been talking on behalf of several lawyers - including my partner and great friend, William - who come at things from an entirely different perspective. But both Frank Guadagnino at Reed Smith and their new general counsel, Steve Dunham, have been just superb in this process - raising all the issues that come naturally to them as great lawyers - and they are great lawyers who have served their client well - but also recognizing that in the end it must be a decision made by the new leadership that weighs many, many factors.

I had to weigh accepting this outcome versus what might come with a traditional infractions process in an opinion. I laid it all out and gave my opinion, but the call was not mine. I think they made the right choice.

There will be caustic critics and experts on "due process" etc. I'll get tagged I am sure, but I could truly care less. Truly. Folks who comment from the outside are all hat and no cattle.

Long ago - in the Alabama case - I learned to decide what is important to me ethically and stay right there intellectually. No matter what the noise.

That experience served me well this week, in talking this through with the people I dealt with.

I might fly to Indy on my own dime to talk about this - the big picture of this process - absolutely not specifics as to Penn State.

I hope Penn State will continue to involve me in this process as we move forward, but now is not the time to raise that. I think I can help them - truly.

At let me note that Donald Remy has been absolutely terrific this week. Most importantly, he understood what it was to be on the other side of this as a lawyer.

I remain so sorry for Penn State. So many folks paying a heavy price for the inaction of others. Having spent 28 years on a campus makes me even more sensitive to how this lands on people.

Best regards,

Gene

From: Berst, David [redacted]
Sent: Monday, July 23, 2012 9:17 AM
To: Gene Marsh
Subject: RE: NCAA PRESS CONFERENCE

Gene,

Very much appreciated and your work has been exemplary in a very difficult time. I was worried that it was not clear enough early, but I think Mark hit on it well in Q's and A's.

Best,

Dave

From: Gene Marsh [redacted]
Sent: Monday, July 23, 2012 9:48 AM
To: Berst, David
Subject: NCAA PRESS CONFERENCE

David-

Just ME talking - I think the comments in the press conference are fair and supportive of the new leadership at Penn State - which was appropriate. I have been impressed with Dr. Erickson this week. He is in a hugely difficult position and has handled it as well as anyone could.

Gene M.

LIGHTFOOT

LIGHTFOOT, FRANKLIN, WHITE, LLC

Gene Marsh

[redacted]

EXHIBIT M

Message

From: Remy, Donald [redacted]

Sent: 9/7/2012 3:44:04 PM

To: Gene Marsh [redacted]

CC: Berst, David [redacted]

Subject: Ed Ray E-mails

Importance: High

Gene --

As you know, I have been flying most of the last two days and so I am taking the time to write you this message that I can send when I land. I understand your frustration that this issue continues to arise, and as you know we have previously spoken with President Ray about communications regarding it. While I have not yet confirmed that these e-mails actually came from President Ray or when they were sent, I would like to make a few points in response to your e-mails. Indeed, I think that it is important for you and me to clear the air.

First, it is my view that this ongoing dialogue would never have occurred had it not been for Penn State and its counsel discussing the process in a way designed to gain favor with its constituencies and the fact that current members of the Penn State Board of Trustees are encouraging (without any apparent restraint) that critical letters be written to the NCAA and President Ray. Second, the reporter who forwarded the e-mail to President Erickson – like reporters before him -- appears to intentionally mischaracterize any interview given by President Ray, as well as the e-mail that purports to be from President Ray. Third, as I have discussed with you before, the statements made by President Emmert were designed to assist Penn State with the story it was publicly communicating at the time. In any event, they were consistent with comments made by President Ray and comments made by President Emmert previously, but the media and others chose to distort and misconstrue them. Fourth, whether or not the e-mail is from President Ray, based upon information with which I am familiar I do not find the e-mail to be inaccurate, although it may be incomplete in terms of details about the first Executive Committee meeting. I am not aware, however, of who (NCAA or Penn State) first introduced the notion of an alternative mechanism to resolve quickly issues raised by the Freeh Report, but I do know that it was an idea that all considered preferable. Fifth, in NO communication by David Berst or me did we ever threaten that the so-called death penalty would be imposed if Penn State did not agree to the consent decree. In fact, the voice-mail from David Berst specifically supports that fact. Nor did I ever communicate that a multiple year death penalty was planning to be imposed. Any assertion to the contrary is flat out false. We did tell you after the Executive Committee call on July 17, 2012 that a majority of the Board members favored stronger penalties, and that same majority favored the death penalty. That is not an overstatement or overselling. On that same call with you, me and David, we explained how the death penalty was not solely reserved for repeat offenders and how if we did not utilize this alternate process we believed that an enforcement and infractions process – while "a long hard slog" -- could likely result in the death penalty being imposed. In a subsequent call we informed you that it was Penn State's cooperation and transparency that encouraged members of the executive committee to forego the pursuit of a stop in play. You, me, and David spoke a couple of times thereafter and based upon your advocacy those discussions resulted in some changes to the penalties and the direction (i.e., change from 5 year post season ban to 4 year post season ban, change in the implementation timeframe of the grant in aid reduction). Further, as you know, there were several modifications to the draft consent decree made at your request before it was finalized. As the e-mail purportedly from President Ray explains, at the Executive Committee and Board of Directors call on July 21, 2012 those bodies voted to approve the actions that were ultimately taken – which did not include the so-

called death penalty. At that point, regardless of individual points of view held by anyone previously about any penalties, the NCAA spoke with one voice. At all times prior to the execution of the consent decree, PSU was free to repudiate the Freeh Report, withdraw its consent, and/or reject the direction of the NCAA Executive Committee and either litigate against an imposition of penalties by the Executive Committee or "roll the dice" with the enforcement and infractions process. The decision not to do so was Penn State's decision, not the NCAA.

To further set the record straight, I lay out for you below my chronology of events. I will not disclose attorney client privileged advice or work product, but suffice it to say that advice given throughout fully supports this characterization and timeline.

On November 17, 2011 President Mark Emmert sent a letter to President Rod Erickson regarding the grand jury report released on November 5, 2011 containing allegations of sexual abuse by Jerry Sandusky. On November 21, 2011, the Penn State Board of Trustees appointed the Freeh Group, led by former FBI director Louis Freeh to investigate. During the course of the Freeh investigation both the NCAA and the Big Ten were provided periodic updates on progress. Contrary to suggestions by Penn State and its counsel, we were not provided advance substantive information regarding the findings of the Freeh Group. We learned of those findings at the same time as the rest of the world. On July 10, 2012, the media disclosed that the Freeh Report would be issued and a press conference would be held on July 12, 2012. I contacted the Penn State University Office of General Counsel to inform them of the NCAA's position on this Report. Because Steve Dunham had not yet taken office, on July 11, 2012, I spoke with acting general counsel Mark Faulkner and others. I informed them that it would be the NCAA position when the Freeh Report was released that we expected Penn State to respond to the November 17 letter and then the NCAA would determine our course of action. That course of action could include anything from doing nothing to conducting a full blown enforcement investigation and going through the infractions process. On that same day, July 11, 2012, President Emmert delivered a similar message to President Erickson. On July 12, 2012 the Freeh Report was issued and the NCAA released the message we had communicated to PSU: we expected a response and then we would see what was next. On July 12, 2012, you contacted me for the first time and indicated that you would handle drafting the response for PSU, that you would be vacationing but would be available by mobile and we should try to connect the following week. We tried to connect over the weekend and on Monday, July 15, 2012, you and I spoke and recognized that our clients (NCAA and Penn State) were contemplating the possibility of resolving matters without a response to the letter and without an enforcement investigation and infractions hearing, but rather through some summary resolution wherein Penn State would agree to the findings of the Freeh Report and the NCAA would impose a set of penalties based upon those findings. On that same day, President Emmert appeared on a prescheduled interview with PBS where he discussed the Freeh Report and indicated that the NCAA was waiting for Penn State's response to his letter. In that interview he acknowledged that the traditional enforcement process was available and that all penalties, including the so-called death penalty were in play. On July 17, 2012 the NCAA Executive Committee met and discussed the approach of a summary resolution based upon Penn State's adoption of the Freeh Report that would include various penalties. On that same day, David Berst and I communicated to you the proposed penalties and the approach of a binding consent decree. You will recall that the proposed fine was originally discussed to be $30 million and subsequently raised to $60 million and we initially neglected to report on the vacation of wins, but immediately followed up the call with an e-mail to that effect. President Emmert had a similar conversation with President Erickson. Late night on July 20, 2012 you were sent a draft of the consent decree, pending NCAA Executive Committee approval. On July 21, 2012, the Executive Committee voted to approve the concepts of the penalties as they were spelled out in the final consent decree and that was communicated to you. On July 23, the consent decree was executed and announced.

Gene, as I have told you before I do not make a habit of discussing these types of exchanges publicly as I believe that is the only way that you can have a candid exchange of positions. Accordingly, I have remained silent thus far. Further, I agree that discussion around this issue needs to cease as we all are trying to move forward and hope that we can catch up with President Ray soon to reiterate that point. Nonetheless, while I don't intend to be combative or adversarial, I felt compelled to explain to you the position that I will take if ever required to speak about it.

If you want to talk further about this, I can be reached on my mobile over the weekend.

Regards,

Donald

From: Gene Marsh [redacted]
Sent: Friday, September 07, 2012 10:39 AM
To: Berst, David; Remy, Donald
Subject: Fwd: Ed Ray's Version of Events - No Wonder the Push to "MOVE ON"

See below - more of the same.

Sent from my iPhone

LIGHTFOOT

Gene Marsh
[redacted]

Begin forwarded message:
From: David La Torre [redacted]
Date: September 7, 2012 9:14:24 AM CDT
To: Gene Marsh [redacted] Frank Guadagnino [redacted]
Subject: Fwd: Ed Ray's Version of Events - No Wonder the Push to "MOVE ON"
FYI

Typos courtesy of my iPhine

Begin forwarded message:

From: mccahan[redacted]
Sent: Friday, September 07, 2012 8:44 AM
To: Adam Taliaferro; Adam Taliaferro; Anthony Lubrano; Ryan McCombie
Cc: Paul Silvis; Paul Suhey; Karen Peetz; John Surma; David Joyner; bot[redacted]Maribeth Schmidt; Rodney Erickson; Victoria Hargrave; Roger Williams
Subject: Ed Ray's Version of Events - No Wonder the Push to "MOVE ON"

Mr. Lubrano, Mr. McCombie, and Mr. Taliaferro (and Anyone Other BOT Members Who Have Enough Guts To Keep Fighting for the Truth):

Possibly you could get an explanation / clarification on the email responses below to a fellow alum from Mr. Ed Ray of the NCAA – his responses are highlighted in yellow. If you remember, he was the guy who looked like he was drooling the morning the sanctions were announced. Apparently, he has at least been professional enough to respond to alumni who have written him (a courtesy most of us haven't received from our own university – and that's not a "slam" on you 3). **Mr. Ray's responses reveal a very, VERY different story than Dr. Erickson's and Mr. Marsh's; the version they described in a recent BOT Teleconference Meeting.**

Someone is not being truthful here. Mr. Ray certainly makes it sound like we requested the sanctions levied on us – not the NCAA – without the threat of the "death penalty". I mean how absurd is that!!!! We would actually rush the NCAA to sanction us just so we could "MOVE ON" – I mean this isn't possible – is it? **And, by the way, every alumni I've spoken to is sick and tired of everyone telling us to "MOVE ON"** – everyone will "MOVE ON" when the truth is finally revealed and the ridiculous sanctions are lifted – IT'S JUST NOT RIGHT. **No wonder Dr. Erickson is in such a big hurry to "MOVE ON" – I would be too if Mr. Ray's story is true!!**

But, we're hoping that you guys can find out who's really telling the truth – if anyone is. It's very sad when you come to realize that your own university has played such a huge role in it's own destruction.

Keep fighting for the truth – you have a LOT of support.

For the Glory,

Matt and Carla McCahan

Class of '84 and '85 respectively

Lifetime Members of the Alumni Association.

For those of you who are curious - here is Dr. Ray's response to my letter (the letter I sent follows). It's not entirely responsive to the concerns I raise which makes me believe it's mostly a cut/paste job form response, and, as expected, it continues to tow his party line - but you can't say he's not responsive. More and more, though - he appears to be putting this on our Board pushing this agenda. **(Ray's responses clearly fly in the face of the version being told by Dr. Erickson and Gene Marsh – MM).**

My letter:

Dear Mr. Ray,

I understand that you have likely been inundated with letters from disgruntled Penn State alumni over the last few weeks concerning the sanctions imposed by the NCAA and I have seen your responses to several of those letters. Many of your responses, rightly, demonstrate that the NCAA's primary focus in deliberating how to handle this situation was on the children and insuring that this doesn't happen again and holding the institution that allegedly permitted this to happen accountable. I commend the NCAA for placing the focus where it rightfully needed to be.

With that said, as the governing body for athletics' programs of institutions of higher learning, and as an organization that promotes itself as insuring the prioritization of academics and education within the athletics'

framework, I hope you can see why the sanctions and the conclusions set forth in the consent decree are abhorrent to those very ideals and why many Penn Staters have vituperatively voiced their objection.

First, while the consent decree finds support in the Freeh report, as you should know, the Freeh report was neither designed for this purpose nor provides a proper foundation for the NCAA to determine culpability. Admittedly, although the report reasonably concludes that certain university administrators and leaders "repeatedly concealed critical facts" concerning Sandusky's behavior to avoid "bad publicity," this is only a "reasonable" conclusion (not a certain one), drawn by one person whose investigation did not take into account the testimony of most of the primary figures involved in the scandal, and seems to have been inferred from only a couple of ambiguous and potentially out-of-context e-mails allegedly written by the very people Mr. Freeh failed to interview.

While these "reasonable" conclusions may have been accepted by the Board in the context of moving forward, placing the focus on the children, or agreeing to the corrective measures suggested by Mr. Freeh, the report is grossly insufficient to be used by an outside organization, who was neither familiar with the investigative process used by Freeh nor has had an opportunity to review and properly weigh all the evidence and testimony culminated by that investigation, for the far more damaging purpose of levying the unprecedented sanctions that the NCAA has. The NCAA's actions amount to decimating a program, a university, and a community ? all of which played no role in this scandal ? based on a third parties' admittedly incomplete interpretation of a few ambiguous e-mails. The lack of due process afforded to the victims of those sanctions (the university, the current players, the Penn State community, etc.) is startling and contrary to the very principles this country was founded on and the inherent rights of the accused.

Fully reading the Freeh report and the alleged supporting documentation, I posit that it is equally (if not more) reasonable to conclude that there was no active concealment of facts to protect Mr. Sandusky in any way. The notion that any one person would actively and knowingly conceal pedophilia is so contrary to human nature that to suggest that it would be done by, not one person, but by Joe Paterno, Graham Spanier, Tim Curley and Gary Schultz ? four individuals whose reputation for acting appropriately and ethically was unimpeachable prior to this incident ? and also people outside the program who had no interest in bad publicity, such as Dr. Dranov, simply defies logic. And, to levy that indictment on these individuals and the university at large based on the scant "evidence" found in the Freeh report constitutes a grave rush to judgment and eviscerates the principles of "innocent until proven guilty" and due process. As Graham Spanier has shown by his retention of former federal prosecutor and federal judge Tim Lewis, I am sure that I can get several authorities equally or more credible to Mr. Freeh to reach that reasonable conclusion. And ? if two authorities of Mr. Freeh's and Mr. Lewis' stature can come to such divergent opinions ? should that not give the NCAA pause before adopting one of those conclusions and destroying reputations and a university based on it?

Putting aside the sanctions, the equally disturbing indictment by the NCAA that Penn State's culture was to blame for the alleged lapses that occurred and that it is that culture which needs to be changed, has only further acted to enrage Penn Staters. As President Erickson recently, and rightly, pointed out, Penn State doesn't have one identifying culture but is made up of several cultures revolving around academics,

philanthropy, research and athletics (to name a few) -- each of which has been a model for other institutions. Thus, when the NCAA says that this culture needs to change, it's not only an overbroad statement that fails to recognize this diversity, it's an insult to all of those people ? students, alumni, faculty, and administrators ? who worked tirelessly over generations to insure the growth, success and balance of those cultures. And, the only difference between Penn State's athletic culture and the athletic culture of other major Division I athletics' programs, is that ? as current and former players and coaches can attest, and as the graduation rates and academic All Americans demonstrate ? Penn State always championed education and success with honor above all else. If that is the culture the NCAA seeks to change, I fear for the future of college athletics.

In conclusion, while I wholeheartedly agree that the focus should be on the children and insuring that this doesn't occur again, and that's what I believe the Board was attempting to do by commissioning and unwittingly accepting the Freeh report, the NCAA's actions do not accomplish that. In valuing expedience over truth, the NCAA simply and prematurely pointed its finger and placed the blame on those who have had no opportunity to defend themselves and penalized an institution for attempting to proceed down the right path. The NCAA's actions have only insured that no institution will ever engage in such transparency or self-investigation in the future and, in doing so, has only further endangered children.

I understand that Mr. Erickson signed the consent decree and, by doing so accepted the sanctions. Capitulation by him or the Board should not be a proper basis or excuse to trample over the rights of those the sanctions directly impact. And that is the precise reason you have and will continue to be inundated with letters.

xxx

Ed Ray's Response:

xxx:

I appreciate your assessment of matters and can only repeat the facts that are determinant for me. Following the Freeh Report and the sentencing of Jerry Sandusky, Mark Emmert asked Penn State to respond to questions raised last November. That led to a discussion about coming to a common agreement between the university and the NCAA about punitive and corrective actions to come to closure on institutional findings, although individual cases could be pursued if new evidence emerges over time. Rod Ericson signed a consent decree with the understanding that the board of trustees, presumably through the chair and the executive committee, approved the agreement.

The executive committee and the Division I board of the NCAA reviewed the proposed punitive and corrective actions in the package announced at the Monday press conference and about 30 college and university presidents and chancellors voted unanimously to accept the terms of the consent decree on behalf of the NCAA. I could not hope to explain the positions of the other 29 colleagues in endorsing the agreement. Absent the consent decree, I would expect the NCAA to go through the usual 1-2 year investigatory process and for the Committee on Infractions to announce findings after that. I assume the consent decree came up as an option because the president and board of trustees at Penn State wanted to close the institutional case and move forward.

Ed

More from Dr. Ed Ray and more fodder for the Rally for Resignations.... Reply

I followed up my letter from yesterday with a couple of questions (you'll have to scroll back a few pages to see the initial letter and Ray's response) - but here is my recent e-mail and his response if you're interested (from his iphone no less).

Dr. Ray,

Thank you for the time and thoughtfulness in your response. While I doubt it satisfies everyone's concerns regarding the rush to judgment and lack of due process that took place here, I think it provides some insight into the process the NCAA undertook.

You mention in your response that, absent the consent decree, you envisioned a 1-2 year investigative process. **Can I take that to mean that, had Dr. Erickson not signed the consent decree, the NCAA would have engaged in this process and that there was no pre-determined set of sanctions the NCAA was prepared to levy?** In other words, the possibility of the so-called "death penalty" would have been as possible an outcome as the NCAA not levying any sanctions and it would have all been dependent on the NCAA's independent investigation?

Again, I appreciate your response and hope you understand why the Penn State community has been outraged at this process and that you don't confuse that outrage for a lack of concern for the victims.

Ray's response:

xxx:

You are correct. We explicitly voted overwhelmingly not to include the death penalty. The COI (Committee on Infractions) would develop the case and make its own decision.

Ed

Sent from my iPhone

EXHIBIT N

7/22 Sunday, July 22 Exec Committee 6pm

✓Alexander
✓Broadhurst
✓Dambly
✓Eckel
✓Erickson
✓Frazier
✓Hintz
✓Masser
✓Peetz
X Strumpf
✓Surma

✓Dunham
✓Guadagnino
✓Poole

Sandy
Spanier

5pm Status Update

Crippling
aggressive actions save for the BOTs and admin
actions over the last 8 mos.
docs - consent decree
AIA [illegible] agreement - RAE & KBP sign

broad findings
[illegible]
heavy reliance on Freeh report
specific sanctions
$60M [illegible] into endowment
[illegible] to fund child sex abuse
4 yr post season ban
4 yr reduction in scholar 25-15; max in 65

CONFIDENTIAL

begins 2015
5 yrs probation
[illegible] all wins since 1998
waiver of rules for transfer
right to/process

correction measures
- [illegible]
[illegible] Ath. Intr Agreement
- compliance officer + counsel
- training + edu re conduct
(any provisions violated, impose
all punishment)
- [illegible] independent monitor (5yrs)
- include quarterly reports to BoT
9 am press release

culture
[illegible] will allow us
to [illegible]

pg 10

[illegible]

could have turned NCAA ruling down + gone to
the Committee on Infractions -

REDACTED

CONFIDENTIAL

PSUCOR00732

if new info surfaces, can this be revisited?
- Yes, if additional NCAA violations are

[illegible] ; no press conference
accountability? [illegible]

O'Brien's contract

ICA mtg @ 3pm

schedule ☆ 9am - Press Conference - streamed - send link

Talking points for Exec Com

Written statement

☆ resolution of acknowledgement

statement share w/ full bd

post statement [illegible]

11:30 - 3:30 TDena Statem

[illegible] bd call [illegible]

1pm call 1-3 calls

Founder's Rm

7:30a prep session
8:30 PC - 40
9 am Conf
10:30 Board call

noon - Athletics - Founders Rm

EXHIBIT O

** IMPORTANT NOTICE **
PLEASE READ BEFORE USING REALTIME ROUGH DRAFT
AGREEMENT OF PARTIES
WORKING WITH REALTIME ROUGH DRAFTS

*** ROUGH DRAFT AND REALTIME ONLY AVAILABLE ***
WITH CERTIFIED TRANSCRIPT ORDER

We, the party working with realtime and rough draft transcripts, understand that if we choose to use the realtime rough drafts screen, or the printout, that we are doing so with the understanding the rough draft is an uncertified copy and is an adjunct to the certified final transcript, NOT a stand-alone service.

We further agree not to share, give, copy, scan, fax, or in any way distribute this realtime rough draft in any form (written or computerized) to any party. However, our own experts, co-counsel, and staff may have limited internal use of same with the understanding that we agree to destroy our realtime rough draft and/or any computerized form, if any, and replace it with the final transcript upon its completion.

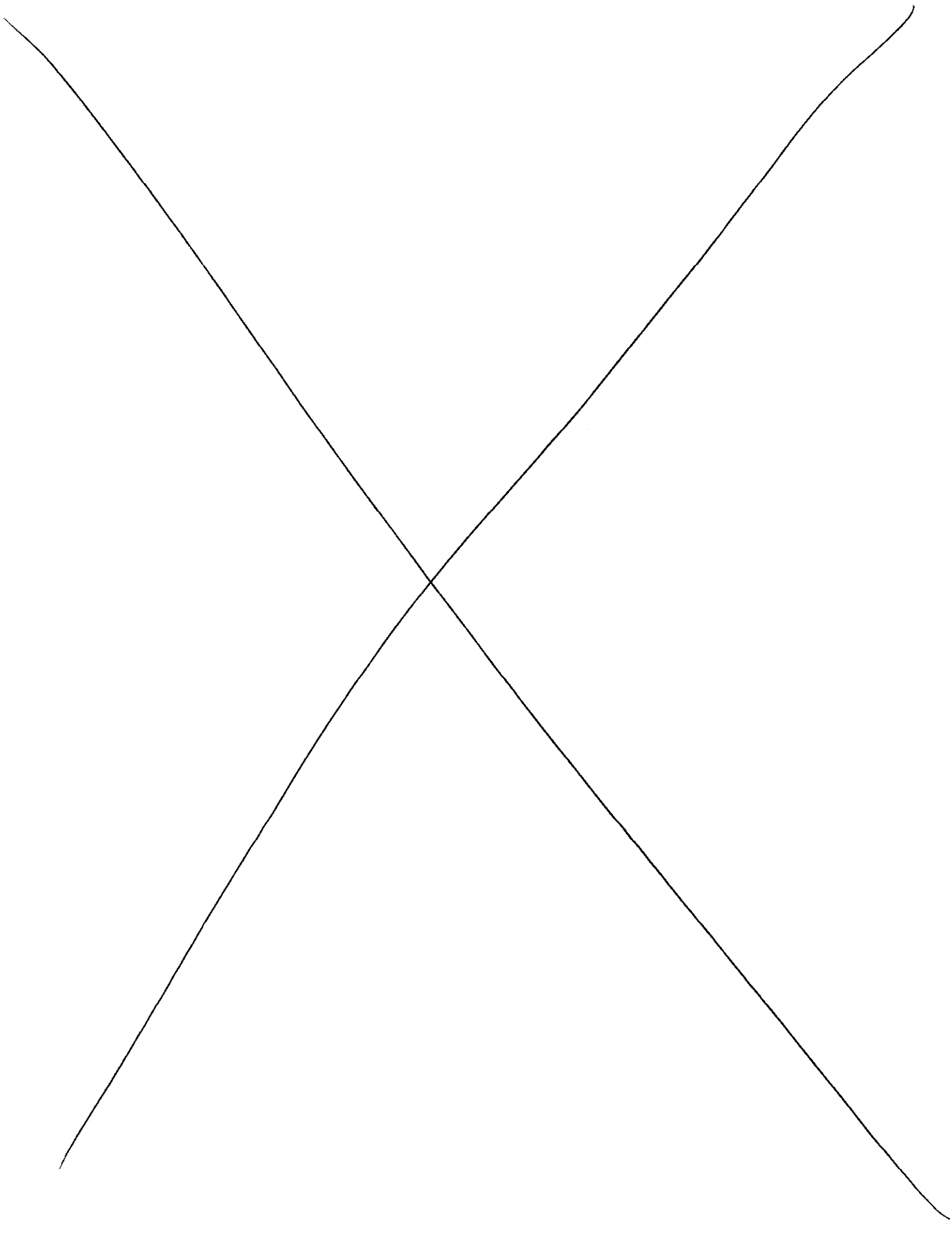
CASE: Corman v. NCAA
WITNESS: David Berst
DATE: November 12, 2014

REPORTER'S NOTE:

Since this deposition has been realtimed and is in rough draft form, please be aware that there may be a discrepancy regarding page and line number when comparing the realtime screen, the rough draft, rough draft disk, and the final transcript.

Also please be aware that the realtime screen and the uncertified rough draft transcript may contain untranslated steno, reporter's note after the designation BENCH, misspelled proper names, incorrect or missing Q/A symbols or punctuation, and/or nonsensical English word combinations. ALL SUCH ENTRIES WILL BE CORRECTED ON THE CERTIFIED, FINAL TRANSCRIPT.

Rachel F. Gard, CSR, RPR, CLR, CRR



Page 178

would follow up further on this the matter and 01:48
consider a consider possible alternatives, 01:48
consider what to do next. 01:48
Q. Did you -- 01:48
A. And he would, I think, indicate -- I 01:48
think he indicated that he would be in contact 01:48
with Penn State directly. 01:48
Q. Was it your understanding as a 01:48
result of or after that phone call, that 01:48
Dr. Emmert also intended to move forward 01:48
against Penn State with some action, whatever 01:49
that might be? 01:49
MR. KOWALSKI: Objection to the 01:49
form. 01:49
A. And I can't go that far at that 01:49
juncture. I don't know what his mindset was. 01:49
Q. Okay. You don't remember him 01:49
expressing -- 01:49
A. All I knew was he was going to make 01:49
a phone call, I believe, to Penn State. I 01:49
don't know what the substance would be. 01:49
Q. Were you ever briefed on the 01:49
substance of that phone call between -- the 01:49
phone call between Dr. Emmert and Dr. Erickson? 01:49
A. I don't think at that time, no. 01:49

Page 179

Q. Do you recall ever being briefed on 01:49
it? 01:49
A. Not briefed. I think later, I must 01:49
be aware of a phone call confirming that the 01:49
consent decree had been essentially approved. 01:49
Q. I'm talking about the very first 01:49
communication between Dr. -- 01:49
A. Yeah, and I don't know what those 01:50
were. 01:50
Q. You don't know. That's fair enough. 01:50
And I may nail down when that call 01:50
happened. But I think for our purpose, we can 01:50
agree that that phone call would have happened 01:50
after the executive committee individually and 01:50
then sort of collectively expressed a desire to 01:50
do something with respect to Penn State and 01:50
Mark Emmert indicated, yes, I will do 01:50
something? 01:50
MR. KOWALSKI: Objection to form. 01:50
A. You asked me that and I told you I 01:50
wouldn't go there with you. All I said was the 01:50
president was going to make a follow-up call to 01:50
Penn State. Now, you tried to characterize it 01:50
as him doing something. I'm not willing to say 01:50
that. So quit asking me that. 01:50

Page 180

Q. I'm not trying to characterize it in 01:50
any way, I'm trying to establish it temporally. 01:50
We can -- 01:50
A. Then use different words. 01:50
Q. All right. If -- you know, let me 01:50
just ask what I'm trying to get at. I'm trying 01:51
to establish a timeline. Because I know 01:51
earlier on you were concerned about specific 01:51
dates and making sure the dates were right. 01:51
And that's really the only purpose of this. 01:51
It's not to characterize who said what in a 01:51
phone call. 01:51
To your knowledge, was it after the 01:51
phone call, the first call between president 01:51
Erickson and Dr. Emmert, that Gene Marsh 01:51
reached out and contacted NCAA? 01:51
MR. KOWALSKI: Objection to form. 01:51
A. I don't know the timing. 01:51
Q. Okay. We haven't nailed down the 01:51
date and we'll move on from when the phone call 01:51
to Gene Marsh was from Maine. But that is, to 01:51
your knowledge, the first time that Gene Marsh 01:52
reached out to NCAA? 01:52
A. I don't recall specifically whether 01:52
he was in Maine or leaving Maine or even at the 01:52

Page 181

institution. But my recollection is that he 01:52
was heading back to the institution and that he 01:52
would be having some conversation with whoever 01:52
was appropriate to have conversations with at 01:52
the NCAA. And I don't recall specifically 01:52
where I have that recollection from, but I knew 01:52
that Gene Marsh was going to be representing 01:52
the institution. 01:52
Q. You testified earlier today that you 01:52
desired to participate in the process that 01:52
ended up involving Ed Ray and Gene Marsh; is 01:52
that right? 01:52
MR. KOWALSKI: Objection to form. 01:52
A. No. I may have said that I inserted 01:52
myself into the process when I understood that 01:52
Gene Marsh was going to be representing the 01:53
university. 01:53
Q. Why? 01:53
A. Because I considered Gene Marsh to 01:53
be exceptionally familiar with NCAA processes 01:53
and bylaws and the like, and he had represented 01:53
a number of institutions. And I didn't have 01:53
the same confidence, frankly, in any of our 01:53
people. And I thought I could help because 01:53
both I understand the NCAA processes, how they 01:53

Page 182

operate, where the authorities are, and because 01:53
I believe that Gene Marsh would believe me to 01:53
be a credible source of information. 01:53
Q. Did you -- do you include Mr. Remy 01:53
in the group of individuals you feel, I can 01:53
read it back, I don't want to characterize -- 01:53
A. No, I'll answer the question. 01:54
Q. Is he in that group of folks who has 01:54
a less superior knowledge of the bylaws than 01:54
you do? 01:54
A. In my opinion, yes. 01:54
Q. That's fine. 01:54
Were you asked by Mr. Remy or 01:54
Mr. Emmert or anyone else to participate? 01:54
A. I asked if I could participate. And 01:54
the answer was that, fine, yes. 01:54
Q. Who did you ask? 01:54
A. I think I asked Mark. I think it 01:54
was Mark Emmert. 01:54
Q. Do you recall -- I think you said 01:54
and testified that you made this request after 01:54
you were aware that Gene Marsh was in the mix; 01:54
is that right? 01:54
A. Yes. 01:54
Q. So this conversation, was it a 01:54

Page 183

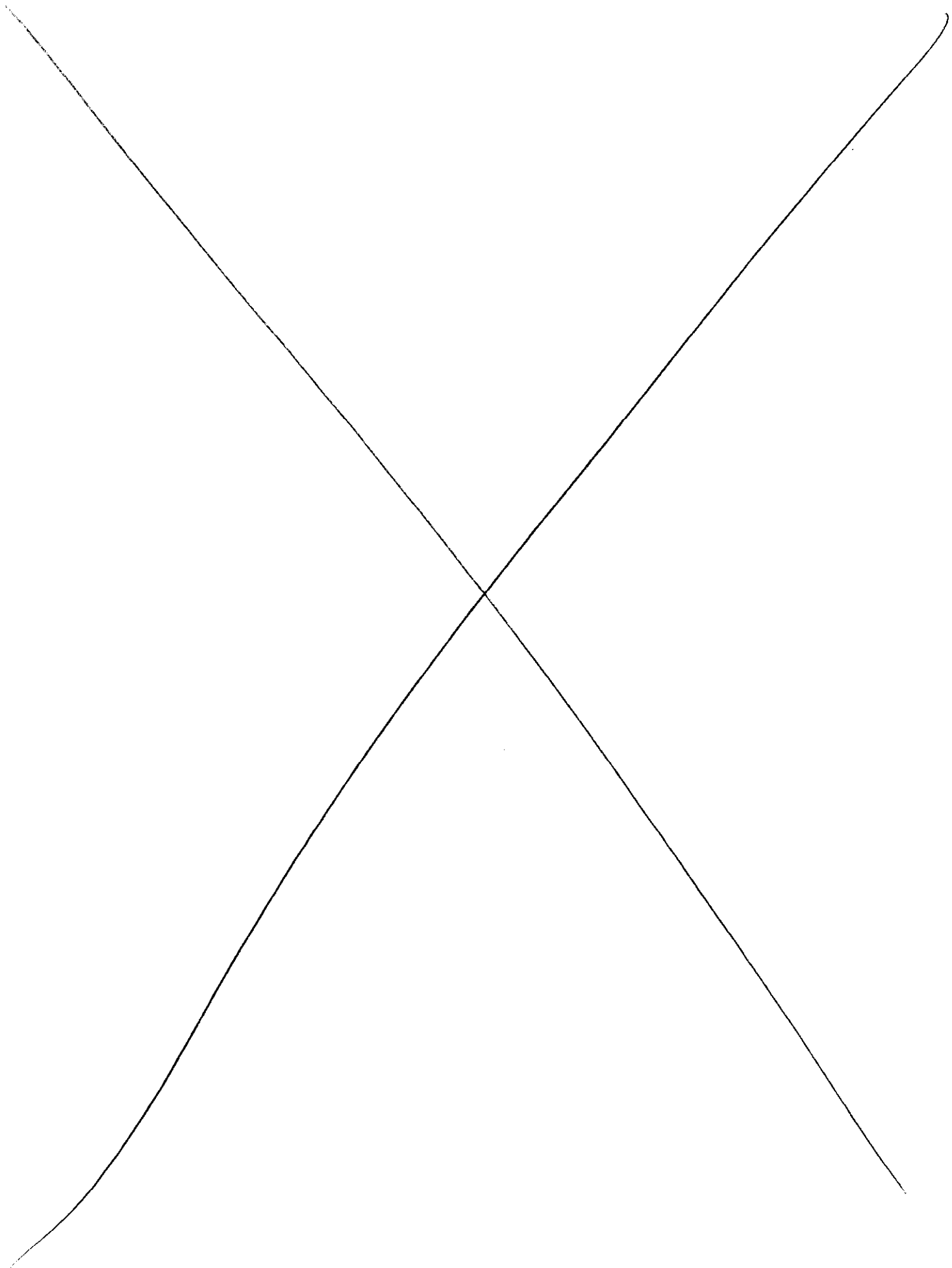
conversation? Or was it via email with 01:54
Dr. Emmert? 01:55
A. It was a conversation. 01:55
Q. Did you -- were you told in this -- 01:55
and was it between you and Dr. Emmert only? 01:55
A. I think there were more people 01:55
involved. I don't recall Donald. I recall, I 01:55
think, Julie, Kevin Lennon, you know, the same 01:55
sort of group of people that you were talking 01:55
about. 01:55
Q. Do you recall Dr. Emmert expressing 01:55
what the goal of the interaction with Gene 01:55
Marsh was? 01:55
MR. KOWALSKI: And just to confirm, 01:55
this is not a meeting that involves 01:55
Mr. Remy? We agree, then, it's not -- the 01:55
purpose of this meeting is not to provide 01:55
or receive legal advice, is that your 01:55
understanding? 01:55
A. I think I'm still in that category 01:55
at that point. My -- I didn't receive 01:55
instruction. I just indicated that -- the 01:55
reasons that I set out, I wanted to be involved 01:55
in those conversations. And that I thought of 01:56
anybody on our staff, I'd be able to think 01:56

Page 184

through options as well or better than anybody 01:56
present. 01:56
Q. In that initial discussion with 01:56
Dr. Emmert, did anyone raise the notion that 01:56
the outcome of the discussion with Gene Marsh 01:56
would be a consent decree with Penn State? 01:56
MR. KOWALSKI: Objection to -- just 01:56
caution you not to reveal any legally 01:56
privileged communications to answer the 01:56
question. 01:56
Q. This is a conversation that didn't 01:56
have Remy in the room. 01:56
A. And I don't recall the timeline of 01:56
how there ended up being the consent decree. 01:56
That's not my term. So that doesn't come from 01:56
me. So I don't have that recollection. I just 01:56
wanted in so that I could make sure that 01:56
wherever it is -- wherever we went in terms of 01:57
processing this case, that I could believe we 01:57
had the authority and ability to do it. 01:57
Q. You said of course, and you said 01:57
this a few times, you wanted in. What was your 01:57
understanding of the goal of what you were 01:57
getting in? 01:57
A. I wanted to help in the conclusion 01:57

Page 185

of issues around Penn State at that point. You 01:57
still had an outstanding letter that had been 01:57
sent by the president of the association. You 01:57
had the Freeh Report that had just been 01:57
completed. You still had the cry of basically 01:57
everyone in the public about how horrible this 01:57
whole thing is, the NCAA needs to take action. 01:57
I assumed at least that there would 01:57
be further considerations along those lines, 01:57
and I wanted to be part of helping to making 01:58
sure it was a reasonable and appropriate 01:58
process. 01:58
Q. You understood when you spoke with 01:58
Dr. Emmert that at that point, NCAA planned to 01:58
take action against Penn State of some nature? 01:58
A. Well, I don't know that I had 01:58
that -- I don't know who from. But my sense 01:58
was from all of those reasons that I stated 01:58
earlier, I thought this is going to be 01:58
processed further. And Gene Marsh is going to 01:58
be a party to assisting the university in going 01:58
forward. There would be communications with 01:58
NCAA. And whatever those were, I want to be a 01:58
part of them. 01:58
Q. Was it your understanding at that 01:58



Page 194

quickly. 02:08
MR. KOWALSKI: We'll take a quick 02:08
break now. Space this out a little bit. 02:08
Now is the right time. 02:09
(A short break was had.) 02:09
Q. All righty, Mr. Berst. While we 02:20
were off the record, we are looking on an iPad 02:20
because that's the age in which we live, at a 02:20
document I will read into the record is NCAA JC 02:20
00014366 and this is an age dated Sunday 02:20
July 15, subject call from Gene Marsh to Donald 02:20
Remy and it's a back and forth between Messrs. 02:20
Remy and Marsh and and you are not on this 02:20
email. 02:21
I showed it to you during the break, 02:21
and I will read into the record that the first 02:21
email from Gene Marsh reads hi Donald, thank 02:21
you for the call Friday. Do you have time to 02:21
talk briefly on Monday. I am still on the trip 02:21
get back late Tuesday but have time tomorrow. 02:21
Let me know if you do and what time and your 02:21
office phone. And then he talks about where he 02:21
is in Maine. 02:21
If Sunday, July 15 was in fact 15, 02:21
that would make the Friday call referenced, 02:21

Page 195

Friday, July 13. Does me reading this email or 02:21
reading those dates to you refresh your 02:21
recollection or otherwise inform you about when 02:21
the first time you recall Gene Marsh 02:21
materializing in these discussions? 02:21
A. Well, it helps me a little. And I'm 02:21
still thinking I may not be involved yet with 02:22
Marsh. I believe that I would have been on a 02:22
call involving the executive committee earlier 02:22
than that, and that Donald begins to make 02:22
those, get in touch with Gene and I have a 02:22
feeling the call where I try to insert, or the 02:22
call, the meeting where I insert myself 02:22
hopefully is probably Monday or right about 02:22
then. And then I begin to have conversations 02:22
with Gene or get included in the conversations 02:22
with Gene. 02:22
Q. Are the communications, once you 02:22
become included with Gene and with Remy 02:22
primarily by phone, primarily by email, or is 02:22
there no primarily? 02:22
A. Primarily by phone; some by email. 02:22
Q. Are these three-person telephone 02:23
calls? Is there anyone from NCAA participating 02:23
other than you and Mr. Remy? 02:23

Page 196

A. No. 02:23
Q. Do you recall if Gene Marsh had an 02:23
associate or a colleague from his law firm 02:23
participating on these calls? 02:23
A. Not in very good detail. I think 02:23
there would have been a call or two where 02:23
someone from the university would have 02:23
participated, but that would have been 02:23
infrequent, I think, in those calls. 02:23
Q. Why in these early telephone calls, 02:23
if you know, was Julie Roe not a participant? 02:23
MR. KOWALSKI: And please don't 02:23
reveal the contents of privileged 02:23
communications with Donald Remy or other 02:24
NCAA legal counsel. 02:24
A. I don't have any way of answering 02:24
that. Julie Roe was not a consideration for me 02:24
because I was trying to find some way into this 02:24
process in an effort to either find a way to 02:24
avoid enforcement or if we had to go 02:24
enforcement, then you can certainly involve 02:24
Julie Roe. But it seemed to me to be premature 02:24
to do that. 02:24
Q. No need for an enforcement person 02:24
until you decide you're going to go the 02:24

Page 197

enforcement route and that hadn't been decided 02:24
yet? 02:24
MR. KOWALSKI: Objection to form. 02:24
A. From my perspective, that's right. 02:24
Q. When do you recall your 02:24
conversations with Mr. Remy and Mr. Marsh, I'm 02:24
not asking about your conversations with 02:24
Mr. Remy alone, I'm asking about the three of 02:24
you, when do you recall the first time that 02:24
conceptually what we know as the consent decree 02:25
was discussed? And you can call it whatever 02:25
you want. I'm not we'ded to the term. That's 02:25
just the term I have for it? 02:25
A. I believe in my first call with Gene 02:25
Marsh -- 02:25
Q. Who -- 02:25
A. I probably wouldn't have used the 02:25
words consent decree, I don't think that 02:25
existed. But I would have talked through 02:25
things like, well, all of the processes with 02:25
him, including stipulating to matters that 02:25
could be handled more quickly. 02:25
Q. Is the first time conceptually what 02:25
became the consent decree was discussed among 02:25
anyone was when you discussed it as a 02:25

Page 198

possibility, regardless of what it was called? 02:25
MR. KOWALSKI: Don't reveal any 02:26
privileged communications in answering, 02:26
please. 02:26
A. I believe that to be the case. It 02:26
may not have been the first conversation where 02:26
that would occur. But the idea certainly 02:26
surfaced in that, in a call with Gene. And he 02:26
became very interested in whether there was 02:26
some possible process that could be quicker 02:26
than going through what I call, I'm sure I used 02:26
the word, I have everywhere else, the hard slog 02:26
of trying to go through infractions. 02:26
Q. Did the idea for the concept that 02:26
became the consent decree originate with you? 02:26
A. I don't think -- I don't know the 02:26
word consent decree. 02:26
Q. Me neither. 02:26
A. So I don't believe that word was 02:27
mine. I think looking for a way to move more 02:27
quickly was certainly mine. And there may have 02:27
been other people trying to figure out how you 02:27
might get there from here. But I was saying 02:27
that to anyone I was talking to. 02:27
Q. So at least with respect to -- well, 02:27

Page 199

I'll ask internally and object, and we can 02:27
figure out if you can answer. 02:27
Internally inside NCAA, do you 02:27
recall, you being the first proponent of this 02:27
worked out notion? I don't know what to call 02:27
it. You know what we're talking about, the 02:27
concept that ultimately ended up with the 02:27
consent decree product, did that thought 02:27
process, idea, emanate with you internally? 02:27
MR. KOWALSKI: So I'll object to the 02:27
form of the question. And you can answer, 02:28
you know, the yes-or-no question that he's 02:28
posed to you. 02:28
A. Yeah, I don't -- I don't know the 02:28
answer to that for sure. I was advocating all 02:28
possible approaches, the quicker and avoiding 02:28
enforcement would be the best. Now, whether it 02:28
was me or someone else who actually put the 02:28
pieces together, I'm not sure who did it first. 02:28
Q. Was it, from the time of your 02:28
involvement to the conclusion of the process 02:28
with Gene Marsh was your preferred mode to 02:28
resolve the matter with Penn State by the use 02:28
of a vehicle that became the consent decree? 02:28
In other words, a cooperative, collaborative 02:28

Page 200

agreement or stipulation or, you know, what 02:29
have you? 02:29
MR. KOWALSKI: Object to form. 02:29
Q. It's a lousy question. I'm just 02:29
trying -- 02:29
A. I question whether I was that smart 02:29
in the very beginning in the first call. But 02:29
soon I became intensely interested in trying to 02:29
pursue that. 02:29
Q. Was your intense interest and 02:29
concept for what the outcome ultimately became 02:29
informed by the -- you're going to have to tell 02:29
me the right term for it -- but informed by the 02:29
use of the vehicle in the enforcement process, 02:29
the stipulated process? 02:29
A. Yes, that was a process that I had 02:29
been involved in developing, so I was familiar 02:29
with it, yes. 02:29
Q. Conceptually at least in your mind 02:29
when you were thinking through the resolution 02:29
with with Gene Marsh and discussing it, were 02:29
you modeling it at least in part on that 02:29
vehicle that you had used in the enforcement 02:29
side, understanding this wasn't an enforcement 02:29
action? 02:30

Page 201

A. Not entirely. It was merely trying 02:30
to establish some sort of a stipulated 02:30
agreement, what is it that we all can agree to 02:30
here, is there something. And if there is, 02:30
maybe there's a way to move this more quickly. 02:30
Q. You indicated that Gene Marsh was 02:30
receptive to this as a solution? 02:30
MR. KOWALSKI: Objection to form. 02:30
A. He was, he was listening, I think, 02:30
to any of the possible options. Eventually he 02:30
became interested had in that concept, but I 02:30
don't know the timing of when he got onboard. 02:30
And I just don't know the answer to that. 02:30
Q. Did he propose any other modes or 02:30
solutions for this process other than your 02:30
concept of the stipulated agreement or whatever 02:30
we call it? We know what we're talking about 02:31
now I think. 02:31
A. We talked through all the other 02:31
options and he said what ifs. Talked about 02:31
stipulated agreements or the summary 02:31
disposition and talk about a normal infractions 02:31
investigation, how that might go, are there, 02:31
you know, are there those that are motivated to 02:31
go that way. The answer to that was yes. And 02:31

Page 202

are there other options. I think he was just 02:31
trying to find other options himself, as was I. 02:31
Q. Who was motivated to use the 02:31
infractions process? 02:31
A. Everything that I talked to. I 02:31
mean, anyone in the public thought the 02:31
infractions process ought to be imposed, you 02:31
know, probably even unilaterally on Penn State. 02:31
But obviously that couldn't happen. 02:32
Q. Well, when you say in the public, do 02:32
you mean friends and family? Or do you mean 02:32
the public as in your colleagues and members, 02:32
you know, athletic directors, presidents, that 02:32
public? 02:32
MR. KOWALSKI: So we're not talking 02:32
about conversations with Remy just right 02:32
now. 02:32
A. Correct, we're not. We're talking 02:32
about, yes, conversations I might have with 02:32
institutional personnel or even listening to 02:32
presidents talk. I don't think any of them 02:32
were familiar with nuances of how you do 02:32
various process or how you handle various 02:32
processes. But their interest was pursuing is 02:32
through enforcement. 02:32

Page 203

Q. Internally at NCAA were there people 02:32
using the traditional enforcements or 02:32
infraction process? 02:32
MR. KOWALSKI: I caution you not to 02:32
reveal any privileged communication. 02:32
A. I'm not sure that I've had those 02:33
conversations other than in the presence of 02:33
Donald and other of those vice presidents, so I 02:33
don't think I can answer that. 02:33
Q. I'm going to ask it another way that 02:33
I think you can. Your counsel will tell you. 02:33
Did Dr. Emmert ever express to you a preference 02:33
for the enforcement mechanism or the 02:33
enforcement process versus another process? 02:33
MR. KOWALSKI: In the context of 02:33
meetings with Mr. Remy -- 02:33
A. I don't think he offered a 02:33
preference. I think -- 02:33
MR. KOWALSKI: Let's be careful not 02:33
to go into too much detail on this, 02:33
Mr. Berst. 02:33
THE WITNESS: Okay. 02:33
MR. KOWALSKI: First, were the 02:33
communications you're thinking about with 02:33
President Emmert in the presence of legal 02:33

Page 204

counsel. 02:33
THE WITNESS: Yes. 02:33
MR. KOWALSKI: We have to be 02:34
careful. 02:34
Q. Your answer was no, you don't recall 02:34
him expressing a preference? 02:34
MR. KOWALSKI: Right. So we don't 02:34
have to go there. 02:34
Q. You're going to be annoyed? 02:34
MR. KOWALSKI: Which one of us. 02:34
MR. HAVERSTICK: Everybody. 02:34
Everybody but me. Probably me too. 02:34
Q. Catalog for me the options you 02:34
recall being discussed with Gene Marsh for ways 02:34
to resolve the situation? 02:34
A. I think you've already talked about 02:34
all of them. We, what I call the hard slog of 02:34
simply sending out NCAA investigators without 02:34
any prior information even to begin to inquire 02:34
into matters related to Penn State, evaluating 02:34
not just what's known through the public media 02:34
but the rest of the athletics program as well. 02:35
Q. Would that be through the auspices 02:35
of the traditional infractions process. 02:35
A. Yes. 02:35

Page 205

Q. Okay. That's one. 02:35
A. Would be simply taking the Freeh 02:35
Report and using that as a starter in launching 02:35
an NCAA inquiry into the athletics practices of 02:35
the university, not limited to those matters 02:35
that were included in the Freeh Report. 02:35
Q. Also an infractions auspices? 02:35
A. Yes. 02:35
Q. Okay. 02:35
A. The so-called stipulated agreement 02:35
of facts and then the possibility if those 02:35
point out NCAA rule violations like 02:35
institutional control, taking that as a summary 02:35
disposition kind of a case through the normal 02:35
infractions process. 02:36
Q. On that point, I neglected to ask 02:36
this earlier. As a matter of process, 02:36
approximate it there was a stipulated factual 02:36
determination like that, does the committee on 02:36
infractions then impose punishment as a 02:36
separate proceeding or do you also stipulate to 02:36
the punishment? 02:36
A. You don't stipulate to the 02:36
punishment it is on hearing with the committee 02:36
on infractions to review the stipulated 02:36

Page 206

findings and the penalties assessed. 02:36
Q. So that's three. Those all involve 02:36
a traditional infractions process. Other than 02:36
doing nothing, is the fourth the process that 02:36
is outside the infractions process which 02:36
results in the executive committee doing 02:36
something, approving something? 02:36
MR. KOWALSKI: Objection to form. 02:36
A. Well the fourth would be the 02:36
executive committee assuming jurisdiction in 02:36
the matter because they consider it to be so 02:37
heinous an offense and a matter that demands 02:37
being addressed by the overall association. 02:37
And I'm sure we covered all of those, including 02:37
by the time I talked to him, the fact that we 02:37
had had at least one call of the executive 02:37
committee members wherein they, individually as 02:37
I described earlier, had almost to a person 02:37
indicated that they believed penalties such as 02:37
the so-called death penalty appears to be 02:37
appropriate in this kind of a matter. So I was 02:37
trying to explain to him that from my 02:37
perspective, this was a grave situation. 02:37
Q. Options 1, 2, 3 would all be what 02:37
you've characterized as hard slogs, long slogs. 02:38

Page 207

Those are processes that occur over a period of 02:38
time, correct? 02:38
A. Yes. 02:38
Q. Process 4 is one that could be, on 02:38
the other hand, wrapped up potentially quite 02:38
quickly? 02:38
A. Well, I'm not sure in the first 02:38
conversation we would have that I would know 02:38
how to do that at that juncture. I believe 02:38
that the executive committee had interest 02:38
approximate in assuming jurisdiction, but I 02:38
don't know that I knew the -- I don't think I 02:38
knew of the consent decree at that point. 02:38
Q. Was it ever communicated to Gene 02:38
Marsh that there was a desire by NCAA to 02:38
resolve this matter quickly? 02:38
A. Well, I don't know how it would have 02:38
been phrased. I certainly would have been 02:38
involved in conversations with him with Gene 02:39
Marsh about the -- eventually when there was a 02:39
set, there was an actual report from Freeh that 02:39
the institution accepted would follow through 02:39
with in implementing recommendations and would 02:39
assume responsibility for, I saw that as a 02:39
matter that could be used by the executive 02:39

Page 208

committee to assess appropriate penalties. 02:39
Q. When did the appropriate penalties 02:39
begin to materialize? In other words -- 02:39
A. There was a second call of the 02:40
executive committee in which much of the same 02:40
kind of thinking, attitude of individual 02:40
presidents I think was expressed but there was 02:40
an agreement by the presidents to permit the 02:40
president of the association to evaluate what 02:40
he believed might be the most palatable, most 02:40
appropriate set of penalties that could be 02:40
attached to the so-called consent decree. And, 02:40
you know, that may or may not then include the 02:40
so-called death penalty. I think there were 02:40
some still saying do that but there at least 02:40
was authorization for him to consider further 02:40
what to do. 02:40
Q. Did you believe that Gene Marsh on 02:40
behalf of Penn State had the right to reject a 02:41
proposal that involved executive committee 02:41
consideration and instead opt for the 02:41
infractions process? 02:41
A. At every step. And I believe -- I 02:41
don't know that he could do that unilaterally. 02:41
His obligation I would expect would be to go 02:41

Page 209

back to Erickson or whoever else he was 02:41
reporting to at the institution and any or all 02:41
of them could take that step at any juncture. 02:41
Q. And had that step been taken 02:41
assuming appropriate authority from president 02:41
Erickson, would NCAA to your knowledge have 02:41
honored that request and instead used the 02:41
traditional infractions process? 02:41
MR. KOWALSKI: Objection to form. 02:41
Go ahead. 02:42
A. I believe that it would have, yes. 02:42
Q. Was that a topic of discussion 02:42
internally? 02:42
MR. KOWALSKI: You can answer yes or 02:42
no. 02:42
Q. Yeah. 02:42
A. I don't believe so. 02:42
Q. You're premising your answer on your 02:42
understanding of the situation, or was it based 02:42
more on your understanding of what the bylaws 02:42
are? 02:42
MR. KOWALSKI: You can go ahead and 02:42
answer don't reveal -- 02:42
A. Take me back to what your real 02:42
question is. 02:42

Page 210

Q. How did you come to understand -- 02:42
no, no, no, that's the wrong question. What's 02:42
the source of your knowledge or information 02:42
that you believed had Marsh rejected executive 02:42
committee scrutiny and instead opted for the 02:42
enforcement process that NCAA would have 02:42
agreed, all right, we'll do the enforcement 02:42
process? 02:42
MR. KOWALSKI: Just caution you not 02:42
to he reveal the contents of privileged 02:43
communications with legal counsel. 02:43
A. I probably come to that conclusion 02:43
on my own just based on how I think the 02:43
processes would work. 02:43
Q. And what processes are those? 02:43
A. The enforcement process and the 02:43
executive committee jurisdiction. 02:43
Q. Is there a mechanism by which a 02:43
member may compel adjudication by the 02:43
enforcement process as opposed to some other 02:43
process? 02:43
MR. KOWALSKI: Objection to form. 02:43
A. I'm not sure that I follow you. Any 02:43
time there's a potential violation of NCAA 02:43
rules, the enforcement process is the natural 02:43

Page 211

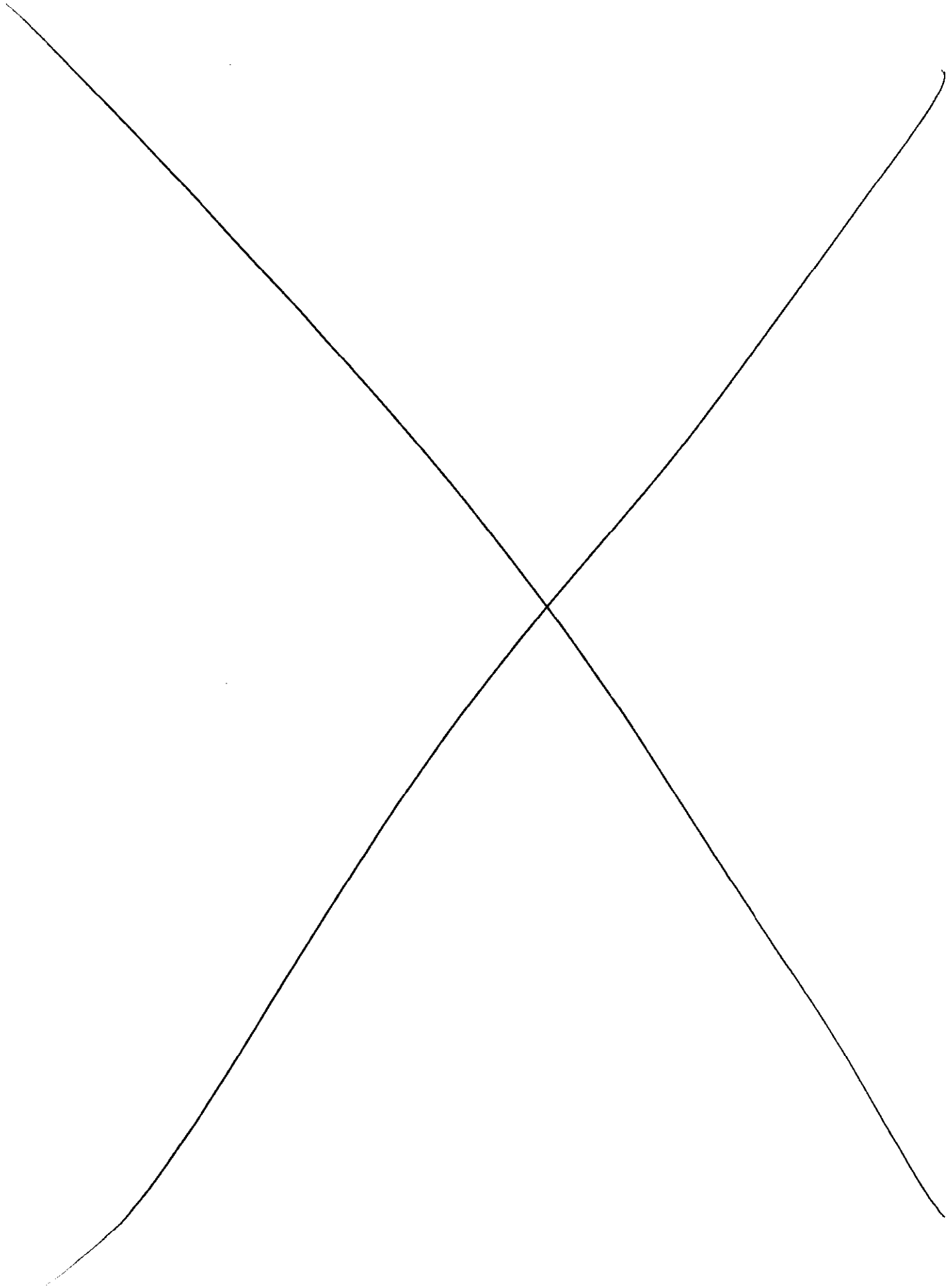
one to come into play. 02:43
Q. But that's not here yet when you're 02:43
talking to Gene Marsh what was happening, 02:43
right? 02:43
MR. KOWALSKI: Objection to form. 02:43
A. I can't answer that for sure. From 02:43
my perspective, I was trying to keep it away 02:44
from the, whether you had a violation or not 02:44
made no difference to me. The university may 02:44
well have acknowledged violations either in the 02:44
Freeh Report or separately in the consent 02:44
decree. That wasn't important in my view. If 02:44
there was a set of facts for which they took 02:44
responsibility, that was enough for the 02:44
executive committee to act and the institution 02:44
could demand that the matter be handled by the 02:44
enforcement process. 02:44
Q. So that was an option that was open 02:44
to Penn State the at that time? 02:44
A. Yes. 02:44
Q. Rather than the option that became 02:44
the consent decree, your testimony is the 02:44
university could have chosen to be adjudicated 02:44
through the enforcement process? 02:45
A. At any point in the process, not 02:45

Page 212

just then. 02:45
Q. Was it ever communicated to the 02:45
university, either by you or by anyone else, to 02:45
your knowledge, that if Penn State chose to 02:45
invoke the enforcement process, that it was at 02:45
serious risk of receiving the death penalty? 02:45
A. In my conversations with Gene, I 02:45
indicated that there certainly would be 02:45
interest in pursuing the matter and that it is 02:45
possible that the death penalty would be 02:45
imposed. That was how I was reading the mood 02:45
of the membership and the public basically. 02:45
Q. I want to be careful because I don't 02:45
want to inquire about your conversations with 02:45
Mr. Remy if they get into legal advice. 02:45
A. That's my conversation with Gene. 02:45
Q. Gene Marsh. Did you -- was -- did 02:45
the words you used to express that sentiment 02:46
express a sentiment that Gene, you are likely 02:46
to get the death penalty if you go the 02:46
infractions route or, Gene, it's on the table 02:46
if you go the infractions route? 02:46
A. It was probably closer to the 02:46
latter, that the so-called death penalty comes 02:46
into play. And there would be those that would 02:46

Page 213

advocate for it. 02:46
Q. Now, at the time you're having these 02:46
conversations with Mr. Marsh, has the 02:46
possibility of the alternative process 02:46
involving the exec I have committee matured to 02:46
the point it's coalesced into a different 02:46
thing, a different process that be could be 02:46
used? 02:47
MR. KOWALSKI: Objection to form. 02:47
Q. Did he have alternatives at that 02:47
point in other words? 02:47
A. I think he always had alternatives, 02:47
and the consent decree alternative may have 02:47
been slower in developing than the others but 02:47
couldn't -- it must have hours or a day or 02:47
something. 02:47
Q. Do you recall a conversation with 02:47
Gene Marsh in which the substance of the 02:47
communication was Penn State can accept the 02:47
punishments it will get through the executive 02:47
committee and, you know, a stipulated result, a 02:47
consent decree, whatever by that point it was 02:47
being called or it can go the infractions route 02:47
and it runs serious risk of the death penalty? 02:47
A. I don't think it was ever phrased 02:47



Page 222

there was a failure to report that information, 03:01
which I think was immediately corrected. 03:01
Q. Is -- were the -- I don't want to 03:01
call them deal terms because I don't want you 03:01
to get mad at me, were the terms that 03:01
Dr. Emmert developed as the punishment terms 03:01
ever given to you in any kind of written 03:02
document? Is there a sheet, spreadsheet 03:02
saying, for instance, here's what they are? 03:02
MR. KOWALSKI: Objection to form. 03:02
A. No, I never had any such thing. And 03:02
I don't know how to respond beyond that because 03:02
that would involve Donald Remy. 03:02
Q. All right. Let's take a look 03:02
quickly at Tab 27, which is Berst 14. I've 03:02
been imprecise in trying to nail down dates 03:02
where the settlement discussions, for lack of a 03:02
better term, are developing. If as we go 03:02
through these emails it helps you to articulate 03:02
yes, I remember on this date the conversation 03:02
had developed here, please let me know. 03:02
This is an email at least the 03:03
non-redacted part, is an email from Gene to 03:03
you, re: Question. Do you recall reading this 03:03
email what the question was? 03:03

Page 223

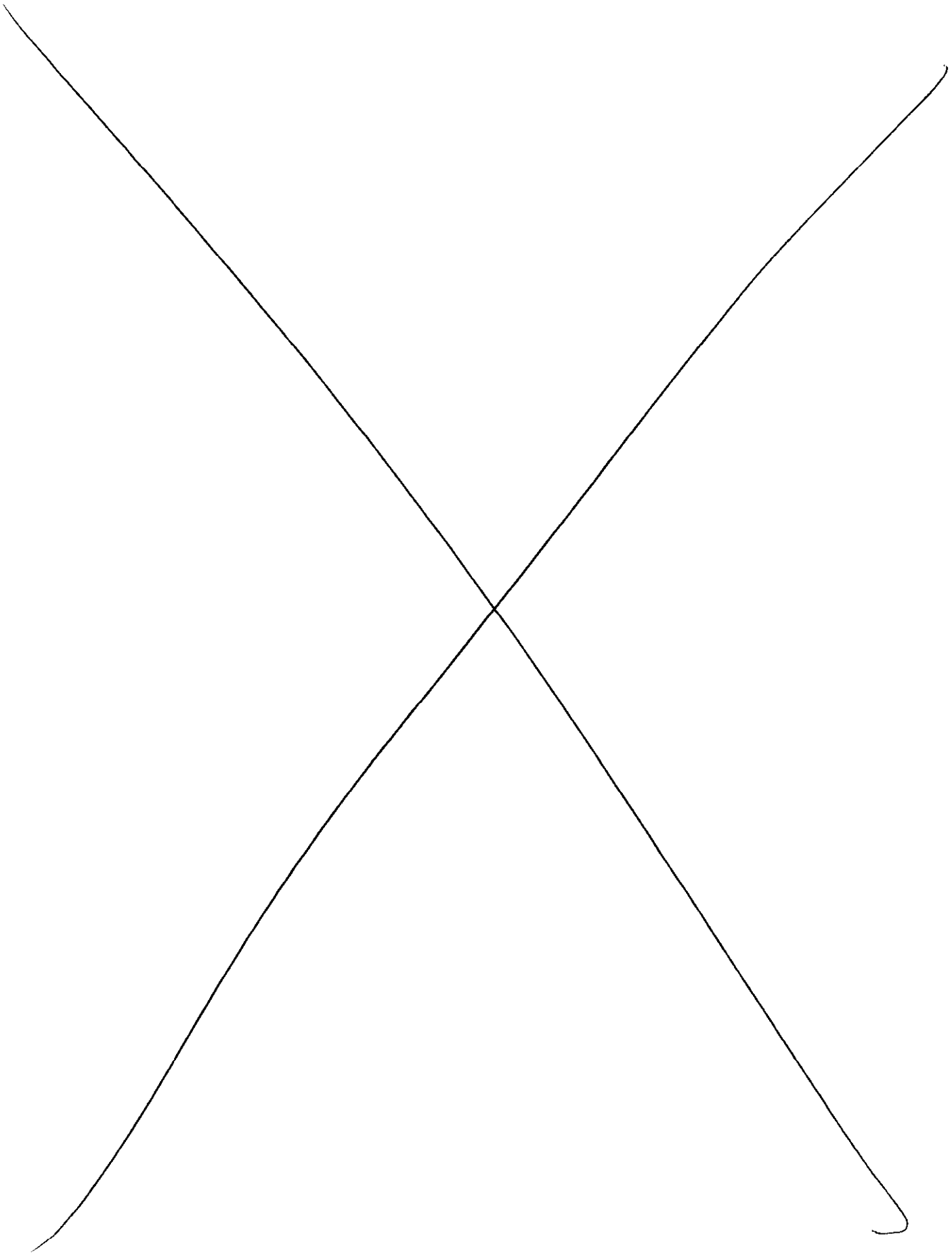
A. No, I don't. 03:03
Q. Do you recall Gene Marsh calling you 03:03
on July 17, either on your cell or your direct 03:03
line? 03:03
A. I don't recall specifically. He 03:03
would have called me, you know, half a dozen 03:03
times probably. 03:03
Q. Would he have called you primarily 03:03
to discuss issues like an intellectual debate 03:03
over the applicability of the death penalty? 03:03
MR. KOWALSKI: Objection to form. 03:03
A. He -- I don't recall him calling for 03:04
that reason. He would call related to, you 03:04
know, a process kind of a question that I 03:04
probably know more quickly than anyone else. 03:04
Q. As an aside, when -- well, you 03:04
testified that there was discussion about the 03:04
perceived difficulty of proving a case on the 03:04
enforcement side. And that was at least Gene 03:04
Marsh's suggestion to you that there would be 03:04
problems with that case, right? 03:04
A. He recognized the same impediments 03:04
that I did. 03:04
Q. Did he in -- well, did he raise as 03:04
an impediment his belief that only repeat 03:04

Page 224

offenders could receive the death penalty? 03:04
A. He did ask that question, whether a 03:04
so-called death penalty could be imposed in the 03:04
first instance rather than only in a repeat 03:05
violator case. 03:05
Q. And what did you tell him? 03:05
A. I told him it could, in fact, be 03:05
applied that there was no limitation, frankly 03:05
on the committee on infractions in imposing any 03:05
set of penalties that it wished to. 03:05
Q. Do you know if that view of the 03:05
applicability of the death penalty is accepted 03:05
throughout the enforcement division? 03:05
A. I would say that -- I don't know 03:05
precisely whether that's -- whether that's the 03:05
practice in all instances. It's -- it was a 03:05
set of bylaws that I actually wrote, so I know 03:05
the room was left to do that. 03:05
Q. Are you aware of the death penalty 03:05
being imposed on a member that was not a repeat 03:05
offender? 03:05
A. Well, yes. McMurray College in the 03:05
sport of tennis, actually, there's been a 03:06
couple of self-imposed similar cases involving 03:06
Tulane University and University of San 03:06

Page 225

Francisco. Other than that, it would be a 03:06
repeat violator case involving SMU. 03:06
Q. What were the facts in the McMurray 03:06
tennis team case? 03:06
A. It was an out of control booster of 03:06
a program, I say out of control. There might 03:06
be some objection from somebody else when I say 03:06
that. 03:06
Q. Not from me. 03:06
A. But it was a relative of the tennis 03:06
coach and it related to benefits provided to 03:06
international student athletes that were part 03:06
of their team for a period of years. 03:06
Q. Did Gene Marsh challenge you on your 03:06
position that repeat offenders -- I'm sorry, 03:06
that non-repeat offenders could receive the 03:07
death penalty? 03:07
A. I think he questioned me closely at 03:07
least on that point. 03:07
Q. Turning your attention to, let's 03:07
take Tab 28. 03:07
Q. While we do that, do you know if 03:07
Gene Marsh ever informed Penn State that Penn 03:07
State had the ability to compel invocation of 03:07
the infractions process? 03:07



Page 234

could impact the University of Alabama. 03:22
Q. And he was at that time a faculty 03:22
member at the University of Alabama? 03:22
A. Yes. 03:22
Q. I don't need more than that. 03:22
He closes this email by noting that 03:22
this is just his own personal rant. And then 03:22
at some point, an institution may be bet are 03:22
off under a traditional infractions process but 03:22
that is just inside my head and going nowhere 03:22
else for now. 03:22
Two questions, Mr. Berst: First, do 03:22
you know if Mr. Marsh, in fact, kept these 03:22
thoughts it to himself and -- I'm asking if you 03:22
know -- and did not share them with anyone at 03:22
Penn State? 03:22
MR. KOWALSKI: Objection. 03:22
A. I don't believe he, that he kept 03:22
them to himself in regard to processes 03:22
available to Penn State. I don't know whether 03:22
he shared with Penn State that to the extent 03:23
the NCAA is going to attempt to evaluate the 03:23
culture of, you know, an intercollegiate 03:23
athletics program and its impact on the local 03:23
community, whether that is something the NCAA 03:23

Page 235

should or should not do then or in the future. 03:23
I don't know. I don't know what he did with 03:23
that information. 03:23
Q. Did I gather correctly that you 03:23
believe that he may have informed Penn State 03:23
that Penn State might be better off under the 03:23
traditional infractions process? Or did I hear 03:23
that wrong? 03:23
A. You heard that wrong. 03:23
Q. Okay. 03:23
A. I think I know Gene well enough to 03:23
know he would review all of the options and if 03:23
asked he would provide more commentary on their 03:23
impact and the positives and negatives. But I 03:24
think he'd do it in that spirit. 03:24
Q. But as we sit here now, you don't 03:24
know what he told Penn State specifically on 03:24
those points? 03:24
A. I'm basing my view just on the 03:24
continuing conversations we had. I don't think 03:24
there were any secrets between him and the 03:24
university regarding processes that might be 03:24
available to them. I take it that's why he was 03:24
hired. 03:24
Q. Did you I think I know the answer to 03:24

Page 236

that when do you recall Gene Marsh informing 03:24
you that Penn State agreed to accept the 03:24
consent decree with the punishment terms 03:24
imposed by NCAA? 03:24
A. It had to be possibly even the day 03:24
before this because it looks like on the 19th, 03:24
there was work being done on what a consent 03:25
decree will provide for. And he's offering 03:25
some information that he hopes might be 03:25
included somehow in that language. I don't 03:25
know whether, whether the penalties, I guess we 03:25
figured out when those were reported, which may 03:25
have been on the same day. And now I've lost 03:25
the original question. The sequence of events 03:25
was that the consent decree was being drafted, 03:25
I believe, and the penalties were being 03:25
reported to him. 03:25
Q. Were you aware of whether President 03:25
Emmert had scheduled a press conference to 03:25
announce sanctions against Penn State prior to 03:25
the time that the consent decree was agreed to 03:25
by Gene Marsh? 03:26
A. I don't know the timing of when 03:26
things were scheduled. I would guess -- it 03:26
doesn't sound impossible since everyone's going 03:26

Page 237

to be trying to think ahead on whatever the 03:26
timing of these things are going to be in 03:26
regard to how you present the information 03:26
publicly. 03:26
Q. What was NCAA's plan if Gene Marsh 03:26
rejected the consent decree, if you he know? 03:26
MR. KOWALSKI: And if you can answer 03:26
this without revealing privileged 03:26
communications with legal counsel. 03:26
A. I really just have to speculate from 03:26
what I know. That certainly could be a 03:26
response by the -- by Penn State and if so, 03:26
everything whatever canceled and we would have 03:26
gone onto the next step. 03:26
Q. Which would have been what? 03:26
A. Consider how to handle the matter 03:26
further, whether it then rolls into a process 03:27
that is a part of the infractions process or 03:27
whether anyone could believe that there might 03:27
be a different process that could be applied 03:27
through the executive committee under those 03:27
circumstances. 03:27
Q. In your opinion, I'm sorry, not your 03:27
opinion. 03:27
Did you believe based on your 03:27

Received 11/13/2014 Commonwealth Court of Pennsylvania

Filed 11/13/2014 Commonwealth Court of Pennsylvania
1 MD 2013

IN THE COMMONWEALTH COURT OF PENNSYLVANIA 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 Commonwealth of Pennsylvania, Plaintiffs	:	1 MD 2013
v.		
The National Collegiate Athletic Association, Defendant		
v.		
Pennsylvania State University, Defendant		

PROOF OF SERVICE

I hereby certify that this 13th day of November, 2014, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

PROOF OF SERVICE

(Continued)

Service

Served:	Booker, Daniel I.
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Reed Smith Llp 225 Fifth Ave Ste 1200 Pittsburgh, PA 152222716
Phone:	412-288-3131
Representing:	Defendant Pennsylvania State University

Served:	Cobetto, Jack Bernard
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Reed Smith Llp 225 Fifth Ave Ste 1200 Pittsburgh, PA 152222716
Phone:	412-288-7282
Representing:	Defendant Pennsylvania State University

Served:	Craig, Christopher B.
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Treasury Department 127 Finance Building Harrisburg, PA 17120
Phone:	717-787-2740
Representing:	Plaintiff McCord, Robert M.

Served:	Doblick, Donna Marie
Service Method:	eService
Email:	ddoblick@reedsmith.com
Service Date:	11/13/2014
Address:	225 Fifth Avenue Suite 1200 Pittsburgh, PA 15222
Phone:	412-.28-8.7274
Representing:	Defendant Pennsylvania State University

PROOF OF SERVICE

(Continued)

Served:	Doblick, Donna Marie
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Reed Smith Llp 225 Fifth Ave Ste 1200 Pittsburgh, PA 152222716
Phone:	412-288-3131
Representing:	Defendant Pennsylvania State University

Served:	Garden, Andrew Kabnick
Service Method:	eService
Email:	agarden@conradobrien.com
Service Date:	11/13/2014
Address:	Conrad O'Brien PC 1500 Market St STE 3900 W TWR Philadelphia, PA 19103
Phone:	215--52-3-8305
Representing:	Plaintiff Corman, Jake

Served:	Garden, Andrew Kabnick
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Conrad O'Brien, PC 1500 Market Street West Tower, Suite 3900 Philadelphia, PA 19102
Phone:	215-864-9600
Representing:	Plaintiff Corman, Jake

Served:	Haar, Matthew Myers
Service Method:	eService
Email:	mhaar@saul.com
Service Date:	11/13/2014
Address:	2 North Second Street 7th Floor Harrisburg, PA 17101
Phone:	717-257-7508
Representing:	Defendant Pennsylvania State University

PROOF OF SERVICE

(Continued)

Served:	Haar, Matthew Myers
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Saul Ewing Llp 2 N 2ND St Fl 7 Harrisburg, PA 171011619
Phone:	717-238-7508
Representing:	Defendant Pennsylvania State University

Served:	Haverstick, Matthew Hermann
Service Method:	eService
Email:	mhaverstick@conradobrien.com
Service Date:	11/13/2014
Address:	1500 Market Street, Suite 3900 Centre Square West Philadelphia, PA 19102-2100
Phone:	215--52-3-8325
Representing:	Plaintiff Corman, Jake

Served:	Haverstick, Matthew Hermann
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	1500 Market Street, Centre Square West Tower, Suite 3900 Philadelphia, PA 191021916
Phone:	215-864-9600
Representing:	Plaintiff Corman, Jake

Served:	Langan, Jennifer
Service Method:	eService
Email:	jlangan@patreasury.gov
Service Date:	11/13/2014
Address:	127 Finance Building Harrisburg, PA 17120
Phone:	717-787-9738
Representing:	Plaintiff McCord, Robert M.

PROOF OF SERVICE

(Continued)

Served:	Langan, Jennifer
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	PA Treasury Department 127 Finance Bldg Harrisburg, PA 171200018
Phone:	717-787-2740
Representing:	Plaintiff McCord, Robert M.

Served:	MacNett, Stephen C.
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	The Payne Shoemaker Building 240 N. Third Street 5th floor Harrisburg, PA 17101
Phone:	717-232-2141
Representing:	Plaintiff Corman, Jake

Served:	Schwartz, Craig S.
Service Method:	eService
Email:	csschwartz@patreasury.gov
Service Date:	11/13/2014
Address:	127 Finance Building Harrisburg, PA 17120
Phone:	717--78-7-9737
Representing:	Plaintiff McCord, Robert M.

Served:	Schwartz, Craig S.
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	PA Dept of Treasury 127 Finance Building Harrisburg, PA 17120
Phone:	717-787-9737
Representing:	Plaintiff McCord, Robert M.

PROOF OF SERVICE

(Continued)

Served:	Scott, Michael T.
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Reed Smith Llp 1717 Arch St Ste 3100 Philadelphia, PA 191032762
Phone:	215-851-8100
Representing:	Defendant Pennsylvania State University

Served:	Seiberling, Mark Edward
Service Method:	eService
Email:	mseiberling@conradobrien.com
Service Date:	11/13/2014
Address:	1500 Market Street, Centre Square West Tower, Suite 3900 Philadelphia, PA 19102
Phone:	610-212-8918
Representing:	Plaintiff Corman, Jake

Served:	Seiberling, Mark Edward
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	1500 Market Street Centre Square West Tower, Ste. 3900 Philadelphia, PA 19102
Phone:	215-864-9600
Representing:	Plaintiff Corman, Jake

Served:	Sheridan, William Jennings
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	Reed Smith Llp 225 Fifth Ave Ste 1200 Pittsburgh, PA 152222716
Phone:	412-288-3131
Representing:	Defendant Pennsylvania State University

PROOF OF SERVICE

(Continued)

Served:	Voss, Joshua John
Service Method:	eService
Email:	jvoss@conradobrien.com
Service Date:	11/13/2014
Address:	The Payne Shoemaker Building 240 N. Third Street, 5th Floor Harrisburg, PA 17101
Phone:	717--94-3-1211
Representing:	Plaintiff Corman, Jake

Served:	Voss, Joshua John
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	The Payne Shoemaker Building 240 N Third St Fl 5 Harrisburg, PA 17101
Phone:	215-864-8081
Representing:	Plaintiff Corman, Jake

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served:	Boockvar, Kathryn
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	PA Dept of the Auditor General 224 Finance Bldge Harrisburg, PA 17120
Phone:	717-787-4546
Representing:	Amicus Curiae Department of Auditor General

Served:	Madden, Victoria Sellitto
Service Method:	eService
Email:	VMadden@auditorgen.state.pa.us
Service Date:	11/13/2014
Address:	224 Finance Building Office of Chief Counsel Harrisburg, PA 17043
Phone:	(71-7) -705-5181
Representing:	Amicus Curiae Department of Auditor General

Served:	Madden, Victoria Sellitto
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	PA Dept of the Auditor General 613 North St Fin Bldg RM 224 Harrisburg, PA 17102
Phone:	717-787-4546
Representing:	Amicus Curiae Department of Auditor General

Served:	Pankiw, Bohdan R.
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	PA PA Utility Commission 400 Nost Cmnwlth Keystone Bldg Harrisburg, PA 171200001
Phone:	717-783-3222
Representing:	Amicus Curiae Public Utility Commission

PROOF OF SERVICE

(Continued)

Served:	Pennsylvania District Attorneys Association
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	2929 North Front St. Harrisburg, PA 17110
Phone:	--
Representing:	Amicus Curiae Pennsylvania District Attorneys Association

Served:	Pike-Nase, Christal
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	PA Dept of the Auditor General 224 Finance Building Harrisburg, PA 171200018
Phone:	717-787-4546
Representing:	Amicus Curiae Department of Auditor General

Served:	Rohrbaugh, Eric Albert
Service Method:	First Class Mail
Service Date:	11/13/2014
Address:	PA Public Utility Comm 400 N St Keystone Bldg Harrisburg, PA 171200001
Phone:	717-787-5534
Representing:	Amicus Curiae Public Utility Commission

/s/ Thomas W. Scott

(Signature of Person Serving)

Person Serving:	Scott, Thomas W.
Attorney Registration No:	015681
Law Firm:	Killian & Gephart, L.L.P.
Address:	218 Pine St P.O. Box 886 Harrisburg, PA 171080886
Representing:	Defendant The National Collegiate Athletic Association