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

GEORGE SCOTT PATERNO, as duly : 2013-2082
appointed representative of the :
ESTATE and FAMILY of JOSEPH PATERNO; :

RYAN McCOMBIE, ANTHONY LUBRANO, AL :
CLEMENS and ADAM TALIAFERRO, members :
Of the Board of Trustees of :
Pennsylvania State University; :
PETER BORDI, TERRY ENGELDER, SPENCER :
NILES, and JOHN O'DONNELL, members :
Of the faculty of Pennsylvania State :
University; :

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

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

VS :

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, and THE :
PENNSYLVANIA STATE UNIVERSITY :

TRANSCRIPT OF PROCEEDINGS

Before: John B. Leete, Senior Judge
Judicial District 320
Specially Presiding

ORIGINAL

1 Date: February 6, 2015

2

3 Place: Centre County Courthouse
4 Courtroom No. 1
5 102 South Allegheny Street
6 Bellefonte, Pa 16823

5

6 Appearances:

7 For the Plaintiffs:

8 L. Joseph Loveland, Esquire
9 Patricia L. Maher, Esquire
10 Samuel Evan Doran, Esquire

10 For the Defendants:

11 Everett C. Johnson, Esquire
12 Thomas W. Scott, Esquire
13 Brian E. Kowalski, Esquire
14 Sarah Gevagert, Esquire
15 Daniel I. Booker, Esquire
16 Donna M. Doblick, Esquire

14

15 Notes by: Elise A. Sturges
16 Official Court Reporter
17 Room 208, Centre County Courthouse
18 Bellefonte, Pa 16823
19 814 355-6734 or fax 814 548-1158

18

19 Index to the Exhibits

20

Admitted:

21 Plaintiffs:

22 No. 1

23

24 Defendants:

25 [None]

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

2 The Court: Please be seated.

3 Good morning, ladies and gentlemen.

4 Everyone: Good morning, Your Honor.

5 The Court: I apologize for the late
6 start. The failsafe Subaru failed a little bit
7 this morning and while we were within driving
8 distance of a garage we got some things checked
9 out because after that area there is 70 miles
10 with no cellphone service and no gas station. So
11 that's why we're running a little bit late.

12 Preliminarily, I'm going to ask
13 plaintiffs and defendants to outline what you
14 think our issues of the day are, and I will also
15 ask anyone who is speaking when you do speak
16 please give your name, even if you have done it
17 previously, for the benefit of our court reporter
18 who is endeavoring to make a record here.

19 After we've completed our argument I
20 want to meet privately with counsel of record and
21 any named parties who may be present are also
22 welcome to sit in on that just to go over some
23 other issues.

24 Mr. Loveland: Good morning, Your Honor.
25 Joe Loveland on behalf of the plaintiffs.

1 I believe there are three issues before
2 the Court this morning. The first is the NCAA's
3 preliminary objection to the estate's standing
4 with regard to Count 1; second is an issue with
5 regard to our ability to subpoena certain NCAA
6 members of the Executive Committee and they have
7 objected to our ability to submit those
8 subpoenas; and the third is proposed
9 modifications of the protective order.

10 The Court: Yes, sir, for the defense.

11 Mr. Johnson: Yes, Your Honor. Everett
12 Johnson. We agree that those are the issues
13 before Your Honor this morning.

14 The Court: Okay. Well let's start with
15 the first one, the obvious one, that's the
16 preliminary objections to the amended complaint,
17 and, of course, that has a lot of implications in
18 terms of the last opinion that this Court issued.
19 I'm not sure everyone understood that opinion
20 very well but I will be happy to hear from the
21 NCAA on that issue.

22 Mr. Johnson: Thank you, Your Honor.
23 It's clear that we understood it differently.

24 The Court: It's very clear that we
25 understood it differently.

1 Mr. Johnson: Judge, before we get into
2 that I would like to just take a second because I
3 suspect the Court is aware of a substantial
4 development in a different case --

5 The Court: I am aware.

6 Mr. Johnson: -- and that is the Corman
7 litigation.

8 The Court: We have followed that and my
9 capable law clerk has been looking into the
10 implications of that. That's one thing that I
11 wanted to discuss, the implications, at a more
12 private session, but it's open forum at this
13 time, sir.

14 Mr. Johnson: Thank you, Your Honor.
15 If, in fact -- I think the Court's preference is
16 a good one and I will just skip over that piece
17 of that for now and raise it privately with Your
18 Honor at the end of our session here today.

19 The Court: Very well.

20 Mr. Johnson: Our view about the amended
21 complaint, Your Honor, is that it is essentially
22 just a Motion for Reconsideration of Your Honor's
23 September decision in this case.

24 The Court: That's how I read it.

25 Mr. Johnson: And the issue is a

1 relatively narrow one and that is what did Your
2 Honor decide with respect to the estate's breach
3 of contract claim in Count 1 and whether anything
4 in the amended complaint alters that decision,
5 and I'll try and break it into those two
6 component parts. I think from our prospective
7 the answers are relatively simple. We believe
8 the Court dismissed the breach of contract claim
9 brought by the estate, not by the trustee but by
10 the estate, and we believe that the amended
11 complaint can't and doesn't alter that outcome.

12 Here is how I see the fundamental
13 difference in interpreting Your Honor's order
14 between ourselves and the plaintiffs. Your Honor
15 clearly sustained our preliminary objection to
16 the involved party standing of Coach Paterno
17 holding specifically that Coach Paterno was not
18 an involved individual while alive and couldn't
19 become an involved individual while deceased. In
20 a sense the entirety of Count 1 is predicated
21 upon the third party beneficiary status that
22 would arise from Coach Paterno becoming an
23 involved individual. By finding that he was not
24 an involved individual, Your Honor found that he
25 could not have been a third party beneficiary and

1 that extinguished that breach of contract claim.

2 The difference in opinion between the
3 parties arises from another holding in Your
4 Honor's September decision and that is that
5 Trustee Clemens and Coach Paterno have standing
6 to challenge the validity of the consent decree.

7 The Court: Right.

8 Mr. Johnson: And from that the estate
9 now argues that that means that Count 1 survived
10 and I think their misreading of the Court's
11 opinion is simply confusing a remedy with a cause
12 of action. The Court clearly held -- we're not
13 here today to contest that if the remedy of
14 invalidation of the consent decree makes sense
15 that these parties have standing to pursue it,
16 but remedies have to attach to a legal theory and
17 the legal theory that that remedy can't attach to
18 any longer is the breach of contract claim
19 expressed in Count 1 because it's predicated upon
20 the involved individual status, which the Court
21 has ruled the estate did not have.

22 So, in our mind at least, it's clear
23 that the estate's claim with respect to Count 1
24 has been dismissed. We suspect that the estates
25 secretly thinks so any way otherwise they would

1 not have sought to amend Count 1. Which brings
2 me to the question of whether or not the
3 amendment can salvage the count. I understand
4 what they're now arguing, Your Honor --

5 The Court: Now let's assume that the
6 amendment was properly done, which is a whole
7 other issue we're going to talk about today --

8 Mr. Johnson: And I was going to begin
9 there actually.

10 The Court: Go right ahead.

11 Mr. Johnson: As Your Honor knows, our
12 view is that the Pennsylvania Procedural Rule is
13 quite clear. A pleading can be amended under two
14 circumstances. One is by leave of court and the
15 other is by consent of the parties. There is no
16 issue in this case about whether there was a
17 consent of the parties because we never discussed
18 it. The issue is whether or not the Court in its
19 September opinion granted a broad enough leave to
20 allow the Count 1 to be amended as it relates to
21 the NCAA.

22 We thought the Court's ruling was
23 exceedingly clear, that the only leave to amend
24 that the Court granted was to clarify which
25 claims were being stated against Penn State

1 University. The amended complaint does that but,
2 of course, it does substantially more. So we
3 think at the outset that the amendment was not
4 permitted by the Court's earlier ruling and could
5 be simply denied on that basis.

6 Having said that, Your Honor, if the
7 Court wants to take up the amendment on its
8 merits I actually think that our po's ought to be
9 sustained again for precisely the same reason
10 that you sustained them before.

11 The Court: If I understand what
12 plaintiffs are saying, they are saying well since
13 you wrote that opinion we've had discovery and
14 now we feel that Joe Paterno and Al Clemens were,
15 in fact, involved parties, particularly with
16 regard I guess to Paterno, during Joe Paterno's
17 lifetime before his unfortunate passing. I
18 believe that's what plaintiffs are saying. Do
19 you think so?

20 Mr. Johnson: I understand it exactly
21 that way. I think that's precisely what they're
22 saying.

23 The Court: So there is some intervening
24 discovery, which we will talk about with
25 plaintiffs on that issue.

1 Mr. Johnson: Yeah. We don't
2 necessarily agree that there is any new
3 information here but I do understand that to be
4 their argument, and, Your Honor, so that raises
5 two questions. One is was Coach Paterno an
6 involved individual before he died in January of
7 2012? Secondly, would it make any difference
8 whether or not he was? And the later question is
9 remarkably simple and I think already addressed
10 by the Court in your September decision because
11 even if he were an involved individual the --
12 that would be a contract right. It would be a
13 third party beneficiary status according to Your
14 Honor's earlier rulings.

15 The question would be could that survive
16 his death? And Pennsylvania law is really clear
17 in that regard. There are numerous cases out
18 there. They tend to be very old but the most
19 succinct statement of this is in the Estate of
20 Pierce where the Court set forth what kinds of
21 contracts survive and those that don't and it's a
22 pretty clear line. One is it survives if it's
23 akin to the payment of money. In other words, if
24 the performance of the agreement doesn't depend
25 on the individual then that contract right and

1 obligation -- because the contracts are mutual --
2 can survive the contracting party's death. On
3 the other hand, if the performance of the
4 contract is personal then the contract rights and
5 obligations die with the party. What could be
6 more personal than the contract right that the
7 estate of Coach Paterno seeks to enforce here in
8 this courtroom? Because it's not a right to the
9 payment of money. It's a right to a process.
10 It's a right to a hearing. It's a right to be
11 heard but also a right to be judged and that can
12 no longer be done.

13 Now the estate says, oh, we're happy to
14 do it. We will just come in and we will just
15 make all of these arguments but that's like a
16 football team saying we're happy to be on offense
17 all of the time. What's lost here is the ability
18 of anyone to understand what Coach Paterno would
19 have said in such a proceeding. He can't answer
20 questions today that would be at the center of
21 it. What did you know? What did you do? Who
22 did you talk with about it? Why didn't you do
23 more?

24 Now the estate is perfectly happy to say
25 we will come in and answer all of those questions

1 but they can't because they don't know either.
2 Only Coach Paterno knew that. The proceeding
3 would be a proceeding to sanction Coach Paterno.
4 He can't be sanctioned because he is no longer
5 alive and he can't answer those questions because
6 he can no longer participate. It's the essence
7 of a personal obligation that Pennsylvania law
8 says does not survive the death of a contracting
9 party.

10 The reason I start with that, Your
11 Honor, is because if we are right about that --
12 and we think the law clearly supports that --
13 then it doesn't make any difference whether or
14 not he was an involved individual before his
15 demise because whether or not he was the contract
16 right wouldn't have survived. We actually think
17 Your Honor that you already addressed that and
18 held that in your September opinion.

19 Now let's talk about whether or not
20 Coach Paterno could have been an involved
21 individual.

22 The Court: That's a necessary
23 discussion.

24 Mr. Johnson: That's a necessary
25 discussion. While he was alive. And I think

1 there are two important components of that
2 discussion. One is whether or not the estate
3 ought to be bound by the countless number of
4 times it stated clearly and unequivocally that
5 the NCAA did not conduct an investigation. Your
6 Honor, I'm not going to repeat them here. We
7 cited them in our briefs but it's literally too
8 many to count. Now they're trying to throw a
9 nuance in here because one time they called it a
10 proper investigation but the Doctrine of Judicial
11 Admission says if you come to court and you say
12 to your own advantage that X is true you can no
13 longer in the future argue not X, and that's
14 precisely what they're trying to do here.

15 For the longest period of time they've
16 wagged their finger at the NCAA and said you
17 didn't conduct an investigation, you should have
18 conducted an investigation, you never
19 investigated, that's the problem. That's at the
20 core of their complaint. When that turns out to
21 be an unfortunate fact now they say it's more
22 nuance. Now you did an investigation you were
23 already investigating, you just didn't do a very
24 good one.

25 This reversal of course shouldn't be

1 permitted, Your Honor, and I think the law
2 supports the idea that once you allege in a
3 verified complaint and in all of their pleadings
4 that no investigation was conducted then that's
5 the factor --

6 The Court: I've seen your argument that
7 they should be bound by what you characterize as
8 judicial admissions.

9 Mr. Johnson: Right. Having said that,
10 Your Honor, no investigation was conducted and
11 they know it, and Your Honor has actually already
12 held it because what they point to primarily is a
13 letter that President Emmert sent to President
14 Erickson of Penn State University in November --
15 I think it was on November 17th of 2011 and in
16 that letter the NCAA says we are considering the
17 possibility of an inquiry and in order to help us
18 determine whether or not to commence an
19 investigation could you answer the following four
20 questions. It's well known and completely
21 undisputed that Penn State did not answer those
22 questions but everybody agreed to await the Freeh
23 report conclusions before deciding whether to
24 commence an investigation.

25 And, Your Honor, the reason I say that

1 that's dispositive of this, that document is
2 attached to their complaint. It's attached to
3 the second amended complaint. The Court is
4 perfectly free to consider it but you already
5 described it in your January opinion in the way
6 that I just did, that it is a precursor to a
7 potential investigation but is not itself the
8 beginning of an investigation.

9 Now it can't be the case that you become
10 an involved party if somebody thinks about you.
11 You become an involved party, according to them
12 in the most broad way, is if you are the subject
13 of an investigation. So even under their theory
14 of it if there is no investigation then there is
15 no -- then you cannot have been an involved
16 party. And I particularly invite Your Honor's
17 attention to your description of the meaning of
18 the November letter in your January of 2014
19 opinion.

20 So, Your Honor, focussing now on those
21 issues we think you decided this in September.
22 We think that it doesn't make any difference
23 whether or not Coach Paterno was an involved
24 individual while he was alive because that right
25 would have expired at the time of his death. We

1 think they are bound by their multiple assertions
2 that no investigation was undertaken by the NCAA
3 and we think that the evidence is clear and
4 already decided that the only thing that had
5 happened at the time of his death was the NCAA
6 was considering the possibility of a future
7 investigation.

8 All of those things we believe to be
9 true. Any one of them would be sufficient to
10 grant our preliminary injunctions.

11 The Court: All right. Thank you,
12 Mr. Johnson.

13 Mr. Johnson: Thank you.

14 The Court: Mr. Loveland, I will be
15 happy to hear from you as well.

16 Mr. Loveland: Thank you, Your Honor.
17 Your Honor, if I might, I want to go back and
18 cover all of the issues but I would like to start
19 with Mr. Johnson's very last point because I do
20 think that it is critical to the question of
21 whether Joe Paterno was an involved individual
22 and it's critical to the issues that we've tried
23 to put in front of the Court.

24 Let me do it this way. Rather than
25 Mr. Johnson telling the Court what the NCAA was

1 doing and suggesting that the letter was simply
2 to use his words considering the possibility of a
3 future investigation -- and I understand he's to
4 some extent using language from the Court's
5 January 2014 opinion.

6 The Court: Yes. He is.

7 Mr. Loveland: So we thought it was
8 important to put in front of the Court the actual
9 letter, which is now an amendment to the second
10 amended complaint, and the actual letter doesn't
11 say anything remotely close to what Mr. Johnson
12 just said.

13 I would like to hand, if I might, the
14 Court a copy of the letter?

15 The Court: Certainly.

16 Mr. Loveland: We will mark as
17 Exhibit 1. May I approach, Your Honor?

18 The Court: Of course.

19 Mr. Loveland: This is attached as
20 Exhibit B to our -- Exhibit B I believe of our
21 seconded amended complaint. On the first page
22 Mr. Emmert writes as follows.

23 He starts off with as we have discussed
24 on November 5, 2011, the NC -- pardon my
25 handwriting. On November 5, 2011, the NCAA first

1 learned about allegations of sexual abuse of
2 young boys occurring in the athletics facilities
3 of Pennsylvania State University perpetrated by a
4 former assistant head football coach.

5 Now I would like to go down to -- about
6 eight lines further in that first paragraph.
7 Here is what Mr. Emmert actually said the NCAA
8 was doing.

9 I am writing to notify you that the NCAA
10 will examine Penn State's exercise of
11 institutional control over its intercollegiate
12 athletics program, as well as the actions and
13 inactions of relevant responsible personnel. I
14 also have notified the NCAA Division I Board of
15 Directors of the NCAA approach.

16 Last sentence of the paragraph.

17 We will utilize any information gained
18 from the criminal justice process in our review
19 and have posed additional questions below to
20 gather information that we believe relevant to
21 this review.

22 Now this is not a potential. This is
23 not something that might happen in the future.
24 This is what Mr. Emmert put in play on November
25 17, 2011. He expressly on page two references

1 Coach Paterno's responsibilities. Page two, the
2 second paragraph down about two-thirds of the
3 way, he is going through the relevant bylaws that
4 he believes are implicated by what he calls the
5 unethical conduct that had occurred, and he says
6 bylaw 11.1.2.1 goes on the state that, quote, it
7 shall be the responsibility of an institutions
8 head coach to promote an atmosphere compliance
9 within the program -- excuse me -- an atmosphere
10 for compliance within the program supervised by
11 the coach and to monitor the activities regarding
12 compliance of all assistant coaches and other
13 administrators involved with the program who
14 report directly or indirectly to the coach.

15 So we have -- we are doing an
16 examination. We are going to cover specific
17 issues. We identify the bylaw provisions. He
18 expressly refers to the responsibilities of the
19 head coach. I don't see the word considering,
20 potential anywhere in this document.

21 Now he goes on to say -- and as he said
22 he would, he poses four specific questions that
23 he wants answers to. If you look at the end
24 after the four questions he says in the last
25 paragraph as you and I have discussed it is

1 essential that Penn State respond to the
2 questions I have posed so that any failures in
3 the management of athletics programs, both real
4 and perceived, can be rectified. Unless you
5 provide reason for a different timeline, your
6 response should be submitted by December 16 in
7 order for the NCAA to determine next steps.

8 One of the questions posed, question
9 three, is have each of the alleged persons to
10 have been involved or have notice of the issues
11 identified in or related to the Grand Jury Report
12 behaved consistent with principles and
13 requirements governing ethical conduct and
14 honesty?

15 Joe Paterno was an individual who was
16 identified in the Grand Jury Report and we
17 pointed that out in our complaint. Now, Your
18 Honor, this letter was referenced in our first
19 amended complaint but we didn't attach it as an
20 exhibit. We've now attached it as an exhibit
21 because the NCAA wants to run away from what they
22 did. So let's clarify exactly what we have said,
23 tried to say, and if I've ever misspoke on it I
24 apologize but I don't think we've ever come close
25 to anything that would under any scenario

1 constitute a judicial admission. And what we've
2 said is this. The NCAA chose to do something
3 completely different this time than it had ever
4 done before.

5 The Court: That you have stated.

6 Mr. Loveland: It didn't choose to go
7 through its normal Infractions Committee
8 investigations. Instead, Mr. Emmert decided that
9 he and the Executive Committee were going to
10 seize control of this issue but this is an
11 investigation. It may not be an investigation
12 under their rules. In fact, it is not an
13 investigation under their rules.

14 The Court: That's a good question. Is
15 it an investigation or is this a statement of
16 what they plan on doing?

17 Mr. Loveland: He says I am writing to
18 notify you the NCAA will examine -- he's asking
19 questions, specific questions, that he wants
20 responses --

21 The Court: But did they examine or did
22 they just defer entirely, as we've discussed many
23 times, to the Freeh report?

24 Mr. Loveland: I believe the record is
25 clear that what the NCAA did is this. They

1 started this investigation on November 17, 2011.
2 They then elected not to follow through. They
3 elected -- having done that, having started the
4 process, they elected then to say we are going to
5 wait to see what happens with the Freeh report,
6 and as we know they then adopted the Freeh report
7 as the basis for the consent decree they imposed
8 on Penn State, and that's again the language of
9 the consent decree imposed on Penn State.

10 The Court: That's the word in the
11 decree. I agree.

12 Mr. Loveland: So there is no question
13 they started this process on November 17. Now
14 the Court -- I would like to now just cover a
15 couple points on this.

16 The Court: And, you know, one of the
17 issues, of course, I think is what happened, if
18 anything, beyond the letter? Now at this stage I
19 don't know that and it's not appropriate for me
20 to know that.

21 Mr. Loveland: Right. And so, Your
22 Honor, I think --

23 The Court: So you're alleging that
24 something -- or I should say are you alleging
25 that something happened within the NCAA beyond

1 the sending of this letter or did they simply put
2 it on a shelf?

3 Mr. Loveland: We know they didn't put
4 it on a shelf. We know that what they did was,
5 in fact, coordinate with the Freeh firm and
6 that's what the discovery is beginning to show.

7 The Court: Well that's what's been
8 alleged.

9 Mr. Loveland: That's what's been
10 alleged and that's what we -- so this question is
11 did the NCAA conduct an investigation? Certainly
12 not according to its rules. No. It did not.

13 The Court: No. And that's not
14 disputed.

15 Mr. Loveland: No ones every disputed.
16 But here's what the Court had to say about that
17 before when looking at the issue of involved
18 individuals and it's from the September 11 order.

19 To claim the plaintiffs do not have
20 standing to bring suit against NCAA for not
21 following their own rules because the NCAA did
22 not follow their own rules is circuitous logic,
23 which the Court finds to be contrary to the
24 interest of justice.

25 The Court: Verbatim quote.

1 Mr. Loveland: And that applies equally
2 well here. What they're saying is because we
3 didn't follow our own rules on investigating
4 individuals, we decided to do something different
5 and send this letter, then you don't have the
6 rights that you would have had we followed own
7 rules, and that is again completely circuitous
8 logic. They chose to do something different
9 that's not authorized by the bylaws, that's not
10 approved by the bylaws. Had they done the things
11 that the bylaws approved, we have the rights as
12 involved individuals. So that is -- I think
13 there is an undisputed fact, some undisputed
14 facts, and I would like to go back and cover
15 those.

16 First, let's start -- I'm going back
17 now, Your Honor, to the initial point. We do
18 have a disagreement as to the reading of
19 obviously Your Honor's September 2014 opinion.

20 The Court: Apparently so.

21 Mr. Loveland: And in that opinion the
22 Court addressed on pages five and six the
23 question of whether there was capacity to bring
24 Count 1 and this is how it was discussed by the
25 Court. Now what the Court noted in that, first,

1 was the reference to the Pearsall case and the
2 Court noted contracts that are absolutely void
3 because they have no legal sanction, establish no
4 legitimate bond or relation between the parties,
5 and even a stranger may raise the objection.

6 So the Court is holding here -- and this
7 is before there is any discussion of involved
8 individuals. The Court is saying even a stranger
9 can raise Count 1 in the objection here.

10 The Court goes on to quote the Foflygen
11 case. It says under Foflygen the Court must
12 accept the plaintiffs' averments that the consent
13 decree was imposed through an illegal and
14 unauthorized exercise of NCAA's authority is true
15 for the instant motion making the consent decree
16 void. As a result under Pearsall plaintiffs have
17 standing to challenge the consent decree. That
18 is what Count 1 does. It challenges the consent
19 decree.

20 The Court: That's exactly what I said.

21 Mr. Loveland: So the Court goes on.

22 And this was very interesting, Your Honor,
23 because, frankly, this was not an argument that
24 we were clever enough to make to the Court. The
25 next point that the Court makes, which is it is

1 also worth noting that this case is unique. What
2 distinguishes it from a typical third party
3 contract challenge is the basis of the alleged
4 harm. The alleged harm doesn't come from an
5 action, duty, or relationship resulting from the
6 consent decree but instead is derived from the
7 language in the document itself. The Court finds
8 this distinguishing characteristic also -- alone
9 also warrants plaintiffs standing to challenge
10 the consent decree.

11 So the Court has found that there is
12 standing to challenge the consent decree --

13 The Court: Absolutely right.

14 Mr. Loveland: -- and that's what Count
15 1 does.

16 The Court: That is correct.

17 Mr. Loveland: Now there is a separate
18 discussion. Our point of view -- point is that
19 the individual issue now is a secondary capacity
20 issue and it's discussed in the Court's opinion
21 as another capacity issue. That is, do you have
22 the capacity --

23 The Court: Yeah. It was always a
24 separate heading.

25 Mr. Loveland: Do you have the capacity

1 as an involved individual, okay, but you have
2 already held we have the standing under Count 1
3 to challenge the consent decree, and we have it
4 -- just as the Pearsall case says, anyone would
5 have it within that context. So that gives us
6 standing under Count 1 for the estate and that
7 ruling is for the estate and is also for
8 Mr. Clemens on Count 1.

9 Now if we might talk for a moment then
10 about the involved individual language.

11 Mr. Johnson says that well this is really a
12 Motion for Reconsideration. I'm not going to
13 quibble whether it is or not frankly, Your Honor.

14 The Court: It seems to be.

15 Mr. Loveland: To some extent we are
16 certainly saying, and respectfully so, we think
17 the Court was mislead on this issue and adopted
18 the reasoning that was provided and we think
19 improperly. So if I might explain why I said
20 that, Your Honor.

21 The Court: Sure. And the Court
22 essentially accepted the NCAA argument as to
23 involved persons.

24 Mr. Loveland: But you did so, Your
25 Honor, in a couple of ways that are important.

1 First, the NCAA we believe --

2 On bullet two.

3 The NCAA erroneously argued that the
4 estate had conceded that only a living person
5 could be an involved individual. We never made
6 such a concession and we can discuss that
7 further. Secondly, they argue that Joe Paterno
8 died before the NCAA began its investigation.
9 That's a factual issue and we now know it's
10 undisputed if the November 17 letter is what
11 Mr. Emmert said it is, notification that the NCAA
12 will examine and posing specific questions which
13 are to be answered, that's not potential. That's
14 actual. So that occurred we know three months
15 before Coach Paterno died. He died in January.
16 This is November.

17 The Court accepted those representations
18 and what we've tried to do in the second amended
19 complaint is to add the -- by adding number one,
20 the document that was previously referenced in
21 the complaint, the letter that was previously
22 referenced we previously described, but now this
23 argument says well let's really look at that
24 letter. I mean, the NCAA obviously can't say
25 this isn't their letter. And so to say we said X

1 and Y about it, I mean, again the language is
2 right in front of the Court on what the letter
3 does.

4 But let's look at the next one. Go back
5 to your January order, Your Honor, the first one.
6 Involved individual status is a question of fact.
7 The Court looked at that and said many fact
8 questions remain concerning the meaning and
9 application of the phrase involved individuals in
10 this case, including whether Paterno was
11 personally sanctioned. That's one of them. I
12 think one was was he an involved individual at X
13 point in time or Y point in time?

14 So to pick up on the Court's question a
15 moment ago, what did the NCAA do, I don't know
16 yet. We really want to find out what the NCAA
17 was doing between November and June or July of
18 2012. We know they were talking with the Freeh
19 firm. We know they were providing certain
20 information. We know they were coordinating with
21 the Big Ten. We don't know what else they were
22 doing because we haven't been able to get the
23 discovery on that. We know they were having an
24 enormous internal debate over whether they had
25 any business dealing with this, and Your Honor

1 I'm sure has seen some of the --

2 The Court: I have.

3 Mr. Loveland: -- information on that.

4 The Court: I have.

5 Mr. Loveland: And where some of the
6 people at the NCAA were saying we're bluffing or
7 going after Penn State is like shooting roadkill
8 at this point but is not necessarily something we
9 should be doing. But, nonetheless, what they
10 were doing during that time is all subject to
11 discovery and as the Court noted in January
12 that's the discovery that really should be done
13 to inform these fact questions about what was
14 going on.

15 So let's look at this specific question.
16 Does involved individual mean only a living
17 person? Well do the NCAA rules require that an
18 individual be alive at the time of the NCAA
19 investigation to be an involved individual?
20 There is no such statement in the rules.

21 The Court: No. But theoretically if
22 the NCAA is going to sanction someone how can
23 that person be deceased and be sanctioned?

24 Mr. Loveland: Well I think we concede
25 that they certainly sanctioned Joe Paterno --

1 The Court: They took the wins away.

2 Mr. Loveland: Well they did more than
3 that. They took the wins away and they included
4 language in a consent decree --

5 The Court: Yes. They did.

6 Mr. Loveland: -- that said that Joe
7 Paterno facilitated Jerry Sandusky's crimes and
8 that he helped conceal them for 20 years and they
9 said that in the consent decree.

10 Now if that -- I don't know what could
11 be more of a personal attack. Now if the NCAA
12 wants to say that once someone is dead they have
13 no rights then presumably the NCAA would say and
14 once someone is dead we are not going to try and
15 slander them, or attack them, or do things about
16 -- say things about what they did because that's
17 what they did here.

18 The Court: You're looking at an
19 expanded -- I shouldn't say expanded. You're
20 looking at a broad meaning to involved person
21 during a person's lifetime and after that person
22 is deceased?

23 Mr. Loveland: We think that -- first --
24 first go to the fundamental premise. We don't
25 concede that you would have to be alive at the

1 time the investigation initiated. We don't
2 believe there is any basis to conclude that. If
3 the NCAA is going to investigate someone's
4 conduct, if they are going to make comments about
5 what that individual did, they are alleged to
6 have been involved in the activities, and that's
7 the only language about involved individuals when
8 we cite that to the Court that's in the rules and
9 regulations. Is this someone who is alleged to
10 have been involved in these wrongful actions? Do
11 they allege that Coach Paterno was involved in
12 wrongful actions? Of course, they did.

13 The Court: Yes. They did.

14 Mr. Loveland: They do it all over the
15 place. So the rules don't say that.

16 Secondly, did the NCAA raise this issue
17 when the Paterno estate sought to participate in
18 2012? We've alleged in the complaint we sent a
19 notice said we want the rights that we have to
20 participate in this process. They didn't say you
21 don't have those rights because Coach Paterno is
22 deceased. They said we didn't follow our rules
23 so there are no rights.

24 The Court: We did the consent decree.

25 Mr. Loveland: Right. We didn't follow

1 our rules so there are no rights -- there is no
2 right to appeal. It wasn't you're not an
3 involved individual. It wasn't you're not an
4 involved individual because he's deceased. They
5 said we didn't follow our rules so no one has any
6 rights.

7 Third -- and I raised this at the
8 hearing we had last time we were before the Court
9 -- has the NCAA ever made this argument before?
10 Has it -- have they ever taken this position
11 other than in this litigation that only living
12 people are involved individuals? I don't know.
13 That, as I indicated the last time we were
14 together, is an interesting question to have
15 discovery on. Is this an idea that has ever
16 risen its head before? I don't know but that's
17 another subject of the discovery that the Court
18 noted in January is necessary to parse who was an
19 involved individual.

20 So those issues go that point and the
21 second point is do the pleadings establish that
22 Joe Paterno was deceased before the NCAA
23 investigation began? That's a factual question
24 of when did the NCAA begin its investigation. I
25 would love the opportunity to ask Mr. Emmert

1 about this letter. I would like to have
2 Mr. Emmert say, oh, no, that's only a discussion
3 of something that we might potentially do in the
4 future, rather than having Mr. Johnson put that
5 gloss on the words that don't say that. Is this
6 an investigation? Yes. Since they were taking
7 it away from the Infractions Committee it's what
8 they were going to do. And he says I have
9 notified the NCAA Division I Board of Directors
10 of the NCAA approach here.

11 So let's look then, Your Honor. Here's
12 the quote and the Court took this quote in its
13 opinion down below at the to be sure point. It
14 said to be sure the rules may have been fashioned
15 with a living participating individual in mind
16 but that is not a requirement. That's the quote.
17 The requirement was emphasized in the original
18 brief that we see. That sentence was certainly
19 not intended by us to say that we agree that the
20 rule requires that someone be a living
21 individual. We're saying whoever wrote it --
22 that may have been the subjective intent in the
23 mind of the person who wrote it. We don't know.
24 That's another issue that we would have to find
25 out. It may have been that intent but they

1 didn't put it in the rule and, thus, it is not a
2 requirement of the rule.

3 The full quote it is irrelevant that
4 Paterno passed away before the NCAA defendants
5 concluded that his conduct provided the basis for
6 imposing sanctions. The NCAA defendants insist
7 that an involved individual must be a living
8 person because the rules contemplate the involved
9 individual's participation in the sanctions
10 process to be sure the rules may have been
11 fashioned but it is not a requirement. It has
12 nothing to do with the definition of involved
13 individual in Rule 32.15.

14 The Court: In the real world if Joe
15 Paterno was an involved individual, let's say we
16 accept that at some point in time, how is he
17 going to participate in whatever follows?

18 Mr. Loveland: And so that goes to
19 Mr. Johnson's argument that whatever rights there
20 were were of the nature of a personal service --

21 The Court: Yes. It does.

22 Mr. Loveland: -- contract and only are
23 uniquely tied to that individual and die at the
24 moment the individual dies. I would say this is
25 not the case. Personal service contracts are --

1 you know, they're a unique body of law.

2 The Court: Yes. They are.

3 Mr. Loveland: It's not something having
4 to do with we made claims about you and we want
5 someone to respond. This is more like the
6 contractual equivalent of the disparagement or
7 the defamation claim. Before we say something
8 bad about someone that person or that person's
9 representatives have the right to respond. And
10 the Court has already noted and rejected the
11 arguments that the disparagement, or the
12 defamation, or any of those passed -- or
13 disparagement, excuse me -- with Joe Paterno's
14 death.

15 The Court: Correct.

16 Mr. Loveland: So we believe this is --
17 clearly the law in Pennsylvania is except in
18 cases of contracts for purely personal services,
19 contract duties survive death, rights and
20 obligations survive death, and we cited the Court
21 to the case there at pages 16 and 17 of our
22 memorandum to stand for that proposition.

23 The NCAA is trying to take the square
24 peg of the involved individual definition and
25 pound it into that round hole of personal service

1 contracts and we don't believe it fits. Why
2 doesn't it fit? Because had the NCAA come to
3 Mr. Paterno's estate's representatives or even
4 allowed them to participate when we tried, rather
5 than saying the things they say in the consent
6 decree -- so let's make sure that we understand
7 what they say in the consent decree.

8 Rather than saying that University
9 President Spanier, Senior Vice President Finance
10 and Business Schultz, Athletic Director Curley,
11 and head football coach Joseph V. Paterno failed
12 to protect against a child sexual predator
13 harming children for over a decade, these men --
14 that's Coach Paterno -- concealed Sandusky's
15 activities from the Board of Trustees, the
16 university community, and authorities. They went
17 on to say Spanier, Schultz, Paterno, and Curley
18 allowed Sandusky to continue to work with young
19 people through Penn State essentially granting
20 him license to bring boys to campus facilities
21 for grooming as targets for his assault.

22 Before they would put those words in
23 something they would give Mr. -- Coach Paterno's
24 representatives the opportunity to respond. They
25 would give them an opportunity as all of the

1 things that are provided in the NCAA rules for
2 involved individuals.

3 The Court: Oh, yeah. There is an
4 elaborate instruction. No doubt.

5 Mr. Loveland: Absolutely. You have the
6 right -- so if they say well we can't ask Coach
7 Paterno questions, no and they can't ask the
8 person who is -- the estate that's bringing the
9 commercial disparagement. They can't ask
10 questions of that individual either but they can
11 still do lots of things and we could still do
12 lots of things.

13 We would have the right, as we are
14 supposed to have under the NCAA rules, to examine
15 witnesses. We would have the right to examine
16 the documents. We'd have the right to say what
17 in the world are you basing that on? Please show
18 us the testimony. Please show us the documents.
19 Please let us have an opportunity examine these
20 witnesses.

21 The Court: Oh, I understand what the
22 rules would have provided.

23 Mr. Loveland: So that's the rights that
24 the estate's representatives would have had,
25 those are the rights the estate's representatives

1 would have been able to utilize, and all of those
2 things can be done whether Coach Paterno is alive
3 -- in fact, we cite in our response to the
4 pleadings, Your Honor, to various places where
5 individuals elected not to individually
6 participate but did participate through attorneys
7 in various of these processes. Those are all of
8 the rights that the estate would have had and
9 those rights could have prevented this misjustice
10 and could have prevented these things from having
11 been said had the NCAA allowed Coach Paterno's
12 estate to have the rights they have as involved
13 individuals.

14 That's what we could have done. We
15 could have at least had a chance to go on record
16 and say you have no basis for these slanderous
17 comments, you have no basis to say these things
18 about Coach Paterno in this contract document,
19 and we oppose it. They did not give us that
20 right but they didn't say you don't have that
21 right because Coach Paterno is dead. They never
22 said that. They said you don't have that right
23 because we are not following our normal
24 investigative procedures.

25 Finally, I want to point out, Your

1 Honor, that when we were here in May we expressly
2 discussed this question and what I said then was
3 fair from conceding that only living individuals
4 can be involved individuals. We've said it has
5 nothing to do with the definition involved
6 individual.

7 And again we have no idea whether the
8 NCAA has ever taken that position before. Have
9 they allowed estates to participate before?
10 Don't know. All we know is that their argument
11 on the second round of preliminary objections
12 here is that it was not proper.

13 Finally, Your Honor, I would like to
14 briefly address -- and I will do this very
15 promptly -- the question of whether the second
16 amended complaint adding the material added was
17 proper.

18 The Court: Yeah. It seems to me we
19 have kind of a tortured view of what the Court
20 allowed for amendment to speak frankly,
21 Mr. Loveland.

22 Mr. Loveland: If we do, Your honor,
23 that's on my head and I apologize to the Court.
24 But let me say first, I don't believe there is
25 any question that had we sought leave to do what

1 we've done in the second amended complaint, leave
2 would have been expeditiously granted.

3 The Court: It probably would have,
4 however, you didn't follow the mandated process.

5 Mr. Loveland: We didn't file a motion
6 -- and let me explain why. Again if we over read
7 it, I apologize.

8 The Court: I think you did over read
9 it, sir.

10 Mr. Loveland: Then I apologize to the
11 Court but let me -- this is what the Court said
12 in the September 11 order. It was with regard to
13 Penn State's objection.

14 The Court: No doubt.

15 Mr. Loveland: I agree it was with
16 regard to Penn State's objection but the Court
17 said plaintiffs will need to file a second
18 amended complaint alleging the actions of each
19 defendant giving rise to each count along with
20 the corresponding relief requested. Now we
21 interpreted that -- perhaps incorrectly -- as
22 saying let's have -- we have to put more meat on
23 the bones with regard to each count for each
24 defendant.

25 The Court: Well I thought the clear

1 implication and certainly the -- I will state in
2 open court the intent of the Court related those
3 amendments were permitted purely as to Penn
4 State. The Court had no intention of granting
5 plaintiffs the right to restructure Count 1.

6 Mr. Loveland: And again if that was --
7 if that's the case, that's on me.

8 The Court: That is the case.

9 Mr. Loveland: I understand the Court
10 and I apologize for then our having overstepped.
11 I don't believe on the other hand, Your Honor, as
12 I said there is any prejudice at all that flows
13 from this.

14 The Court: That may be as well.

15 Mr. Loveland: And so again I accept
16 full responsibility and I guarantee you it will
17 never happen again, Your Honor. So let me then
18 -- because I think it's important then to look at
19 what we really did in the second amended
20 complaint because what we really did was, as I
21 said, take what had previously been in the first
22 amended complaint, which was references to the
23 November letter, and then just talk about what
24 this really says.

25 And, you know, I'm not going to go

1 through all of it but 57 in the first amended
2 complaint we have alleged that on November 17,
3 2011, Emmert sent a letter to President Erickson
4 of Penn State expressing concern of the Grand
5 Jury presentments asserting the NCAA had
6 jurisdiction over the matter and might take
7 action. What we've done now is a copy of the
8 letter is attached to the Plaintiff Exhibit B.
9 Emmert's letter stated and goes on in quotes from
10 the letter just as we have given the Court the
11 letter here.

12 58 we added that it is expressly
13 referenced in the Grand Jury presentment and was
14 one of the individuals referenced in the letter.
15 So again we're talking about the letter which was
16 already referenced. When Emmert sent this letter
17 -- we're still talking about the letter -- Joe
18 Paterno was alive. There is no dispute about
19 that. The facts in the earlier complaint had
20 obviously identified that.

21 In 60 we added or any of the individuals
22 being investigated, including Joe Paterno and
23 other coaches and administrators, again using the
24 language of the letter.

25 61 is a reference again to the letter.

1 62 is again the reference to the fact that
2 without offering Paterno or other individuals the
3 right to participate.

4 Your Honor, that's essentially what we
5 did in the first amended complaint in Count 1,
6 was we added the substance of a letter that was
7 already referenced in the first --

8 The Court: I would agree.

9 Mr. Loveland: And under those
10 circumstances again I apologize if we
11 overstepped. We obviously -- to be consistent
12 with the Court's direction we should have filed a
13 motion for leave. We don't believe there is any
14 conceivable prejudice given that what we're doing
15 is talking about what the --

16 The Court: And that's a good comeback.

17 Mr. Loveland: The best I've got, Your
18 Honor. Your Honor, if I might have one moment, I
19 think that's all I have on the issue of the
20 preliminary objection. But at the end of the day
21 I'm back to a point that I made for the Court
22 for, which is if you step back and you simply ask
23 yourself the question was Coach Joe Paterno an
24 involved individual, you cannot read the consent
25 decree without concluding that he -- of course,

1 he was. They have attacked his character. They
2 have attacked his integrity. They attacked his
3 legacy. They stripped the wins. I can't
4 conceive of who could be more involved then Joe
5 Paterno, the head coach at Penn State, for at the
6 Athletic Regulatory Agency to be discussing.

7 Thank you, Your Honor.

8 The Court: Okay. Thank you.

9 Mr. Johnson, do you have a brief reply?

10 Mr. Johnson: I do, Your Honor. Does
11 Your Honor have the November 17th letter there?

12 The Court: I do.

13 Mr. Johnson: So Mr. Loveland's exact
14 words, this wasn't potential, this was actual,
15 that potential is Mr. Johnson's gloss on it. If
16 Your Honor can turn to page two of the letter.
17 The paragraph before the questions that they find
18 to be so important says with this as backdrop and
19 to prepare for a potential inquiry, a potential
20 inquiry, the university should provide relevant
21 information.

22 The letter is exactly what it says it
23 was. It's exactly what I say it was. It's
24 exactly what Your Honor found it was. It was a
25 preliminary inquiry to consider whether or not to

1 begin an investigation, and it's quite remarkable
2 that we can sit here and hear so much about this
3 letter and not focus on what it actually said.
4 Now Mr. Loveland said they made some changes but
5 it was really just to clarify what the letter
6 was.

7 Joe, could I ask you to put up your
8 slide that had the first amended complaints 57
9 and 58 in it?

10 Mr. Loveland: 58, right there.

11 Mr. Johnson: Well the one that compared
12 57 and 58.

13 The Court: There you go. 57 and 57
14 there.

15 Mr. Johnson: I misspoke. So what did
16 they change? In the original complaint they
17 acknowledged it was about a potential inquiry.
18 In the amended complaint they took it out.

19 So all of this argument here today that
20 this letter was the actual inquiry and was never
21 about a potential inquiry, they have known from
22 day one what the letter said. It says literally
23 what it means. This is a precursor to a
24 potential inquiry. It's not my gloss. Your
25 Honor wasn't wrong. This wasn't the beginning of

1 an investigation. There is no reasonable
2 construction of this letter that leads to that
3 conclusion.

4 Mr. Loveland explained their view about
5 standing. Your Honor held that these parties do
6 have standing to challenge the consent decree.

7 The Court: I did.

8 Mr. Johnson: And as I said at the
9 outset we're not -- you held that. That's the
10 law of this case. Unlike our opponents we're not
11 asking for reconsideration of that. The question
12 is what does it mean? Standing isn't a cause of
13 action. Relief has to pass through a cause of
14 action. The fact that a party has standing
15 doesn't mean he has a --

16 The Court: Obviously they're completely
17 different legal concepts.

18 Mr. Johnson: They are completely
19 different.

20 The Court: They're related but very
21 different.

22 Mr. Johnson: You need both. You have
23 to have standing and then in order to get relief
24 you have to prevail on a cause of action. Their
25 cause of action was breach of contract, alleging

1 that Coach Paterno was a third party beneficiary
2 of the bylaws of the NCAA and, therefore, have
3 contractual rights. So the fact that he has
4 standing says nothing at all about whether he has
5 a cause of action and what the Court held when
6 you found that he was not an involved individual
7 is that his contractual cause of action was not a
8 viable path to this relief.

9 Now if they want to argue later in time
10 that the causes of actions that did survive, like
11 commercial disparagement, give rise to this
12 relief, then the Court has held that they have
13 standing to do so, but the cause of action in
14 Count 1 is breach of contract. The only theory
15 of breach of contract standing -- they have to
16 have standing for every count. The only legal
17 theory expressed in Count 1 is breach of contract
18 and that was based upon their third party
19 beneficiary status.

20 Mr. Loveland argued that they didn't
21 acknowledge that involved individuals have to be
22 alive and I don't think we ever said that they
23 said anything other than what they actually did
24 say, which is the drafters of the rules may have
25 had in mind living individuals, and then they go

1 on to say but it is not required. That misses
2 the legal point. Whether or not a claim survives
3 beyond death is a function of the intention of
4 the parties. So once you acknowledged that it
5 was the intention that it applied to living
6 individuals that answers the survival question.
7 It doesn't have to be required. If you intended
8 that to be the case then the party's intention
9 governs the survivorship question.

10 Let me just end, Your Honor, with our
11 real world. Yes, Coach Paterno I'm certain today
12 would like -- the estate would like to examine
13 witnesses. I'm sure of it. I'm sure they would
14 like to look at documents.

15 The Court: No doubt.

16 Mr. Johnson: NCAA would like to examine
17 Coach Paterno and that's what can't be done and
18 that's why -- remember, the contract is always
19 mutual. It's not just that one party gets right.
20 It's that they get rights and obligations
21 vis-a-vis each other. And Coach Paterno can no
22 longer perform his obligations under that
23 contract, which would be to answer the questions
24 that all of us would like to hear the answer to,
25 and that's why, Your Honor, it is uniquely

1 personal. I think Mr. Loveland said it exactly
2 right at the end. What could be more personal
3 than what happened here? If that's the case then
4 the right to a hearing expired with Coach Paterno
5 in January of 2012.

6 Thank you, Judge.

7 The Court: Okay. And the very last
8 word, Mr. Loveland.

9 Mr. Loveland: Thank you, Your Honor. I
10 think if you start with the letter, Your Honor,
11 what we have is a letter where he says on the
12 first page I'm writing to notify you the NCAA
13 will examine Penn State's exercise, and where he
14 asks four questions, including the questions
15 about Coach Paterno, and insist on answers by a
16 given point in time and he does on page two talk
17 about a potential interview, but this is the
18 beginning.

19 But more importantly the question is do
20 we know when the NCAA really started its
21 investigation? When they really did it? All we
22 have is this letter. We know this is a trigger
23 but is it the first? What happened before this?
24 What did they do after it? What happened
25 internally at the NCAA? All of those are the

1 factors that we cannot learn from reading the
2 pages of the document and that's why we need the
3 opportunity see what was the NCAA doing during
4 this time? What were they doing in terms of
5 coordinating with Mr. Freeh and others? What
6 opportunities were there before Coach Paterno
7 passed away to seek information since they now
8 are making inquiries to him? And why weren't
9 those done?

10 Mr. Johnson says that the intent governs
11 the survivorship issue but again we've never
12 conceded and no one can find what the intent was
13 on the rule. The sentence that they say we
14 conceded what the intent was is the rules may
15 have been fashioned with a living participating
16 -- but that's not a requirement. There is to
17 concession as to intent and they've offered no
18 evidence of anyone's intent. There is no
19 evidence before this Court --

20 The Court: Well at this stage obviously
21 we're not hearing that.

22 Mr. Loveland: Right. And so the Court
23 can't conclude what the intent of the parties is
24 in a contract simply because counsel says it was
25 our intent that it only apply to living

1 individuals. There's no reason to believe that
2 more than let's just take the words of the
3 contract, the constitution is what it really is,
4 on its face.

5 And, finally, while Mr. Johnson says the
6 NCAA would like to examine Coach Paterno, we
7 understand that and believe me I would like to
8 have Coach Paterno's testimony as well, and I
9 believe the Court would, and I know many others
10 would as well. We don't have that opportunity
11 but that does not deprive the estate of all of
12 the other rights that the Constitution and bylaws
13 give to involved individuals and those rights
14 continue, just like they do in all of the other
15 rights that survive death of an individual. You
16 know, most contracts you'd like to be able to
17 examine a party.

18 The Court: Of course.

19 Mr. Loveland: Of course you would, but
20 if the individual's dead the contract is still
21 there and it still continues and that's what we
22 have here. We have a contract that the Court has
23 said we have standing to challenge the consent
24 decree under and we believe that the only thing
25 that you could correctly conclude at this point

1 is, as you concluded in January, there are a lot
2 of factual questions about whether he was an
3 involved individual and when did he obtain these
4 rights and those factual questions must await
5 discovery.

6 Thank you, Your Honor.

7 The Court: Okay. Thank you. I believe
8 Penn State -- Mr. Booker's in the position to be
9 an observer on this issue?

10 Mr. Booker: That's correct, Your Honor.

11 The Court: Okay. Thank you.

12 All right. Let's move on to our next
13 issue.

14 Mr. Johnson.

15 Mr. Johnson: Your Honor, we have two
16 issues, which I'm hopeful we can address briefly.
17 One is the question of the subpoenas to the
18 university president's former members of our
19 Executive Committee. Ms. Gevagert from our team
20 is going to address that. And the other is the
21 issue concerning the modification to the
22 protective order and Mr. Kowalski is going to
23 address that.

24 Mr. Kowalski: Yes. Which is
25 plaintiffs --

1 Mr. Johnson: Which is their issue, of
2 course. So the question, Your Honor, is which
3 would you like to proceed with?

4 The Court: Let's go to protective
5 order, Your Honor, issue.

6 Mr. Loveland: Your Honor, Ms. Maher is
7 going to make our argument on that.

8 The Court: Okay. Thank you.

9 Ms. Maher: Good morning, Your Honor.

10 The Court: Good morning.

11 Ms. Maher: Patricia Maher for the
12 plaintiffs. Your Honor, last summer after the
13 hearing in May the parties continued to work on
14 negotiating a protective order and you may recall
15 we were successful in doing so.

16 The Court: In large part, yeah.

17 Ms. Maher: With the exception of one
18 provision as to which the plaintiffs did not
19 agree with Penn State and the NCAA.

20 The Court: I do recall.

21 Ms. Maher: And that was subparagraph 5a
22 of the protective order which restricts the
23 party's use of materials produced in discovery,
24 regardless of whether they have been designated
25 as confidential or highly confidential,

1 attorney's eyes only --

2 The Court: I recall.

3 Ms. Maher: Okay. So that's the
4 provision that we were talking about and the NCAA
5 in advocating for the inclusion of subparagraph a
6 said this in its brief. Defendants should not
7 face the possibility that plaintiffs for purposes
8 unrelated to the preparation and trial of this
9 case will turn over to the public realm a
10 significant set of documents that have not been
11 designated as confidential by defendants but
12 plaintiffs' own public statements made clear that
13 there is a stark risk of just that. Defendants
14 have a well-founded concern that during the
15 pretrial discovery phase plaintiffs will
16 inappropriately and selectively provide private
17 discovery materials to the media, post them on
18 their website, or otherwise release materials en
19 masse.

20 The Court: That's what their position
21 was.

22 Ms. Maher: And Penn State said
23 something very similar referring to the risk of
24 what plaintiffs will do by disclosing materials
25 on plaintiffs' website and they made specific

1 reference to the website, and Your Honor accepted
2 that argument by the NCAA specifically referring
3 to the NCAA's argument in your order, entering
4 the protective order, in which you stated that
5 the Court finds the NCAA's argument convincing
6 and holds that plaintiffs using discovery for
7 this purpose would be an abuse of the discovery
8 process because there is no right for the public
9 to have access to pretrial documents the risk to
10 contaminate the potential jury pool is high and
11 the dissemination of pretrial documents would be
12 an abuse of discovery process. The provision at
13 issue shall be included.

14 And so Your Honor entered the protective
15 order, including subparagraph 5a which restricts
16 the party's use of all discovery materials
17 regardless of whether they have been designated
18 confidential. And there is no dispute that
19 plaintiffs have complied with the protective
20 order. I don't think there is a dispute about
21 anybody complying with the terms of the
22 protective order.

23 The Court: With all of the issues
24 floating around that happily is not one of them.

25 Ms. Maher: But, as Your Honor may know,

1 in the Corman litigation there was no protective
2 order.

3 The Court: Right. I believe Judge
4 Covey, if I recall correctly, declined that.

5 Ms. Maher: She declined to do so and
6 the defendants in this case are also defendants
7 in that case.

8 The Court: Yes.

9 Ms. Maher: Much of the -- many of the
10 same documents have been produced by the
11 defendants in both cases and so many of the
12 documents that are at issue in this case were
13 also at issue or produced to the plaintiffs in
14 the Corman case and are not subject to the
15 restriction of a protective order and certainly
16 not subject to a restriction like subparagraph
17 5a.

18 The Court: I agree.

19 Ms. Maher: So during dependency of the
20 Corman case, which we know was further advanced
21 in this case certainly in terms of discovery
22 during the fall of 2014, there were disclosures
23 made by both parties in filings with the Court
24 and in November of 2014 the NCAA disclosed on its
25 website -- made an extensive disclosure of

1 materials that had been produced in discovery and
2 we're going to provide a copy of it --

3 The Court: And you are certainly
4 welcome to do so. I am familiar with that as
5 well.

6 Ms. Maher: With this? This is a screen
7 shot of the NCAA's website that I will represent
8 to the Court was captured this week.

9 The Court: That's fine.

10 Ms. Maher: So this was put up in
11 November -- I believe it was November 14th of
12 2014. I am sorry it isn't bigger but there is a
13 lot on this website and everything that is in
14 blue -- at the end of every entry you can see
15 that there is a blue entry and every one of those
16 blue items if you click on those on the website
17 it takes you to a document, or it takes you to a
18 transcript, takes you to more than is just here.
19 And as it states on the NCAA's website the
20 documents clarify the Penn State consent decree.
21 The NCAA sets the record straight. So this is
22 not -- here is our take --

23 The Court: There is no doubt --

24 Ms. Maher: Here is the truth.

25 The Court: Perhaps I can say there is

1 no doubt in the Court's mind that the NCAA was
2 tooting its own horn and putting its best
3 information forward for the sole benefit of the
4 NCAA.

5 Ms. Maher: Thank you, Your Honor. Skip
6 over that.

7 The Court: That's the way it was.

8 Ms. Maher: And that is what has
9 happened and this still there. There is a
10 voluminous disclosure of discovery materials that
11 have been on the NCAA's website for three months.
12 They include at least three deposition
13 transcripts of NCAA personnel that are over 700
14 pages of deposition testimony. There is
15 obviously no corresponding testimony by other
16 non-NCAA personnel --

17 The Court: Although apparently if I
18 understand Judge Covey's position there was
19 certainly no prohibition -- should the Corman
20 plaintiffs have chosen to do that, they could
21 have done that.

22 Ms. Maher: And, Your Honor, we don't
23 contend that the NCAA was prohibited by Judge
24 Covey in the Corman case from doing this. What
25 we are here today is to say to the Court then in

1 light of what happened in Corman, in light of the
2 fact that there is this extensive disclosure made
3 by the NCAA -- which when they were arguing the
4 protective order in this case they said this
5 would have been inappropriate. This would be an
6 abuse of the discovery process. What we are here
7 is to ask the Court with respect to only material
8 -- discovery materials that have not been
9 designated confidential or highly confidential to
10 allow us to set the record straight because we
11 don't agree that this clarifies the consent
12 decree.

13 The Court: But obviously the Corman
14 case is of great interest in the present matter,
15 there is no doubt, but my point is could not the
16 Corman plaintiffs -- which I realize did not
17 include the estate of Joe Paterno with such --
18 the Corman plaintiffs could have taken whatever
19 they gleaned from all of this discovery and done
20 the same thing, could they not, and, in fact,
21 there would be a huge overlap of some of the very
22 items you probably wish to release publically?
23 Is that correct?

24 Ms. Maher: Yes. And, Your Honor, my
25 guess is that the NCAA will say they did exactly

1 that but our point, Your Honor, is that what was
2 at issue in both cases is the consent decree.
3 The Corman plaintiffs had a different claim.

4 The Court: They did.

5 Ms. Maher: Different issues that they
6 focused on.

7 The Court: Although it went in some
8 interesting directions as we'll talk later.

9 Ms. Maher: Right. But the underlying
10 facts, the relevant facts, have to do with the
11 formation of the consent decree, the decisions
12 that were made by the parties to the consent
13 decree to enter the consent decree, what the
14 consent decree means, and, frankly, the parties
15 views today of whether it was the correct way to
16 resolve the issue. And as we said in our brief
17 as an example of something that we disagree with
18 in terms of what is on the NCAA's website, they
19 say that certain of these e-mails and documents
20 show that Penn State believes that it made the
21 right decision in entering the consent decree and
22 we're not here to --

23 The Court: And I think that's still
24 Penn State's position if I understand
25 Mr. Booker's previous involvement in the case.

1 Ms. Maher: Your Honor, what we are here
2 to say is that there are nonconfidential
3 documents that contradict that and that if we
4 were not under the restriction of the
5 subparagraph 5a of the protective order there --
6 we with the vantage point of the plaintiffs in
7 this case could counter those statements that the
8 NCAA is telling the world is the record -- sets
9 the record straight. So that's all we're asking
10 is not to undo any of the protections that apply
11 to confidential or highly confidential documents.

12 The Court: But ultimately doesn't the
13 record get set straight in a trial on the merits
14 in this very courtroom?

15 Ms. Maher: Your Honor --

16 The Court: Perhaps.

17 Ms. Maher: Your Honor, I mean, that may
18 or may not come but this has been publically
19 available for 20 months. I mean, for three
20 months. The case has been pending for 20 months
21 and we're just starting discovery.

22 Your Honor, in addition to the discovery
23 materials, the NCAA has posted its Motion for
24 Summary Judgment and other pleadings on its
25 website. They don't have the countervailing

1 position of the Corman plaintiffs. And again we
2 realize that's a different -- those are different
3 claims than were made in this case but the Motion
4 for Summery Judgment was denied by Judge Covey in
5 this case and frankly she termed the motion
6 frivolous.

7 The Court: Yes. She did.

8 Ms. Maher: And yet it remains on the
9 NCAA's website as something that clarifies the
10 consent decree and sets the record straight.
11 And, Your Honor, we just submit that given the
12 changed circumstances as a result of the fact
13 that Judge Covey declined to enter a protective
14 order in that case whatsoever, let alone a
15 protective order that included a restriction with
16 something comparable to subparagraph 5a in this
17 case, that it really makes no sense to continue
18 the restrictions of subparagraph 5a and we ask
19 the Court to modify the protective order to
20 strike subparagraph 5a going forward.

21 The Court: And I don't know the answer
22 to my own question but in theory since Corman was
23 different litigation, albeit I know with some of
24 the same counsel and obviously some overlapping
25 issues, is there anything that prohibits Paterno

1 plaintiffs from publicizing discovery obtained
2 solely through the Corman case?

3 Ms. Maher: I'm not sure what you mean
4 about discovery obtained through the Corman --
5 you mean that we obtain it from Corman counsel?

6 The Court: I believe it's -- the
7 argument is that it's all been public domain or
8 at least the NCAA part of it.

9 Ms. Maher: Right. Right.

10 The Court: If counsel -- if Paterno
11 counsel were to obtain whatever was disclosed --
12 and I assume there is a huge overlap of what's
13 been disclosed here so far?

14 Ms. Maher: There is.

15 The Court: Is that public domain that
16 you could -- that you could put out there if I
17 chose to do so? I don't know the answer to that
18 but I'm interested in what your thought is.

19 Ms. Maher: Your Honor, I would say
20 this. We have asked the NCAA to produce -- and
21 they have produced to us -- the documents that
22 they produced to the plaintiffs in the Corman
23 case. So my guess is that they would regard
24 those as materials that were provided to us in
25 discovery and that would bring them under the

1 restrictions of subparagraph 5a.

2 The Court: Oh, we will probably hear a
3 little more about that.

4 Ms. Maher: Probably will. Thank you,
5 Your Honor.

6 The Court: Thank you.

7 Mr. Kowalski, is that correct?

8 Mr. Kowalski: Yes, sir. Good morning,
9 Your Honor.

10 The Court: Good morning.

11 Mr. Kowalski: The plaintiffs' position
12 seems to be that because of what happened in the
13 Corman litigation that we should reduce the
14 protections of the protective order here.

15 The Court: It's almost -- it's not
16 exactly but it seems to be kind of a waiver
17 argument perhaps?

18 Mr. Kowalski: Maybe so but I think our
19 position is sort of the exact opposite, which is
20 what happened in Corman shows exactly why this
21 Court was right to enter a protective order, and
22 a particular right to include 5a, and that
23 striking 5a now would be a mistake.

24 So a little bit of context on what
25 happened. As Ms. Maher mentioned, both the NCAA

1 and Penn State did seek to enter a protective
2 order in the Corman litigation. It was the exact
3 same protective order that was in place here.
4 They included paragraph 5a. One of plaintiffs
5 objected. Judge Covey declined to enter --

6 The Court: I saw that.

7 Mr. Kowalski: The Corman plaintiffs
8 immediately took full advantage of the lack of a
9 -- of any protective order in this case and
10 repeatedly and selectively disclosed discovery
11 materials as part of a coordinated press strategy
12 to manipulate public perception of the matter and
13 prejudice the NCAA.

14 The Court: I believe your client may
15 have been equally guilty of that discretion or
16 indiscretion. Would you -- can I force you to
17 agree with me?

18 Mr. Kowalski: Well I think what I can
19 say is that once these prejudicial disclosures
20 were being made repeatedly by the Corman
21 plaintiffs the NCAA felt that it had the need and
22 the right to protect itself and to provide
23 appropriate context and that's what happened.
24 And, you know, as I said, our preference would
25 have been to proceed in an orderly and proper

1 manner in that case and not have anything -- not
2 have that case to proceed in the media as it did
3 but the fact of the matter is we were on the
4 defensive immediately because of their
5 coordinated press strategy. They attached
6 documents to pleadings that had really nothing to
7 do with the pleading itself and made comments to
8 the press about them that were misleading in our
9 view and our view did not accurately describe the
10 documents themselves much less the full context.
11 So it was in that context that the NCAA issued
12 the statement that the plaintiffs have
13 identified.

14 And to be clear, I mean, there were
15 eight documents, eight e-mails, that the NCAA
16 attached -- or referenced and provided in this
17 press statement along with transcripts of
18 testimony by its own witnesses. In every case it
19 was the NCAA's own documents. It was not
20 documents that have been obtained from -- through
21 the discovery process from other parties. It was
22 its own materials that -- you know, frankly, the
23 NCAA could put internal e-mails or documents up
24 on its website at any time regardless of whether
25 there is litigation pending and we were careful

1 not -- the NCAA was careful not to disclose other
2 materials obtained through other parties in that
3 manner.

4 So sort of in that background again I
5 think our view is that the request ought to be
6 denied for really several reasons. The most
7 important one is plaintiffs have requested a jury
8 trial in this case. The misleading press
9 strategy that we think was employed by the
10 plaintiffs in the Corman matter, you know,
11 irrespective, of, you know, the NCAA's attempts
12 to try to provide context as it did, undoubtedly
13 prejudiced the jury poll to some degree and we
14 think that in order -- and that may well be the
15 subject of a forthcoming motion by the NCAA at
16 some point but the fact of the matter is if we
17 want to have any chance of having a fair jury
18 trial in Pennsylvania we ought to proceed in this
19 case in an appropriate and typical manner. I
20 mean, what they're really just asking pretty
21 blatantly is allow us to continue to contaminate
22 the jury poll.

23 The Court: What do you think is the
24 weight of precedent on this issue? I know I have
25 commented on that in the opinion. What do you

1 think the weight of precedent is on that issue?

2 Mr. Kowalski: In terms of the --

3 The Court: In terms of open disclosure
4 discovery materials. There is some law in it.

5 Mr. Kowalski: There is, Your Honor.

6 We've sited it in our papers and we sited it last
7 time.

8 The Court: You did.

9 Mr. Kowalski: And we think that it does
10 stand for the proposition that when you go out
11 and obtain discovery materials from another party
12 and you -- those materials are not generally
13 intended to be used outside of the litigation
14 process. And we think we set forth our position
15 that in this case with the high profile nature of
16 the case and the demand for a jury trial it is
17 appropriate to exercise caution and be careful
18 with the way that discovery materials are used,
19 and we think that's entirely consistent with both
20 Federal cases that we sited, as well as
21 Pennsylvania cases including the Stinger case
22 that we referenced in our prior briefs.

23 The Court: Thank you, sir.

24 Counsel, would you like to respond
25 further?

1 Ms. Maher: I would.

2 The Court: Or I should say argue
3 further.

4 Ms. Doblick: May I, Your Honor?

5 The Court: Of course. This is a Penn
6 State related issue.

7 Ms. Doblick: Thank you, Your Honor.

8 Donna Doblick on behalf of Penn State. Your
9 Honor, I think your reaction was exactly right.
10 I heard Ms. Maher stand up here and say they need
11 to set the record straight, they need to set the
12 record straight, they need to set the record
13 straight. The only record that should matter is
14 the record established in this courtroom in
15 pretrial filings and before a jury.

16 And as Your Honor recognized when he
17 entered Section 5a of the protective order quite
18 a lot of mischief could be caused by allowing
19 documents produced in this case to be put in the
20 public domain.

21 To the extent there is any problem or
22 taint either real or perceived by the Corman
23 plaintiffs in the NCAA's disclosure of a limited
24 number of documents in connection with the Corman
25 case, I respectfully submit that really or

1 perceived problem would only be exacerbated by
2 allowing all of the documents produced in this
3 litigation to also be placed in the public
4 domain.

5 I also just want to point out a few
6 points unique to Penn State, which is that the
7 provisions of Section 5a not only benefit the
8 NCAA but also -- not only the university, but the
9 current and former faculty members,
10 administrators, and trustees of the university
11 whose documents are being produced in this
12 litigation. They were produced either to the
13 Freeh Firm or to counsel for production -- for
14 review and production in this litigation with
15 certain expectations of confidentiality.

16 And I also would like to point out that
17 the discovery requests made of Penn State in the
18 Corman case were very limited. Our production in
19 that case was limited by several orders of
20 magnitude as compared to the tens and tens of
21 thousands of documents we've been asked to
22 produced and have produced in this case and will
23 continue to produce in this case. So we're
24 talking about a much broader swath of documents,
25 including, as Your Honor recognized at the last

1 hearing, the documents provided to the Freeh firm
2 in connection with their investigation and those
3 documents number in the millions and --

4 The Court: 3.5 million as I recall.

5 Ms. Doblick: 3.5 million. We have been
6 working with plaintiffs' counsel to come up with
7 protocol and search terms for getting those
8 reviewed. Even under those search terms you're
9 talking about tens and tens of thousands of
10 potentially responsive documents.

11 I also would like to point out that with
12 respect to the ruling production we have made,
13 we've made the production and we've designated
14 confidential or not designated confidential in
15 reliance of there being a protective order
16 stating that even documents that aren't
17 confidential will be not disclosed to the public.
18 To now undo that after these documents have
19 already been produced I think would serve a grave
20 injustice to the individuals whose files the
21 documents came from.

22 Thank you, Your Honor.

23 The Court: Thank you so much.

24 Ms. Maher, if you would you like to
25 respond at this time to what we've heard?

1 Ms. Maher: Yes, Your Honor. A few
2 points. Ms. Doblick said that we have stated
3 repeatedly that we are interested in setting the
4 record straight. That is a term that the NCAA
5 used on its website that what it has posted is to
6 set the record straight. That's why I used that
7 term.

8 The Court: I understand. Yep.

9 Ms. Maher: The other point I want to
10 address is the question of jury taint and the
11 NCAA has argued that we should preserve the
12 protective order as is because to lift that
13 restriction would be to risk tainting the jury in
14 this case, but, Your Honor, the materials on
15 their website have been posted for three months.
16 The Corman case has been over for several weeks
17 and that information is still posted on the
18 NCAA's website. So that is still available and
19 for them to talk about protecting the record,
20 preserving -- protecting against taint of the
21 jury poll, first of all, the material is still
22 there. It's extensive. I'm not sure how they
23 say that there are eight documents, only eight
24 documents, that were listed.

25 The Court: Apparently they relate to

1 multiple hundreds of pages more.

2 Mr. Maher: They relate to -- close to a
3 thousand pages of deposition testimony and a
4 voluminous number of e-mails and the links are
5 extensive. So it is -- I'm not sure how you
6 could ever characterize that as a limited
7 disclosure.

8 The other point I want to address is the
9 -- Penn State's statement about concern about
10 confidential documents. As we have stated before
11 filing the motion and in subsequent discussions
12 with counsel, this isn't going to change the
13 protections for things that have been designated
14 as confidential. Ms. Doblick said well they
15 produced things that maybe they would have
16 designated confidential had there not been
17 subparagraph 5a.

18 Two comments on that. First, there has
19 been quite extensive use of the confidential --
20 not highly confidential but confidential
21 destination in the productions that have been
22 made to date. But more than that, Your Honor, if
23 a document is not confidential then it shouldn't
24 be designated confidential. And so if there was
25 an expectation of privacy or it was confidential

1 then presumably Penn State took the steps to
2 designate that during the production and I would
3 represent to the Court that the productions bear
4 that out, that there has been very generous
5 designation of confidential materials.

6 So lastly, Your Honor, in terms of the
7 NCAA's position that they were responding to try
8 to defend themselves against what was happening
9 by the Corman plaintiffs, we are here really to
10 say aren't we entitled to do the same? That they
11 have a different view than what the Corman
12 plaintiffs had in the disclosures that they made.

13 And, by the way, the disclosures that
14 were made by the Corman plaintiffs were made in
15 court filings. They were not made on a website.
16 They were made in filings that were made in the
17 Commonwealth Court. And the NCAA responded by
18 the -- putting up the website that we've
19 replicated here this morning.

20 But we're simply asking for the ability
21 to use nonconfidential documents in a way that
22 would address materials that have been available,
23 publically available, for more than three months
24 and certainly are available to members of the
25 jury poll in this community. There is no

1 restriction of that NCAA website to the
2 Commonwealth Court or any segment of
3 Pennsylvania. And so the taint has happened, if
4 there has been a taint, and to say it should stop
5 here is a position that the NCAA can take because
6 their position has been set forth on their
7 website through the extensive relief they have
8 made and we are simply asking to have the right
9 to do the same.

10 Thank you, Your Honor.

11 The Court: Thank you.

12 Mr. Kowalski, brief reply.

13 Mr. Kowalski: Yes. Very brief, Your
14 Honor. One of the problems we are going to have
15 in terms of a jury in this case, Your Honor, are
16 the numerous statements by state officials, the
17 plaintiffs, about that -- that it will -- are
18 going to remain on the Internet and publically
19 available sources for a very, very long time.
20 They have been made. The documents they disclose
21 have been made. So this is not something that
22 exists in isolation of all of that.

23 The real thing I wanted to do to try to
24 answer your question about the use of publically
25 available materials, I would point out that under

1 5a there are two carveouts and one is something
2 that's in good faith attached to a filing and the
3 other is something that's obtained through a
4 public source. And so I would just note that
5 presumably all of the materials that are on the
6 Commonwealth Court website that we can all go
7 look at right now are public source materials.

8 The Court: They are public.
9 Absolutely.

10 Mr. Kowalski: Right. That's all.

11 The Court: Thank you.

12 And, Ms. Doblick, we will give you the
13 very last word here.

14 Ms. Doblick: Your Honor, I have nothing
15 further unless you have any questions for me.

16 The Court: I don't. Thank you.

17 All right. Let's move on to our
18 subpoena issue here.

19 Ms. Maher: Your Honor, Patricia Maher
20 again for the plaintiffs. In early December we
21 filed with the Court a notice of intent to issue
22 subpoenas to five members of the NCAA Executive
23 Committee and we received from the NCAA this
24 chart in response to a discovery request, which
25 lists the member of the Executive Committee in

1 July of 2012 and there are 21 members of
2 Executive Committee.

3 We have noticed -- or issued an intent
4 to subpoena five members of the committee to
5 depose them and those five members live in five
6 different jurisdictions. There is one in
7 Virginia, North Carolina, South Carolina, one in
8 Michigan, and one in Utah, and they are
9 presidents of universities in those various
10 jurisdictions. And we've noticed our depositions
11 because these individuals were member of the
12 Executive Committee that met twice in the summer
13 in July of 2012 between the time that the Freeh
14 report issued on July 12th and the time that the
15 consent decree was entered on July 23rd. There
16 were two meetings. One on July 17th, another on
17 July 21st.

18 There are no notes of the first meeting
19 on July 17th. There is no record of that. I
20 mean, there is a record that the meeting took
21 place but there are no notes. There is no formal
22 record of what took place at the meeting and yet
23 accounts of what took place at that meeting were
24 very important and supposedly very influential in
25 the decision by Penn State to agree to enter the

1 consent decree. And specifically, Your Honor,
2 there were reports that members of the Executive
3 Committee were clamoring for the death penalty
4 and that that took place at the first meeting,
5 July 17th, as to which there is no formal record.

6 Now we don't know if all of these
7 individuals participated in that meeting. We
8 know that the five that we have given our intent
9 to subpoena participated in the July 21st meeting
10 and voted at the July 21st meeting. There are
11 minutes of that meeting and there is a record of
12 the vote that took place on whether or not to
13 impose the death penalty.

14 So that's why we have issued our intent
15 to subpoena these people. We think that their
16 testimony about what happened at this very
17 important July 17th meeting is clearly relevant
18 and so we were surprised there was an objection
19 from the NCAA that we take their depositions.
20 And the NCAA has issued -- served not one, but
21 two responses to our intent to depose these
22 individuals.

23 In their first response they said that
24 they knew what we were going to ask -- they know
25 what we're going to ask these individuals and it

1 would be objectionable. So they object to even
2 issuing the subpoenas and they base that on
3 questions that were asked when the chairman of
4 the Executive Committee was deposed in December
5 of 2014. That's Dr. Edward Ray. Now the
6 interesting thing about that is during Dr. Ray's
7 deposition the NCAA didn't object to the
8 questions that they say we would now be asking
9 about at the depositions of these additional
10 members of the Executive Committee but they also
11 say that these would be objectionable because
12 they pertain only to Count 1 and Count 1 has been
13 dismissed and we've heard that argument here
14 today by the NCAA.

15 The Court: We have.

16 Ms. Maher: So that is out of the case
17 so we shouldn't be able to ask questions of these
18 individuals that could only pertain to Count 1.
19 Your Honor, we have made clear to the NCAA that
20 regardless of what happens with respect to Count
21 1, the testimony of these individuals is relevant
22 to the formation of the consent decree and also
23 to the care and the purpose of the Executive
24 Committee in agreeing to authorize President
25 Emmert to enter the consent decree with Penn

1 State. And so it is relevant to every count of
2 the second amended complaint and so we feel that
3 it is clear that we would be entitled to take
4 their depositions regardless of the Court's
5 ruling on Count 1 here today.

6 The Court: Just I gather that the Count
7 1 discussion seems to be the heart of the NCAA's
8 objections, which I think we are going to hear
9 more about.

10 Ms. Maher: Yes, Your Honor, but the
11 objections with respect to Count 1 were phrased
12 in terms of the estate's continued participation
13 as a plaintiff on Count 1.

14 And so the other point that we have made
15 to the NCAA is regardless again of the Court's
16 ruling on Count 1 there is another plaintiff, Al
17 Clemens, who was a member of the Board of
18 Trustees. The preliminary objection that the
19 NCAA has made to the second amended complaint
20 does not challenge Mr. Clemens continued status
21 as a plaintiffs on Count 1.

22 So again we would be entitled to depose
23 these five individuals and these are five out of
24 21 members of the Executive Committee. We didn't
25 issue an intent to depose 21 members of the

1 Executive Committee, but a representative sample
2 of the individuals, members of the governing body
3 of the NCAA who participated in two key meetings,
4 one of which there is no record of, the second
5 there are multiple records of -- which are not
6 completely consistent but multiple drafts at
7 least of the notes of the second meeting that
8 took place on July 21st. And so we are simply
9 asking to depose these individuals to take their
10 testimony on what happened at those meetings.

11 Now, Your Honor, why five right now?
12 The NCAA has said why don't you do this one by
13 one. Why don't we go through this five times.
14 And, Your Honor, the reason is, frankly, that it
15 is a somewhat cumbersome process and that once we
16 get the Court's permission to issue subpoenas we
17 then have to go to five different jurisdictions
18 to domesticate those subpoenas. The process in
19 each jurisdiction is different and so it is a
20 fairly cumbersome process. Your Honor, it has
21 taken us two months from the issuance of the
22 notice just to get here and we said to the NCAA
23 we don't want to go through this five more times
24 so that --

25 The Court: No. That strikes me as

1 logical that we'll deal with the issue here and
2 now.

3 Ms. Maher: So those are the first
4 objections that we received from the NCAA. We
5 then got a second response this week from the
6 NCAA saying they now object to us taking these
7 depositions because they would be premature and
8 cumulative. I am not sure how they can be both
9 but that's the objection that we received on
10 Wednesday of this week.

11 With respect to them being premature,
12 Your Honor, as I said earlier when we were
13 arguing with respect to the protective order, we
14 are 20 months into this case. We have taken one
15 deposition and that is the deposition of
16 Dr. Edward Ray, who was a Chairman in the
17 Executive Committee, which we took in December at
18 the assistance of the NCAA and Dr. Ray's counsel
19 because he was being deposed in the Corman case.
20 So we are not jumping the gun to take a lot of
21 depositions and we think it's time to start
22 taking the depositions of the key individuals who
23 were involved in the events that ultimately led
24 to the consent decree.

25 And as far as they were being

1 cumulative, Your Honor, again we have taken one
2 deposition, Dr. Ray's testimony, and we certainly
3 have no interest in taking cumulative
4 depositions. We don't know from the documents
5 who actually participated in the July 17th
6 meeting, who voted, how they voted, and that is
7 why we have taken a sampling of the members of
8 the Executive Committee and ask the Court to
9 overrule the NCAA's objections to allow us to
10 proceed in an orderly way.

11 I want the Court to know that we have
12 attempted to work with the NCAA to tell them that
13 we would work with them in terms of scheduling,
14 sequencing, for the convenience of these
15 individuals if they would facilitate their
16 appearance at these depositions and the NCAA has
17 told us that they will not do that. That
18 although they're here fighting very hard to
19 protect these individuals against having to
20 appear for a deposition, they can't do the
21 converse and work with them to facilitate their
22 appearance at a deposition.

23 So, Your Honor, we feel that we are
24 trying to do this in an efficient way to obtain
25 the subpoenas from this Court that we can

1 domesticate in these jurisdictions and proceed to
2 try to schedule these depositions in an orderly
3 way.

4 Thank you, Your Honor.

5 The Court: Thank you.

6 Yes, ma'am. Welcome.

7 Ms. Gevagert: Good morning, Your Honor.

8 The Court: Good morning once again.

9 Ms. Gevagert: For about five more
10 minutes. Good morning. Sarah Gevagert for the
11 NCAA.

12 Your Honor, this is a matter of timing.
13 The NCAA understands that discovery is broad and
14 the NCAA is not saying that the plaintiffs can't
15 take these depositions ever. We're just saying
16 not now. There is no reason to do it right now.
17 In fact, it's too early. We don't yet know what
18 the proper scope of these depositions should be.
19 There is still the preliminary objections that
20 are pending. There is still the issue that we
21 are going to discuss --

22 The Court: Well suppose we get the
23 preliminary objections dealt with, then where are
24 we?

25 Ms. Gevagert: Well after this -- when

1 we meet in private and discuss what really is the
2 continuing viability of Count 1 -- that is still
3 a remaining question that we will need to discuss
4 and that will have a significant effect on the
5 scope of any depositions that happen and will
6 also effect the number of depositions that are
7 even necessary. Now we are willing -- we are
8 willing to withdraw our objections if the Court
9 would leave -- allow us to do so without
10 prejudice to being able to reassert objections
11 with regard to specific depositions down the road
12 as they come up based upon the information in the
13 record at that time.

14 The Court: You would withdraw them as
15 to the five pending deposition requests?

16 Ms. Gevagert: We would say let them get
17 through this stage to be permitted to go get
18 their subpoenas in other states with the ability
19 for us to object to whether or not those
20 depositions should then go forward on an
21 individual basis. If plaintiffs' concern is
22 purely the cumbersome nature of the procedure
23 we're -- we would be willing to withdraw our
24 objections to them moving past this step as long
25 as we have the ability to renew our objections

1 down the road with specific -- regard to specific
2 depositions based upon the record at that point,
3 and we made this recommendation to plaintiffs but
4 they declined that.

5 I would like to briefly address
6 Ms. Maher had indicated that the plaintiffs had
7 offered to the NCAA if we would simply facilitate
8 making these witnesses available for these
9 depositions that this could resolve this whole
10 process but the problem is that these are not
11 NCAA employees. We do not have control over the
12 former -- current and former members of the
13 Executive Committee and so we don't have the
14 ability to be able to facilitate them appearing
15 at these depositions.

16 But, Your Honor, assuming that -- what
17 plaintiffs ultimately are asking for is right now
18 to be able to take burdensome discovery of
19 out-of-state nonparties before we, a, have
20 resolution on the exact scope of the case and the
21 claims that are in the case, and, b, before they
22 have even taken discovery of much more available
23 witnesses and taken discovery on issues that are
24 clearly right for discovery, such as their tort
25 claims, rather than focussing primarily on this

1 Count 1 that remains influx as to the nature of
2 its viability.

3 The Court: Well let me -- if it makes
4 it any simpler for any of the parties the Court
5 obviously is going to rule on Count 1 where it
6 stands and at the same time I would be addressing
7 this objection to the subpoenas. So whatever
8 gets resolved, it's going to get resolved all at
9 one time.

10 Ms. Gevagert: Which makes sense, Your
11 Honor. I might also state and note that of these
12 -- the five individuals that they seek to depose
13 only two of them are currently members of the
14 NCAA Board of Governors.

15 The Court: If they were involved in
16 decisions was difference does that make?

17 Ms. Gevagert: Absolutely, Your Honor.
18 I don't deny that they may not -- they were
19 necessarily involved at the time but I'm just
20 noting in terms of the level of burden on these
21 individuals right now I do think that has some
22 relevance to that where there are other witnesses
23 that are far more available and these witnesses
24 are --

25 The Court: Are you suggesting that the

1 defense should choose the plaintiffs' parties to
2 depose?

3 Ms. Gevagert: Most definitely not, Your
4 Honor. In fact --

5 The Court: Then what are you
6 suggesting?

7 Ms. Gevagert: My primary point is it's
8 about staging. It's about timing. We are not
9 stating that they should not be able to take
10 depositions. Our point is simply first seek
11 discovery of the claims that are clearly in the
12 matter and seek discovery from available
13 witnesses, for example party witnesses.

14 The Court: As you choose them to be, is
15 that right?

16 Ms. Gevagert: Well they can depose any
17 -- there is NCAA witnesses. There is Penn State
18 witnesses.

19 The Court: Well how about these five?

20 Ms. Gevagert: Excuse me?

21 The Court: I mean, any available
22 witness that -- apparently they feel that these
23 five are available.

24 Ms. Gevagert: I am distinguishing third
25 party discovery, Your Honor, from discovery of

1 a --

2 The Court: Well they're third party but
3 they are not. If they were on the Board of
4 Directors it's pretty hard to argue they were
5 third party.

6 Ms. Gevagert: They are third party in
7 that they are not NCAA agents and they are not --
8 they are not parties in this case.

9 The Court: They are not employees.

10 Ms. Gevagert: That's right. But they
11 did take their deposition of Ed Ray, who is a
12 party in this case, and so there are other more
13 sensible places to start the discovery. And
14 these witness are also located all over the
15 country, from Utah, to South Carolina, and just
16 increases the amount of burden that's necessary.

17 Now I just want to touch briefly on the
18 relevance aspect of these depositions, and I'm
19 not going belabor this point, and I won't deny
20 that there is probably some relevance to the
21 depositions, but I think that there are other
22 types of discovery and subject matter that are
23 far more pertinent to the claims that are right
24 for the case.

25 The Court: But do they have to choose?

1 Do the plaintiffs have to choose well we are
2 going to do a but we are not going to do b? Do
3 they have to choose that?

4 Ms. Gevagert: Absolutely not.

5 The Court: Obviously if it becomes
6 cumulative that is a viable source of objection.

7 Ms. Gevagert: Again the NCAA does not
8 state that they should not take this discovery.
9 We just ask that we focus first on core discovery
10 of the topics that are clearly right for
11 discovery of the issues that are undeniably in
12 the case, for example, their tort claims, which
13 are focused on the reliability of the Freeh
14 report and additional document discovery. There
15 are other types of discovery that are available
16 that we should focus on now and then we can turn
17 to the third party discovery of these individuals
18 and at least then we will know the scope and
19 whether or not they actually need all of that
20 discovery.

21 For example, Your Honor, there were 12
22 voting members of the Executive Committee on that
23 July 21st call. They have already deposed Ed Ray
24 and they seek to depose five more. That is half
25 of the Executive Committee. I don't know but we

1 may learn that that becomes cumulative to need
2 all of those depositions, which is why let's
3 learn more about the scope of these claims and
4 the discovery they actually need before jumping
5 full feet into the deep end and deposing all of
6 these third party witnesses and burdening them.
7 They are sitting university presidents with
8 demanding daily responsibilities and it's asking
9 a lot of them to take these depositions if it
10 turns out that the plaintiffs don't actually even
11 need the discovery. It's too early to know how
12 much they will actually need that discovery.

13 So ultimately what -- a couple other
14 points on the relevance issue. Plaintiffs note
15 that Mr. Clemens is also a plaintiff to Count 1
16 but I would note that the factual basis, the
17 allegations that he presents in Count 1, are
18 entirely distinct from those that Coach Paterno
19 asserts or the estate asserts on his behalf for
20 Count 1. Thus, again, resolving Count 1 in the
21 preliminary objections is relevant to
22 understanding the scope of these depositions.

23 In the one deposition that has happened
24 so far, which was of Dr. Ed Ray, right out of the
25 starting gates the first hour plus of that

1 deposition focused on questions that were
2 pertinent only to Count 1 or primarily to Count
3 1, including questions of the ways the NCAA
4 bylaws work, what it means to have notice of an
5 investigation, and that may be discovery that
6 isn't necessary once we know more about what the
7 claims themselves are, and viability of Count 1,
8 and what discovery is actually need.

9 Thus, ultimately what we're saying is
10 let's wait for resolution of the preliminary
11 objections and an understanding of what Count 1
12 -- the viability of it and the parameters of it,
13 take discovery for more available resources on
14 top -- and on topics that are clearly right for
15 discovery, and that will probably inform how many
16 depositions and the scope of those depositions
17 that will be necessary, and the parties can
18 likely reach agreement at that point and we won't
19 even need judicial assistance to resolve this
20 matter.

21 Alternatively, as I mentioned earlier,
22 we are willing to withdraw our objections to them
23 moving forward at this stage if we have the
24 ability to object to specific depositions as they
25 come up individually.

1 Thank you, Your Honor.

2 The Court: Thank you very much.

3 Welcome back.

4 Ms. Maher: Your Honor, just a few brief
5 points in response. The scope of these
6 depositions is going to be limited by what the
7 witnesses know and can tell us, the events they
8 have participated in. It's not going to be
9 dictated by who remains in on Count 1.

10 Mr. Clemens, as we've said, remains a plaintiff
11 on Count 1. He is not subject to the issue
12 that's before the Court today and so there really
13 is no reason to defer taking these depositions,
14 although, Your Honor, we understand that you're
15 going to rule on everything at one time.

16 The Court: I will.

17 Ms. Maher: The other thing, Your Honor,
18 and we've said this to the plaintiff, I said it
19 again this morning, these depositions don't
20 relate only to Count 1. The consent decree is at
21 issue in literally every count of the second
22 amended complaint. Plaintiffs I think -- I mean,
23 the NCAA would like to try to avoid these
24 depositions in the event that the Court rules in
25 favor of their preliminary objection on Count 1,

1 but the fact remains that we would still proceed
2 with the depositions. We would like to proceed
3 with the depositions because they're relevant to
4 the formation of the consent decree and the
5 events of the two meetings that were referenced
6 earlier are relevant to every count of the second
7 amended complaint.

8 Then just briefly, Your Honor, I don't
9 know how we're ever going to be in a position of
10 agreeing if agreement hinges on us telling the
11 defendants in advance the questions we are going
12 to ask so we somehow get their agreement that
13 it's acceptable for us to proceed with the
14 depositions.

15 And, Your Honor, they are correct that
16 we declined their proposal to allow them to
17 reassert objections later. I do not really know
18 what the mechanism for that would be. That if
19 they simply later say, oh, we decided we're now
20 objecting to you taking Dr. Pastide's (ph.)
21 deposition because we believe that that would be
22 cumulative, what would that entail? Do we have
23 to acquiesce? Would we have to come back here?
24 Again, Your Honor, it seemed more efficient for
25 us to proceed getting the five deposition

1 subpoenas, working with these individuals and
2 their counsel to schedule them for their
3 convenience at a time when they're available, as
4 we did with Dr. Ray with the cooperation of the
5 NCAA and Dr. Ray's counsel.

6 And, finally, Your Honor, I would simply
7 state that under the Rule 4007.3, the sequence
8 and timing of discovery, the rule states that the
9 parties can use the various methods of discovery
10 in any sequence and it's not dependent on
11 agreement of the parties or unless there is a
12 motion by another party the Court dictating the
13 sequence of discovery.

14 Thank you, Your Honor.

15 The Court: Thank you.

16 If there are any last words, by all
17 means.

18 Ms. Gevagert: Very shortly. I just
19 want to address Ms. Maher's last two points.

20 The first is that she said that she is
21 not sure what the mechanism is if we couldn't
22 reach agreement but I think the NCAA at that
23 point would just return to the Court to seek a
24 protective order with regard to specific
25 depositions.

1 But with regard to her next point about
2 the sequence of timing of discovery being
3 permitted to be controlled by the plaintiffs,
4 Rule 4011, Your Honor, also prohibits undue and
5 burdensome discovery and our point is that third
6 party out-of-state witnesses from all over the
7 country with very busy schedules is an
8 unnecessary burden when they're other less
9 burdensome means to start with.

10 Thank you, Your Honor.

11 The Court: Thank you very much.

12 I believe we have covered it all, ladies
13 and gentlemen?

14 Mr. Loveland: I believe that is
15 correct, Your Honor. Thank you.

16 The Court: Okay. Thank you.

17 What we are going to do at this time if
18 anybody needs a break we can take a short break,
19 but I would like to then meet in private session
20 -- we will do it in here simply because we have
21 got the space available -- with all counsel and
22 if any named parties are present and wish to
23 participate or listen in they may do so as well.

24 So we will adjourn our arguments for the
25 day. Thank you, everyone, for your

1 presentations. The Court will take the matters
2 under advisement and certainly will do my best to
3 get something to you relatively soon on these
4 outstanding issues.

5 So we will take a five-minute break and
6 then again the parties I've indicated if you
7 would be kind enough to meet me back here in
8 courtroom.

9 Thank you, everyone. I appreciate all
10 of the effort that's goes into the presentations
11 whether I have questions on them or not. I know
12 a great deal of effort and a great deal of
13 resources are being expended. Thank you,
14 everyone.

15 E N D O F P R O C E E D I N G S
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3/11/15

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Elise A. Sturges

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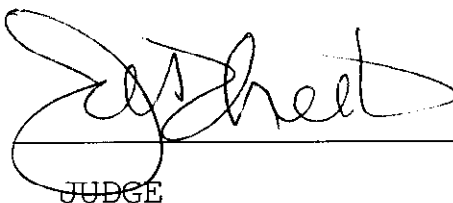
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PRESIDING JUDGE/COURT REPORTER: Judge Leete; E. Sturges

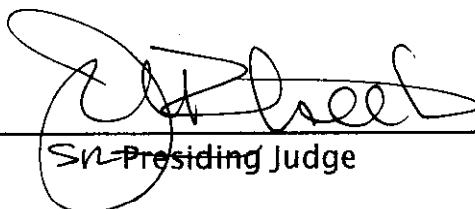
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November 17, 2011

Mark A. Emmert
President

P.O. Box 6222
Indianapolis, Indiana 46206
317/917-6222

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

Dear President Erickson:

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

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

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

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

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

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


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

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

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

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

Sincerely,



Mark Emmert
President

ME:dbv

cc: Division I Board of Directors
Selected NCAA Staff Members