

1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 Case No. 1 M.D.

3 -----X

4 JAKE CORMAN, in his official capacity as  
5 Senator from the 34th Senatorial District of  
6 Pennsylvania and Chair of the Senate  
Committee on Appropriations; and ROBERT M.  
7 McCORD, in his official capacity as Treasurer  
of the Commonwealth of Pennsylvania,

8 PLAINTIFFS,

9 -against-

10 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

11 DEFENDANT,

12 -against-

13 PENNSYLVANIA STATE UNIVERSITY,

14 DEFENDANT.

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15  
16 VIDEOTAPED DEPOSITION OF

17 KENNETH FRAZIER

18 Philadelphia, Pennsylvania

19 Monday, December 15, 2014

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21  
22 Reported by:

23 Rebecca Schaumloffel, RPR, CLR

24 Job No: 88352

25

1 December 15, 2014

2 9:59 a.m.

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6 Videotaped deposition of KENNETH

7 FRAZIER, held at the offices of REED SMITH,

8 1717 Arch Street, Philadelphia, Pennsylvania,

9 before Rebecca Schaumloffel, a Registered

10 Professional Reporter, Certified Livenote

11 Reporter and Notary Public of the State of

12 New York and the State of New Jersey.

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1 A P P E A R A N C E S :

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KILLIAN & GEPHART  
Attorneys for NCAA  
218 Pine Street  
PO Box 886  
Harrisburg PA 17108  
BY: ROBERT DANIELS

7

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CONRAD O'BRIEN  
Attorneys for Jake Corman  
1500 Market Street  
Centre Square  
Philadelphia, PA 19102  
BY: MARK SEIBERLING  
ALEXIS MADDEN

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REED SMITH  
Attorneys for Penn State University  
1717 Arch Street  
Philadelphia, PA 19103  
BY: MICHAEL SCOTT

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LATHAM & WATKINS  
555 Eleventh Street Northwest  
Washington, DC 20004  
BY: DREW WISNIEWSKI  
ALLEN GARDNER

ALSO PRESENT:

Gerard Alfe, videographer

\* \* \*

Penn State Sunshine Fund

1 THE VIDEOGRAPHER: This video  
2 deposition is now beginning. The  
3 date, December 15, 2014. The time is  
4 9:59. This is the video deposition of  
5 Kenneth C. Frazier taken in the matter  
6 of Jake Corman, et al versus NCAA  
7 versus Pennsylvania State University.  
8 Counsel will appear on the record.  
9 Please swear in the witness.

10 K E N N E T H C. F R A Z I E R, called  
11 as a witness, having been first duly sworn  
12 by a Notary Public of the State of New York,  
13 was examined and testified as follows:

14 EXAMINATION BY

15 MR. GARDNER:

16 Q. Hi, Mr. Frazier.

17 A. Good morning.

18 Q. Could you state your name for the  
19 record, please?

20 A. My name is Kenneth C. Frazier.

21 Q. And I introduced myself just  
22 before we started, but now that the video is  
23 on, I am Allen Gardner from Latham & Watkins,  
24 and I represent the NCAA in this litigation.

25 Can you give us a little bit

1 about your educational background, please?

2 A. I was educated here in  
3 Philadelphia in the public school system. I  
4 then went to Penn State University. And  
5 graduated there in 1975, and then went  
6 immediately to Harvard Law School and  
7 graduated in 1978.

8 Q. Can you give us a little bit of  
9 your professional background after graduation  
10 from Harvard Law School, please?

11 A. Yes, I practiced law here in  
12 Philadelphia for 14 years at a law firm  
13 called Drinker Biddle & Reath where I became  
14 a partner, and in 1992, I left and went to  
15 work at Merck.

16 Q. You went to work at Merck as an  
17 attorney, in-house counsel?

18 A. Yes.

19 Q. Okay.

20 A. My first job was.

21 Q. And what was the name of that  
22 position, if you would, please, and around  
23 how long were you in it?

24 A. I was the general counsel of a  
25 joint venture between Merck and a Swedish

1 drug company called Astra, which was called  
2 Astra Merck, and I was the general counsel of  
3 that entity for about a year and a half. I  
4 then was asked to join Merck, meaning Merck  
5 Merck, so to speak, where I was  
6 vice-president of public affairs, which is  
7 essentially communications and policy and  
8 corporate social responsibility,  
9 philanthropy, those kind of things. I did  
10 that job for about six years and then I was  
11 then deputy general counsel having all of  
12 that public affairs responsibility under me  
13 and then general counsel.

14 And following that, I became the  
15 head of the commercial division of Merck,  
16 which is called global human health and then  
17 in 2010, I became president, and in 2011, I  
18 became CEO and in 2012, I became chairman  
19 and CEO.

20 Q. Are you chairman and CEO of Merck  
21 today?

22 A. Yes.

23 Q. When did you first become  
24 involved with the -- with Pennsylvania --  
25 Penn State's board?

1           A.     I joined the board at Penn  
2 State -- my recollection is, in July of 2009.

3           Q.     Prior to July 2009, did you have  
4 any role at Penn State after graduation?

5           A.     Yes. I was on the liberal -- The  
6 College of Liberal Arts development  
7 committee.

8           Q.     Okay. Any other role prior to  
9 joining the Penn State board in July of 2009?

10          A.     Not to my recollection.

11          Q.     Do you sit on Penn State's board  
12 today?

13          A.     Yes, I do.

14          Q.     You have been on it consistently  
15 from July 2009 to the present?

16          A.     Yes, I have.

17          Q.     Did there come a time when you  
18 became a member of the executive committee of  
19 the Penn State board?

20          A.     Yes.

21          Q.     Do you recall when that occurred?

22          A.     Not exactly but I can give you a  
23 general timeframe.

24          Q.     That would be great.

25          A.     It was following the event of



1 November 2011.

2 Q. And the events of November 2011,  
3 I know we all know, but we are talking  
4 about --

5 A. The grand jury report that had to  
6 do with alleged child sexual abuse committed  
7 by Joe Sandusky.

8 Q. Prior to the grand jury report  
9 about Mr. Sandusky, you were not a member of  
10 the executive committee?

11 A. That's correct. And I guess to  
12 be more precise prior to the formation of the  
13 special investigative task force of the board  
14 to investigate how the University responded  
15 to alleged reports of child sexual abuse, I  
16 was not a member of the executive committee.

17 Q. When the task force was formed,  
18 you became the chair of that task force,  
19 correct?

20 A. Correct.

21 Q. As part of that, became part of  
22 the executive committee?

23 A. Yes, at some point subsequent to  
24 that.

25 Q. Are you a member of the executive

1 committee of the Penn State board today?

2 A. I believe I am.

3 Q. You have been consistently since  
4 being first appointed in November-ish 2011?

5 A. I am not so sure because there  
6 was a period of time between the cessation of  
7 the activity of the special investigative  
8 task force and when I became a committee  
9 chair, and I just don't remember what  
10 happened in that small period of time.

11 Q. Okay. So you are on the  
12 executive committee today by virtue of being  
13 a committee chair?

14 A. Correct.

15 Q. Which committee do you chair?

16 A. Legal and compliance.

17 Q. And do you recall when you  
18 became, roughly, the chair of the legal and  
19 compliance committee?

20 A. I believe it was about two years  
21 ago. Not sure exactly when.

22 Q. That's fine. I understand. So  
23 you became a member of the executive  
24 committee during the time of the special task  
25 force, November-ish, 2011 until it wrapped up

1 its work, right?

2 A. Correct.

3 Q. Then there was some break of some  
4 sort where you were not on the executive  
5 committee of the board?

6 A. I believe that's the case.

7 Q. Okay. And then, you know, you  
8 again became a member of the executive  
9 committee when you became chair of the legal  
10 and compliance committee?

11 A. I believe that's the case. I  
12 just don't remember it. I will go back to  
13 the comment that there may have been a short  
14 period in that time period where I was not  
15 continuously a member.

16 Q. Okay. When did you first learn  
17 of the allegations surrounding  
18 Jerry Sandusky?

19 A. To the best of my recollection,  
20 the first I heard of it was in November of  
21 2011 when the grand jury report came out.

22 Q. Do you recall what day it came  
23 out, what the date was?

24 A. As I sit here today, I don't  
25 recall but somehow, November 5th sticks in my

1 mind.

2 Q. Okay. Did you read the  
3 presentment when it came out?

4 A. I read it within 48 hours of it  
5 becoming public.

6 Q. Just generally, what were your  
7 thoughts as they related to your role as a  
8 member of the board at Penn State when you  
9 read the presentment?

10 A. I was shocked at what I read in  
11 the presentment. I was upset by what I read  
12 in the presentment. I wanted to know why, as  
13 a board member, I hadn't heard anything about  
14 the fact that there was, in fact, grand jury  
15 proceedings pending that involved not just  
16 Mr. Sandusky, but other officials of the  
17 University.

18 Q. So prior to the grand jury  
19 presentment becoming public, you were unaware  
20 there was a grand jury investigating what the  
21 grand jury was investigating related to  
22 Jerry Sandusky and others?

23 A. To the best of my recollection, I  
24 was not aware of it. I became aware of it  
25 subsequent to the grand jury presentment.

1 Q. A few days after the grand jury  
2 presentment was made public, there were some  
3 personnel decisions that were made at Penn  
4 State University that related to Mr. Curly,  
5 Mr. Schultz, Mr. Spanier and Coach Paterno?

6 A. That's correct.

7 Q. Were you involved in those  
8 decisions?

9 A. Yes, I was involved in the  
10 discussions and deliberations that led up to  
11 those decisions.

12 Q. Can you describe for us, please,  
13 those deliberations and discussions that  
14 resulted in the personnel decisions?

15 A. There were a series of telephone  
16 calls, as I recall, the calls involved the  
17 entire board including emeritus trustees.  
18 There were a lot of points of views exchanged  
19 during those calls. And ultimately,  
20 decisions were made.

21 Q. What decisions were made as a  
22 result of those calls?

23 A. As I sit here today, I recall  
24 that with respect to Mr. Curly and  
25 Mr. Schultz, the decision was made to put

1     them -- I think with respect to Mr. Curly the  
2     decision was to put him on some kind of  
3     administrative leave. I believe with  
4     Mr. Schultz, it was to allow him to retire as  
5     he had previously stated his intent to  
6     retire. With respect to Coach Paterno, the  
7     decision, as I recall, was that he should not  
8     coach the remaining games of the season that  
9     was underway at that time. And with respect  
10    to President Spanier, the decision was that  
11    he would be terminated as president of the  
12    University, but he would continue to be a  
13    tenured member of the faculty.

14           Q.     Why was the decision made to  
15    place Mr. Curly on administrative leave?

16           MR. SCOTT:  Objection. I will  
17    ask for clarification. Are you asking  
18    for Mr. Frazier's thought processes or  
19    the thought processes of every member  
20    of the board?

21           MR. GARDNER:  Fair point. Fair  
22    point.

23           Q.     Let me ask it this way. Were you  
24    in agreement with the decision to place  
25    Mr. Curly on administrative leave?

1 A. Yes.

2 Q. Why did you think that was the  
3 right thing to do?

4 A. Because at that time there were  
5 pending legal proceedings, we had a grand  
6 jury presentment, but my feeling at the time  
7 was that the grand jury presentment was not  
8 equivalent to a determination about what the  
9 real facts were.

10 Q. What about Mr. Schultz, the  
11 decision to allow him to retire, were you in  
12 favor of that decision?

13 A. I don't remember precisely having  
14 a lot of thought about that because my  
15 recollection is that he was going to retire.  
16 So he was going to retire. I don't remember  
17 that being a discussion of a lot of  
18 deliberations.

19 Q. How about Coach Paterno not  
20 coaching the remaining games that season, it  
21 was November, so obviously midseason,  
22 correct?

23 A. Yes.

24 Q. Were you in favor of the decision  
25 not to allow Coach Paterno to coach out the

1 rest of the season.

2 A. Ultimately, I was in favor of  
3 that.

4 Q. Initially, did you have some  
5 reservations?

6 A. I did.

7 Q. Just explain your thought process  
8 and how you became in favor of that decision.

9 A. Just as I said in the case of  
10 Mr. Curly, my initial feeling was, when I  
11 first heard about this, that the facts had  
12 not been established and we needed to be  
13 careful to make sure we understood the facts.  
14 As I was in -- in that 48-hour time period  
15 read the grand jury presentment, I reached  
16 the conclusion that given what had become  
17 public about the issues leading up to the  
18 presentment and given what was said in the  
19 presentment itself about Coach Paterno's  
20 testimony and about what the graduate student  
21 said to Coach Paterno, I felt that it would  
22 not send the right message if Coach Paterno  
23 was able to lead the football team out onto  
24 the field of play under those circumstances.

25 So I didn't change my mind on the



1 question of whether we had established all  
2 the key facts that related to Coach Paterno's  
3 involvement and/or responsibility. But I had  
4 reached the conclusion that, from the  
5 standpoint of what the University's values  
6 would be interpreted to be by the broader  
7 public, that what was known was sufficiently  
8 serious as it relates to child sexual abuse  
9 that it would send the wrong message about  
10 our values as a University if Coach Paterno  
11 were allowed to coach as though none of this  
12 had ever happened.

13 Q. Did you agree with the decision  
14 to terminate President Spanier as president  
15 of the University?

16 A. Yes.

17 Q. Why?

18 A. As I recall, there were several  
19 conversations with President Spanier. My  
20 recollection was that at one point the board  
21 and I specifically made a point about what  
22 our public statement should say, and the  
23 point I was making was that the public  
24 statement should be very clear that child  
25 sexual abuse is -- what's the right word for

1 it, is a horrible thing. That it shouldn't  
2 occur anywhere in our society, but in  
3 particular, it shouldn't occur on the campus  
4 of Penn State University, that we were  
5 committed to getting to the bottom of that,  
6 and we would do everything in our power to  
7 ensure the safety and welfare of children on  
8 our campus.

9           The statement that was  
10 subsequently issued after that board call did  
11 not reflect that statement of concern about  
12 child welfare. It reiterated  
13 President Spanier's belief in the innocence  
14 of Mr. Curly and Mr. Schultz, and I felt that  
15 that was inappropriate given the direction.  
16 I also felt that having read the grand jury  
17 report, and knowing that President Spanier  
18 was aware that there were grand jury  
19 proceedings that the board had not heard  
20 about, that I lost confidence in his ability  
21 to lead under the circumstances.

22           Q. Did you think at the time that,  
23 or in the 48 hours after the grand jury  
24 presentment was made public and you reviewed  
25 it, did you think those were facts -- or that

1 you should have known about the grand jury  
2 proceedings as a member of the board at Penn  
3 State University?

4 A. Yes, although there was a  
5 meeting, I've come to now know, in May, at  
6 which I was not present, at which there were  
7 some discussions about this issue.

8 Q. Okay. You didn't know as a  
9 member of the board that the grand jury  
10 proceedings were going on, but as you point  
11 out, you weren't at a meeting in May in which  
12 they were discussed, is that what you are  
13 telling me?

14 A. Yes.

15 Q. Other than this May meeting, were  
16 the grand jury proceedings discussed prior to  
17 the presentment being made?

18 A. Not to my personal knowledge.

19 Q. Okay. These personnel decisions  
20 that were made within days of the grand jury  
21 presentment coming out, did the NCAA play any  
22 role in your discussions or the personnel  
23 decisions that the board made, to your  
24 knowledge?

25 A. Not to my knowledge.

1 Q. There was no discussion at the  
2 meeting about --

3 A. There were meetings. There were  
4 teleconferences.

5 Q. Thank you. Do you recall any  
6 discussion during these teleconferences about  
7 we have heard from the NCAA and they want  
8 this, that or the other?

9 A. I have no recollection of any  
10 such comments being made.

11 Q. So to your recollection, all the  
12 personnel decisions that were made were  
13 decisions of the Board of Trustees at Penn  
14 State University based on the information it  
15 had from the grand jury presentment?

16 A. And events that related to that,  
17 yes. It was a decision by the board.

18 Q. Without outside influence?

19 A. I recall no specific outside  
20 influence. I would say we were cognizant of  
21 the fact that the broader public knew about  
22 these things. We were cognizant that the  
23 faculty knew about these things and so there  
24 were no direct influences. No one talked to  
25 us about it.

1 Q. Okay. Thank you for the  
2 clarification.

3 MR. GARDNER: We will mark this  
4 as Exhibit 1, please.

5 (Whereupon, Frazier Exhibit 1,  
6 November 11, 2011, Board of Trustees  
7 minutes of meeting was marked for  
8 identification as of this date by the  
9 Reporter.)

10 BY MR. GARDNER:

11 Q. Mr. Frazier, you have been handed  
12 what's been marked as Exhibit 1 to your  
13 deposition, and it appears to be minutes of  
14 the board -- the Pennsylvania State  
15 University Board of Trustees meeting dated  
16 November 11, 2011; is that correct?

17 A. Yes.

18 Q. Now, this board meeting, if I  
19 have got my time right, would have been  
20 six days after the presentment and two days  
21 after the personnel decisions were made, does  
22 that sound about right?

23 A. Generally speaking. I don't  
24 recall the precise dates.

25 Q. If you look at the second

1 paragraph, second line, second paragraph  
2 indicates that you were present, and the  
3 first paragraph indicates that it was an  
4 in-person meeting held at the Nittany Lion  
5 Inn, is that consistent with your  
6 recollection?

7 A. Yes, it is.

8 Q. The formation of a special  
9 committee, a special investigations task  
10 force is discussed at this meeting. If you  
11 will look at --

12 A. The next-to-last paragraph on the  
13 first page.

14 Q. Correct. How did the board come  
15 to the decision that it needed a special  
16 investigations task force?

17 A. I don't remember how the board  
18 came to that conclusion. What I remember is  
19 that I took a series of calls from  
20 John Surma, who was vice-chairman and  
21 Steve Garban, who was chairman, asking me  
22 would I be willing to chair such a special  
23 investigative task force.

24 Q. I take it you agreed?

25 A. Ultimately. At first I did not

1 agree.

2 Q. Why did you not agree at first?

3 A. Because in November of 2011, I  
4 was a new CEO. And I had a lot of  
5 responsibilities, and there were issues at  
6 home involving health and other things, and I  
7 did not know that I had the time, but  
8 ultimately, after talking to them more than  
9 once, I was persuaded that my background was  
10 sufficiently close to what was being asked  
11 here, that I would be one of the few people  
12 on the board who would have had experience  
13 with these kinds of investigative procedures  
14 and independent reports.

15 Q. What experience did you have at  
16 the time with, as you said, these type of  
17 investigations and reports? And I don't need  
18 to know the details, just generally, I'm  
19 certainly not trying to get into privileged  
20 information or anything else in your  
21 background. I am not, and your counsel would  
22 throw something at me if I was.

23 A. So in private practice, my firm  
24 had been engaged to do special reports for  
25 various clients, and as general counsel of

1 Merck, we had retained people to do special  
2 investigative reports with respect to  
3 specific issues.

4 Q. Did -- in coming to the decision  
5 as the Penn State board to do what was  
6 ultimately commonly referred to as the free  
7 investigation and the free report, did you  
8 share some of your background and experience  
9 in doing these types of investigations and  
10 reports?

11 A. With whom?

12 Q. With anybody on the board.

13 A. No, I wasn't running for this  
14 job. But I think, particularly with respect  
15 to my representation of the company in broad  
16 investigations and litigations that related  
17 to the voluntary withdrawal of a painkiller  
18 called Vioxx, people knew about my  
19 involvement with similar matters.

20 Q. If you go in to pages 6 and 7,  
21 which I believe are the last two pages of the  
22 exhibit, you will see starting most of the  
23 way down on page 6, there is a report of the  
24 executive sessions that includes F?

25 A. Yes.



1 Q. "Special investigations task  
2 force has been established and work is  
3 underway to identify members"?

4 A. Um-hum. Yes, that's what it  
5 says.

6 Q. That's what we have been talking  
7 about. This is the task force that's being  
8 established that's going to end up doing an  
9 investigation, the facts and circumstances  
10 surrounding the Sandusky events?

11 A. Well, it says specifically it is  
12 being put together to determine what failures  
13 occurred, who is responsible and what  
14 measures are necessary to ensure that this  
15 never happens again.

16 Q. Did you play any role in coming  
17 up with what the scope of the task force  
18 would be?

19 A. My recollection is that I did.

20 Q. And is this an accurate -- the  
21 portion you just read from Exhibit 1, is that  
22 an accurate reflection of what the task  
23 force, what their mandate was at the time?

24 A. It is consistent with my  
25 recollection of what the mandate of the task

1 force was.

2 Q. Okay. If you go further down on  
3 page 6, there are some comments that are  
4 attributed to you. Do you see that?

5 A. Yes.

6 Q. It says, "Thank you, Mr. Chair.  
7 I would just start by saying that the special  
8 committee will take very seriously its charge  
9 of conducting a complete and independent and  
10 separate investigation, which will be viewed  
11 as rigorous, objective and impartial into the  
12 matters you discussed."

13 Was it important to you that the  
14 task force's investigation be complete?

15 A. Yes.

16 Q. And independent?

17 A. Yes.

18 Q. And rigorous?

19 A. Yes.

20 Q. And objective?

21 A. Yes.

22 Q. And impartial?

23 A. Yes.

24 Q. Was the task force investigation  
25 all of those things, looking back at it?

1           A.       From everything that I could  
2 tell, it was certainly complete. It was  
3 certainly independent. I think the  
4 investigation could be viewed as rigorous,  
5 objective and impartial. The investigation.

6           Q.       Okay. I take it -- sorry, I  
7 won't take anything.

8           A.       When I say "the investigation," I  
9 want to be clear that I am sure we are going  
10 to talk about the content of the report later  
11 in this deposition. Here it makes reference  
12 to the investigation itself and, of course,  
13 we retained someone to investigate the facts  
14 and then subsequently, there was a report  
15 that included inferences and interpretations  
16 and conclusions. So this comment relates to  
17 the investigation, which is Step 1.

18          Q.       Okay. Okay. Well, let me just  
19 ask you, do you have -- do you have the same  
20 opinions of the report that you do of the  
21 investigation? In other words, the opinions  
22 that you just shared with me about complete  
23 and independent and rigorous?

24          A.       I think what I would say about  
25 that is that the report contains opinions,

1 conclusions, inferences of the investigator,  
2 which I think of as being something other  
3 than completely objective, the way factual  
4 observations are objective.

5 Q. I understand. Thank you. We are  
6 finished with that one. Let me move to a  
7 new one.

8 (Whereupon, Frazier Exhibit 2,  
9 4-page article dated November 21,  
10 2011, entitled Former FBI Director  
11 Freeh to Construct Independent  
12 Investigation was marked for  
13 identification as of this date by the  
14 Reporter.)

15 BY MR. GARDNER:

16 Q. You have been handed what has  
17 been marked as Exhibit 2 to your deposition,  
18 and it's a story dated November 21, 2011,  
19 announcing Director Freeh was going to  
20 conduct the independent investigation that we  
21 have been talking about, correct?

22 A. Correct.

23 Q. Okay. Does November 21st, is  
24 that consistent with your recollection of  
25 when Director Freeh was chosen?

1           A.     Yes, because it was right before  
2 Thanksgiving.

3           Q.     This case seems to like to ruin  
4 holidays.

5           A.     It sure does.

6           Q.     Did you consider -- did you, let  
7 me rephrase that.

8                     Did the -- did your task force  
9 consider other candidates other than former  
10 FBI Director Louie Freeh?

11          A.     The retention of the person to do  
12 the investigation was something that I  
13 handled along with my co-chair, Ron Tomalis.  
14 We did not engage other members of the  
15 independent task force in the vetting  
16 process.

17          Q.     Okay. Did you and Mr. Tomalis  
18 vet other candidates other than  
19 Director Freeh?

20          A.     Yes. We -- the vetting actually  
21 had two stages.

22          Q.     Okay.

23          A.     After we announced that we were  
24 going to conduct an independent  
25 investigation, we received a significant

1 amount of correspondence and phone calls from  
2 lawyers around the country who felt they  
3 would be ideal candidates for such a  
4 representation. So we had in front of us a  
5 significant amount of documentation from  
6 lawyers, many of whom were lawyers of very  
7 high visibility and high stature. So we  
8 reviewed those materials and then we decided  
9 to do two in-person interviews in Washington.

10 Q. Okay. Who did you decide to  
11 interview in person in Washington?

12 A. One was Judge Freeh and the other  
13 one was Michael Chertoff.

14 Q. Okay. Why did those two make the  
15 initial cut?

16 A. Well, you are asking me after  
17 many years to rationalize a decision that was  
18 made after looking at a lot of data, but I  
19 would have to say, and I don't mean to be  
20 tautological, because we thought they were  
21 the best two.

22 Q. You ask a dumb question, you get  
23 an obvious answer.

24 A. But there were a lot of really  
25 other significant people of high stature who

1 asked to be considered in this respect.

2 Q. Ultimately, you chose Judge  
3 Freeh?

4 A. Yes.

5 Q. Other than the obvious point  
6 that -- you decided he was the best  
7 candidate, was there anything about Judge  
8 Freeh that caused you to choose him?

9 A. My recollection is that he  
10 impressed us in the meeting as very serious,  
11 that he had a background that made him aware  
12 of and sensitive to issues of child sexual  
13 abuse. My recollection is that he had made  
14 that a cornerstone of one of the things that  
15 he wanted to focus on when he ran the Bureau.  
16 I think we believed that he was a man who  
17 would call things as he saw them and that he  
18 would be regarded as such by the public. I  
19 think we were equally impressed with  
20 Michael Chertoff. Ultimately, I think one of  
21 the deciding factors for me was that Michael  
22 is a law school classmate of mine, and the  
23 Covington firm is one of the major firms that  
24 represents Merck.

25 Q. At any point since choosing Judge

1 Freeh to lead the independent investigation,  
2 have you regretted that decision?

3 A. I have not regretted the decision  
4 to retain Judge Freeh. There have been  
5 moments of doubt with respect to how the  
6 entire process was carried out.

7 Q. Can you describe those moments of  
8 doubt for me?

9 A. Well, for better or worse, I am  
10 law trained, and I have been involved in  
11 investigations before. I think it's  
12 documented that when we originally retained  
13 Judge Freeh the special investigative task  
14 force was going to, and me specifically, was  
15 going to have an opportunity to engage  
16 Judge Freeh before the report became public.  
17 For various reasons, in the course of the  
18 process, it was decided to allow the report  
19 to become public at the same time that the  
20 board saw it for the first time, and I think  
21 that as a result we were scrambling to deal  
22 with the public fallout in a way that we  
23 would not have had we been able to sit down  
24 in a quiet room, understand what was being  
25 said, probe what was being said and being



1 prepared for what was being said.

2 Q. Were there any other moments of  
3 doubt or was that what you meant when you  
4 said moments of doubt in response to one of  
5 my earlier questions?

6 A. That is essentially what I was  
7 talking about. The way in which the report,  
8 as distinguished from the investigation, was  
9 made public and how it was articulated to the  
10 public and then the pressure that we were  
11 under in the immediate news cycles in which  
12 we live to respond to something that we were  
13 not prepared for.

14 Q. When you originally engaged  
15 Judge Freeh, did you anticipate that the  
16 board would be given some advanced notice or  
17 advanced opportunity to review the report  
18 before it was make public?

19 A. Yes.

20 Q. That did not turn out to be the  
21 case?

22 A. That did not turn out to be the  
23 case.

24 Q. Do you know why?

25 A. I do know why.

1 Q. Can you tell us why, please?

2 A. The board made a decision to  
3 forego our prerogative to pre-review the  
4 report, or to preview the report, I guess.  
5 Do prepublication review, to be more precise,  
6 of the report. After hearing the reaction to  
7 that part of the agreement, that is the  
8 agreement between us and Judge Freeh, hearing  
9 the reactions to that by the Penn State  
10 faculty and by alums and others.

11 Q. What reactions to -- when you say  
12 engagement, you are talking about the  
13 engagement letter with the Freeh firm, the  
14 engagement agreement?

15 A. I don't know if it was  
16 specifically in the engagement letter, but it  
17 was always understood between  
18 Judge Freeh and myself that I would have an  
19 opportunity to sit with him before the report  
20 became public to review the report with him,  
21 which I believe is customary in these  
22 situations, if for no other reason to ensure  
23 that there were no factual errors in the  
24 report.

25 Q. Okay. But you said there were

1 concerns by alums and faculty about that  
2 previewing opportunity that you believe to be  
3 customary?

4 A. That's correct.

5 Q. How did you find out about these  
6 concerns?

7 A. I heard them directly from  
8 faculty members when we had a -- an evening  
9 dinner with some faculty members. I read  
10 about the faculty Senate discussing these  
11 issues and expressing a lack of confidence  
12 that the report would be independent and  
13 objective if it were reviewed in advance, and  
14 I remember similar statements being made in  
15 the press by at least one alumni group.

16 Q. Because of these concerns about a  
17 lack of confidence in the report's  
18 independence and objectivity, you decided to  
19 forego this customary preview of the report?

20 A. That's correct.

21 Q. Did you discuss the decision to  
22 give up that customary previewing of the  
23 report with anybody on the board before that  
24 decision was made?

25 A. Yes, it was the board's decision,

1 not my decision. It would have been my  
2 inclination to have done it the way that I  
3 set it up in the first place.

4 Q. Now, the customary preview that  
5 you had envisioned was that for purposes of  
6 editing the report or just hearing about it  
7 before it was made public?

8 A. I don't recall that we actually  
9 had guidelines like that. But, to be -- go  
10 back to the beginning, we retained  
11 Judge Freeh because we were troubled by what  
12 we had heard in the presentment. I wanted  
13 someone that the world would know would call  
14 them as he saw them. And so it was not my  
15 intent to try to manipulate the report, but  
16 it has also been my experience that people  
17 make mistakes sometimes or people interpret  
18 things that they might see differently if  
19 they have a broader perspective on the issue.

20 So to me, independence really  
21 relates to the fact that Judge Freeh was to  
22 have the last word. It did not mean that he  
23 should not at any point engage in a  
24 discussion including ensuring that facts are  
25 correct. Does that make sense to you?

1 Q. It does. It does. After  
2 reviewing the report, did you believe that  
3 Judge Freeh had called the facts as he had  
4 seen them based on his investigation?

5 A. I didn't know that he had called  
6 them as he had seen them, but I believe that  
7 he said what he believed to be the case.

8 Q. Going back to Exhibit 2, it notes  
9 that Judge Freeh's findings and  
10 recommendations were going to be made public.

11 A. Correct.

12 Q. Whose idea was that?

13 A. That was always the idea of doing  
14 this report. When we decided -- let me back  
15 up. The context of setting up an independent  
16 investigation was that when one read the  
17 grand jury report, one saw that the grand  
18 jury had at least reached certain findings  
19 that brought into question the University's  
20 handling of allegations of child sexual abuse  
21 by Sandusky or observations by people of what  
22 was believed to be child sexual abuse. So it  
23 seemed to us from the very beginning that the  
24 integrity of the University was being called  
25 into question, so as a result, we needed to

1 retain somebody who was not part of the  
2 University, who did not have any close  
3 affiliation with the University and who was  
4 viewed by the public as -- an objective  
5 thorough investigator to look at ourselves.  
6 In other words, it was a moment for critical  
7 self examination on the part of the  
8 University, and we felt that that process of  
9 self examination would be significantly  
10 enhanced by having an outside person look at  
11 us from an outside point of view.

12 Q. Was there any concern expressed  
13 at the board level about this decision to  
14 make Judge Freeh's findings and  
15 recommendations public?

16 A. Never. To my recollection. I  
17 don't remember anyone ever expressing any  
18 reservation about the fact that the report  
19 was intended ultimately to go to the public.  
20 As I mentioned before, the process leading up  
21 to it becoming public was the subject of  
22 discussion and debate among the board.

23 Q. If you look down at the end of  
24 paragraph 1, carrying over to page 2,  
25 Mr. Tomalis makes a comment about

1 Judge Freeh. He says, "He is man of complete  
2 integrity, independence and objectivity. The  
3 scope of his work will be expansive and he is  
4 free to take his work to whatever conclusions  
5 he deems appropriate." Was that true at the  
6 time?

7 A. Generally speaking, yes.

8 Q. Looking back on it, do you  
9 believe that Judge Freeh was free to take his  
10 work to whatever conclusions he deemed  
11 appropriate?

12 A. Absolutely, because he made his  
13 report with no interaction with anyone at the  
14 University, so I would have to say yes.

15 Q. Then Judge Freeh comments in the  
16 next paragraph. The second sentence of his  
17 comment, he says, "Our investigation will  
18 look carefully at the governance, protocols,  
19 decision making and oversight within the  
20 University."

21 Do you recall those being issues  
22 that Judge Freeh was going to look at?

23 A. Yes, I would say that those were  
24 the kinds of things primarily that we were  
25 interested in finding out, which was what

1 broke down inside the University, if  
2 anything, such that reports that were being  
3 made about allegations of sexual abuse of  
4 children were not acted upon sufficiently to  
5 stop someone from committing further acts of  
6 sexual abuse, if those acts actually  
7 occurred. Because at the time we didn't know  
8 they occurred. We only knew that the grand  
9 jury said they occurred.

10 Q. Okay.

11 A. That's an important point. It  
12 wasn't like the Sandusky trial had occurred.

13 Q. Absolutely.

14 A. At the time we retained him. We  
15 had a grand jury presentment, and again,  
16 forgive me for acting like a person with  
17 legal training.

18 Q. That's fine.

19 A. But grand juries indict people  
20 all the time and those people are often found  
21 to be not guilty of the offenses for which  
22 they have been indicted. So I saw the grand  
23 jury report as reason for the University to  
24 engage in this self examination, but I did  
25 not reach the conclusion that the grand jury



1 report was correct in all respects.

2 Q. If some of the things that you  
3 want Judge Freeh to look at were things like  
4 controls, safeguards, reporting,  
5 institutional control type issues?

6 A. Correct.

7 Q. That was true from the time you  
8 engaged Judge Freeh?

9 A. That was true from the very  
10 beginning.

11 Q. Who came up with this initial  
12 mandate, was it you, was it Judge Freeh, was  
13 it the task force, was it in combination?

14 A. I think it was largely myself,  
15 whoever I talked to on the board, I believe  
16 Surma and Garban. I believe it may have been  
17 other board members, although I don't recall.  
18 Ron Tomalis. We all together said, look, it  
19 is obvious that if we are going to be able to  
20 maintain public trust, we need to have a  
21 thorough investigation of who knew what, when  
22 and what might have gone wrong such that this  
23 theories of allegations were not reported to  
24 the proper authorities.

25 Q. Did you have concerns at the time

1 that the University's institutional controls  
2 might not have been functioning properly,  
3 might have resulted in this -- the breakdown  
4 that was reflected in the grand jury  
5 presentment?

6 A. I would have to say as a general  
7 matter, yes. I would say that controls is a  
8 broad word, so I am starting to hesitate a  
9 little bit with it because, you know, there  
10 are no sets of controls that will prevent  
11 individuals from doing things that they are  
12 not supposed to do. So I hadn't reached the  
13 conclusion that there weren't rogue actions  
14 at the time. But the facts in the grand jury  
15 report gave me reason to want to know whether  
16 the failures that were alleged to have  
17 occurred were systematic failures or  
18 individual failures.

19 Q. Thank you. If you go to page 3  
20 of Exhibit 2.

21 A. Yes.

22 Q. I believe it is the full text of  
23 the remarks you made at this press conference  
24 begin here on page 3 and carry over.

25 A. Um-hum.

1 Q. Do you recall making remarks at  
2 this press conference?

3 A. Yes.

4 Q. And in reviewing this, I am not  
5 going to ask you if every word is exactly  
6 accurate, is this generally consistent with  
7 what you recall your remarks being?

8 A. Yes.

9 Q. Okay. If you go to the middle of  
10 page 4, which is about halfway through your  
11 remarks, there is a paragraph that begins,  
12 "We are committed."

13 Do you see where I am?

14 A. Yes.

15 Q. "We are committed to leaving no  
16 stone unturned to get to the bottom of what  
17 happened. Who knew what when and what  
18 changes we want to make to ensure that this  
19 doesn't happen again."

20 A. Yes.

21 Q. And that means any area of the  
22 University, not just the football program?

23 A. Um-hum.

24 Q. Why did you call out the football  
25 program specifically?

1           A.       Because the grand jury report  
2 told me something that I never knew, which is  
3 that there was building called the Lasch  
4 Building on campus and that it was a football  
5 training facility. I learned that, according  
6 to the grand jury report, Mr. Sandusky was  
7 observed at least twice in that facility to  
8 be engaged in inappropriate acts with  
9 children and that people who were employed in  
10 that building observed those acts and that  
11 acts were never reported to the authorities.  
12 I also, of course, knew that Mr. Sandusky  
13 himself was a rather prominent member of the  
14 Penn State football program, although he had  
15 retired, to the best of my knowledge, before  
16 the grand jury report and, of course, the  
17 grand jury report also makes reference to the  
18 fact that a graduate student in the football  
19 program had made a report to the head  
20 football coach, Coach Paterno, about at least  
21 one incident that he had alleged -- he  
22 alleged to have observed.

23                       So all of those reasons made me  
24 want to make it clear that while the grand  
25 jury report centered on activities in the

1 football building, we were not restricting  
2 Judge Freeh to figure out what went on in the  
3 Lasch Building. We were asking him to figure  
4 out what went on on our campus, or I should  
5 say all of our campuses.

6 I would also add that because  
7 personalities involved, namely Sandusky and  
8 Paterno, were such public figures, I believe  
9 that a fair amount of the news coverage was  
10 initially around the fact that they were  
11 personalities well known to the public as a  
12 result of the prominence and success of the  
13 Penn State football program.

14 Q. If you go to page 5 and over onto  
15 page 6, Judge Freeh makes some remarks at  
16 this press conference as well. Do you recall  
17 that?

18 A. I remember him making remarks.

19 Q. I just want to ask you, if you go  
20 to the bottom of the -- the paragraph that  
21 starts on the bottom of page 5 and carries  
22 over to page 6, if you take a look at that, I  
23 want to ask you a couple of questions.

24 A. Yes.

25 Q. At the top of page 6, Judge Freeh

1 said that his "examination would include,  
2 among other things, any failures or gaps in  
3 the University's control environment,  
4 compliance programs and culture which may  
5 have enabled the alleged misconduct to occur,  
6 go undetected and not be reported and  
7 addressed promptly and properly."

8 Do you recall Judge Freeh having  
9 those concerns or understanding that that was  
10 part of his mandate to look at at the  
11 beginning of his investigation?

12 A. I don't know that they were  
13 concerns. But I believe that's what we asked  
14 him to look at.

15 Q. You asked him to look at the  
16 University's -- failures or gaps in the  
17 University's control environment?

18 A. Generally speaking, yes. As well  
19 as other things.

20 Q. I wanted to ask you specifically,  
21 the word culture is here. Judge Freeh said  
22 he was going to "examine whether there was a  
23 culture which may have enabled the alleged  
24 misconduct to occur go undetected" and then  
25 he goes on. Was that a concern or something

1 you wanted investigated?

2 A. Let me be clear, from the very  
3 beginning, I was horrified by what the grand  
4 jury report said. You can point to controls  
5 or culture. I wanted to know if it happened  
6 and why it happened, and I wanted him to look  
7 at all aspects of our operations and to  
8 determine where weaknesses may have occurred.

9 Q. Okay. Do you recall talking to  
10 anybody associated with the NCAA after --  
11 after Judge Freeh was appointed to do this  
12 investigation?

13 A. I have a general recollection of  
14 having conversations with representatives of  
15 the NCAA and I believe also the Big Ten.

16 Q. Let's start with the NCAA. Who  
17 do you recall speaking with?

18 A. I don't recall as I sit here who  
19 I spoke to. I think it might have been one  
20 of the lawyers at the NCAA.

21 Q. Donald Remy?

22 A. I know his name. I know his name  
23 from all the events that occurred. So as I  
24 sit here, that doesn't refresh my  
25 recollection that it was Donald Remy, if

1 that's what you asked.

2 Q. You talked to a lawyer at the  
3 NCAA, you don't recall whether it was Donald  
4 or someone else?

5 A. I don't recall -- my general  
6 recollection is I believe it was a lawyer at  
7 the NCAA. I don't remember specifically, but  
8 I believe it could have been Donald Remy  
9 because his name strikes a chord with me.

10 Q. Can you tell me what you recall  
11 about the conversation?

12 A. I don't recall if it was  
13 one conversation or multiple conversations,  
14 but as I sit here today, I remember there was  
15 a period of time in which I learned the NCAA  
16 was interested in conducting an investigation  
17 into the matters involving Jerry Sandusky and  
18 allegations of child sexual abuse on campus.  
19 I remember being personally concerned that  
20 there would be multiple investigations taking  
21 place at the same time involving overlapping  
22 witnesses, overlapping document productions,  
23 and I did not feel that was a good way for  
24 the University to continue to operate to do  
25 what it is there to do, which is to educate



1 opportunities. So for that reason, I  
2 remember having conversations with the Big  
3 Ten, NCAA and others to let them know we  
4 retained a person that we believed was of  
5 substantial competence in this area and of  
6 high integrity to do what he thought was the  
7 right thing and to suggest that they might  
8 want to forebear their prerogative to do such  
9 an investigation to allow Judge Freeh to do  
10 what he had been commissioned to do, which  
11 was a thorough complete investigation.

12 Q. Was there any discussion with  
13 anybody associated with the NCAA or the Big  
14 Ten about whether it would be appropriate or  
15 acceptable for them to contact or have any  
16 discussions with anybody at the Freeh firm?

17 A. I don't have a specific  
18 recollection of that as I sit here today, but  
19 if we were going to ask people to allow  
20 Judge Freeh to do the investigation so to  
21 speak, it doesn't strike me as surprising  
22 that they would want to say, okay, so, will  
23 he cover what we are going to cover.

24 Q. But as you sit here today, you  
25 don't have a recollection of whether that

1 occurred or not?

2 A. I do not.

3 Q. You know who Frank Guadagnino is?

4 A. I know him very well.

5 Q. If Frank testified that the  
6 University requested that the Freeh firm  
7 provide periodic updates on its investigation  
8 to the NCAA and the Big Ten, would you have  
9 any reason to disagree with him?

10 MR. SCOTT: Allen --

11 MR. GARDNER: Do want to see it?

12 MR. SCOTT: I know what the  
13 document is.

14 MR. GARDNER: I'm not trying to  
15 hide it.

16 MR. SCOTT: It is Frank's  
17 Affidavit, so why don't you show him.

18 MR. GARDNER: Absolutely. In  
19 fact, let's be really official and put  
20 a sticker on it.

21 (Whereupon, Frazier Exhibit 3,  
22 Affidavit of Frank Guadagnino was  
23 marked for identification as of this  
24 date by the Reporter.)

25 A. You want to direct me?

1 BY MR. GARDNER:

2 Q. Yes, paragraph 7. And you are  
3 obviously free to review any of it that you  
4 want.

5 A. Yes, I see that.

6 Q. Okay. As you sit here today, any  
7 reason to doubt that that happened?

8 A. None whatsoever.

9 Q. Okay. Is that consistent, as you  
10 testified earlier, with what you would have  
11 expected to happen if the Freeh report and  
12 investigation was to be the investigation?

13 A. It is consistent with it. I  
14 think at this level of detail, I think  
15 this -- at this stage, the conversations  
16 ultimately got turned over to the University  
17 counsel at some point. And I went back to my  
18 day job, and I don't believe I had the level  
19 of discussions that are reflected here. I  
20 had the conversation early on with the NCAA  
21 and the Big Ten in which I requested them to  
22 give consideration to the possibility of not  
23 having a separate investigation because we  
24 intended to do a very thorough investigation.

25 Q. Did you, in essence, ask the NCAA

1 and Big Ten to wait and see if the Freeh  
2 report and investigation was something they  
3 could rely on for their purposes, is that  
4 what you are telling me?

5 A. I am saying yes, I said to the  
6 NCAA and the Big Ten that I believe that  
7 duplicative investigations would not be  
8 necessary to find the facts.

9 MR. GARDNER: Let's take a  
10 five-minute break. I will see what I  
11 can hurry along through.

12 THE VIDEOGRAPHER: We are now  
13 going off the video record. That  
14 concludes tape number 1. The time is  
15 11 a.m.

16 (Whereupon, a recess was held.)

17 (Whereupon, Frazier Exhibit 4,  
18 Document dated May 4, 2012 entitled  
19 Frazier Provides Update on Special  
20 Investigations Task Force was marked  
21 for identification as of this date by  
22 the Reporter.)

23 THE VIDEOGRAPHER: We are now  
24 back on the video record. This  
25 commences tape number 2, December 15,

1           2014. The time, 11:11.

2           Please continue.

3 BY MR. GARDNER:

4           Q. Mr. Frazier, you have been  
5 handed what has been marked as Exhibit 4 to  
6 your deposition, and it is a May 4, 2012,  
7 update report on the task force work,  
8 correct?

9           A. Yes.

10          Q. And you are quoted as giving this  
11 update?

12          A. Correct.

13          Q. You note -- about two-thirds of  
14 the way down on page 1 of Exhibit 4, you see  
15 the paragraph that starts "The investigation  
16 is being conducted"?

17          A. Yes.

18          Q. "Independent of several other  
19 active investigations by agencies and  
20 government authorities"?

21          A. Yes.

22          Q. "And will not interfere with  
23 those inquiries"?

24          A. Yes.

25          Q. What were some of the several

1 other active investigations by agencies and  
2 government authorities that you were  
3 referring to here?

4 A. So I was aware of criminal  
5 proceedings which were pending, I believe at  
6 that date, against Jerry Sandusky, against  
7 Mr. Schultz and Mr. Curly. I was aware by  
8 that time that there were other  
9 investigations that were taken -- that were  
10 undertaken by federal authorities. I believe  
11 the U.S. attorney in the middle district had  
12 expressed interest in doing an investigation.  
13 I also know that the Department of Education  
14 was doing an investigation. So there were  
15 several governmental investigations, criminal  
16 and non-criminal, that were pending.

17 Q. The next paragraph you are quoted  
18 as saying, "Judge Freeh and his team have  
19 interfaced with those agencies and  
20 authorities as appropriate throughout the  
21 course of the investigation."

22 A. Correct.

23 Q. Did that include the agencies and  
24 authorities that you just listed?

25 A. Yes.

1 Q. Did you have any concerns or did  
2 anybody express to you any concerns about  
3 Judge Freeh coordinating interfacing as  
4 appropriate with, for example, the Department  
5 of Education?

6 A. No.

7 Q. Thanks. Do you recall  
8 representatives of the Paterno family wanting  
9 to reach out to anybody in the Freeh firm  
10 during its investigation?

11 A. No, I don't have a recollection  
12 of that.

13 MR. GARDNER: Can you mark this,  
14 please.

15 (Whereupon, Frazier Exhibit 5,  
16 Two-page E-mail was marked for  
17 identification as of this date by the  
18 Reporter.)

19 BY MR. GARDNER:

20 Q. Exhibit 5 to your deposition is a  
21 series of e-mails in May of 2012. If you  
22 could just take a look at it, please, and  
23 then I have just a couple of summary  
24 questions for you.

25 Does this refresh your

1 recollection that you were involved in  
2 discussions about anybody in the Paterno  
3 family wanting to talk to anyone at the Freeh  
4 Group?

5 A. No, it does not.

6 Q. Then I handed you the wrong  
7 exhibit. Let's try 13 -- I'm sorry, it will  
8 be 6.

9 (Whereupon, Frazier Exhibit 6,  
10 E-mail chain was marked for  
11 identification as of this date by the  
12 Reporter.)

13 A. Okay.

14 BY MR. GARDNER:

15 Q. Sorry about that.

16 A. Okay.

17 Q. Exhibit 6 is a series of e-mails  
18 between yourself and others, including  
19 representatives of the Paterno family and  
20 members of the Freeh group, correct?

21 A. Correct.

22 Q. Does Exhibit 6 refresh your  
23 recollection that there was at least  
24 discussions about the Paterno family wanting  
25 to discuss or having concerns about what was



1 going on in the Freeh investigation in  
2 May 2012?

3 A. I see that it says that. But I  
4 actually am -- it doesn't really still cause  
5 me to independently recall that.

6 Q. Okay. That's fine. If that had  
7 happened, would you have had concerns that  
8 somehow if the Paternos wanted to talk to the  
9 Freeh firm that it would corrupt the  
10 investigation somehow?

11 A. No, it would not have caused that  
12 concern to arise.

13 Q. Why not?

14 A. Well, we retained Judge Freeh  
15 because we believe that he was capable of  
16 doing an independent investigation, and we  
17 also wanted it to be independent and  
18 comprehensive. So to the extent that people  
19 had information that would be germane to his  
20 investigation, it would be a positive thing  
21 for him to reach out to people. So I was  
22 never concerned about people who wanted to  
23 provide input to his investigation. I was  
24 concerned that ultimately he was responsible  
25 for synthesizing that information and making

1 factual findings based on all that he looked  
2 at and all that he heard.

3 Q. Okay. We are done with that  
4 document. Let's move to the issuance of the  
5 report.

6 A. Okay.

7 (Whereupon, Frazier Exhibit 7,  
8 One-page document dated July 12, 2012  
9 was marked for identification as of  
10 this date by the Reporter.)

11 BY MR. GARDNER:

12 Q. Exhibit 7 are some excerpts as  
13 reported by CNN about the press conference  
14 that was held on July 12, 2012, which was the  
15 day that the report was issued, correct?

16 A. Correct.

17 Q. Do you recall a press conference  
18 on the day the Freeh report was made public?

19 A. I certainly do.

20 Q. I won't ask you to relive all of  
21 that.

22 A. Thank you.

23 Q. Just to recount some things you  
24 said earlier, you did not receive nor to your  
25 knowledge did anybody on Penn State's board

1 receive an advance copy of what was in the  
2 report?

3 A. That's correct. We had no  
4 advance copy or advance knowledge of what the  
5 report said.

6 Q. So you were reading it realtime  
7 with everybody else in the public?

8 A. That's correct.

9 Q. Okay. The release of the report,  
10 did it generate some press interest?

11 A. Yes. Substantial press interest.  
12 In fact, Judge Freeh held a press conference  
13 to announce his findings.

14 Q. Did you know what he was going to  
15 say in that press conference before he  
16 said it?

17 A. I did not.

18 Q. If you look at Exhibit 7, you are  
19 being reported as having said some things at  
20 the press conference. You start out -- let  
21 me be clear, "An event like this can never  
22 happen again in the Penn State University  
23 community."

24 A. Yes.

25 Q. You next are reported as having

1 said, "We are accountable for what's happened  
2 here"?

3 MR. SCOTT: Just to be clear,  
4 this does not purport to be --

5 MR. GARDNER: It's just  
6 excerpts.

7 MR. SCOTT: -- verbatim. Just  
8 excerpts?

9 MR. GARDNER: Correct.

10 Q. I am going to ask, do you recall  
11 saying in sum or substance "We are  
12 accountable for what's happened here"?

13 A. Yes.

14 Q. And that was in the press  
15 conference surrounding the issuance of the  
16 report?

17 A. I remember that we put out a  
18 written statement that I was substantially  
19 responsible for writing myself. We issued a  
20 public statement and then we had a press  
21 conference.

22 Q. Okay.

23 A. And I remember saying, in  
24 essence, this, both in the statement, written  
25 statement, and at the press conference.

1 Q. Okay. Did the written press  
2 statement include the statement that the  
3 Board of Trustees accepts full responsibility  
4 for the failures that occurred?

5 A. Those words ring a bell with me.  
6 Those were words that I was trying to get  
7 across.

8 Q. And the failures that occurred  
9 were the failures that were noted in the  
10 Freeh report, correct?

11 A. Well, at that point in time, I  
12 didn't have enough time to go through the  
13 report in great deal. I had a high level  
14 sense of what failures were being reflected  
15 and what I was trying to say is that as the  
16 highest authority entitled to act on behalf  
17 of the University, we accept the  
18 accountability for what happened and that  
19 includes everything we learned in the  
20 Sandusky trial, which had predated the Freeh  
21 report. So it wasn't just the Freeh report.  
22 I just want to be clear.

23 Q. Right.

24 A. There had been convictions.  
25 There had been a conviction as it relates to

1 the child who -- the graduate student, who we  
2 now know was Mike McQueary, there had been a  
3 conviction related to Sandusky's abuse of  
4 that child based solely, as I remember, on  
5 Mike McQueary's testimony. So when I was  
6 saying that there were failures, I was taking  
7 all of that into consideration and basically  
8 saying this did not have to happen this way.  
9 That there were opportunities for people to  
10 have reported what they knew without having  
11 perfect or complete knowledge, and I believe  
12 that as adults we have a responsibility for  
13 giving the benefit of the doubt to a child  
14 when there is an allegation that that child  
15 may be sexually abused. What was clear to me  
16 was that did not happen.

17 So I was referring to that as the  
18 paramount failure here. So I wasn't trying  
19 to say that I read every line and was putting  
20 anything in a column saying I accept this or  
21 don't accept that. But I was saying, the  
22 whole story here was something that we had to  
23 be accountable for. I don't know if that  
24 makes sense to you.

25 Q. It certainly does. You weren't

1 going line by line and saying yeah, we will  
2 take responsibility for that, but we dispute  
3 this, you were saying generally we should  
4 have done a better job, we accept that?

5 A. That's correct and I go back to  
6 something I testified to about an hour ago,  
7 which is that in my normal experience as a  
8 lawyer, reports like this are made available  
9 for examination so that you do have a more  
10 comprehensive and precise understanding of  
11 what's in the report. In this instance, for  
12 good and sufficient reasons that I continue  
13 to agree with now, we waived that right to  
14 become familiar with the details and,  
15 therefore, in the -- in the moments after  
16 this report was issued on the fly, we had to  
17 respond to it, and I was responding generally  
18 to what I learned in the report, which was  
19 that there were people who could have made  
20 reports who didn't make reports.

21 Q. Prior to the press conferences  
22 that occurred on July 12th, had you had a  
23 chance read the executive summary of the  
24 Freeh report?

25 A. Before this conference?

1 Q. Yes.

2 A. Yes. That morning when the  
3 report was issued, I read the executive  
4 summary and I remember turning to read the  
5 exhibits.

6 Q. Like a lawyer?

7 A. Perhaps like a lawyer. I wanted  
8 to read every piece of evidence that was  
9 attached to it. In fact, that was what I was  
10 really curious about, was what did he  
11 actually find.

12 Q. Did you have a chance to do both  
13 of those things before the press conferences?

14 A. Yes, I did. And I had an  
15 opportunity to read quickly through the body  
16 of the report itself.

17 Q. I want to move to your  
18 involvement in what eventually became the  
19 consent decree between the NCAA and Penn  
20 State University, okay?

21 A. That's okay with me.

22 Q. Can you describe for me generally  
23 what your involvement was in that process?

24 A. As I sit here today, what I  
25 recall about that series of events was that I



1 got a phone call. I believe it was a  
2 weekend. It was after the Freeh report came  
3 out. I can't tell you in what proximity the  
4 call was to the issuance of the report. But  
5 in any event, there was a telephone call that  
6 I took in my home office on a weekend in  
7 which the executive committee discussed with  
8 President Erickson what he had learned from  
9 his interactions with the NCAA and  
10 specifically what were the options we faced  
11 as a result of those conversations with the  
12 NCAA.

13 Q. Okay. And what do you recall --  
14 so you weren't involved prior to this  
15 teleconference of the executive committee,  
16 you hadn't been involved in any discussions  
17 or negotiations with the NCAA?

18 A. Accepting what I said at the very  
19 outset, back in November 2011, about let's  
20 not all do duplicative reports, putting all  
21 that aside, at the front end, I had no  
22 further discussions with the NCAA from that  
23 series of discussions until this moment.

24 Q. Okay. Sorry to break your  
25 streak. Prior to this teleconference that

1 you took from your home office, did you have  
2 discussions with any of Pennsylvania State  
3 University's lawyers about what they were  
4 doing and their discussions with the NCAA?

5 A. I don't recall.

6 Q. Had you coordinated with  
7 President Erickson about this call about what  
8 he was doing in his discussions with the  
9 NCAA?

10 A. I don't recall, but I don't  
11 believe that I did. Because I remember being  
12 surprised by the conversation that we had  
13 that weekend.

14 Q. Okay. And you said that during  
15 this conversation on the weekend, that you  
16 took from your home office, President  
17 Erickson laid out the options that the  
18 University faced?

19 A. Yes.

20 Q. Can you tell me what those  
21 options were?

22 A. To the best of my recollection,  
23 we discussed the fact that there was  
24 significant sentiment among the presidents of  
25 the NCAA, that comprised the NCAA or the NCAA

1 board, governors or whatever the term might  
2 be, that given the circumstances that  
3 surrounded the Sandusky affair, if I can call  
4 it that, that the University could very well  
5 be looking at what was referred to as the  
6 death penalty. I remember President Erickson  
7 saying there were discussions with people at  
8 the NCAA about that fact and that there was a  
9 limited opportunity for the University to  
10 avoid the death penalty by entering into a  
11 consent decree. I recall that President  
12 Erickson said that there wasn't a lot of room  
13 for negotiation about what the consent decree  
14 would say or require of the University. I  
15 remember him saying that there was a very  
16 limited and short timeframe for us to decide  
17 whether we would go that route, namely the  
18 consent decree route or not, and I remember  
19 him saying that if the possibility of a  
20 consent decree leaked, all bets were off.

21 Q. What did you understand him to  
22 mean "If the possibility of a consent decree  
23 leaks, all bets are off," what did that mean?

24 A. What I took that to mean at the  
25 time was that the NCAA was offering the

1 University the opportunity in this short  
2 timeframe to avoid the death penalty by  
3 accepting a consent decree, but that was  
4 conditioned upon those negotiations, in  
5 quotes "around the consent decree not  
6 becoming public."

7           If it became public, it was my  
8 understanding that we would revert to the  
9 sentiment that had been expressed by many of  
10 the presidents that the death penalty was the  
11 appropriate outcome for the issues relating  
12 to child sexual abuse by Jerry Sandusky.

13           (Whereupon, Frazier Exhibit 8,  
14 PSUCOR '00731 through 733 was marked  
15 for identification as of this date by  
16 the Reporter.)

17 BY MR. GARDNER:

18           Q.     You have been handed what has  
19 been marked as Exhibit 8, and it is a series  
20 of handwritten notes dated up top, somewhat  
21 cut off, it appears to say "July 22nd,  
22 executive committee."

23                     Does that look right to you?

24           A.     I think that's a fair  
25 interpretation of the cutoff language.

1 Q. Okay. And your name is in the  
2 left-hand column on page 1 of Exhibit 8?

3 A. Correct.

4 Q. July 22nd would have been a  
5 Sunday, I believe. Take a look at this, if  
6 you would, please, and I would like to know  
7 whether this is the call that we were talking  
8 about that you took from your home office,  
9 not whether everything that is written here  
10 you recall, but generally, would place that  
11 call in time?

12 A. It tracks with -- it tracks with  
13 the subject matter and it tracks with the  
14 general time period.

15 Q. Do you recall any other executive  
16 committee discussions -- other than the one  
17 that we talked about prior to Penn State  
18 agreeing to the consent decree?

19 A. No, I do not.

20 Q. So there was one meeting by phone  
21 call that happened on a weekend and we now  
22 think it is on July 22nd?

23 A. To the best of my recollection,  
24 that's correct.

25 Q. If you go to page 2 of Exhibit 8,

1 at the very bottom of the page, I believe it  
2 says, "Could have turned NCAA ruling down and  
3 gone to the committee on infractions." Then  
4 there is a dash and there is something  
5 redacted. Do you see that?

6 A. I can't say whether it is could  
7 or should, but it could be one of those  
8 words.

9 Q. Okay. Well, let's talk about  
10 that. Do you recall any discussion of, hey,  
11 we should turn down the consent decree and go  
12 to the committee on infractions?

13 A. No, I do not.

14 Q. Do you recall the opposite  
15 discussion, we should take the consent decree  
16 rather than go to the committee on  
17 infractions?

18 MR. SCOTT: Object to the form.

19 You can answer.

20 Q. What do you recall?

21 A. Well, I don't recall any specific  
22 conversation about the committee on  
23 infractions one way or the other. I do  
24 remember sitting in the office and being  
25 struck with the fact that we faced a very

1 unpalatable choice between a consent decree  
2 that had fairly onerous difficult terms and  
3 the death penalty, and I remember thinking  
4 that the death penalty would set the  
5 University's environment back in a calculable  
6 way.

7 I remember a very good friend of  
8 mine played football at SMU, he is a judge in  
9 Dallas, and we have had many conversations  
10 about the impact that the death penalty had  
11 on SMU's program, and I remember thinking we  
12 cannot allow Beaver Stadium to be empty this  
13 fall.

14 Q. Does that suggest you ended in  
15 favor or favoring the consent decree as to  
16 the proposed resolution with the NCAA?

17 A. It suggests that, as I recall, I  
18 don't think I was asked to tell whether I was  
19 in favor or not. I think my recollection is  
20 that President Erickson had reached that  
21 conclusion, and he wanted us to know that he  
22 had reached that conclusion, and I remember  
23 feeling badly for him, and I remember feeling  
24 that under the circumstances, as he  
25 articulated them, that I thought that was the

1 better of the two choices that we were  
2 facing.

3 Q. Okay. Do you recall any  
4 discussion surrounding the death penalty that  
5 related to what the mechanism would be that  
6 would allow the board, the governing board of  
7 the NCAA to apply the death penalty to Penn  
8 State?

9 A. I do not remember anything about  
10 process or procedure. I just remember that  
11 the death penalty was what we were trying to  
12 avoid.

13 Q. Do you recall any discussion  
14 during this July 22nd executive committee  
15 call of when are we -- we could sue the NCAA,  
16 we could try to stop any penalties?

17 A. I do not.

18 Q. Do you recall any discussion of  
19 what Penn State's lawyers recommended?

20 A. Not specifically.

21 Q. Did you have any concerns during  
22 this call that Penn State's interests had not  
23 been represented properly in this process?

24 A. Not that I recall. I do not  
25 remember thinking that was an issue.



1 Q. Do you recall anybody at the --  
2 on this executive committee call of July 22nd  
3 suggesting President Erickson, don't do this,  
4 there has to be some other way?

5 A. I don't have a specific  
6 recollection. But I think we all probed him  
7 as to why this was the choice, take it or  
8 leave it that we felt we were being presented  
9 with. So I don't remember specifically. But  
10 I don't remember that the reaction of the  
11 executive committee was, oh, okay. I think a  
12 lot of people said are we sure that there is  
13 no way to go back to them and see if we can  
14 develop a different menu of options? I  
15 remember that being very much what the call  
16 was consisting of and President Erickson  
17 assuring us that he had tried his best, that  
18 time was of the essence and that if we were  
19 not willing to accept the consent decree  
20 with, essentially, only minor modifications,  
21 that's what I remember. He didn't say there  
22 was no negotiation, but he said, in effect,  
23 this thing is pretty much set in stone and if  
24 we are not willing to enter into that now  
25 without making it public before, we are going

1 to get the death penalty.

2 Q. Do you recall any member of the  
3 executive committee at the end of the call, I  
4 know a vote wasn't taken, but saying they  
5 objected to President Erickson entering into  
6 the consent decree on behalf of Penn State  
7 University?

8 A. I do not.

9 Q. Do you recall any questions from  
10 the executive committee about whether  
11 President Erickson had the authority to enter  
12 into the consent decree on behalf of Penn  
13 State University?

14 A. I remember that general  
15 conversation coming up in the context of  
16 people saying is this a decision that can be  
17 taken by the president or is it one that  
18 should involve the full board.

19 Q. And what was the resolution of  
20 that discussion or what was the conclusion?

21 A. Well, I don't remember  
22 specifically what was said. I remember  
23 getting off the phone with the impression  
24 that this was a decision that  
25 President Erickson could make, and he had the

1 authority to make this decision.

2 Q. Do you recall any discussion in  
3 this executive committee meeting phone call  
4 about whether the NCAA had the authority that  
5 it was talking about, either to impose the  
6 death penalty through some process that I  
7 know either wasn't discussed or you don't  
8 recall or entering into the consent decree?

9 A. I don't have a specific  
10 recollection. What I remember is that we  
11 were given this option and implicit in that  
12 was they could, in fact, impose a death  
13 penalty. I believed it to be an imminent  
14 possibility if we did not enter into the  
15 consent decree.

16 Q. Do you recall any discussion  
17 during this July 22nd executive committee  
18 teleconference about whether Penn State had  
19 employed experts on the NCAA process to  
20 advocate on its behalf?

21 A. As I sit here today, I can't say  
22 for sure whether that was a part of that  
23 conversation. But I came to learn that we  
24 had at some point. It could have been in  
25 that conversation. I would have to say in

1 all likelihood, it was in that conversation,  
2 but I don't specifically recall.

3 Q. You don't recall any open  
4 discussion during this July 22nd  
5 teleconference about whether the NCAA had the  
6 authority to do what it was proposing to do?

7 A. As I sit here today, I don't  
8 remember specifically discussing it one way  
9 or the other. But I remember coming away  
10 with -- from the discussion, with the  
11 impression that they did have the authority.  
12 That's what I meant by saying it was a real  
13 and imminent threat. If it was a  
14 hypothetical threat, the conversation would  
15 have proceeded very differently.

16 Q. You don't remember how you came  
17 to that impression, but you walked away with  
18 that impression?

19 A. I definitely had that impression  
20 and that's why I remember feeling that  
21 judge -- that President Erickson was making  
22 the best choice that he thought he could  
23 make, and I also remember thinking that  
24 because it was an imminent thing, because  
25 this was something I remember really being

1 concerned about, that it was okay for him to  
2 make it without us consulting the full board  
3 because he had no practical choice under the  
4 circumstances.

5 Q. No practical choice meaning?

6 A. Death penalty or not. That was  
7 what I believe was the practical choice.  
8 Either he was willing to accept the death  
9 penalty and all that that entailed, or he was  
10 willing to enter into the consent decree in  
11 the time window that we were talking about.

12 Q. Okay. Do you recall any of the  
13 University's lawyers talking on this  
14 July 22nd call, Mr. Dunham, Mr. Guadagnino?

15 A. I don't have a specific  
16 recollection of that, no.

17 Q. Do you recall anything else about  
18 the July 22nd call that we haven't talked  
19 about?

20 A. Nothing germane. I remember I  
21 sat in my office, and it was dark in my  
22 office, and I remember feeling very badly  
23 that this was the choice that we had and  
24 feeling personally badly about it.

25 Q. Did you leave the July 22nd call

1 believing that the University had done  
2 everything that it could to improve its  
3 choices with the NCAA?

4 A. I don't remember having a belief  
5 about that. I remember having been told  
6 that, and I had no reason to question it.

7 Q. Okay. We have talked already  
8 that background as a lawyer, training as a  
9 lawyer, did you consider at any time prior to  
10 the consent decree being entered into  
11 suggesting that maybe Penn State should sue  
12 the NCAA and try to stop it?

13 A. I do not remember that, and I  
14 don't believe I would have suggested that.

15 Q. Why not?

16 A. Because based on my recollection  
17 of the conversation, I had no reason to  
18 believe that such a lawsuit would be  
19 effective in preventing the NCAA from  
20 imposing the death penalty on Penn State.

21 Q. And do you recall why you had  
22 that belief? In other words, that a lawsuit  
23 would be ineffective in preventing the NCAA?

24 A. Well, I remember that there was  
25 the issue of time, and the fact that we were

1 facing the possibility of having a season  
2 that was about to commence be cancelled.  
3 That was a factor. I also remember thinking  
4 to myself that generally in membership  
5 organizations, courts are not always willing  
6 to enjoin, you know, University presidents  
7 from taking actions that deal with their  
8 oversight of intercollegiate athletics.

9 I think I had some vague  
10 recollection of at least one lawsuit  
11 involving Jerry Tarkanian. As a lawyer, I  
12 was aware there had been prior litigation as  
13 it related to UNLV that did not conclude in a  
14 positive way for whoever brought the lawsuits  
15 to Coach Tarkanian or University of Nevada,  
16 Las Vegas. I remember thinking that the NCAA  
17 had prevailed in that lawsuit.

18 Q. You don't recall that being  
19 discussed in the July 22nd meeting, that's  
20 just something you had in the recesses of  
21 your mind somewhere?

22 A. I believe that was something that  
23 I had in the recesses of my mind.

24 Q. Okay.

25 A. What I can say is I don't recall

1 ever believing that there was another  
2 practical alternative available to Penn State  
3 in the timeframe we were talking about other  
4 than to accept the death penalty or to go  
5 down the consent decree road.

6 Q. Okay. And you don't recall any  
7 discussion about the committee on infractions  
8 process?

9 A. I remember no discussion about  
10 that at all.

11 Q. Okay. When you say no practical  
12 alternative, you're not saying there was no  
13 choice, you are just saying the choice was  
14 between two bad options?

15 A. Yes, there was a choice. It was  
16 a stark choice, it involved two very  
17 unpalatable options.

18 (Whereupon, Frazier Exhibit 9,  
19 Transcription of Penn State Board of  
20 Trustees special meeting date  
21 August 12, 2012 was marked for  
22 identification as of this date by the  
23 Reporter.)

24 BY MR. GARDNER:

25 Q. Exhibit 9. We are not going to



1 review all of it.

2 A. But there is a tab here.

3 Q. There is a tab there. Somebody  
4 has nicely for all of us tabbed where you  
5 start talking, and I would thank that person,  
6 if he was sitting next to me.

7 Exhibit 9 are -- is a transcript,  
8 I believe?

9 MR. SCOTT: It is.

10 Q. It is a transcript of the  
11 August 12, 2012, Penn State Board of Trustees  
12 meeting, correct?

13 A. A special meeting it says,  
14 August 12, 2012.

15 Q. And while we can spend a lot of  
16 time talking about a lot of stuff in here, we  
17 are going to move right to your comments.

18 A. Okay.

19 Q. Which begin at the tab.

20 A. Yes.

21 Q. I misspoke. Gene Marsh spoke at  
22 this meeting. Gene Marsh was one of Penn  
23 State's lawyers that used to sit on the  
24 committee on infractions at the NCAA?

25 A. That's correct.

1 MR. SCOTT: Was that a question?

2 A. That's correct. Both of those  
3 are correct. That he spoke and that you  
4 generally described his background.

5 Q. And I don't want to go through  
6 it, but you understood, at least by the time  
7 of this Board of Trustees meeting that's  
8 reflected in Exhibit 9, that he was  
9 representing Penn State in discussions with  
10 the NCAA regarding the consent decree?

11 A. Yes, I do.

12 Q. Okay. You don't know whether you  
13 knew that before this or not?

14 A. I don't recall when I first  
15 learned.

16 Q. Now, if we can, we can move to  
17 the tab.

18 A. Okay. Yes.

19 Q. What did you report on in this  
20 meeting, why did you speak?

21 A. Well, I believe I spoke because I  
22 was asked to by Chairman Peetz, and I  
23 believe, based on reading this, that she  
24 wanted me to describe the process behind the  
25 Freeh report, why we commissioned it and what

1 we did in response to it.

2 Q. And on page 42, the first full  
3 paragraph that starts "At that time," you're  
4 talking about the time you engaged  
5 Judge Freeh, correct?

6 A. Yes, November 2011.

7 Q. You noted that "We were under a  
8 great deal of scrutiny from both external  
9 constituencies, including the NCAA, the Big  
10 Ten, Congress, the Department of Education  
11 and media, as well as internal  
12 constituencies, notably our own faculty."

13 A. Yes.

14 Q. Why did you say this? What were  
15 you trying to convey?

16 A. Can I read it all now?

17 Q. I'm sorry, of course.

18 Absolutely.

19 A. Okay.

20 Q. I should have obviously let you  
21 read that beforehand.

22 A. This synthesizes a lot of what I  
23 said this morning.

24 Q. It has. We can go through it all  
25 but I don't think we need to because I think

1 you've said it already, but I would like to  
2 ask you about that paragraph or that  
3 sentence.

4 A. Yes. Did I say we were under a  
5 great deal of scrutiny?

6 Q. Sure.

7 A. Because it goes back to what I  
8 testified to earlier, which is the nature of  
9 the allegations in the grand jury presentment  
10 went to the core of Penn State's integrity,  
11 and it questioned what our values were as a  
12 University. I can think of few things worse  
13 than to say an institution of Penn State's  
14 standing would know of allegations of child  
15 sexual abuse occurring on its campus and not  
16 take immediate swift decisive actions to  
17 protect children. I can think of very few  
18 things that go more to the core of who we are  
19 as a community of informed educated rational  
20 people. Because those allegations were made,  
21 I believed it was incumbent upon us to find a  
22 person in whom the public reposed confidence  
23 and trust to engage in an examination of the  
24 University to determine whether those  
25 allegations were true, if they were true, who

1 knew what when, why they didn't take steps  
2 and what other institutional control failures  
3 might have contributed to the fact that  
4 children were put -- children were exposed to  
5 a serial predator on our campus with -- under  
6 circumstances where we had reason to at least  
7 suspect the possibility that that happened  
8 and took no adequate actions to protect  
9 children.

10 Q. And in that regard, did  
11 Judge Freeh and his team have free reign to  
12 talk to anyone they wanted to?

13 A. I directed him to talk to anyone  
14 from the very top of the University to the  
15 very bottom of the University. So he talked  
16 to the president. He talked to the board.  
17 And he talked to the janitors who were  
18 describing the grand jury report as having  
19 observed sexual misconduct and not having  
20 reported that sexual misconduct. So I would  
21 say that's pretty much free reign.

22 Q. Decisions of who to talk to or  
23 who not to talk were his and his alone?

24 A. I couldn't say his or his alone  
25 because some of the key people were

1 represented by counsel and their counsel made  
2 a decision about whether to make them  
3 available to Judge Freeh. But the decision  
4 as to whether to approach them in the first  
5 place was certainly his decision.

6 Q. Okay.

7 MR. GARDNER: Can we go off the  
8 record for just a couple minutes? I  
9 will see what, if anything else, I  
10 have got and we are either done or  
11 very, very close.

12 MR. SCOTT: Do you have any  
13 questions?

14 MR. SEIBERLING: A little bit.

15 THE VIDEOGRAPHER: We are now  
16 going off the video record. The time  
17 is now 11:57.

18 (Whereupon, a recess was held.)

19 THE VIDEOGRAPHER: Back on,  
20 12:00.

21 MR. GARDNER: I don't have any  
22 further questions at this time. Thank  
23 you.

24 THE WITNESS: Thank you,  
25 Counselor.

1 EXAMINATION BY

2 MR. SEIBERLING:

3 Q. Mr. Frazier, I am  
4 Mark Seiberling. I represent the plaintiff  
5 in the case, the plaintiff, Jay Corman. I  
6 just have a couple of quick follow-up  
7 questions for you, and we will get you out of  
8 here in time. Thank you.

9 Earlier you described your  
10 conversations with individuals from the Big  
11 Ten and from the NCAA in the timeframe of  
12 November 2011.

13 A. Thereabouts.

14 Q. Thereabouts. And you had  
15 discussed the potential involvement of the  
16 NCAA and Big Ten in the investigation that  
17 the Freeh group would be performing; is that  
18 correct?

19 A. What I remember is that they  
20 wanted to do their own investigations, and I  
21 was discussing with them the possibility that  
22 they could avoid or forebear doing their own  
23 investigations because Judge Freeh's  
24 investigation was intended to be complete and  
25 comprehensive.

1 Q. Did you discuss the scope of the  
2 involvement that the NCAA and/or the Big Ten  
3 would have in the Freeh Group's  
4 investigation?

5 A. I don't remember having any  
6 specific conversations about that, no.

7 Q. What was your understanding of  
8 how involved the NCAA and/or the Big Ten  
9 would be in the Freeh Group's investigation?

10 A. I am not sure I had a very  
11 detailed understanding. My goal was to  
12 prevent duplicative investigations. And once  
13 they agreed that they would allow the Freeh  
14 investigation to go forward, they may have  
15 had additional conversations with the  
16 University counsel about the specifics of how  
17 they would be satisfied with the Freeh  
18 investigation. I don't believe they had them  
19 with me. I had threshold conversations about  
20 let's do one investigation. Judge Freeh will  
21 cover the waterfront and after that, I  
22 remember I got their agreement to proceed in  
23 that way. I believe further discussions did  
24 not take place between me and them.

25 Q. Were you made aware of any



1 further discussions about the scope of  
2 involvement of the NCAA and/or Big Ten in the  
3 Freeh Group's investigation?

4 A. As I sit here today, I don't  
5 recall any specific discussions about that.  
6 If you are asking me am I surprised they had  
7 interactions with the Freeh group, I am not  
8 surprised they had interactions with Freeh  
9 group because of the reasons I just stated,  
10 which is that I was suggesting to them that  
11 there was no need for them to do a separate  
12 investigation. And the implication of that  
13 was Judge Freeh would cover whatever they  
14 were interested in.

15 Q. Were you aware of the NCAA  
16 providing proposed questions to the Freeh  
17 Group?

18 A. No, I was not.

19 Q. Would you be surprised to learn  
20 that?

21 A. Not necessarily, for the reasons  
22 I just stated.

23 Q. Were you aware that the NCAA  
24 provided potential database search terms to  
25 the Freeh Group?

1 A. No, I wasn't.

2 Q. Were you aware of the NCAA  
3 providing a PowerPoint presentation to the  
4 Freeh group on certain aspects of the NCAA's  
5 bylaws?

6 A. No, I wasn't. I assume that all  
7 your questions relate to the time period that  
8 we are talking about?

9 Q. Yes, the November, December, 2011  
10 into January 2012.

11 A. I have been told that by another  
12 board member in the last month or two.

13 Q. Given your history of having  
14 performed or been part of internal  
15 investigations, would you be surprised to  
16 learn of the NCAA providing that type of  
17 information to the Freeh Group?

18 MR. SCOTT: Object to the form.

19 MR. GARDNER: Me too.

20 A. I don't know that I have any  
21 experience with this kind of situation where  
22 there were multiple parties who wanted to do  
23 multiple investigations. What I can say to  
24 you is that I was aware that other people had  
25 an interest in investigating the same facts

1 about why this happened as we did. So  
2 implicit in my saying let's have Judge Freeh  
3 do the paramount, the primary investigation  
4 implicit in that is that he would have some  
5 sense of what the others were interested in  
6 and try to cover it in his investigation.

7 Q. You had stated earlier that you  
8 were aware of the updates that the NCAA and  
9 the Big Ten were receiving from the Freeh  
10 Group?

11 A. What I remember saying in this  
12 testimony is I am not surprised that they got  
13 updates. I don't remember specifically  
14 discussing with Judge Freeh that he had  
15 periodic updates. But, again, it would have  
16 been consistent with what we have discussed  
17 so far.

18 Q. Are you aware of what those  
19 updates contain or the substance of those  
20 updates?

21 A. No, I am not.

22 Q. In your role as the chair of the  
23 special investigations committee, were you  
24 receiving updates from the Freeh Group?

25 A. I was.

1 Q. How often were those updates?

2 A. I can't recall. They were not  
3 weekly. They were scheduled around  
4 Judge Freeh's sense of whether there had been  
5 enough progress to have another report and  
6 then separate and apart from reports to the  
7 task force, I had E-mail exchanges with  
8 Judge Freeh and Omar McNeill on a fairly  
9 ongoing basis.

10 Q. Without getting into the,  
11 necessarily the specific substance of the  
12 updates, what kind of information were you  
13 generally provided in those updates?

14 A. Generally speaking, we talked  
15 about how many people he had interviewed.  
16 How many documents he looked at. We didn't  
17 get into the content of what he talked about.  
18 You have asked me about was I aware of his  
19 interactions with the NCAA and the Big Ten?  
20 I don't have a specific recollection of that,  
21 but I do have a specific recollection of his  
22 interactions with the commonwealth criminal  
23 prosecutors who were looking at this because  
24 I remember that being something that we  
25 talked about on a consistent basis because we

1 as a University had promised to be  
2 cooperative with the prosecution.

3 Q. You had mentioned earlier the,  
4 how you believe the Freeh Group's  
5 investigation was complete and thorough and  
6 objective. But then you separated out in a  
7 way the Freeh report?

8 A. Yes.

9 Q. Did you -- first of all, why? I  
10 believe we probably touched on it earlier,  
11 but just generally if you can reiterate why  
12 you had reservations about the potential  
13 objectivity of the Freeh report?

14 MR. SCOTT: Object to the form.

15 MR. GARDNER: Me too.

16 A. I don't think I said I had  
17 reservations. What I remember saying is I  
18 believed that the investigation was complete  
19 and thorough and rigorous and objective.  
20 What I tried to distinguish was the gathering  
21 of facts and data on the one hand versus the  
22 inferences, conclusions and opinions that  
23 Judge Freeh reached based on that data. So,  
24 to me, the facts are the facts. And  
25 reasonable people can reach different

1 inferences based on their examination of  
2 those same facts. That's what I was trying  
3 to say.

4 Q. Did you personally have any  
5 issues or concerns with the inferences that  
6 Judge Freeh drew in his report?

7 A. Yes.

8 Q. Can you explain what those issues  
9 or concerns were?

10 A. Judge Freeh reached some  
11 conclusions about the motivation of  
12 individuals at Penn State. It was clear to  
13 me, if you read the statement that we put  
14 out, I think the facts showed that people had  
15 reason to know or suspect that Jerry Sandusky  
16 had engaged in inappropriate behavior with  
17 children. That they discussed reporting what  
18 they knew to authorities. That at one point  
19 they had characterized that as an agreement  
20 to report to authorities. And that  
21 subsequently, for whatever reasons, they  
22 decided not to report it to authorities and  
23 subsequently children were harmed. To me,  
24 those were the facts. Judge Freeh, in his  
25 commentary at the press conference and in the

1 report itself, reached certain inferences  
2 about what motivated them not to report.

3           From my perspective, as I sit  
4 here today and as I sat there then, I  
5 continued to believe that human motivation is  
6 an extremely complex subject that has  
7 multiple layers. And so as it relates to the  
8 conclusions about why people did or did not  
9 do what they did, I believe there are  
10 multiple ways to explain that. I am not  
11 saying that the conclusions he drew were  
12 unreasonable. I am simply saying that there  
13 are other reasonable inferences that could be  
14 drawn from that, and as a result, I tried on  
15 that day, when we put out the report, sorry,  
16 when I put out our statement, our official  
17 written statement in response to the report,  
18 I made the decision in realtime to write a  
19 statement that did not join in all the  
20 conclusions of the report. But simply said  
21 that we take accountability for the failures  
22 that occurred, and what I said earlier, which  
23 is that there were people in a position to  
24 have taken actions to protect children who  
25 did not protect the children. That I thought

1 was pretty clear from the facts. The state  
2 of mind of those individuals, again, I can't  
3 say his conclusions were wrong. I don't  
4 believe they were unreasonable. I just don't  
5 think they are as clear and irrefutable as  
6 some people seem to think they are.

7 Q. Finally, I just want to turn to  
8 the meeting, the executive committee meeting  
9 you had on July 22nd, I believe, and earlier,  
10 you had mentioned that you were told or you  
11 were led to believe that there was a short  
12 timeframe in order to make a decision.

13 A. That's correct.

14 Q. Were you told or explained why  
15 there was a short timeframe?

16 A. I don't recall being told that  
17 there was a specific reason for it, other  
18 than the fact that the sense of the  
19 presidents was that the death penalty was an  
20 appropriate remedy for what had happened at  
21 Penn State, and if we were to try to persuade  
22 them not to impose the death penalty, we had  
23 better act reasonably quickly before it got  
24 set in stone.

25 Q. You had also mentioned that



1 the -- you were informed that this discussion  
2 had remained confidential?

3 A. That's correct.

4 Q. Was it explained to you why these  
5 discussions or a decision had to be -- had to  
6 remain confidential?

7 A. I don't remember what was -- what  
8 was specifically said about it, but I think  
9 what I remember was that the NCAA was taking  
10 the position that we had a very short window,  
11 and if we were going to negotiate this, we  
12 had to negotiate it quickly and  
13 confidentially. I don't remember why they  
14 were insisting on confidentiality. I  
15 think -- it didn't strike me as an unusual  
16 provision having been a lawyer, having  
17 negotiated settlements, that people tend to  
18 want to have the settlement before the terms  
19 are made public. But that's all I can say  
20 about it.

21

22

23 (Continued on next page to include  
24 jurat.)

25

1 MR. SEIBERLING: I don't have  
2 anything further.

3 MR. GARDNER: Nothing. Thank  
4 you.

5 THE WITNESS: Okay.

6 THE VIDEOGRAPHER: That now  
7 concludes this video deposition and  
8 DVD number 2. The time is 12:13.

9 (Whereupon, at 12:13 p.m., the  
10 Examination of this Witness was  
11 concluded.)

12

13

14

\_\_\_\_\_  
KENNETH FRAZIER

15

16 Subscribed and sworn to before me  
17 this \_\_\_\_ day of \_\_\_\_\_, 2014.

18

\_\_\_\_\_  
NOTARY PUBLIC

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## E X H I B I T S

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EXHIBIT

EXHIBIT

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6

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DESCRIPTION

7

Exhibit 1

November 11, 2011,

21

8

Board of Trustees

9

minutes of meeting

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Exhibit 2

4-page article dated

28

11

November 21, 2011,

12

entitled Former FBI

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Director Freeh to

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Construct Independent

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Investigation

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Exhibit 3

Affidavit of Frank

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17

Guadagnino

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Exhibit 4

Document dated May 4,

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19

2012 entitled Frazier

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Provides Update on

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Special Investigations

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Task Force

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Exhibit 5

Two-page E-mail

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24

Exhibit 6

E-mail chain

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1			
2	EXHIBIT	EXHIBIT	PAGE
3	NUMBER	DESCRIPTION	
4	Exhibit 7	One-page document	58
5		dated July 12, 2012	
6	Exhibit 8	PSUCOR '00731 through	68
7		733	
8	Exhibit 9	Transcription of Penn	80
9		State Board of	
10		Trustees special	
11		meeting date	
12		August 12, 2012	

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18	EXAMINATION BY		PAGE
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22			
23	INFORMATION AND/OR DOCUMENTS REQUESTED		
24	INFORMATION AND/OR DOCUMENTS		PAGE
25	(NONE)		

1 C E R T I F I C A T E

2

3 STATE OF NEW YORK )  
4 : SS.: )  
5 COUNTY OF NASSAU )

6

7 I, REBECCA SCHAUMLOFFEL, a Notary  
8 Public for and within the State of New York,  
9 do hereby certify:

10 That the witness whose examination  
11 is hereinbefore set forth was duly sworn and  
12 that such examination is a true record of the  
13 testimony given by that witness.

14 I further certify that I am not  
15 related to any of the parties to this action  
16 by blood or by marriage and that I am in no  
17 way interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto  
19 set my hand this 15th day of December, 2014.

20

\_\_\_\_\_  
REBECCA SCHAUMLOFFEL

21

22

23

24

25

WITNESS ERRATA SHEET

Witness Name: Kenneth Frazier

Case Name: Corman v. NCAA

Date Taken: December 15, 2014

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