

1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2
3 JAKE CORMAN, in his official)
4 capacity as Senator from the)
5 34th Senatorial District of)
6 Pennsylvania and Chair of the)
7 Senate Committee on)
8 Appropriations; and ROBERT M.)
9 McCORD, in his official)
10 capacity as Treasurer of the)
11 Commonwealth of Pennsylvania,)

Case No.
1 M.D. 2013

12 Plaintiffs,)

13 vs.)

14 NATIONAL COLLEGIATE ATHLETIC)
15 ASSOCIATION,)

16 Defendant,)

17 vs.)

18 PENNSYLVANIA STATE UNIVERSITY,)

19 Defendant.)

20 DEPOSITION OF SHEPARD COOPER
21 Indianapolis, Indiana
22 Thursday, November 13, 2014

23 Reported by:

24 RACHEL F. GARD, CSR, RPR, CLR, CRR

25 JOB NO. 86747

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November 13, 2014

9:05 a.m.

Deposition of SHEPARD COOPER, at the
offices of Barnes & Thornburg, LLP, 11 South
Meridian Street, Indianapolis, Indiana,
pursuant to subpoena before Rachel F.
Gard, Illinois Certified Shorthand Reporter,
Registered Professional Reporter, Certified
LiveNote Reporter, Certified Realtime Reporter,
Indiana Notary Public.

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15 ALSO PRESENT: SCOTT BEARBY, NCAA

16 ZANDRIA CONYERS, NCAA

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1 I N D E X

2 WITNESS PAGE

3 SHEPARD COOPER

4 Examination by Mr. Seiberling 7

5

6 E X H I B I T S

7 COOPER DEPOSITION EXHIBIT PAGE

8 Exhibit 1 Email 33

9 Exhibit 2 Appointment invite 53

10 Exhibit 3 Email 58

11 Exhibit 4 Email 61

12 Exhibit 5 Email 66

13 Exhibit 6 Meeting invite 72

14 Exhibit 7 Email 74

15 Exhibit 8 Email 78

16 Exhibit 9 Email 92

17 Exhibit 10 Email 97

18 Exhibit 11 Email 102

19 Exhibit 12 Email 105

20 Exhibit 13 Email 108

21 Exhibit 14 Email 114

22 Exhibit 15 Appointment invite 118

23

24

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1 (Witness sworn.)

2 WHEREUPON:

3 SHEPARD COOPER,
4 called as a witness herein, having been first
5 duly sworn, was examined and testified as
6 follows:

7 EXAMINATION

8 BY MR. SEIBERLING:

9 Q. Good morning, Mr. Cooper.

10 A. Good morning.

11 Q. My name is Mark Seiberling. I'm
12 with the law firm Conrad O'Brien. I have my
13 co-counsel with me here today, Alexis Madden,
14 Kevin McKenna, and Matt Haverstick is also
15 here, but he stepped out for a little bit.

16 Have you ever been deposed before?

17 A. Not in this case.

18 Q. In other cases?

19 A. Yes.

20 Q. So what I'm going to say is probably
21 familiar to you. The best you can, please
22 answer questions clearly, audibly, so the court
23 reporter gets everything down.

24 A. Understood.

25 Q. Yes or no answers.

1 If I ask you a question and you
2 don't understand it, ask me to rephrase it and
3 I'll do my best to rephrase it for you.

4 At certain points throughout the
5 deposition, you may hear your counsel object.
6 You still must answer the question unless
7 you're directed not to answer the question by
8 counsel.

9 Finally, if you need to use the rest
10 room, take a break, let us know, and we'll do
11 our best to accommodate.

12 A. Okay.

13 Q. You mentioned you were deposed
14 previously in other matters. To the best of
15 your ability, can you let us know what those
16 other matters were?

17 A. Is that privileged?

18 MS. GRAGERT: No.

19 A. There was actually a couple lawsuits
20 filed by a former men's basketball coach at
21 Suny Buffalo. His name is Tim Cohane, filed
22 two separate lawsuits. I was deposed, I
23 believe, once in each one of those. And then
24 there was a lawsuit filed by a former assistant
25 football coach at Southern California named

1 Todd McNair, also sued, and I was deposed in
2 that.

3 Q. Any else that you can remember?

4 A. No.

5 Q. Prior to your deposition today, did
6 you meet with counsel to discuss today's
7 deposition?

8 A. Yes.

9 Q. For how long?

10 A. 2 hours, perhaps.

11 Q. When did that occur?

12 A. It occurred on Tuesday.

13 Q. Were you shown documents?

14 A. I was.

15 Q. Moving to your general background,
16 could you let us know or tell us about your
17 academic history, your education?

18 A. Graduated from the University of
19 Missouri, 1978 with a degree in fisheries and
20 wildlife biology. Served 10 years of active
21 duty in the United States Marine Corps. After
22 that, I joined the NCAA in 1990 as an
23 enforcement rep, investigator. And then in
24 1998, I was promoted to the position of the
25 director of the infractions committees.

1 Q. So initially you were in what would
2 be the enforcement group of the NCAA?

3 A. That's correct.

4 Q. Then you moved over into what would
5 be the infractions group within the NCAA?

6 A. Correct.

7 Q. Can you explain, first of all, your
8 role within the enforcement group when you were
9 in that position?

10 A. I was an investigator.

11 Q. And what responsibilities, job
12 duties did that entail?

13 A. To investigate potential violations
14 of NCAA legislation by interviewing
15 individuals, putting together information
16 relating to cases, and if there was sufficient
17 information to indicate that there were
18 violations, present that information before the
19 committee on infractions, in a hearing.

20 Q. In 1998, you moved over to the
21 infractions committee?

22 A. Correct, which are separate
23 entities. The enforcement staff, in that
24 sense, they're the police and prosecutor. The
25 committees on infractions are the judge and the

1 jury.

2 Q. Has it always been that way?

3 A. Yes.

4 Q. There's always been two groups, two
5 separate groups, the enforcement group and
6 infractions group?

7 A. Well, infractions committees, which
8 are comprised of the membership and general
9 public. They're not NCAA employees.

10 Q. There's a staff that supports the
11 committee?

12 A. Correct.

13 Q. And that's -- you would have been on
14 that staff that supports the committee?

15 A. I still am.

16 Q. Generally, can you explain your job
17 responsibilities as a staffer?

18 A. Sure. It's to support the
19 committees on infractions in their review and
20 adjudication of infractions cases. It's
21 drafting correspondence, providing research,
22 setting up the hearings, setting up conference
23 calls, writing drafts of reports of their
24 decisions. We do not enter into the decision
25 process. We simply support them in their

1 process in reaching decisions in infractions
2 cases.

3 Q. Who do you personally within the
4 NCAA organization report to?

5 A. Managing director Joel McGormley.

6 Q. Has it always been Joel McGormley?

7 A. No, he was brought in -- Joel was
8 brought in about 2 years ago. It was felt --
9 and I'm not an attorney. It was felt they
10 needed to have an attorney in the office of the
11 committee on infractions, and he was a former
12 assistant Attorney General in the State of
13 Michigan. So at one time, I was director and
14 reported to David Berst, and then Joel
15 McGormley was brought in to oversee.

16 Q. So Mr. McGormley is an attorney?

17 A. He is.

18 Q. Are there any other attorneys on
19 staff?

20 A. All the other individuals in
21 administrative positions are attorneys except
22 myself.

23 Q. You had mentioned there was a
24 belief, you can correct me if I'm wrong, that
25 there was a need to have an attorney in the

1 director position?

2 A. Managing director position.

3 Q. Managing director position.

4 A. Yes.

5 Q. Can you explain, if you know, why
6 that was?

7 A. You know, it wasn't a decision on my
8 part. But I was aware that they wanted to have
9 someone who was an attorney.

10 Q. So you're the only non-attorney left
11 currently on the staff?

12 A. Other than support personnel.

13 MS. GRAGERT: It's important you let
14 him finish your question and then you can
15 answer.

16 THE WITNESS: Sorry.

17 A. Other than support personnel, right.

18 Q. Generally, can you just explain --
19 and if I can, we'll mark it as Cooper --
20 actually, it's Berst Exhibit 1, so we'll just
21 leave it already marked as Berst Exhibit 1.

22 Sitting before you, will be the
23 bylaws, the rules, the constitution. It's
24 titled the Division I Manual, but I assume it's
25 essentially the Bible for the NCAA.

1 From my understanding, the
2 infractions process is laid out within that
3 document; is that correct?

4 A. Yes.

5 Q. In layman's terms or in a nutshell,
6 can you explain to us generally the infractions
7 process? And if you need to refer to the
8 manual, feel free to.

9 A. In general terms, I explained
10 earlier that there's a process whereby the
11 enforcement staff acting on credible
12 information about potential violations conducts
13 investigations, do interviews, there's
14 transcripts. They put information together.
15 There's a document called the Notice of
16 Allegations which contains allegations,
17 potential violations, and then that's given to
18 institutions or involved individuals, coaches,
19 whoever might be involved, and then they're
20 provided an opportunity to provide a written
21 response.

22 The case, if there's credible
23 information there, can go to pathways. It can
24 go to the committee on infractions, or if
25 there's agreements on everything, it can go a

1 different pathway called summary disposition,
2 which is basically a report on the written
3 record taken to the committee.

4 The committee reviews it. The
5 committee may ask for additional information.
6 Typically, in a summary disposition, the
7 involved institution and sometimes involved
8 coaches propose penalties. The committee on
9 occasion will contact the institution and
10 perhaps suggest additional penalties. I can
11 get more into detail on that, but that's
12 generally how it works.

13 The summary dispositions, then, with
14 hearings, the involved institution and coaches
15 appear in a hearing setting before the
16 committee. The information is presented by
17 both sides, the committee asks questions. And
18 then after the hearing, based upon the
19 information, they go into deliberation and
20 decide whether or not there's violations there.
21 Sometimes they don't find violations, and then
22 they also discuss and decide on the penalties.

23 Sometime after that, a decision is
24 released. There's typically a press conference
25 if it went to hearing where the committee chair

1 or designated spokesman fields questions from
2 the media. With summary disposition cases, we
3 don't do press conferences.

4 There's an appeal process after
5 that, an appeal opportunity if someone wants to
6 appeal a decision, whether it be a finding of a
7 violation or a penalty. And then there's an
8 appeals hearing process that follows.

9 Q. You personally, what is your role
10 within that process?

11 MS. GRAGERT: Object to the form.

12 A. I believe I stated that before. I'm
13 involved with setting up the hearings, along
14 with other people in my office. Drafting
15 correspondence relating to infractions
16 hearings. Based upon committee deliberations
17 and the notes we take, drafting infractions
18 reports that are reviewed by the committee, and
19 then edited by the committee and then released,
20 so that's essentially what it involves.

21 Q. Does your staff advise the committee
22 on penalties?

23 A. Absolutely not.

24 Q. Does the committee seek advice from
25 anyone on penalties that you're aware of?

1 A. Other than looking at the manual and
2 the available penalties, no.

3 Q. How does the committee know what
4 penalties can or should be imposed depending on
5 the circumstances?

6 MS. GRAGERT: Object to the form.

7 A. The bylaws show what's available.
8 Now, that's changed in recent years. There's
9 now something called a penalty matrix which
10 gives a mix of penalties based upon the level
11 of the violation. Level 1 is the most serious,
12 Level 2 is less serious, Level 3 is still less
13 serious, and under the old system, would be
14 considered secondary.

15 And then penalty matrix, there's
16 basically boxes that say Level 1 aggravated,
17 Level 1 standard, Level 1 mitigated, or Level 2
18 same range, and then there's penalties that are
19 available in that.

20 But prior to that, there was a range
21 of penalties that were just listed in bylaw 19.

22 Q. The committee is made up of whom?

23 A. The committee is made up primarily
24 of representatives from the membership.
25 There's also members from the general public.

1 We currently have also former coaches on the
2 committee. And we have former presidents of an
3 institution on the committee. So that's the
4 range, the mix. It's mostly from the
5 membership and a few from the general public.

6 Q. Who or what process decides who is
7 on the committee or who comprises the
8 committee?

9 A. There's a couple of different
10 pathways. Members from the membership are
11 nominated through conference offices. And
12 those names are submitted to the coordinator of
13 the committees at the NCAA. And then those
14 nominees are vetted and approved by the
15 Division I board of directors. There's two
16 other committees on infractions, Divisions II
17 and III. And in Divisions II and III, it's
18 those respective division's management counsels
19 who approve.

20 For public members, it's more of an
21 ad hoc process where suggestions are made from
22 former committee members or current committee
23 members, and those names, there -- on some
24 occasions, there's interviews of the
25 individuals, and the committee will decide to

1 nominate someone to the board of directors, and
2 the board of directors will ultimately approve.

3 Q. Does your group within the NCAA have
4 any role in that process or deciding who's on
5 the board or helping the committee decide who's
6 on the board?

7 MS. GRAGERT: Object to the form.

8 A. We -- that's really not my area.
9 But we do coordinate the nomination process,
10 particularly with public members. Reaching
11 out, gauging their possible interest, getting
12 their resume and things of that nature.

13 Q. If you can remember to the 2012/2011
14 time frame, can you identify who was on the
15 committee at that time, to the best of your
16 knowledge and best of your ability?

17 A. Division I committee?

18 Q. Division I.

19 A. Missy Conboy --

20 Q. And if you can, identify the school
21 or institution they are affiliated with.

22 A. -- University of Notre Dame.
23 Britton Banowsky, conference commissioner for
24 conference USA. Greg Sankey is associate
25 commissioner of the Southeastern Conference.

1 Jim O'Fallon, who's a law professor and faculty
2 athletics representative at University of
3 Oregon. I believe Eleanor Meyers was on the
4 committee at that time. Eleanor is a law
5 professor at Temple.

6 John Black, John Black is a public
7 member. He's the general counsel for the
8 National Federation of High School
9 Associations.

10 Q. Were there any members on the
11 committee from any Big Ten schools?

12 MS. GRAGERT: To the extent you can
13 recall.

14 Q. Yeah, and at this time frame, at
15 this time period?

16 A. I believe so.

17 Q. Do you know who the chair was?

18 A. In '11?

19 Q. '11/'12 time frame.

20 A. It may have been Dennis Thomas who's
21 no longer on the committee. Or could have been
22 Britton Banowsky. I'm not sure if Britton had
23 taken over by then. Dennis Thomas is the
24 commissioner of the Mideastern Athletic
25 Association, the MEAC. Might have been but I'd

1 have to go back and look.

2 Q. Earlier -- again, you can correct me
3 if I'm paraphrasing this wrong, the infractions
4 group --

5 A. The infractions committee.

6 Q. I'm talking your group within NCAA.

7 A. I'm sorry. It's the office of
8 committee on infractions.

9 Q. The office of committee on
10 infractions and the enforcement group are two
11 separate entities within the NCAA?

12 A. That's correct.

13 Q. Is there any interaction between the
14 two, even though they're separate, do they
15 interact or work together on certain matters?

16 A. Mainly on coordinating cases.

17 MS. GRAGERT: Give me a second so I
18 can get an objection. But that's okay. Go
19 ahead.

20 Q. And can you explain what you mean by
21 coordinating cases?

22 A. With hearings that are going to take
23 place, things of that nature. We receive
24 something called a case readiness chart, which
25 shows the list of cases that the enforcement

1 staff is working on, gives an approximate time
2 frame when those cases might be completed and
3 ready for hearing. What pathway they're going
4 to take, summary disposition or hearing.
5 That's primarily it.

6 It's mainly logistics, but there is
7 a strict firewall between the office of the
8 committee on infractions and the enforcement
9 staff.

10 Q. But if there's an investigation
11 going on, the office of committee on
12 infractions, would know about it, not
13 necessarily know the details of it but know
14 there's a potential investigation and it may
15 come before the committee at some time?

16 A. That's correct. I mean, the office
17 of the committee on infractions isn't notified
18 as soon as an investigation starts. There's
19 something called the notice of inquiry that the
20 enforcement staff gives to institutions, and
21 we're made aware when there's a notice of
22 inquiry.

23 Q. So you're provided a copy of the
24 notice of inquiry when the enforcement group
25 issues it?

1 A. Typically, not anymore. Typically,
2 notice of inquiries are given verbally. It's
3 the notice of allegations which actually shows
4 what the alleged violations are, yes,
5 eventually get a copy and the committee gets a
6 copy of that.

7 Q. In August of 2011, there was a
8 presidential retreat.

9 Do you remember that retreat?

10 MS. GRAGERT: Objection. Lack of
11 foundation.

12 A. I remember it occurring. I was not
13 part of it.

14 Q. You didn't attend that retreat?

15 A. Did not.

16 Q. Do you remember the subject matter
17 or topics of that retreat?

18 MS. GRAGERT: Objection to form.

19 A. I recall there were, I believe,
20 several issues discussed. One relating to
21 rules and perhaps shortening the rules, trying
22 to shorten the manual. And then the other area
23 was infractions.

24 Q. Related to the infractions, were you
25 aware of any working groups that were

1 established from that retreat?

2 A. Yes, there was -- sorry.

3 Q. Go ahead.

4 A. There was an enforcement working
5 group that was formed.

6 Q. And what did you know about that
7 group, if anything?

8 A. I was -- I sat in on that group. I
9 was part of it for most of its meetings.

10 Q. Who was the chair of that group?

11 A. Ed Ray.

12 Q. Was there other NCAA staff involved
13 with that working group?

14 A. Yes. It primarily was led by the
15 enforcement staff. Julie Roe was more or less
16 the lead staffer from the NCAA national office.

17 Q. And what was your role in that
18 working group?

19 A. As an advisor and to have a presence
20 there from the office of the committee on
21 infractions.

22 Q. Did you provide any comments,
23 changes to drafts or plans from that working
24 group?

25 MS. GRAGERT: Object to form.

1 A. Not that I recall. I think
2 primarily my role was providing historical
3 information on past cases and penalties.

4 Q. Do you know of any changes to the
5 rules or bylaws that came as a result of that
6 working group?

7 A. There were several changes, yes.
8 One of the things I mentioned earlier was the
9 penalty matrix was a change. Categorization
10 of -- actually, breakout of violations into
11 four categories, Level 1, 2, 3, 4.

12 Previously, it was just major and
13 secondary. That's primarily what I remember.

14 Q. Do you know when those changes were
15 implemented?

16 A. I believe they were for the -- I
17 believe they -- some of them started on
18 October 30th, 2012. I believe the manual that
19 first incorporated all of them was the 2013/'14
20 manual.

21 Q. Do you remember any discussions of
22 Penn State or the allegations related to Penn
23 State in those working groups?

24 A. There was no discussion of Penn
25 State in the working group.

1 MS. GRAGERT: Just a reminder to let
2 him finish his question, please.

3 THE WITNESS: Sorry. Sorry.

4 Q. We'll segue into the Penn State
5 matter now.

6 When was the first you learned of
7 the allegations regarding Penn State?

8 A. I don't recall.

9 Q. Did you read the Sandusky, the Jerry
10 Sandusky indictment?

11 MS. GRAGERT: At any time?

12 Q. If so, when, if you did?

13 A. I don't recall reading the Sandusky
14 indictment. I recall seeing media reports. It
15 made a big splash nationally.

16 Q. Would that have been in the November
17 of 2011 time frame?

18 A. I'm not certain exactly when.

19 Q. And what do you remember from
20 reading those media stories?

21 A. That they were heinous allegations
22 against Jerry Sandusky for sexual abuse of
23 young boys.

24 Q. Did anyone from the media contact
25 you related to the committee on infractions or

1 your group about responding to those
2 allegations?

3 A. Not that I recall. As a general
4 practice, any media inquiries we get, we
5 immediately send to our public affairs office.
6 We don't answer them.

7 Q. Who would that be?

8 A. Currently, it's Emily James. Before
9 that, it was Stacey Osburn.

10 Q. So within the office of committee of
11 infractions, you have a public affairs
12 individual?

13 A. No, that's within the national
14 office. They have different areas of
15 responsibility. Bob Williams is the vice
16 president, and then under him, he has various
17 individuals assigned to different areas. Emily
18 currently, I think, oversees media inquiries
19 relating to enforcement and infractions.

20 Q. So if there's a media inquiry,
21 either you or someone within the office of
22 committee on infractions would direct it to the
23 NCAA communications department to respond to?

24 A. That's correct.

25 Q. Do you receive media inquiries

1 often?

2 A. Depends upon what you mean by often.

3 I would say two to three times per month.

4 Q. Did the inquiries come usually
5 based, I assume, on allegations not necessarily
6 pending cases before the office of committee on
7 infractions?

8 MS. GRAGERT: Object to form.

9 A. They can -- I think we received
10 media inquiries in a variety of situations
11 relating to when enforcement staff might have
12 come on campus and they call us, which we have
13 nothing to do with enforcement staff and their
14 investigations too, after schools, particularly
15 public institutions, have to provide notice of
16 allegations as part of the Sunshine laws. We
17 will get calls after that. There's a variety
18 of situations. But again, we don't talk to the
19 media.

20 Q. What about individual committee
21 members? How are media inquiries handled if an
22 individual member receives an inquiry?

23 MS. GRAGERT: Object to form.

24 A. They're instructed if they are
25 contacted by the media to refer those calls to

1 the public affairs staff.

2 Q. Do they always do that? Or are
3 there occasions where they respond on their
4 own?

5 MS. GRAGERT: Object to the form.
6 Calls for speculation.

7 A. As far as I know, they do. I can't
8 say in every instance they do, but that's what
9 they're instructed to do.

10 Q. Were you made aware of any inquiries
11 made by the NCAA to Penn State following the
12 Sandusky indictment?

13 MS. GRAGERT: Object to the form.

14 A. I recall a letter that was sent. I
15 believe you mentioned November of '11. I do
16 recall that letter, and I remember seeing that
17 letter, yes.

18 Q. What do you remember about that
19 letter?

20 A. I primarily remember there was some
21 questions that were asked of Penn State.
22 That's mostly what I recall from it.

23 Q. Did you have the opportunity to
24 review that letter?

25 A. I did review it. I did not provide

1 any edits.

2 Q. You reviewed it prior to it being
3 sent out?

4 A. I believe that's the case, yes.

5 Q. Who asked you to do that?

6 A. Donald Remy.

7 Q. Did you find that letter unusual?

8 MS. GRAGERT: Object to the form.

9 A. I found the situation unusual at
10 Penn State. It was unprecedented. So I guess
11 in that sense, since it was an unprecedented
12 situation, it was, yeah. I mean, it was a
13 letter that addressed an unprecedented
14 situation. So I don't know if you want to
15 characterize it as unusual. But it was just
16 unprecedented.

17 Q. To your knowledge, was that letter a
18 notice of inquiry?

19 MS. GRAGERT: Objection. Calls --
20 I'm sorry, object to form.

21 A. It wasn't a notice of inquiry in the
22 traditional sense.

23 Q. What about -- strike that.

24 Can you explain that?

25 A. Well, notice of inquiry typically

1 comes from the enforcement staff. This wasn't
2 a notice of inquiry from the enforcement staff.
3 It was a letter asking questions. I believe it
4 was from President Emmert.

5 Q. In your -- I guess you had been
6 there since 1998, so at this point, it would
7 have been almost 14 years. Had you seen a
8 letter like that be sent out under the
9 president's name to an institution?

10 A. No.

11 Q. So would you say that letter itself
12 was unprecedented?

13 A. I suppose it was unprecedented
14 because it was an unprecedented situation.

15 Q. Did you discuss that letter with
16 anyone else other than Donald Remy within the
17 NCAA?

18 A. Not that I recall.

19 Q. Did you discuss that letter with
20 anyone from the enforcement group, if you can
21 remember?

22 A. No.

23 Q. Julie Roe?

24 A. Again, not that I recall.

25 Q. Do you know if Penn State responded

1 to that November 2011 letter?

2 A. I don't.

3 Q. You never saw a response from Penn
4 State that you can remember?

5 A. I did not.

6 Q. Moving along a timeline, when would
7 have been the next moment following that
8 November 2011 letter that Penn State popped
9 back on your radar?

10 MS. GRAGERT: Object to the form.

11 A. As far as an official function or
12 just -- or knowing about it? I mean ...

13 Q. I assume you read media accounts
14 throughout the time?

15 A. I did.

16 Q. Were you aware of Penn State's
17 retention of the Freeh Group to investigate the
18 matter?

19 A. I was.

20 Q. Did you have any interactions with
21 anyone from the Freeh Group?

22 A. No.

23 Q. Do you know if anyone within the
24 NCAA was having any discussions or
25 conversations with the Freeh Group?

1 A. I don't know.

2 MR. SEIBERLING: We will mark Cooper
3 Exhibit 1.

4 (Cooper Exhibit Number 1 marked for
5 identification.)

6 Q. This is an email chain dated
7 July 4th. It initially began as an email from
8 David Price to Gene Marsh. Subject: Expert
9 Penn State Unlikely to Face NCAA Sanctions.

10 Who's David Price?

11 MS. GRAGERT: Take a moment to read
12 it, if you need to.

13 A. David Price is the former vice
14 president of enforcement.

15 Q. Had you worked with David Price?

16 A. I had not worked -- when he took
17 over as vice president for enforcement, I was
18 no longer on the enforcement staff, but I had
19 interaction with David Price simply because he
20 was vice president for enforcement and our
21 office has interaction with his office.

22 Q. At this point in time in July 2012,
23 he was no longer with the NCAA?

24 A. That's my understanding, yes,
25 correct. He was not.

1 Q. Do you know why he left the NCAA?

2 A. I think he retired.

3 Q. The next email in the chain is from
4 Gene Marsh to you saying: Shep, FYI.

5 Do you remember being forwarded this
6 email from Gene Marsh?

7 A. I -- once I saw it when I consulted
8 with counsel, I did remember it, yes.

9 Q. Who's Gene Marsh?

10 A. Gene is a former law professor at
11 Auburn who was on the committee on infractions,
12 and at one time was the chair of the committee
13 and subsequently joined a law firm who
14 occasionally represented institutions.

15 Q. So you had worked with Gene Marsh in
16 the past?

17 A. I had. I had worked with Gene
18 Marsh. I want to make something very clear,
19 that this email from me was sent prior to the
20 Freeh Report.

21 Q. Yeah.

22 A. After reading the Freeh Report, I
23 had a completely different opinion on the Penn
24 State case.

25 Q. Okay. We'll get there.

1 Were you still communicating with
2 Gene Marsh even after you no longer worked with
3 him on the committee on infractions?

4 A. On occasion. We developed a
5 friendship. Most of the communication with him
6 was relating to family activities. He lives on
7 a lake, he's a fisherman, I'm a fisherman. He
8 would occasionally send me photos of fish,
9 things of that nature. So off and on, I did
10 communicate with him.

11 Q. I believe you mentioned he joined a
12 law firm that represented individuals or
13 institutions before the committee on
14 infractions; is that correct?

15 A. That's correct.

16 Q. So he would come -- you would see
17 him occasionally come before the committee on
18 infractions, even after he left the committee
19 itself?

20 A. Yes. Not often, but yes. Most of
21 that business was handled by one law firm
22 called Bond, Schoeneck & King. They tend to
23 dominate the market, if you will. I did see
24 Gene maybe on two or three occasions
25 representing either institutions or

1 individuals.

2 Q. He would have represented Ohio State
3 in --

4 A. As I recall, he didn't represent
5 Ohio State. He represented Jim Tressel, who
6 was a former head football coach.

7 Q. And that matter came before the
8 committee?

9 A. It did.

10 Q. The next email on the chain is
11 from -- actually, if we can take a step back,
12 it appears, you can correct me if I'm wrong,
13 the email chain started with the forwarding of
14 a story, a news article from the Center County
15 Times in which Gene Marsh was either quoted or
16 discussing the Penn State matter.

17 Does that refresh your recollection
18 or does that sound correct?

19 MS. GRAGERT: Objection to form.

20 A. It says centerdaily.com. I'll take
21 your word for it that it's a newspaper in
22 Pennsylvania.

23 Q. Do you remember reading the story or
24 the news article that initiated this email?

25 A. I must have. I don't remember the

1 substance of it.

2 Q. Okay. On July 4th, 2012 at 2:16 you
3 write, quote: FWIW.

4 Can you explain what that means?

5 A. For what it's worth.

6 Q. For what it's worth, I agree.

7 However, the new NCAA leadership is extremely
8 image conscious, and if they conclude that
9 pursuing allegations against PSU would enhance
10 the association's standing with the public,
11 then an infractions case could follow.

12 Let's break that sentence down, if
13 we can. Can you explain what you meant by the
14 new NCAA leadership is extremely image
15 conscious?

16 A. I think like any large
17 national-level organization, the NCAA is
18 concerned about its image.

19 Q. Was there a new leadership that had
20 come to power or taken over around this time
21 period?

22 A. 2012, I'm not sure how long Mark
23 Emmert had been there. I think within the
24 first, probably would have been within 2 years
25 or year or two after he joined.

1 Q. When you say the new NCAA
2 leadership, were you implying President Emmert?

3 A. I think leadership refers to the
4 president, the vice presidents, all of those
5 individuals, perhaps even folks from the
6 membership.

7 Q. When President Emmert became the
8 president in 2010, did you notice any change in
9 culture at the NCAA?

10 MS. GRAGERT: Object to the form.

11 A. There was initiation of something
12 called One Team One Future, which was, I think,
13 an effort to change the culture. But ...

14 Q. In what way, if you can explain?

15 A. There were some principles,
16 accountability, collaboration, boy, I'd have to
17 go back and look. Those are the two that I
18 recall. Just trying to make the office work
19 better, more efficiently, communicate better,
20 serve the membership better, be responsive to
21 them. I think that was kind of the focus of
22 this cultural change.

23 Q. And you would say that was a change
24 from prior leadership?

25 A. It was a change, yes.

1 Q. And this is your personal opinion,
2 for the better or for the worse or indifferent?

3 A. I think it was for the better.
4 Again, it was an effort to try to get folks to
5 collaborate, communicate and, again, be
6 responsive to the membership, which I think is
7 all positive.

8 Q. If you continue on in that same
9 sentence, it states: And if they conclude that
10 pursuing allegations against PSU would enhance
11 the association's standing with the public,
12 then an infractions case could follow.

13 Can you explain, if you can, what
14 you meant by: Pursuing allegations against PSU
15 would enhance the association's standing with
16 the public?

17 A. It was the opinion that I had at
18 that time that the situation at Penn State, in
19 my opinion at that time, before the Freeh
20 Report, was a criminal matter, and in my
21 opinion at that time, that that was probably
22 not something the NCAA should get involved
23 with.

24 Again, that changed after the Freeh
25 Report, and I no longer believed that's the

1 case. So it was an erroneous statement on my
2 part at that time and one that changed
3 radically once the Freeh Report was released.

4 Q. At this time, did you share that
5 view with anyone other than Gene Marsh?

6 A. I did not.

7 Q. Why -- at this time, why were you
8 sharing that view with Gene Marsh?

9 A. He was a friend. I was expressing
10 just my opinion to him. It was not an opinion
11 that I shared, as I mentioned earlier, with
12 anyone else at the NCAA. He was an old friend,
13 and that was an opinion I had, again, at that
14 time, which I have said now on numerous
15 occasions, I do not hold that opinion anymore.

16 Q. The next sentence reads: I know
17 that Mark Emmert has made statements to the
18 press indicating that he thinks it could fall
19 into some sort of lack of institutional control
20 case.

21 That's what LOIC means, lack of
22 institutional control?

23 A. That's correct.

24 Q. Did you believe that it could fall
25 into some sort of lack of institutional control

1 case?

2 MS. GRAGERT: At what time?

3 Q. At this time, when you wrote this
4 email?

5 A. I think it was a possibility that it
6 could, yes.

7 Q. On what -- on what basis?

8 A. That if it was shown that
9 institutional officials did not take action to
10 address the Jerry Sandusky situation, it
11 possibly could fall under lack of institutional
12 control.

13 Q. Prior to Penn State and this matter,
14 were you aware of any lack of institutional
15 control cases coming before the committee?

16 MS. GRAGERT: Object to the form.

17 A. Yes, lack of institutional control
18 was, I don't know if common is the right word,
19 but the committee does see that frequently.

20 Q. And that is --

21 A. Those are allegations made by the
22 enforcement staff.

23 Q. And that's addressed within the
24 bylaws?

25 MS. GRAGERT: What's addressed?

1 Q. The lack of institutional control
2 argument or allegation?

3 MS. GRAGERT: Object to the form.

4 Q. I can ask -- rephrase or ask a
5 better question.

6 Is lack of institutional control
7 defined within the bylaws?

8 A. It's -- I'd have to look.

9 Q. These are the -- you can take a look
10 through here if you'd like.

11 MS. GRAGERT: Are you asking about a
12 definition in the bylaws as a whole or the
13 enforcement section of the bylaws that he's
14 responsible for?

15 MR. SIEBERLING: Honestly, anywhere.

16 Q. We can -- withdraw the question.

17 What is your understanding of what
18 is meant by the term lack of institutional
19 control?

20 A. That the institution fails to take
21 measures and has procedures in place that
22 promote the rules, they make sure that the
23 rules are being followed. There is a white
24 paper from 1996 that addresses what lack of
25 institutional control can be, and that white

1 paper has been circulated among the membership.

2 Basically ensuring that the rules
3 are followed, that the principles of the NCAA
4 are upheld properly, athletics departments are
5 operated in a manner that follows the rules,
6 again promotes the principles. There's the
7 principle 2.4 that discusses ethical conduct
8 and sportsmanship, the responsibility to be
9 honest, responsible, promote civility, things
10 of that nature.

11 So lack of institutional control,
12 the guiding principle or the guiding document
13 is that white paper that is circulated among
14 the membership. I don't know if that's part of
15 the exhibits or not.

16 Q. I'm not sure, I don't believe it's
17 in there.

18 Do you know who drafted that white
19 paper?

20 A. It was a collaborative effort by the
21 committee at that time, led by Jack
22 Friedenthal, who was the chair of the committee
23 at that time. Jack is a law professor at
24 George Washington University and formerly at
25 Stanford. So yeah, the lack of institutional

1 control is pretty much defined in that white
2 paper and actually is being discussed currently
3 by the membership.

4 Q. Do you remember any case coming
5 before the committee on infractions that was
6 based solely on an allegation of a lack of
7 institutional control?

8 A. No.

9 Q. I presume -- you had mentioned that
10 it has been included within cases that have
11 come before the committee?

12 A. Yes.

13 Q. As one of several allegations?

14 A. Correct.

15 Q. But you can't remember, at least to
16 your knowledge, a case that was solely based on
17 lack of institutional control?

18 MS. GRAGERT: Objection. Asked and
19 answered.

20 A. I don't recall.

21 Q. The next sentence in your email
22 reads, quote: Shooting roadkill is an apt
23 analogy.

24 Can you explain what you meant by
25 shooting roadkill?

1 A. I assume, I have that in quotes that
2 was something from a previous reference. Maybe
3 in the article, which is not before me. I
4 don't think that is, quote, an apt analogy at
5 this point.

6 Q. In hindsight?

7 A. Yeah, in hindsight, after the Freeh
8 Report, no, it's not an apt analogy. I think
9 the NCAA had to do something after the release
10 of the Freeh Report, so that to me, negated --
11 the shooting roadkill is not appropriate.

12 Q. Gene Marsh then responds to your
13 email saying, quote: I know how they think
14 there now.

15 Was it your understanding of his
16 response that he was agreeing with you that the
17 NCAA was image conscious?

18 MS. GRAGERT: Object to the form.

19 You can answer to the extent you
20 understand it.

21 A. I'm not sure exactly what he meant
22 by that. And I know how they think there now,
23 and I don't know.

24 Q. Have you had discussions with Gene
25 Marsh about the new leadership at NCAA being

1 image conscious?

2 A. No, not that I recall.

3 Q. The sentence continues: But they
4 should leave this one alone.

5 Do you know what Gene Marsh was
6 saying by leave this one alone?

7 A. I don't. Anything I would say would
8 be speculation, and I won't speculate.

9 Q. Did you believe at this point in
10 time that the NCAA should not pursue an
11 infractions case against Penn State?

12 MS. GRAGERT: Objection to form. It
13 calls for his opinion. He's not an expert
14 witness.

15 MR. SIEBERLING: I'm not asking as
16 an expert.

17 Q. You can answer.

18 A. You're asking my personal opinion?

19 Q. Yes.

20 A. At that time, I thought it was
21 probably a criminal matter best handled by
22 local law enforcement. But again, as I've said
23 repeatedly and want to emphasize, this was
24 before the release of the Freeh Report, okay?
25 The Freeh Report reflected institutional

1 officials became aware of Jerry Sandusky
2 molesting children and did nothing about it,
3 okay? My father was an assistant football
4 coach his entire career at the University of
5 Missouri. He was my hero, and Sandusky did
6 this stuff. It's egregious, and the university
7 didn't do anything about it. I'm sorry.

8 MR. SEIBERLING: Can we take a
9 break?

10 MS. GRAGERT: Yeah, it's a good time
11 to take a break.

12 (A short break was had.)

13 Q. Mr. Cooper, you had mentioned that
14 the Freeh Report and reading the Freeh Report
15 changed your thinking, your mindset on things.

16 Can you explain what you meant by
17 that?

18 A. Sure. As I think I mentioned
19 before, the Freeh Report reflected that
20 university officials, athletic department
21 officials in leadership positions became aware
22 of information indicating that Jerry Sandusky
23 had sexually abused children, yet there was
24 nothing done about that. In fact, he was
25 allowed continued access to athletic facilities

1 where this abuse continued.

2 It appeared that the institution put
3 the reputation of its football program above
4 that of kids. I have two sons myself. I can't
5 imagine them being victimized by someone like
6 that. Again, I apologize. I'm sorry.

7 Q. So you read, digested, reviewed the
8 Freeh Report; is that safe to say?

9 A. I did. I read, recently reread the
10 executive summary, but I did read it when it
11 first came out, yes.

12 Q. Were you directed by anyone within
13 the NCAA to read it, or did you just read it on
14 your own?

15 A. I read it on my own.

16 Q. Did you discuss its contents with
17 anyone within the NCAA after reading it, other
18 than counsel, probably Donald Remy?

19 A. Other than maybe with my colleagues
20 saying it was a disturbing report, other than
21 that, no, and then with counsel.

22 Q. Your colleagues within the office of
23 committee on infractions?

24 A. Yes.

25 Q. Who within the committee do you

1 remember talking with?

2 A. It was the committee or the staff.

3 Q. I'm sorry, within the staff.

4 A. I think I probably discussed it at
5 some point just in passing with Jim Elworth.
6 Jim was the assistant director.

7 Q. Do you remember you -- as in you as
8 in the office of committee on infractions -- or
9 the actual committee itself receiving media
10 inquiries following the release of the Freeh
11 Report?

12 MS. GRAGERT: Object to the form.

13 A. I don't specifically, and I can't
14 speak for the committee if they did or not,
15 committee members.

16 Q. But if they did, I assume, it's safe
17 to assume that they would have been referred to
18 the communications department like normal?

19 A. That's correct, that's correct.

20 Q. When we were discussing the email
21 from July 4th, you had mentioned at that time
22 you did not believe it was a potential
23 infractions or enforcement matter; is that
24 correct?

25 MS. GRAGERT: Objection.

1 Mischaracterizes testimony.

2 A. Again, before the Freeh Report, my
3 opinion, again, this was not something I shared
4 with anyone in leadership in the national
5 office, was it was probably a criminal matter
6 best handled by local law enforcement. Again,
7 that changed with the Freeh Report.

8 Q. That's the question I wanted to ask.
9 Then after reading the Freeh Report, your view
10 changed or your opinion changed and you thought
11 it could be or should be an enforcement matter
12 or an infractions matter to come before the
13 committee on infractions?

14 A. I thought the NCAA should do
15 something. Whether it was through enforcement
16 or through the governing committees, something
17 should be done to address this situation. The
18 whole enforcement process is overseen by, in
19 Division I, by the board of directors. So they
20 have the authority to do what they think is
21 appropriate with regard to enforcement
22 infractions issues.

23 Q. The Penn State matter never came
24 before the committee on infractions; is that
25 correct?

1 MS. GRAGERT: Object to the form.

2 A. Yes, that's correct.

3 Q. And to your knowledge, there was
4 never an enforcement investigation commenced
5 with regard to Penn State?

6 MS. GRAGERT: Object to the form.

7 A. Again, to my knowledge. But I'm not
8 with the enforcement staff any longer. I can't
9 speak to exactly what, if anything, happened
10 with regard to the enforcement staff in this
11 matter.

12 Q. What is your understanding of how
13 the NCAA handled the issues and allegations
14 arising with regard to Penn State?

15 A. There was a consent decree, I
16 believe it was called. Again, I'm not an
17 attorney, but I believe the title was consent
18 decree. It was entered into between the NCAA
19 and a member institution, Penn State. And Penn
20 State agreed to the consent decree. And that's
21 the extent of my knowledge.

22 Q. I believe you had mentioned this
23 earlier in describing the infractions process.
24 Once the infraction process starts, there's a
25 summary disposition track the cases can go

1 down; is that correct?

2 A. That's correct.

3 Q. And I'm asking for your opinion, and
4 I'm not asking about legal conclusions or
5 anything along those lines.

6 Did you see similarities between the
7 two -- the summary disposition track within the
8 infractions process and the consent decree?

9 MS. GRAGERT: Object to the form.

10 A. I don't think I ever thought of it
11 in that term or that context, not until you
12 mentioned it. But I don't think I ever
13 compared the consent decree to summary
14 disposition process.

15 Q. Other than counsel Donald Remy, did
16 you discuss the consent decree with anyone
17 within NCAA?

18 MS. GRAGERT: At any time?

19 Q. Between the time of the Freeh Report
20 being released and then the ultimate execution
21 of the consent decree?

22 A. No.

23 MR. SIEBERLING: Could we establish,
24 I guess, for purposes of the record or
25 stipulate that the Freeh Report was

1 July 12th, 2012, and then the consent
2 decree was executed July 23rd, 2012.

3 MS. GRAGERT: That's fine.

4 MR. SEIBERLING: Just for purposes
5 of expediency really.

6 (Cooper Exhibit Number 2 marked for
7 identification.)

8 Q. I'll show you Exhibit No. 2. This
9 is an appointment invite dated July 20th, 2012.
10 It's from Donald Remy to Christina Minor.

11 Who's Christina Minor?

12 A. Christina, I believe, was a law
13 intern at the NCAA, was there briefly. Boy, I
14 think she may be employed at the Big Ten now.
15 I think she was a law intern.

16 Q. Who's Scott Bearby?

17 A. Scott is one of the -- our attorneys
18 in the office of legal affairs.

19 Q. And you're an invitee and so is Joel
20 McGormley?

21 A. Correct.

22 Q. And the subject is PSU.

23 Do you remember attending a meeting
24 with these individuals on or about July 20th,
25 2012?

1 MS. GRAGERT: You can answer this
2 question yes or no, but, please, I caution
3 you not to reveal any privileged
4 information.

5 A. I don't. I don't recall this
6 meeting.

7 Q. Do you remember any meeting with
8 counsel from the NCAA prior to the consent
9 decree being executed?

10 MS. GRAGERT: Again, you may answer
11 that question yes or no or I don't recall.

12 A. I don't recall. I don't.

13 Q. Can you explain the structure or the
14 reporting as far as Donald Remy and the legal
15 office and its role with your group with the
16 office of committee on infractions?

17 MS. GRAGERT: Objection. Vague and
18 ambiguous and a lack of foundation.

19 Q. You mentioned earlier there was
20 attorneys within the committee, within the
21 office of committee on infractions.

22 A. Uh-huh.

23 Q. Do you also consult -- if you have a
24 legal question related to the office of
25 committee on infractions, do you also consult

1 the NCAA legal department?

2 MS. GRAGERT: Objection. Are you
3 done?

4 MR. SIEBERLING: Yeah.

5 MS. GRAGERT: Mischaracterizes his
6 testimony. He never said he consulted the
7 attorneys within the committee on
8 infractions, just that they all have their
9 J.D.s.

10 Q. If a legal question arises within
11 the committee on infractions, who's consulted?

12 A. Naima Stevenson.

13 Q. And she's within the corporate legal
14 department?

15 A. The office of legal affairs, yes.

16 Q. On the organizational chart, where
17 does the office of committee on infractions
18 fall vis-a-vis the legal department?

19 MS. GRAGERT: At what point in time?

20 Q. In this time frame, July of 2012.

21 A. We were part of, if you will, the
22 office of legal affairs in terms of
23 organization, that it was within the office of
24 legal affairs.

25 Q. So you had a reporting structure to

1 the office of legal affairs?

2 A. At what time period?

3 Q. In July of 2012.

4 A. Yes. Yes.

5 Q. Other than the office of committee
6 on infractions, are there any other departments
7 that fell under the legal affairs department?

8 MS. GRAGERT: At this point in time?

9 Q. At this point in time, July of 2012.

10 MS. GRAGERT: If you know.

11 A. Not to my knowledge.

12 Q. Is that still the case where your
13 office is -- currently, is that the case where
14 your office falls under the legal affairs
15 department?

16 A. Yes.

17 Q. Was it always that way, at least
18 during your tenure?

19 A. No.

20 Q. When was that change made, if you
21 remember?

22 A. I believe it was shortly after
23 Donald Remy was hired.

24 Q. Do you know why the change was made,
25 without revealing any privileged information?

1 A. Anything I say would be speculative.

2 Q. If you can -- even if you can
3 speculate.

4 MS. GRAGERT: You don't really want
5 a speculation, do you?

6 MR. SIEBERLING: I do want a
7 speculation, if I can.

8 Q. What was your belief as to why there
9 was this restructuring?

10 A. I think it -- the infractions
11 process is a quasi legal process. I've heard
12 it compared to -- it's akin to an
13 administrative law proceeding. So my
14 speculation is that they felt that an attorney
15 should oversee that process.

16 Q. And is it your belief that's why
17 Joel McGormley, as an attorney, was brought in
18 to lead the department?

19 MS. GRAGERT: I caution you not to
20 reveal any privileged information, if
21 that's the basis of how you know that
22 information, if you know it.

23 A. Again, that's speculation on my
24 part. I think that's the case. It's a quasi
25 legal process and should be overseen by an

1 attorney.

2 (Cooper Exhibit Number 3 marked for
3 identification.)

4 Q. I'll show you Cooper Exhibit 3.
5 This is a pretty lengthy email chain. If you
6 can take a couple minutes to review it and let
7 me know when you're done.

8 A. Should I front to back or back to
9 front?

10 Q. Yeah, from the back to front would
11 be the best way to go.

12 MR. SIEBERLING: For the record, the
13 title of the email is, Subject: Q and A on
14 Scholarships.

15 Q. After reviewing the email chain, do
16 you --

17 MS. GRAGERT: I don't think he's
18 done.

19 A. Okay.

20 Q. Do you remember this email chain
21 after reviewing it?

22 A. I do after reviewing it.

23 Q. Can you give us some context of what
24 was being discussed related to scholarships?

25 MS. GRAGERT: I know -- I don't know

1 the answer to this, but I know there are
2 some redactions here which means there's
3 some privileged communications. I caution
4 you not to reveal any privileged
5 communications that you would have had with
6 legal counsel.

7 Q. It appears to be a discussion of
8 penalties related to Penn State and
9 specifically related to the numbers of
10 scholarships that would be reduced as part of
11 the penalties.

12 Does that sound correct?

13 A. It sounds correct, yes.

14 Q. And without revealing any privileged
15 communications, what was your role in either
16 outlining or coming up with the number of
17 scholarships that would be part of the penalty
18 imposed against Penn State?

19 MS. GRAGERT: Again, without
20 describing the contents of the
21 communications, you can describe what your
22 role was in the process.

23 A. Role was primarily to provide
24 background information, historical information
25 regarding scholarship cuts, what the

1 scholarship limits are in Division I. There's
2 two different limits in Division I.

3 MS. GRAGERT: Let's stop there.

4 Q. If I can point you to there's a
5 specific email that you wrote, it would be on
6 Page 3 of the 4-page chain, and without having
7 to go read through the entire text for the
8 record, it appears to be a discussion of you
9 discussing whether the penalty should be 75 or
10 65 scholarships as being the reduction for the
11 penalties with regard to Penn State.

12 MS. GRAGERT: Is there a question?

13 Q. Is that a fair characterization of
14 it?

15 A. I think so. I think so.

16 Q. So were you, and without getting
17 into privileged communications, were you asked
18 to provide guidance or a recommendation on the
19 number of scholarships that should constitute
20 the reduction in scholarships for purposes of
21 the penalties against Penn State?

22 MS. GRAGERT: You can answer that
23 yes or no, were you asked to provide that
24 analysis, or I don't recall.

25 A. It appears that I was.

1 Q. It appears that initially the number
2 was going to be 75; is that correct?

3 MS. GRAGERT: Object to the form.

4 A. I'm not sure. I mean, I said I
5 think it's questionable, a limit of 75 total.
6 I'm not sure if 75 was mentioned somewhere or
7 not.

8 Q. Then it appears to be that you
9 recommended, it seems as though, a limit of 65
10 would be more appropriate?

11 A. I said I recommend a limit of 65
12 grants. Again, that's not my decision. I was
13 just brought in for context.

14 Q. Were you asked to advise or were you
15 asked for your advice or counsel with regard to
16 any other matters addressed within the consent
17 decree?

18 MS. GRAGERT: Again, it's just a yes
19 or no, or I don't recall.

20 A. I don't recall.

21 Q. Do you recall the scholarship issue
22 even?

23 A. Now that I read it, yes.

24 (Cooper Exhibit Number 4 marked for
25 identification.)

1 Q. This is Cooper Exhibit 4. To
2 provide some context for this email, it appears
3 to be a continuation of the prior email I just
4 showed you. At the bottom, you can see it's
5 titled Q and A on Scholarships.

6 A. Uh-huh.

7 MS. GRAGERT: Take a moment to read
8 it. Start at the back.

9 Q. Primarily just want to focus on the
10 second email from the top of the first page.
11 It's an email from you to, I believe, Joel
12 McGormley dated July 21st, 2012.

13 MS. GRAGERT: I just want to say, I
14 don't have any reason to believe that's not
15 correct. But just for the record, we don't
16 know for sure who it was sent to.

17 MR. SEIBERLING: Okay.

18 Q. For the record, it appears that Joel
19 McGormley then responded that same day. The
20 first sentence -- or I'm sorry the second
21 sentence below the redacted portion reads,
22 quote: As we discussed, getting Gene Marsh
23 involved would be prudent at this point.

24 Do you remember what you were
25 talking about as far as getting Gene Marsh

1 involved?

2 A. I believe he was a consultant with
3 Penn State. In the second sentence, it says
4 devised a plan, so. . .

5 Q. Was that related to, as far as you
6 can remember, related to the scholarship issue?

7 MS. GRAGERT: Was what?

8 Q. To get Gene Marsh involved.

9 A. I don't recall if it was
10 specifically scholarships or if it was just the
11 potential penalties in general.

12 Q. The prior email we discussed from
13 July 4th, 2012, at that point, were you aware
14 of Gene Marsh being retained as counsel for
15 Penn State?

16 A. I believe I was, yes.

17 MS. GRAGERT: Wait, wait, wait,
18 wait, I'm sorry. I'm not sure there's
19 clarity over which email you're talking
20 about, the first exhibit that we talked
21 about at the beginning, Exhibit 1?

22 MR. SIEBERLING: Exhibit 1.

23 MS. GRAGERT: So as of the date of
24 this email, did you know that Gene Marsh
25 had been, whatever --

1 Q. Had he been retained as counsel for
2 Penn State.

3 A. I think so.

4 Q. Do you know when you became aware of
5 when Gene Marsh was retained, the best you can
6 remember?

7 A. I don't. I don't recall.

8 Q. Did you have a conversation with him
9 about his retention?

10 A. I can't recall if I had a
11 conversation with him or if I read something
12 somewhere about his retention. I do remember
13 that he was in some remote location at some
14 cabin and got a call, but I can't recall. I
15 don't remember if he told me that or that's
16 something I read in an article.

17 Q. The next sentence, and this is
18 Exhibit 4 --

19 A. 4.

20 Q. -- reads: When he called me earlier
21 this week.

22 Do you remember receiving a call
23 from him around this time frame?

24 A. Other than what's in this email, I
25 don't remember the call.

1 Q. If you continue on: He specifically
2 said that he had devised a plan that he thought
3 would be satisfactory to everyone, parentheses,
4 NCAA, PSU, to include those who want to extract
5 a pound of flesh -- which is in quotes and you
6 have parentheses -- his words from the school.

7 Do you remember having a
8 conversation with Gene Marsh about this issue
9 and particularly the quote, a pound of flesh?

10 A. I don't, other than what's reflected
11 in this email.

12 Q. Do you remember him using that term,
13 a pound of flesh?

14 A. Not directly.

15 Q. And it continues on: So based on
16 that, my assumption is that he was the
17 architect or certainly one of the architects of
18 the sanctions set forth in the consent decree.

19 Do you remember him talking about
20 being the architect of the consent decree?

21 A. I don't. I think I said there, my
22 assumption. I don't recall him saying that.

23 Q. And you continue on: He is the
24 obvious go-to guy for the conundrum we find
25 ourselves in.

1 Again, if you can remember, do you
2 know what the conundrum was?

3 A. You know, I don't. I saw this
4 before. I can't recall what the conundrum
5 referred to.

6 Q. Do you remember having any
7 conversations with Gene Marsh between
8 July 12th, which would have been the release of
9 the Freeh Report, and July 23rd, which would
10 have been the date the consent decree was
11 signed?

12 A. I don't. It's over 2 years ago.
13 This is a case I was more or less an observer
14 for and no, I don't. I don't recall.

15 (Cooper Exhibit Number 5 marked for
16 identification.)

17 Q. Cooper Exhibit 5, this is an email
18 from Coop -- from Shep Cooper.

19 A. That's all right. Two last names.
20 I get that all the time.

21 Q. From Shep Cooper to Joel McGormley
22 dated July 22nd, 2012. Subject: ESPN
23 Reporting.

24 The first sentence reads: Citing
25 CBS, ESPN is reporting that NCAA president Mark

1 Emmert will announce, quote, unprecedented
2 penalties to be imposed on Penn State at
3 9:00 a.m. Monday morning. No details on
4 exactly what those, quote, unprecedented might
5 be.

6 It sounds like from reading this
7 email that you were unaware of what the
8 penalties were going to be at this time period?

9 A. That's correct.

10 Q. Why did you put in quotes,
11 unprecedented penalties, if you can remember?

12 A. I think I was citing to CBS and
13 ESPN.

14 Q. The next day, which would have been
15 July 23rd is when the consent decree became
16 public. Upon learning of the sanctions or the
17 penalties, I'm sorry, that were included within
18 the consent decree, did you find them
19 unprecedented?

20 MS. GRAGERT: Object to the form.

21 A. I don't recall thinking one way or
22 the other it was unprecedented. They obviously
23 were severe. Beyond that, I don't know that I
24 thought in context or in terms of
25 unprecedented.

1 Q. As a staff member in the office of
2 committee on infractions, is it your belief any
3 of the penalties that were ultimately imposed
4 by the consent decree could also have been
5 imposed through the infractions process?

6 MS. GRAGERT: Object to the form.

7 A. I don't know that I thought that at
8 the time. Anything I'd offer now would be
9 just --

10 Q. In hindsight, if you can. Any of
11 the penalties that were imposed against Penn
12 State, could they have been imposed through the
13 normal infractions process?

14 MS. GRAGERT: Object to the form.

15 A. I think they could have, yes.

16 Q. As a staffer in the office of
17 committee on infractions, were you expecting
18 the Penn State matter to come through or be
19 referred to the infractions process?

20 MS. GRAGERT: Object to the form.

21 A. I don't know that I expected it. I
22 don't recall that being -- even entering into
23 my mind as, like, this is an infractions issue
24 that needs to be handled. Again, I don't
25 recall.

1 Q. Were you surprised by the executive
2 committee exercising its jurisdiction over the
3 matter --

4 MS. GRAGERT: Objection.

5 Q. -- instead of going through the
6 normal infractions process?

7 MS. GRAGERT: Object to the form.

8 A. Given the unprecedented nature of
9 this case, I don't think I was surprised. I
10 mean, it could have been handled either way,
11 but this was not something that, you know, was
12 within my purview or authority. It was the
13 authority of the executive committee and the
14 Division I board of directors in consultation
15 with President Emmert. Again, that's beyond my
16 pay grade.

17 Q. But would it be your belief or
18 understanding that if jurisdiction wasn't
19 exercised by the executive committee, it would
20 have gone through the typical infractions
21 process?

22 MS. GRAGERT: Object to form.

23 A. Would have or could have? I suppose
24 it could have, yes. But again, that's not my
25 call.

1 Q. Did you attend the press conference
2 where these penalties and the consent decree
3 against Penn State were discussed?

4 A. No.

5 Q. After the consent decree was
6 executed and the press release or the press
7 conference was held, do you remember any issues
8 arising as far as student transfers with regard
9 to Penn State?

10 MS. GRAGERT: Object to the form.

11 A. I have some vague recollection of
12 some transfer issues.

13 Q. Were you asked to provide guidance
14 on -- with regard to some of those transfer
15 issues?

16 MS. GRAGERT: In order to avoid --
17 and I don't know if there's any privilege
18 here, but to avoid it, you can answer that
19 question yes, no, or I don't recall.

20 A. I seem to recall there was
21 something, yes.

22 Q. Were those -- was that request from
23 Donald Remy or someone within the legal
24 department?

25 MS. GRAGERT: Again, you can answer

1 yes, no, or I don't recall.

2 A. I don't recall where that question
3 came from.

4 Q. To the extent you can without
5 revealing privileged communications, what
6 guidance were you asked to provide with regard
7 to those transfer issues?

8 MS. GRAGERT: If you think this
9 may -- I caution you not to provide any
10 privileged communications. If you think it
11 may have done that, if it may impede on
12 privileged areas, then --

13 A. Okay. Yeah, it's possible that it
14 was in talking to counsel, Donald Remy, so I'm
15 not sure. I mean, if you have any documents or
16 something that might refresh my memory.

17 Q. I'll try asking it a different way.
18 The consent decree didn't get into
19 the specifics of student transfers; is that
20 correct?

21 MS. GRAGERT: What do you mean by
22 specifics? I'm sorry. I'm not trying to
23 be difficult. I just don't understand your
24 question, Mark.

25 Q. There were questions that fell

1 outside the four corners of the consent decree
2 related to student traverse; is that correct?

3 A. I don't recall exactly what was in
4 the consent decree relating to transfers.

5 (Cooper Exhibit Number 6 marked for
6 identification.)

7 Q. This is Cooper Exhibit 6. The first
8 email on the chain appears to be an invite for
9 a meeting on July 23rd, 2012. Subject: PSU
10 Transfer.

11 MS. GRAGERT: Unless you're going to
12 direct him to a specific point, can he have
13 a chance to finish reading the document?

14 A. Okay.

15 Q. Do you remember attending a meeting
16 to discuss Penn State transfer issues around
17 this time frame of July of 2012?

18 A. Sorry. Vague recollection.

19 Q. Do you remember seeing the document
20 that's attached to the email?

21 A. No, I don't.

22 Q. Does this help jog your memory about
23 any of the transfer issues that were being
24 discussed around this time?

25 MS. GRAGERT: You can say yes, no,

1 or I don't recall.

2 A. Again, I have some vague
3 recollection of some discussion about
4 transfers.

5 Q. If you can answer this question, why
6 would questions about transfer issues be
7 directed to you?

8 MS. GRAGERT: Objection. Calls for
9 speculation.

10 A. I'm not a hundred percent sure of
11 why --

12 MS. GRAGERT: I also caution you not
13 to relay information you learned from
14 counsel as to why you were brought into
15 this discussion.

16 Q. Does the office of committee on
17 infractions handle or deal with transfer issues
18 typically?

19 A. There is legislation relating to if
20 there's a post-season ban, that student
21 athletes can transfer without having to sit out
22 a year of residency. But that is an issue for
23 legislative -- actually, academic and
24 membership affairs. It's a waiver process. It
25 goes through them. And that's really the

1 extent of it.

2 (Cooper Exhibit Number 7 marked for
3 identification.)

4 Q. Cooper Exhibit 7, this is an email
5 chain from July 25th, 2012. Subject: Penn
6 State Exempted Contests.

7 Any idea what exempted contests
8 means?

9 A. Exempted contests are those that
10 don't -- they're exceptions to the limited
11 number of contests. One of the exemptions is,
12 as this email refers to, a game in Hawaii.
13 That would be in addition to the limit of
14 football games. I believe bowl games fall into
15 that as well. But there's an exemption for
16 traveling to Hawaii and playing in Hawaii.

17 Q. With regard to this email, what was
18 the correlation between Penn State and exempted
19 contests?

20 MS. GRAGERT: Objection. We're
21 getting into privileged area. Let me think
22 about this. You can explain how there's an
23 issue, what the issue was with exempted
24 contests and Penn State, but don't get into
25 any communications, just what the issue

1 itself was, nothing that you were told or
2 discussed about that issue with legal
3 counsel.

4 Q. Maybe I'll try to summarize it. And
5 I think the first email on the chain with
6 regard to the question from the sports writer
7 essentially summarizes the question. There was
8 an initial question addressed to the NCAA from
9 a sports writer, and you can correct me if I'm
10 summarizing it wrong, it appears to be could
11 Penn State based on its bowl ban or its
12 post-season ban, still play a game in Hawaii
13 and not be in violation of the terms of the
14 consent decree.

15 Does that sound correct?

16 A. It sounds correct, yes.

17 Q. And you were asked to advise or
18 provide guidance on a response to that
19 question; is that correct?

20 MS. GRAGERT: Yeah, I think you can
21 answer that question yes, no, or I don't
22 recall.

23 Q. It appears the answer is yes based
24 on the first email in the chain because you're
25 responding or providing your thoughts on that.

1 A. That appears to be the case.

2 Q. Let's focus on that email.

3 MS. GRAGERT: The top email?

4 Q. Yeah, the first email on the first
5 page. The first sentence reads: Joel, the
6 consent decree language did not explicitly say
7 exempted contest namely.

8 Can you provide any context -- after
9 hearing that statement, does that refresh your
10 recollection or --

11 MS. GRAGERT: Refresh his
12 recollection as to whether or not yes or no
13 he was asked to advise --

14 MR. SIEBERLING: Yeah.

15 MS. GRAGERT: -- on the questions
16 raised by the media reporter?

17 MR. SIEBERLING: Yeah.

18 A. It appears that I was. I don't
19 recall this other than reading this email.

20 Q. If you know, why would you be asked
21 to advise on what this, quote, exempted contest
22 issue was?

23 MS. GRAGERT: Objection. Calls for
24 speculation. And I caution you not to
25 provide any privileged information.

1 A. Well, it appears to be the response
2 from counsel, so ...

3 MS. GRAGERT: Let me offer this,
4 Mark. This is a little dicey. If you give
5 us a couple minutes to talk about it, maybe
6 we can provide more information here and
7 you can get more out of it, rather than us
8 trying to parse this out right now.

9 MR. SEIBERLING: I just want to ask
10 him about one paragraph in the email, and
11 we can probably move on.

12 MS. GRAGERT: Okay.

13 Q. The last paragraph in your response
14 of July 25th, 2012, you state, quote: It was
15 my belief that the consent decree was written
16 primarily for public consumption.

17 Was it your belief that the consent
18 decree was written for public consumption?

19 A. Again, I don't know. I mean, that's
20 speculation on my part there. I don't know if
21 that's true or not.

22 Q. At the time, that would have been
23 your belief?

24 A. My assumption.

25 Q. And it continues: And rightfully

1 did not include the technical jargon of a
2 typical infractions report such as, quote,
3 exempted contests.

4 Can you explain that statement or
5 give context to that statement, again without
6 revealing any attorney-client privileged
7 information?

8 A. I don't recall. I mean, other than
9 what it says, rightfully not including
10 technical jargon, I mean, I'm not sure.

11 Q. It appears that you're saying, and
12 you can correct me if I'm wrong, that the
13 consent decree as written didn't address
14 certain specific issues such as exempted
15 contests. Is that correct?

16 A. Again, plain reading of this
17 language, I assume that's the case. Again,
18 this is speculation on my part.

19 (Cooper Exhibit Number 8 marked for
20 identification.)

21 Q. Cooper Number 8, this is a rather
22 lengthy email, so if you need to take some time
23 to review it from the beginning.

24 MS. GRAGERT: Are you going to be
25 asking about the whole thing or are you

1 going to be zeroing in?

2 MR. SIEBERLING: I'm going to ask
3 his response to the first email, so it
4 makes sense to read the first email.

5 MS. GRAGERT: So take your time.

6 A. Okay.

7 Q. The first email on the chain is from
8 Jerry Parkinson to you dated July 26th, 2012.
9 Subject: Craziness.

10 Who's Jerry Parkinson?

11 A. Jerry is a former member of the
12 committee -- Division I committee on
13 infractions. He primarily handled appeals. He
14 was at that time also the dean at the
15 University of Wyoming school of law.

16 Q. After reviewing the email, do you
17 remember receiving this email?

18 A. Some vague recollection, yes.

19 Q. And I'm trying to summarize for
20 purposes of brevity. It appears he's asking
21 you some questions about the Penn State case.

22 A. Yes.

23 Q. Is that correct?

24 MS. GRAGERT: Among other things in
25 the email.

1 Q. Among other things.

2 And we can focus in on your
3 response, which is the second email in the
4 chain, which would have been the next day,
5 July 27th.

6 The first paragraph, you state:
7 Great hearing from you. Yes, the Penn State
8 case stirred things up around here.

9 Can you explain what you meant by:
10 Stirred things up?

11 MS. GRAGERT: Object to the form.

12 A. Just that it was an unprecedented
13 case that created quite a national stir, if you
14 will, and it impacted the national office.

15 Q. The next sentence states: Although
16 I had a hand in scrubbing some of the language
17 of the consent decree.

18 What did you mean by scrubbing?

19 MS. GRAGERT: I caution you not to
20 reveal any privileged communications.

21 A. Yeah, that would have been
22 communication with Donald Remy, so I think it's
23 privileged.

24 Q. Did you provide edits or revisions
25 or comments to the consent decree?

1 MS. GRAGERT: You can answer that
2 yes, no, or I don't recall.

3 A. No, not to the consent decree
4 proper.

5 Q. Can you explain, then, what you mean
6 by scrubbing if it's not edits?

7 MS. GRAGERT: Without explaining any
8 substance of the consent decree, just what
9 do you mean by the term scrubbing?

10 A. I think that would have been limited
11 to providing historical information relating to
12 past cases and penalties. That's the extent
13 that I recall, historical information on
14 penalties and past infractions cases.

15 Q. And to continue: It was exclusively
16 the product of the VP for legal affairs.

17 Would that have been Donald Remy?

18 A. Yes.

19 Q. Which we now fall under.

20 And that would be a reference to the
21 office of committee on infractions still
22 being -- or being relocated on the structural
23 chart to being under the legal department?

24 A. Yes.

25 Q. President Emmert, the executive

1 committee, and the Division I board of
2 directors, no COI input.

3 I assume COI is committee on
4 infractions?

5 A. Correct.

6 Q. Do you believe there should have
7 been committee on infractions input?

8 MS. GRAGERT: Object to the form.

9 A. Do I believe, what my opinion is?

10 Q. Yes.

11 A. I honestly don't have an opinion one
12 way or the other.

13 Q. Were you offended that there was no
14 input from COI?

15 A. No.

16 MS. GRAGERT: Object to the form.

17 A. No.

18 Q. You did not consider this scrubbing
19 to be input from committee on infractions?

20 A. The scrubbing wasn't from the
21 committee on infractions.

22 Q. From the office of committee on
23 infractions?

24 A. Scrubbing, again, referred to my
25 involvement, which was limited to primarily

1 historical information relating to past
2 infractions cases and the penalties imposed.

3 Q. Were you surprised that there was no
4 committee on infractions input?

5 MS. GRAGERT: Object to the form.

6 A. I don't recall being surprised or
7 not surprised.

8 Q. The next sentence reads: This
9 caused a bit of grumbling by some members of
10 the COI.

11 Can you explain what the grumbling
12 was?

13 A. As I recall, some members thought
14 perhaps it should have gone through the
15 infractions process, but I don't recall
16 specifically who, to what extent there was.
17 There was, I know that the committee, I do
18 recall that Britton talked to them, Britton
19 Banowsky who was the chair at the time, and he
20 alleviated any concerns that they had.

21 Q. You said you cannot remember anyone
22 specifically who believed it should have gone
23 through the committee on infractions?

24 MS. GRAGERT: Object to form.

25 Q. Or went to the committee on

1 infractions?

2 MS. GRAGERT: Object to the form.

3 A. I don't recall.

4 Q. The sentence continues: But after
5 some conference calls with the COI led by
6 current chair Britton Banowsky, the COI's new
7 managing director, Joel McGormley and me, they
8 were less concerned.

9 Do you remember what you said or
10 anyone else on this call, as in the current
11 chair or the managing director said to
12 alleviate their concerns?

13 A. I don't recall any specifics, no.

14 Q. If you can skip ahead a little bit:
15 It was thought that if the enforcement process
16 was employed, it would have taken too long.

17 Was that your belief? Was that
18 communicated to you? Can you explain any
19 context of what you meant by that?

20 A. You know, I don't recall if it was
21 somebody or something that someone said or if
22 that was my own opinion. I simply don't
23 recall.

24 Q. And it continues on: And in all
25 likelihood, many, if not most, of the

1 principals in the case would not have been
2 inclined to speak with the NCAA.

3 Again, was that your belief or was
4 that something that was told to you?

5 A. I don't recall. I can say that the
6 NCAA does not have the power of subpoena, so
7 people don't have to speak to the NCAA. They
8 have no power to compel people to speak, so
9 that may have been my personal opinion, but I
10 don't recall.

11 Q. And then it finishes up: Because
12 they are no longer employed at PSU and two of
13 them are under criminal indictment.

14 Were you explaining there, that
15 sounds to be a reaction to the lack of subpoena
16 power?

17 A. I think that's correct, yes.

18 Q. And finally it says: Further, the
19 Freeh Report was available, which made
20 conclusions, and it was highly unlikely that an
21 NCAA investigation would have been more
22 comprehensive.

23 Again, was that your belief or was
24 that something that was told to you?

25 A. I don't recall.

1 Q. The next paragraph begins: With
2 regard to your question about an athletic
3 integrity monitor, that concept has been on the
4 radar of the enforcement working group for
5 months, even before the PSU case broke.

6 Can you provide some context for
7 that statement? It appears as though there was
8 some discussion about an athletic integrity
9 monitor?

10 A. Yeah, I recall that there was a
11 presentation by this group, I think it's in
12 here, it's called Guidepost Solutions, where
13 they presented a proposal, I mean, it wasn't
14 written or anything, it was just an informal
15 meeting, to monitor institutions who have had
16 infractions cases to make sure that they're
17 complying with penalties and regaining
18 institutional control, whatever.

19 So that was something -- an issue
20 that was discussed in the enforcement working
21 group, and I think that's what I was referring
22 to here.

23 Q. Typically, the monitor role would be
24 performed by the committee on infractions; is
25 that correct?

1 A. No, that's not correct. Well, let
2 me go back. There is monitoring in the sense
3 that institutions that are put on probation are
4 required to file a preliminary compliance
5 report within 45 days of the issuance of the
6 infractions decision. Thereafter, those
7 compliance reports are submitted annually.

8 So in that sense, there's monitoring
9 but not actual on-site oversight. It's a
10 document that's submitted. They show --
11 reflect compliance with penalties, things of
12 that nature. So that's the extent, if you
13 will, of monitor.

14 Q. So what role or potential role would
15 this monitor have performed in the context of
16 this email?

17 MS. GRAGERT: Objection to form.

18 Q. I guess I'm not understanding what
19 was Guidepost pitching to you as far as a
20 monitor and what would that monitor do for
21 NCAA?

22 MS. GRAGERT: Object to the form.

23 A. First, Guidepost didn't propose
24 anything related to Penn State.

25 Q. The proposal they provided, what was

1 that for?

2 A. To essentially -- you know, I think
3 they used the analogy of banking regulations
4 being broken and that they can go in and
5 monitor banks and financial institutions and
6 things of that nature, and so they were
7 proposing that concept, if you will, to make
8 certain that there's somebody physically at an
9 institution making sure they're doing what
10 they're supposed to do to be in compliance with
11 the penalties, to make sure they're going to be
12 in compliance with institutional control,
13 things of that nature.

14 Q. The next sentence reads: To be
15 honest, before the Penn State case, there was
16 little support for this forum -- for this from
17 the members of the COI, as well as Joel, the
18 managing director, and me.

19 So based on that sentence, it sounds
20 like you at least initially were against the
21 idea of any type of third-party monitor.

22 MS. GRAGERT: What's the question?

23 Q. Was he against the idea of having
24 some outside company perform a monitor
25 function?

1 A. I think I had some concerns as it
2 related to infractions cases.

3 Q. What were those concerns?

4 A. I think who would pay for this
5 monitorship was one of them. That's the extent
6 of what I can recall. I think it was mainly a
7 financial situation.

8 Q. The next sentence reads: However,
9 now that it is part of the Penn State
10 penalties, it has come back to the forefront.

11 What with regard to the Penn State
12 penalties brought it back to the forefront, if
13 you know?

14 A. You know, I don't recall. I assume
15 that maybe that was part of the consent decree,
16 that there was a monitorship required.

17 Q. If we can flip, then, to the next
18 email in the chain. It's from Jerry Parkinson
19 to you. He's responding to your email of July
20 27th, 2012.

21 If we could skip down, I just want
22 to ask you a couple of questions about the last
23 paragraph of your email.

24 A. My email?

25 Q. Yeah.

1 MS. GRAGERT: Jerry's email.

2 MR. SEIBERLING: I'm sorry, Jerry's
3 email.

4 Q. The last paragraph, I believe it's
5 the third sentence in says, quote: I do know
6 the Freeh Group, an entity separate and apart
7 from the law firm of Freeh, Spork & Sullivan,
8 that did the PSU investigation and report is
9 interested in moving into NCAA matters.

10 Were you aware of the Freeh Group
11 trying to -- or being interested in NCAA
12 matters?

13 A. No.

14 Q. Were you aware of the Freeh Group
15 pitching anyone within NCAA about handling any
16 type of NCAA matter?

17 A. I was not.

18 Q. The next sentence reads: They had a
19 role in the USC case too, as you probably know.

20 Were you aware of the Freeh Group
21 having any type of role in the USC case?

22 A. No.

23 Q. Did anyone from the Freeh Group ever
24 pitch you or the office of committee on
25 infractions?

1 A. No.

2 Q. The final email on this chain, will
3 be the one at the very top of the first page,
4 it's from Joel McGormley to you. And it says,
5 quote: I would like to refrain from offering
6 up info and assistance even to past COI
7 members, re: PSU.

8 Why was Joel McGormley telling you
9 to -- maybe I'm mischaracterizing, you can tell
10 me if I am, that you should refrain from
11 offering up info or assistance to past COI
12 members, re: PSU?

13 MS. GRAGERT: Objection. Calls for
14 speculation.

15 A. Yeah, you have to ask Joel.

16 Q. Did you have a conversation with him
17 about it?

18 A. Not that I recall.

19 Q. After receiving this email, did you
20 stop communicating with past COI members
21 regarding Penn State?

22 A. Yes. To my knowledge.

23 THE WITNESS: Can I take a restroom
24 break.

25 MR. SEIBERLING: I was just going to

1 recommend a break.

2 (A short break was had.)

3 (Cooper Exhibit Number 9 marked for
4 identification.)

5 Q. We will show you Cooper
6 Exhibit 19 -- I'm sorry, Exhibit No. 9.
7 Hopefully we don't get to 19 today.

8 This appears to be a continuation of
9 one of the prior email chains I showed you
10 regarding exempted contests.

11 A. Uh-huh.

12 Q. If we could just focus in on the
13 second page, there's an email from you to Stacy
14 Osborn, July 26, 2012, cc to Joel McGormley. I
15 believe you mentioned this before, but who's
16 Stacy Osborn?

17 A. She works in the public affairs
18 office.

19 Q. She's the media person you
20 identified?

21 A. She's one of them, yeah.

22 Q. The paragraph reads: Not to be
23 critical, but can you tell me how a question
24 like this gets routed to AMA for an interp.

25 Who or what is AMA?

1 A. Academic and Membership Affairs.
2 They're the ones that handle questions that
3 might arise about rules.

4 Q. Could you give us some context of
5 what you were saying here? It appears a
6 question went to them instead of you; is that
7 correct?

8 MS. GRAGERT: I think that question
9 is a privileged question, potentially, so I
10 just caution you not to provide any
11 privileged communications.

12 Q. Isn't the question the first email
13 on the chain related to the --

14 MS. GRAGERT: Until that's
15 established. I just don't remember. I
16 just don't want to --

17 Q. And if you can flip to the last
18 email, I believe it's the same question of Penn
19 State potentially playing a game in Hawaii; is
20 that correct?

21 A. Yeah, it appears to be, yes.

22 Q. Why would, if you know, why would
23 that question get directed at least initially
24 to the AMA?

25 A. I don't know. I think that's what I

1 asked.

2 Q. Do you remember getting a response
3 as to why it was sent there first?

4 A. You know, I'm trying to reconstruct
5 what happened here. It looks like it may have
6 been sent first to media affairs, media
7 relations, and then someone on their staff
8 referred it to AMA.

9 Q. And then it made its way to your
10 desk?

11 A. It might have, yes.

12 Q. The next sentence reads: First, as
13 everyone should know, this decision came from
14 Mark Emmert and the highest levels of the
15 association's governance. It wasn't a rule
16 that needed to be interpreted.

17 If you can provide any context, what
18 rule needed to be interpreted or what rule
19 didn't need to be interpreted?

20 A. I think I was saying there wasn't a
21 rule that needed to be interpreted. I mean,
22 that's what AMA's function is, is to interpret
23 the bylaws if there's ever any ambiguity or
24 question about it. So I guess I was puzzled as
25 to why this type of question went to AMA, which

1 really wasn't a rule question.

2 Q. So if I can summarize, you're
3 basically saying the question should have come
4 to the committee on infractions, or the of
5 office of the committee on infractions, and not
6 AMA?

7 MS. GRAGERT: Object to form.

8 A. Yeah. Initially it should have
9 come to -- usually, when there's questions
10 about penalties, it comes to the office of the
11 committee on infractions.

12 Q. I believe the next sentence answers
13 that: Further, even if there was issue about
14 penalty under the normal enforcement infraction
15 processes, a question such as this should have
16 gone to the office of the COI. And in
17 parentheses it says: Even though the COI
18 didn't impose these penalties on PSU, it would
19 have been better even in this case to route
20 such questions exclusively to the OCOI as we
21 were involved in scrubbing the language and the
22 fact that we now fall -- now fall under the
23 office of legal affairs.

24 A. Right.

25 Q. Again, you used the term scrubbing

1 the language. In this context, it sounds
2 you're scrubbing the language. Before you used
3 scrubbing in the context of providing
4 historical insight.

5 Does this change that prior
6 statement?

7 A. I can only -- Sorry. I can only
8 speak to what I did, and that was provide
9 historical context.

10 Q. You personally didn't scrub any
11 language that you remember?

12 MS. GRAGERT: Well, I think the term
13 scrubbing is causing trouble. Do you mean
14 revise or edit language?

15 Q. It's the term is vague to me, too.

16 A. I don't recall editing the consent
17 decree.

18 Q. Okay. If we can flip to the first
19 email on the first page. This is an email from
20 you to Joel McGormley, July 26th, 2012. Below
21 the redaction box, the first paragraph reads:
22 I wouldn't think the PSU folks would push back
23 on this narrow issue, although Gene said there
24 are some real hotheads on the board of
25 directors who are pretty combative in response

1 to the current state of affairs, as opposed to
2 most who have accepted the punishment and
3 simply want to move on as quickly as possible.

4 Do you remember having a discussion
5 with Gene Marsh about hotheads on the board of
6 directors of Penn State?

7 A. No, other than what's in this email,
8 I don't recall.

9 Q. Do you remember having any
10 conversations with Gene about the Penn State
11 board of directors?

12 A. I don't.

13 Q. Do you remember having any
14 conversations with Gene Marsh about the consent
15 decree?

16 A. No, I don't. Not that I recall.

17 (Cooper Exhibit Number 10 marked for
18 identification.)

19 Q. Exhibit Number 10, this is another
20 pretty extensive email chain. If we can just
21 focus in on the last two on the chain, which
22 would be the first two on the first page. Does
23 that make sense?

24 A. Uh-huh.

25 Q. In the middle of the first page,

1 you'll see an email dated July 27, 2012, from
2 you. And it appears to be from Joel McGormley,
3 although it's unclear from the email itself,
4 saying, quote: Apparently he had a pretty
5 heated conversation last week with Donald and
6 David Berst regarding application of the
7 so-called death penalty in the Penn State case.

8 Who were you talking about in that
9 email as far as having a heated conversation
10 with Donald Remy and David Berst?

11 A. I believe it was Gene Marsh.

12 Q. Do you remember having a
13 conversation with Gene Marsh -- about a heated
14 conversation between Donald Remy and David
15 Berst?

16 A. Again, other than what's reflected
17 in this email, I don't.

18 Q. The first sentence on the email
19 chain -- or first email on the email chain is
20 again, July 27th, 2012, from you to Joel
21 McGormley. Quote: Gene said he got in their
22 shorts about that issue.

23 Do you remember discussing with Gene
24 Marsh him getting, allegedly getting into the
25 shorts of Donald Remy and David Berst?

1 A. I do recall in my years working with
2 Gene, that he used that term. So that seems to
3 fit his colloquialisms and his speech. He also
4 says "get in their knickers" when he's speaking
5 about an argument.

6 Q. That's a phrase commonly used by
7 Gene Marsh, at least that you're familiar with?

8 A. As I recall, yes.

9 MS. GRAGERT: Sounds like a good old
10 Alabama boy.

11 A. Yeah.

12 Q. The next sentence reads: He said
13 that Berst, who had a hand in writing much of
14 the legislation in 19 and 32 -- Any idea what
15 19 and 32 are?

16 A. Those are bylaws. There used to be
17 separate bylaws in 19 and 32 that addressed the
18 enforcement and infractions process. They've
19 all been consolidated into bylaw 19 now.

20 Q. Generally, do you know what those
21 bylaws read or provide?

22 A. They provide how the enforcement
23 infractions process work, how it's supposed to
24 be handled, to include potential penalties that
25 could be applied. Just the process, mainly

1 process.

2 Q. Continuing: Over the course of many
3 years during the 1970s, '80s, and '90s,
4 insisted that the prohibition on competition,
5 parentheses, death penalty, could be applied in
6 the PSU case, even though legislatively that
7 doesn't appear true, parentheses, PSU wasn't a
8 repeat violator.

9 So if we can break that sentence
10 down. And I don't want to mischaracterize what
11 you were saying or meant. It sounds as if
12 David Berst believed that the death penalty
13 could be applied to Penn State. Is that
14 correct?

15 MS. GRAGERT: Objection. Calls for
16 speculation.

17 A. Again, what's in this email, I mean,
18 I don't recall other than what's reflected in
19 this email.

20 Q. Did you believe that the death
21 penalty could be applied to Penn State in this
22 matter?

23 A. There is language in the legislation
24 that talks about other penalties as
25 appropriate, I believe. And I don't know if

1 that's a direct quote or not. So in that
2 sentence, under that kind of catchall, I think
3 it could be applied.

4 Q. The sentence, that sentence makes a
5 reference to legislatively, it appears that the
6 death penalty could only be applied in repeat
7 violator situations.

8 Was that your belief?

9 A. I think at that time, I said that
10 doesn't appear to be true, which is not a
11 definitive statement. Historically, the death
12 penalty has only been applied once. Well,
13 actually once in Division I. I think it's been
14 applied in some other divisions. But that was
15 in the SMU case. And typically, that is in
16 repeat violator cases, although under that
17 catchall, appropriate penalties, theoretically
18 I think could have been applied.

19 Q. Assuming the Penn State matter had
20 gone through the typical infractions process,
21 is it your understanding that the death penalty
22 could have been one of potentially numerous
23 penalties that could have been interposed?

24 MS. GRAGERT: Object to the form.

25 A. It's speculation. I suppose it

1 could have been. Again, it didn't go through
2 the process. It's speculation at this point.

3 Q. Did you discuss with anyone else,
4 obviously besides Joel McGormley in this email,
5 this alleged heated conversation between David
6 Berst and Donald Remy?

7 A. No, not that I recall.

8 Q. Do you remember if you asked or
9 inquired of Donald Remy or David Berst about
10 this alleged heated conversation?

11 A. I did not.

12 (Cooper Exhibit Number 11 marked for
13 identification.)

14 Q. Exhibit 11, again, it's difficult to
15 tell because of all the redactions. But based
16 on the subject matter, this again appears to be
17 another email chain discussing the exempted
18 contests issue with regard to Penn State. Does
19 that sound accurate?

20 A. From what the email reads, it talks
21 about post-season ban language. I mean, you're
22 right. There's a lot of redactions here.
23 Yeah, there is a reference to post-season ban
24 and exempted contests, yes.

25 Q. The first un-redacted email in the

1 chain is an email from Joel McGormley to you
2 dated July 27, 2012. And it states: Shep,
3 frame this for me. Is Gene working and playing
4 us by seeking language from you?

5 What was your understanding or can
6 you explain what Joel McGormley was saying
7 there?

8 MS. GRAGERT: I caution you not to
9 reveal the contents of any privileged
10 information.

11 A. I don't. I think you'd have to ask
12 Joel. I don't really specifically recall this
13 email, other than reading it here. I think
14 you'd have to ask Gene what he meant by that --
15 excuse me, Joel.

16 Q. Did Joel discuss with you any
17 concerns that Gene Marsh might be working or
18 playing you in particular?

19 MS. GRAGERT: Again, I caution you
20 not to reveal any privileged information.

21 A. Again, other than what's in this
22 email, no, I don't recall any other
23 conversations.

24 Q. And if you can flip to the first
25 page. And if we could just focus on your email

1 at the top, which is the first email on the
2 first page. You state to Joel McGormley, this
3 is July 27, 2012, quote: I'm very fond of
4 Gene, but I need to be mindful that he is now a
5 hired gun working for clients who expect him to
6 act in their best interests.

7 Could you provide some context for
8 that email? What did you mean by hired gun?

9 MS. GRAGERT: Again, I caution you
10 not to provide the content of privileged
11 information.

12 A. I think I was just reacting to what
13 Joel had said and kind of a warning that, you
14 know, despite the fact that Gene Marsh is a
15 friend, he works for institutions and we should
16 be careful about what we say to him.

17 Q. Was Joel warning you to stop
18 communicating with Gene Marsh about the Penn
19 State matter?

20 MS. GRAGERT: Objection. Calls for
21 speculation.

22 A. I suppose that could be implied
23 here, but you'd have to ask Joel.

24 Q. Did Joel talk to you about your
25 communications with Gene Marsh?

1 A. I don't recall any conversations,
2 other than what's reflected in these emails.

3 (Cooper Exhibit Number 12 marked for
4 identification.)

5 Q. Exhibit 12 --

6 A. Do I need to read the whole --

7 Q. No, the article is just attached for
8 reference.

9 A. Oh, okay.

10 Q. The initial email has a link to the
11 article.

12 MS. GRAGERT: Can we just make clear
13 for the record that this article was not an
14 attachment to the email?

15 MR. SEIBERLING: Yeah, that's fine.

16 Q. The first email is from Don Vannatta
17 to Gene Marsh, subject: ESPN.com, the Penn
18 State negotiations. It's dated August 3rd,
19 2012. And again, it appears to be an email
20 from Vannatta to Marsh providing a link to an
21 ESPN, a magazine article.

22 The next email on the chain is an
23 August 14th, email, 2012, from Gene Marsh to
24 you, forwarding his -- the email he received
25 from ESPN with the link. And in the text he

1 says to you, quote: See the great choice we
2 had.

3 Do you remember reading the article
4 after Gene Marsh forwarded it to you?

5 A. No, I don't.

6 Q. What was your understanding of what
7 Gene Marsh said as far as see the great choice
8 we had?

9 A. You'd have to ask Gene Marsh. I
10 can't speculate on what he was thinking.

11 Q. The article, and I'm trying to
12 paraphrase the article, one of the
13 allegations -- even in the first paragraph, if
14 you can just read the first paragraph, it
15 focuses on Gene Marsh's communications with
16 Donald Remy, who was the counsel for the NCAA;
17 is that correct?

18 A. It appears to be referring to Donald
19 Remy, yes.

20 Q. So the -- in the first paragraph it
21 reads: The news -- and I'm towards the end of
22 the first paragraph, and I'm trying to skip
23 ahead to save time.

24 A. Sure.

25 Q. And it references a phone call from

1 Donald Remy to Gene Marsh. And it continues
2 on: The news was grim. Remy said Penn State
3 was facing an unprecedented punishment, a
4 multiple-season death penalty, no football for
5 years. Are you overselling this, Marsh asked.
6 Absolutely not, Remy said.

7 Did Gene Marsh discuss with you any
8 of the conversations you had with Donald Remy?

9 A. Not that I recall.

10 Q. Did Gene Marsh discuss with you any
11 threat of a so-called death penalty?

12 A. Again, not that I recall.

13 Q. Did Gene Marsh discuss with you any
14 choices that Penn State was given with regard
15 to the Penn State matter?

16 MS. GRAGERT: Object to the form.

17 A. Again, not that I recall.

18 Q. From the emails we've seen today,
19 you seem to have been, around this time frame,
20 July/July 2012, communicating with Gene Marsh.
21 Is that correct?

22 MS. GRAGERT: Object to the form.

23 A. To the extent that the email record
24 reflects.

25 Q. Can you remember any conversations

1 around this time that you had with Gene Marsh
2 that haven't been memorialized in any of these
3 emails?

4 A. You know, I don't. I'm 60 years
5 old, and a lot has happened in the last 2
6 years. I don't recall any of the
7 conversations.

8 Q. Was Gene Marsh discussing with you
9 any of the potential penalties that could be
10 imposed against Penn State?

11 A. Again, not that I recall.

12 Q. Were you aware of any appeals being
13 lodged with regard to the consent decree?

14 MS. GRAGERT: Object to the form.

15 A. I was not.

16 Q. Were you aware of the Paterno family
17 attempting to appeal?

18 A. I was aware the Paterno family had
19 filed a lawsuit. I maybe had some vague
20 recollection of an appeal, but I don't know the
21 particulars of it.

22 (Cooper Exhibit Number 13 marked for
23 identification.)

24 Q. Cooper Exhibit Number 13. This
25 document doesn't appear to have Bates numbers

1 on it. It was produced to you. We had this
2 issue on Tuesday, I believe, with some of the
3 documents not having Bates numbers on them.

4 MR. GARDNER: If it's marked as an
5 exhibit, no big deal.

6 Q. This is an email chain that appears
7 to have begun on August 13th, 2012. Subject:
8 Emmert and UNC. The first email is from Tom
9 Johanningmeier.

10 A. Rich. Rich Johanningmeier.

11 Q. Who's that?

12 A. He's a former NCAA enforcement staff
13 member, retired. He was also a former coach
14 of, football coach. He's known my dad for a
15 number of years.

16 Q. Whose email, if you know, is
17 coachjoah@att.net --

18 A. That's him, Rich Johanningmeier, the
19 person I just described.

20 Q. So it appears he was sending it from
21 his work account to his personal account?

22 A. No, Rich is retired.

23 Q. I'm sorry, then who is Tom
24 Johanningmeier, if you know?

25 A. I don't. Maybe his brother.

1 Q. So the next email in the chain is
2 Rich Johanningmeier forwarding it, forwarding
3 the story from the Sporting News in the first
4 email to you and others. Do you remember
5 receiving this email?

6 A. I don't.

7 Q. If we can skip then up to your
8 response to Rich Johanningmeier. You state:
9 Rich, thanks. Interesting. As the writer
10 said, taking action in a case involving a child
11 sex offender resonates with the general public
12 and guarantees rave reviews when the NCAA takes
13 unprecedented action. Let's see if the
14 leadership around here will step up and take on
15 the UNC academic fraud issue. It's all about
16 image with the NCAA national of office
17 nowadays.

18 What was your understanding of the
19 UNC academic fraud issue?

20 MS. GRAGERT: Well, I'm a little
21 concerned we're going to get into
22 confidential information about an ongoing
23 investigation.

24 Q. Is there an on --

25 MS. GRAGERT: I don't know. So can

1 we take a minute, step outside for just a
2 second and talk about this?

3 MR. SEIBERLING: Yeah.

4 MS. GRAGERT: Let's take a minute.

5 (A short break was had.)

6 MS. GRAGERT: Back on the record.

7 Did you want to read the question again?

8 MR. SEIBERLING: Yeah, I will start
9 over. Back on the record.

10 BY MR. SEIBERLING:

11 Q. Your email in the second -- I'm
12 sorry, the third sentence in your email reads,
13 quote: Let's see if the leadership around here
14 will step up and take on the UNC academic fraud
15 issue.

16 Can you explain what you meant by
17 the leadership around here stepping up?

18 A. I think I wondered whether or not
19 this North Carolina academic issue would be
20 something that the NCAA would take on. We
21 don't -- our office is not involved with
22 whether or not -- or deciding whether cases
23 come forward. I just speculate. I just
24 wondered if that's going to be a case.

25 Q. Why did you have concerns that the

1 NCAA leadership wouldn't take on a certain
2 issue?

3 MS. GRAGERT: Object to the form.

4 A. I don't have concerns. I just
5 speculated, let's see.

6 Q. Had there been other instances where
7 the NCAA hadn't taken on issues that, at least
8 in your mind, the NCAA should have taken on?

9 MS. GRAGERT: Object to the form.

10 A. No, I'm not aware of any.

11 Q. The next sentence reads: It's all
12 about image with the NCAA national office
13 nowadays. Can you explain what you meant by
14 it's all about the image with NCAA national
15 office nowadays?

16 A. I think I addressed the image issue
17 later in this deposition. The NCAA is a
18 national organization. It gets a lot of
19 attention. I think the leadership at NCAA
20 rightfully is concerned about its image. Image
21 includes holding member institutions
22 accountable. It's about credibility. It's
23 about upholding the principles of institutional
24 control, upholding the principles of honesty,
25 fairness and sportsmanship. I mean, that's all

1 part of the image and credibility of the
2 national office. Actually, it's a good thing.

3 Q. Were you concerned that the NCAA
4 wouldn't step up in certain circumstances in
5 order to protect its image?

6 MS. GRAGERT: Object to the form.

7 A. No. I wasn't.

8 Q. Were you -- did you have concerns
9 that the NCAA wouldn't take on certain issues
10 in order to preserve its image?

11 A. No.

12 Q. Do you still believe that the NCAA
13 is concerned about its image?

14 MS. GRAGERT: Object to the form.

15 A. I'm not concerned. I think I've
16 answered that question. I mean, it's -- every
17 large organization is concerned about its
18 image, and part of that image is doing the
19 right thing.

20 Q. But if I can quote your statement in
21 the email, you say, quote, it's all about image
22 with the NCAA national office nowadays. Is
23 that your belief even today, that it's all
24 about image with the NCAA?

25 A. Image is something the NCAA is

1 concerned about. Absolutely. Probably more so
2 in recent years, because it wants as an
3 organization to do the right thing.

4 (Cooper Exhibit Number 14 marked for
5 identification.)

6 Q. Exhibit 14. This is an email chain
7 from May of 2013, subject: Litigation hold
8 email. The first email on the chain appears to
9 be a May 11, 2013 email from you to Gene Marsh.
10 And you appear to be discussing a litigation
11 hold. To the best of your ability, can you
12 explain why you were emailing Gene Marsh about
13 a litigation hold?

14 MS. GRAGERT: Object to the form.

15 A. It would be speculation on my part.
16 I think I was just letting him know that there
17 was a litigation hold.

18 Q. Why was there a litigation hold in
19 place, do you know?

20 MS. GRAGERT: Object to form. It
21 calls for privileged information.

22 MR. SEIBERLING: The existence of a
23 litigation hold?

24 MS. GRAGERT: You asked why was
25 there a litigation hold.

1 Q. For what case or what matter was
2 there a litigation hold in place?

3 A. My assumption, it was something to
4 do with Penn State.

5 Q. The second paragraph in your email
6 to Gene reads: I think with litigation holds
7 on email, it is advisable that Gene and others
8 email your personal home account on the things
9 that are most -- that are more personal
10 commentary or personal. I leave it to you to
11 advise him. Merely knowing of the occurrence
12 is helpful, though. Thanks for forwarding.

13 That paragraph appears in quotes.
14 Is that a quote from someone else?

15 A. It appears to be. I'm not a hundred
16 percent sure who it's from.

17 Q. Would that have been a quote from
18 Joel McGormley?

19 A. That's possible.

20 Q. So if I could summarize, you were
21 being advised to, if you were going to have
22 personal emails with Gene Marsh, they should be
23 sent on your personal account and not your NCAA
24 account; is that correct?

25 MS. GRAGERT: Object to the form.

1 Mischaracterizes testimony.

2 A. It appears. Again, it's looking at
3 what that quote says, that anything personal
4 should probably go to my home account.

5 Q. Do you remember having a
6 conversation with Joel McGormley about
7 communicating with Gene Marsh on your personal
8 account as opposed to your NCAA account?

9 A. Other than what's in this email, no.

10 Q. As a result of this email or your
11 conversation with Joel McGormley, did you stop
12 or cease emailing Gene Marsh on your NCAA
13 account?

14 MS. GRAGERT: Object to the form.

15 A. I believe I've had some
16 communication with Gene through my NCAA
17 account. It's -- I think he sent me some
18 fishing pictures and things of that nature.

19 Q. But is it now your practice if
20 you're going to communicate or email Gene
21 Marsh, to do so on your personal account as
22 opposed to your NCAA account?

23 A. I don't recall sending anything to
24 Gene from my home account, other than what's in
25 here, since then.

1 Q. Any idea why Joel McGormley was
2 advising you on this personal email issue?

3 MS. GRAGERT: Object to the form.
4 Calls for speculation.

5 A. I think you'd have to ask Joel.

6 MS. GRAGERT: Before we move on, I
7 want to make note for the record that we
8 made a production from Mr. Cooper's
9 personal email, provided all responsive
10 documents from his personal email account
11 that would have related to Gene Marsh.

12 MR. SEIBERLING: I thought we had
13 just given you search terms to do that.

14 MS. GRAGERT: Yes, and we completed
15 it yesterday. That was the production we
16 ran yesterday.

17 MR. SEIBERLING: And that's been
18 produced to us?

19 MS. GRAGERT: Yes, and there was
20 nothing from Gene Marsh.

21 MR. SEIBERLING: Were there other
22 responsive emails?

23 MS. GRAGERT: The three that were
24 provided, which were news stories that he
25 forwarded on.

1 MR. SEIBERLING: Ah. So this email
2 you obtained from Mr. Cooper's personal
3 account.

4 MS. GRAGERT: So this email we
5 obtained through the NCAA's server. I'll
6 state for the record, we believe
7 Mr. McGormley had cc'd himself. This was
8 on the NCAA system.

9 Q. Do you use your personal account for
10 work-related emails at all?

11 A. Very rarely.

12 Q. Under what circumstances would you
13 use your personal account?

14 A. I remember last year, we were
15 getting ready to have a training session,
16 and -- with the committee on infractions, and I
17 was putting together some training material on
18 my home account that I -- was work-related.

19 Q. So that you could work from home?

20 A. Yes.

21 Q. But typically, NCAA business
22 matters, you use your NCAA the account?

23 A. Correct.

24 (Cooper Exhibit Number 15 marked for
25 identification.)

1 Q. I show you Exhibit 15. This is an
2 appointment invitation dated May 28th, 2013.
3 It's from you to Joel McGormley and Gene Marsh,
4 subject: Lunch with Gene Marsh.

5 Do you remember having lunch with
6 Gene Marsh in or around the time frame of June
7 4th, 2013?

8 A. I don't.

9 Q. Within the last 2 years, do you
10 remember having lunch with Gene Marsh?

11 A. I went to dinner with Gene Marsh
12 this past summer, along with my long-time
13 assistant, Cheryl DeWees. He was in town and I
14 went to dinner with him along with Cheryl.

15 Q. During that dinner, did you discuss
16 the Penn State matter?

17 A. We did not.

18 Q. Prior to that dinner, when is the
19 last time, if any, you remember having lunch or
20 dinner with Gene Marsh?

21 A. I don't recall any other times of
22 having a meal with him other than what's
23 reflected in this email, and I don't remember
24 that. I do remember in the last 3 months,
25 going to dinner. That's the extent.

1 Q. Do you remember a lunch or dinner
2 with Gene Marsh where Joel McGormley in
3 particular was also present?

4 A. I don't.

5 Q. Is Joel McGormley also friends with
6 Gene Marsh?

7 A. No.

8 MS. GRAGERT: Object to form.

9 A. I'm sorry. No.

10 Q. Any idea why Joel McGormley would be
11 joining you and Gene Marsh for lunch?

12 MS. GRAGERT: Object to the form.

13 A. No, I don't. I just don't remember
14 this lunch.

15 MR. SEIBERLING: Can we take a quick
16 break, and hopefully hit the home stretch.

17 (A short break was had.)

18 BY THE WITNESS:

19 A. For the record, I reviewed
20 Exhibit 14 on that litigation hold. And on
21 further review, I am not certain it relates to
22 Penn State. I think it could be related to
23 another matter, another case.

24 BY MR. SEIBERLING:

25 Q. Do you know the other matter?

1 MS. GRAGERT: You can answer that
2 yes or no.

3 A. I don't a hundred percent.

4 Q. Okay. All right. I have a quick
5 question on that email too, nothing as far as
6 the substance. The email chain was between you
7 and Joel McGormley; is that correct?

8 MS. GRAGERT: In part.

9 A. Yeah, I think in part it was.

10 Q. I'm sorry, in part. I believe there
11 was Gene Marsh -- or I'm sorry, Gene Marsh was
12 referenced in the email.

13 A. Yes.

14 Q. And you may have answered this
15 already previously, I just want to make it
16 clear for the record. What's Joel McGormley's
17 role in your office? What's his position?

18 A. He's the boss. He's the managing
19 director.

20 Q. Is he also a lawyer from whom you
21 seek legal advice within the office of the
22 committee on infractions?

23 A. If anything comes up related to an
24 infractions case that may be legal related,
25 Joel even goes to Naima Stevenson.

1 Q. Okay. But as far as for something
2 as a litigation hold, would Joel McGormley be
3 advising you on a litigation hold as a lawyer
4 for the NCAA, or as your boss?

5 A. As my boss.

6 Q. For context, I ask that question
7 because initially that email, the
8 correspondence between Joel and Mr. Cooper was
9 redacted and now it was produced un-redacted.

10 I'm going to ask you a couple
11 follow-up questions. Again, I may have asked
12 them to you already. Again, we're just doing
13 them for purposes of being thorough.

14 What was your understanding of why
15 the Penn State matter did not go through the
16 normal infractions process and come before the
17 committee on infractions?

18 MS. GRAGERT: Objection. Calls for
19 speculation.

20 A. I don't know. I wasn't privy to
21 those conversations.

22 Q. What was your understanding of the
23 jurisdiction exercised by the executive
24 committee with regard to the Penn State matter?

25 MS. GRAGERT: Object to the form.

1 Calls for a legal conclusion, and lack of
2 foundation.

3 Q. What was your understanding of how
4 the Penn State matter was ultimately resolved?

5 A. Well, it certainly wasn't resolved
6 within my office. It was a consent decree. It
7 was my understanding that the document was
8 signed by the NCAA and agreed to by the member
9 institution, and that's basically the extent of
10 my knowledge.

11 Q. Were you aware of or do you know of
12 the executive committee exercising its
13 jurisdiction over the Penn State matter?

14 MS. GRAGERT: Object to the form.

15 A. No.

16 Q. Are you aware of the executive
17 committee exercising its jurisdiction over any
18 matter?

19 MS. GRAGERT: Object to the form.

20 A. No, I'm not. I mean, again, I don't
21 deal with the executive committee ever, so I
22 don't.

23 Q. I believe I may have asked this
24 question before. When did you first become
25 aware of the Freeh Group's involvement in the

1 Penn State matter?

2 A. I don't recall.

3 Q. Were you aware of the Freeh Group
4 being involved prior to the Freeh Report being
5 released?

6 A. I think I was through media reports,
7 but I don't know when I would have become aware
8 of that.

9 Q. Is there any rule or prohibition
10 from former committee on infractions members
11 appearing before the committee on infractions
12 as counsel?

13 MS. GRAGERT: Object to the form.

14 A. No.

15 Q. Is that something that happens
16 regularly, at least that you're aware of?

17 MS. GRAGERT: Object to the form.

18 A. I'm trying to think of any other
19 instances. Gene, I think is the only one that
20 I recall.

21 Q. You had mentioned a law firm that
22 appears regularly before the infractions
23 committee?

24 A. Correct. They're former NCAA staff
25 members, but they're not former committee

1 members.

2 Q. Former staff members from your
3 office?

4 A. No, from enforcement.

5 MS. MADDEN: Can we just have one
6 more minute?

7 MR. GARDNER: Do you want us to walk
8 out?

9 MS. MADDEN: I don't think so.

10 MS. GRAGERT: Go for it.

11 Q. Do you know who Scott Bearby is?

12 A. Scott Bearby, I answered it before.
13 He's general counsel for the NCAA, a member of
14 the office of legal affairs.

15 Q. I'm sorry, Dan Beebe?

16 A. Dan Beebe is the former commissioner
17 of the Ohio Valley Conference. He's also
18 former commissioner of the Big 12 Conference.
19 And he was a member of the enforcement working
20 group.

21 Q. Who's Chuck Smert?

22 A. Chuck Smert is a former enforcement
23 staff member who, as I mentioned before, he's
24 an example of someone who has represented
25 schools. He is the president of the Compliance

1 Group located in Kansas City.

2 Q. What is Jobrina Marques' title?

3 A. Jobrina worked in academic or has
4 worked -- I don't know if she's there or not --
5 but worked at one time and may still be
6 there -- in academic and membership affairs.
7 She would be maybe an associate director.

8 MR. SEIBERLING: Donna, do you have
9 any questions?

10 MS. DOBLICK: No questions.

11 MR. SEIBERLING: I think we're done.

12 MS. GRAGERT: We'll read and sign.

13 (Witness excused, 12:51.)

14

15

16

SHEPARD COOPER

17

18 Subscribed and sworn to before me

19 this _____ day of _____ 2014.

20

21

22

23

24

25

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

2 STATE OF ILLINOIS)

) ss.:

3 COUNTY OF COOK)

4 I, RACHEL F. GARD, CSR, RPR, CLR, CRR,
5 within and for the State of Illinois do hereby
6 certify:

7 That SHEPARD COOPER, the witness whose
8 deposition is hereinbefore set forth, was
9 duly sworn by me and that such deposition
10 is a true record of the testimony given by
11 such witness.

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

17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 13th day of November, 2014.

19
20 -----

21 RACHEL F. GARD, CSR, RPR, CLR, CRR

22
23
24
25

1 NAME OF CASE: Corman vs. NCAA

2 DATE OF DEPOSITION: 11/13/14

3 NAME OF WITNESS: Shepard Cooper

4 Reason codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8

9 Page _____ Line _____ Reason _____

10 From _____ to _____

11 Page _____ Line _____ Reason _____

12 From _____ to _____

13 Page _____ Line _____ Reason _____

14 From _____ to _____

15 Page _____ Line _____ Reason _____

16 From _____ to _____

17 Page _____ Line _____ Reason _____

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