

## MINUTES OF SPECIAL MEETING

**BOARD OF TRUSTEES**

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A special meeting of the Board of Trustees was held via conference call on Sunday, August 12, 2012, at 5:00 p.m.

The following Trustees were present: Peetz (chairman), Masser (vice chairman), Alexander, Allan, Arnelle, Clemens, Corbett, Cotner, Dambly, Deviney, Eckel, Erickson, Frazier, Greig, Hayes, Hintz, Huber, Khoury, Lubert, Lubrano, McCombie, Myers, Shaffer, Silvis, Strumpf, Suhey, Surma, Taliaferro, and Tomalis; Governor's Non-Voting Representative Branstetter; and Trustees Emeriti Brosius, Coppersmith, Huck, Junker, Robinson and Rowell.

[A complete audio recording of the meeting is available at <http://www.youtube.com/watch?v=BwzS7JqRjZl> and a transcript is available at <http://www.psu.edu/trustees/agenda/august122012transcript.pdf>]

Chairman Peetz convened the meeting. Following a point of order raised by Trustee Lubrano, with additional comments by Trustee Myers, Chairman Peetz announced that no motions would be entertained during this session. Her subsequent remarks are included in their entirety:

"Over the last few days, questions have been raised about the process in which the NCAA crafted and imposed, and the University accepted, what are unquestionably harsh sanctions that will have a significant impact on the University and its students, student-athletes, alumni, faculty, staff and other constituencies. Questions have also been raised about the Freeh Report and how that report was used by the NCAA as the basis for its action.

"I had intended to call for a vote this evening to ratify the Consent Decree. Not because ratification is legally required. It is not. But, rather, because President Erickson's authority had been challenged publicly by some of our own trustees, the leadership of the Board wanted to publicly demonstrate the Board's support of President Erickson and the University's commitment to fully perform and comply with the Consent Decree. We had hoped to clear up any lingering misunderstanding with respect to the Board's and the University's position on this matter. Given that Trustee McCombie yesterday indicated publicly that he has instructed his lawyer to refrain from taking any further action, a formal vote may not be as necessary as we had initially anticipated.

"In addition, we have a technical legal issue that prevents us from taking a vote this evening. The University's Charter, written in 1855, contains a provision that requires ten days' written notice of any meeting of the Board. Our Bylaws contain a different provision, requiring three days' prior notice. Because of this inconsistency, and because by law, an organization's bylaws may not be inconsistent with law or its charter, out of an abundance of caution, we will not be taking any official action this evening. In that regard, I will not entertain any motions this evening.

"Regardless of whether we vote, however, I would like to be clear on one thing. I absolutely support President Erickson and his decision to accept the Consent Decree as the only real option in the extraordinarily difficult circumstances and the choices we were presented. It is my sense that every member of this Board also fully supports President Erickson, even though we may not agree with the process used by the NCAA or with the harshness of the sanctions imposed. President Erickson's leadership throughout this extraordinarily difficult time has been invaluable and is greatly appreciated by every member of the Board. On that, we all agree.

"We also agree that our fiduciary duty as trustees is to do what is best for the University, not just in the short term, but with a long term perspective, keeping in mind our mission: to be a world class multi-campus public research university that educates students from Pennsylvania, the nation and the world and improves the well being and health of individuals and communities through integrated programs of teaching, research, and service.

"After speaking with many members of the Board and in light of the comments that we have received over the past two weeks, I believe that further discussion of the issues is warranted. I hope that by having this discussion in an open forum, the public will be able to gain a better understanding of how the decision on the Consent Decree was reached, why the University believed, and still believes, that it was the best alternative available to--indeed, I am confident that most of the Board believes that it was the only real option--and what the University's plans are with respect to compliance with the Consent Decree and the Freeh Report.

"We intend to comply fully with the Consent Decree and the Athletics Integrity Agreement still to be finalized and to be a national model for compliance with the NCAA Constitution, Bylaws and its rules and regulations. At the outset of our discussions with the NCAA, we asked that the Consent Decree include language to expressly provide for reconsideration in the event of the University's outstanding performance. We continued to urge the NCAA to consider such a provision, as late as Friday of last week. The NCAA rejected our requests in each case, including by a vote of their Executive Committee taken this morning. We intend and expect that our performance will be so exemplary that in a few years we will be in a position to request again that the NCAA reconsider whether ongoing non-financial sanctions continue to be appropriate. Discussions with the NCAA are ongoing on a number of details surrounding the implementation of the Consent Decree, including the creation and administration of the \$60 million endowment for programs preventing child sexual abuse prevention and/or assisting the victims of child abuse. We will remain engaged with the NCAA and will be making our aspirations, including our aspiration to outperform these corrective actions, clear to them.

"Indeed, we are well on our way. All of Judge Freeh's interim recommendations, presented to the Board in January, have either been implemented already or are substantially completed. We have a team of trustees and senior administrators, and have hired and will be hiring outside experts, focused on reviewing and implementing, as appropriate, Judge Freeh's final recommendations. In addition, we have a team of administrators focused on reviewing and implementing the corrective actions required by the Consent Decree and we have hired and will hire outside experts here as well. We have begun conversations with Senator George Mitchell, the third party monitor appointed to oversee compliance, and have promised him our full cooperation. We have met with the leaders of our Athletic Department, including our head coaches, to discuss the importance of compliance. They are on board and fully committed to continuing our proud tradition of athletic and academic success.

"So, with that as background, the agenda for this evening's meeting is as follows:

1. We will first hear from Gene Marsh. Gene is a nationally recognized expert in the field of NCAA enforcement, having spent nine years on the NCAA Committee on Infractions, including two as chair. Gene will discuss the nature of the NCAA and review the discussions with the NCAA that led up to the imposition of the Consent Decree.
2. After that, President Erickson will discuss the rationale for acceptance of the Consent Decree and why he believed that it was the only real option available.
3. Steve Dunham, the University's Vice President and General Counsel will discuss President Erickson's authority to accept the Consent Decree.
4. Ken Frazier will then discuss the Freeh Report and the University's plans to implement Judge Freeh's recommendations.
5. Finally, Richard Edelman, our public relations and media relations advisor, will discuss public relations issues.

"After we hear those presentations, we will open the floor to the trustees for questions and comments. Because we are doing this by telephone, we will do this in alphabetical order, starting with Trustee Alexander. I would ask that in the interest of time, and in order to give all trustees an opportunity to comment, please keep your comments brief and to the point. I will also remind everyone, when speaking, to be sure to identify yourselves.

"With that as background, I would like to turn it over to Gene Marsh."

Remarks by Eugene Marsh, Partner, Lightfoot Franklin & White LLP, are included in their entirety:

"Thank you, Chairman Peetz. First let me make a few comments about the NCAA. It is a voluntary membership organization. It sounds like a simple idea, but it has special meaning here. In simple terms it means that if you step into the NCAA world you're subject to a 400-plus page rule book that has both constitutional provisions and bylaws. One of the most important provisions is Article 2.1 with the general header 'The Principle of Institutional Control and Responsibility,' and here's the language that matters most: 'The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures.'

"So let me repeat that. It's the institution's president or chancellor who is responsible for the administration of all aspects of the athletics program. That's relevant to points to be made later on. In 1988, the NCAA won a case before the U.S. Supreme Court that involved the enforcement process. In that case, which involved Jerry Tarkanian, the U.S. court held that the NCAA is not a state actor for purposes of application of the concept of due process.

"So like it or not, that's the law of the land. Penn State is a member of the NCAA, so there's no opting out of the NCAA rules, the principle of the president's control of the athletic department, and of course the Supreme Court ruling is the law of the land separate from any NCAA bylaw or provision.

"So now let me address the week that led up to the execution of the Consent Decree and conversations that I had with people at the NCAA. The first call was on Monday, July 16th with the counsel's office at the NCAA, and the second call was July 17th with the NCAA counsel and an individual who is involved in their governance process, and those are the people I talked to all week long.

"I did not have any direct conversations with Mark Emmert. It was in that Tuesday call that they first listed a series of penalties such as the fines and scholarship reductions, etc., but they also made it clear that this was a very fluid situation with lots of feelings, lots of strong feelings coming from the governing bodies at the NCAA.

"It was made clear that in their discussions the death penalty, so to speak, was in play, but that the board was open to discussion of alternatives. We had a number of back and forth's that week. We asked for consideration of a number of things that we thought were in Penn State's favor.

"That included that Penn State had commissioned the Freeh Report, that Penn State had waived the attorney/client privilege in part allowing the findings to be made public, that the trustees had accepted responsibility for many shortcomings identified in the report for purposes of a Consent Decree, that the individuals involved were no longer affiliated with the university, Penn State's football program was not a repeat offender, having never been found guilty of a major NCAA infraction, that the penalties that were being discussed would harm many people who were not responsible, including current players, the coaching staff and the Penn State community in general, alumni and others, that Penn State would pay an enormous financial penalty separate from this financial penalty that was being imposed in other venues, and that Penn State was going to implement most, if not all, of the Freeh Report's recommendations for reform and would agree to the Athletic Integrity Agreement which included a monitor idea.

"The next most substantive discussion was on Thursday evening, and that message was loud and clear. I was told that I should know that the majority of the board of directors at the NCAA believe that the death penalty should be imposed. That was as late as Thursday evening and that's the first time that I heard, although I understand other places--other numbers may have been tossed around, but that's the first time that I heard a multi-year death penalty.

"I was also told that the NCAA board thought that it was the worst case of loss of institutional control they had ever seen, and that an even greater issue on their mind beyond the acts of individuals was the idea of a culture problem at Penn State. And I know that President Erickson will address the conversations that he had with Mark Emmert, but I understand that some of those were even more intense regarding the sentiment of the board that was expressed.

"Yet even with that news as late as Thursday, we were told that the board was open to a discussion, it was not a negotiation of an alternative, and that alternative ended up being the list of penalties and corrective measures that found their way to the Consent Decree. I was told to look out for a draft of the Consent Decree on Friday evening, and that--it turned out to be at the very end of Friday, really Saturday morning depending on what time zone you're in.

"We were able to change a tiny bit of the language, never anything relating to the penalties. We got some very minor changes made in several places, but none of the penalties ever moved and a Consent Decree was ultimately executed, I believe, Sunday night. Then, as we know, the NCAA held a press conference Monday and then on top of that the Big Ten came in even in the face of these very severe penalties and imposed another financial penalty relating to revenue sharing. So that's the time line of the week. But I want to make a couple of other observations in order to address some concerns that I think people have.

"First, that I was told that the NCAA was getting reports from the Freeh Group or at least relating to their investigation every two weeks, so we know that the NCAA wasn't just firing up after the Freeh Report was issued.

"Second, no one should ever characterize this as a negotiation. It was, and I used this expression two weeks ago with your trustees where I said in the bankruptcy law there's a concept called a 'cram down,' and it's essentially where the judge crams down the throat of complaining creditors what the deal is going to be, and that's the way that this thing felt.

"The people at the NCAA that I spoke to politely listened to all the arguments we made throughout the week and conveyed I believe every argument we made to the people who were the decision-makers. In the end, as they articulated at page four of the Consent Decree, those considerations that they weighed had an impact on their deciding to go with what was finally spelled out in the Consent Decree rather than going to the death penalty.

"But let me also, since I mentioned, I think you can find at page four of the Consent Decree the language where they described weighing these other things in deciding not to impose the death penalty. There's another really important passage at page four, the Consent Decree, that I think a lot of folks are missing based on what I picked up in the media and elsewhere. At page four the Consent Decree under the sanctions, there's a paragraph two that starts with the following language:

'As a result the NCAA has determined that the university sanctions be designed to not only penalize the university for contravention of the NCAA constitution and bylaws, but, and this is the most important part, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with its expected norms and values of intercollegiate athletics.'

"That language, which also was reinforced throughout the week, that there was as much and perhaps more focus on the idea of culture than there was actual NCAA bylaw issues. That language in the Consent Decree breaks the link of precedence as far as the application of penalty bylaws to violations in previous cases.

"People who are looking and making comments on precedent and previous cases are really missing an important point. It was a dominant theme coming from the NCAA throughout the week, that what the great concern was of the NCAA was culture. It clearly was

the NCAA bylaws and it was culture, so to the extent that people continue to try to parse bylaws and talk about precedent there, they don't get it. I don't blame them for not getting it because they weren't there, but that's, in fact, the way things played out.

"And then finally the choice that the institution faced was the terms of the Consent Decree or the death penalty. It was not going to be going in front of the Committee on Infractions, and it was not going to be only the death penalty. That's now been made clear in several different places that I won't refer to, but what we got loud and clear, even post-announcement, was the consideration was of the death penalty with additional sanctions that would hinder the competitive level of the program when it came back to life.

"So that's the stark choice that the university faced, and that's as much as I can relay now that I think accurately conveys my role as far as my discussions with the NCAA, so I'll close with that."

Remarks by Rodney A. Erickson, President of The Pennsylvania State University, are included in their entirety:

"Let me give you some background in terms of my discussions with NCAA President Mark Emmert during that week, and also some more information about my rationale for accepting the Consent Decree.

"I received a message to call President Emmert on Friday, July 13th as I was leaving the Scranton campus after the Board of Trustees meeting. Mark Emmert indicated that now that the Freeh Report had been issued the University should begin work to respond to the letter we received last November 17th from the NCAA following the Grand Jury Presentment. Dr. Emmert indicated that we would have until the first week or so of August to develop our response to that November 17th letter. Dr. Emmert called me back after the weekend and indicated that both the NCAA Division 1 Board and the NCAA Executive Committee were shocked by the Sandusky trial as well as the facts that were provided in the Freeh Report, and that an overwhelming majority of the boards wanted blood to shut down Penn State's football program for multiple years.

"He then said that we should put the November 17th letter aside, that things were moving fast and not in a good direction for Penn State. He indicated that the nature of the violations were such that sanctions would not go through the normal Committee on Infractions route as Gene just indicated, but rather be taken up directly by the board in this case and that the board had the power to go that route. Emmert indicated that our only chance to avoid a death penalty along with sanctions might be to opt for a Consent Decree that would have unprecedented penalties, but would allow us to keep our program running. He noted a hefty fine, which actually became larger following discussions with the board during the week, lots of scholarships and a ban on post-season play of several years.

"He indicated then that the only reason Penn State might be given this option was the actions that the Board of Trustees and Administration had taken during the past eight plus months to replace the individuals that were relieved of their duties last November, commissioning the Freeh investigation, and the fact, as Gene said, that the University had no previous major infractions with its football program. Our legal team then began discussions with NCAA legal counsel on Monday, July 16th, and it was clear that the NCAA was not interested in negotiating the terms of the Consent Decree. It was a 'take it or leave it' proposition, and despite our attempts to push back on the sanctions as we learned about them, we didn't, as Gene indicates, receive the draft Consent Decree in writing until the early hours of Saturday morning then.

"President Emmert and the NCAA staff indicated throughout the week that it was not at all clear that the NCAA board members would accept the Consent Decree without involving the death penalty or penalties even more severe, and we didn't know until late Saturday that the NCAA board was willing to go along with the Consent Decree option. It was late Saturday we learned that. Once we had the Consent Decree in writing we pushed back again on the sanctions, but we were given only very limited latitude on some

clarifications.

"During the week I had kept the Board of Trustees leadership, Chairman Peetz and Vice Chairman Masser, briefed that there were discussions with the NCAA that were moving along very quickly, that the sanctions were going to be severe in any case, and that the NCAA had said, emphatically, that any leak of these discussions by Penn State would take any deal off the table and the NCAA would go the other route.

"I indicated to the Executive Committee of the Board late in the week where we stood, and then, later on Sunday, I, along with legal counsel, spelled out the difficult full terms of the Consent Decree. At that call there was a strong consensus on the Executive Committee that the alternative to the Consent Decree was far worse and that we should take the deal, which I signed then late on Sunday evening.

"Before signing, however, I asked counsel for their legal opinion, and they indicated, after review of the University's *Charter* and *Bylaws*, that I was within my authority as President to sign the Consent Decree.

"I have to tell you this was far and away the most difficult decision I've ever made in my 40-year professional career.

"There were many reasons why I opted for the Consent Decree.

"First of all, the prospect of several years of a death penalty for football has overwhelmingly negative consequences. First, we would have lost all of the football revenue base that helps to support 27 of Penn State's varsity sports. That would have had a devastating affect on our other 700 student athletes. At the same time we would have continuing costs for the football program, including operating and maintenance of facilities, coaches contracts and the cost of other employees with no offsetting revenues from television or gate receipts or sponsorship among others.

"Secondly, an empty stadium for multiple years would have a drastic impact on the economy of Central Pennsylvania and beyond. Many businesses of course depend upon the football season for a significant share of their net revenues during the year.

"Third, from the time I first talked with Bill O'Brien last winter about the prospects of NCAA sanctions, Coach O'Brien said first and foremost he wants us to play and he wants us to play on television, and the Consent Decree makes that possible. I can't thank Coach O'Brien and our football players enough for the character and determination and the team spirit they have displayed throughout this difficult time.

"Fourth, challenging the NCAA actions would have meant a high probability of multiple years in court while we didn't play football and with a high likelihood that, as Gene Marsh has already indicated, we would lose in legal proceedings, such as the nature of a membership organization.

"Fifth, I was also very concerned about the possible actions of the Big Ten conference if we did not opt for the Consent Decree. I believe there was substantial risk of challenging in court the NCAA sanctions, whether meted out directly by the board or the Committee on Infractions, while not playing for several years may have led to our expulsion from the conference with all the terrible effects that would have on our entire intercollegiate athletic program, as well as on our academic programs given that now so many of--which are intertwined with other Big Ten universities through our Committee on Institutional Cooperation.

"Sixth, I felt strongly that the Consent Decree would provide a roadmap for us to make changes and move forward. Fighting the NCAA would both take years and send a signal to the nation that Penn State is really in the end mainly about football. It would be difficult to say the least dealing with the NCAA sanctions, but having the opportunity to move on has considerable value, too.

"Seven, the Consent Decree states that the agreement can be reopened by mutual consent of the parties, and I believe our focus now should be on continuing the task of implementing recommendations of the Freeh Report, working closely with the Athletics Integrity Monitor, and showing the world that we have the spirit and the dedication to emerge from this difficult period as an even stronger University.

"I believe that when I signed the Consent Decree that it was the better of the two crushing alternatives and the most difficult decision I've had to make, and I stand by that decision today. Thank you, Karen."

Remarks by Stephen S. Dunham, Vice President and General Counsel of Penn State, are included in their entirety:

"I want first to address the issue of President Erickson's authority to execute the Consent Decree which has been raised in various circles. During the discussions with the NCAA during the week leading up to the Consent Decree, we looked specifically at the issue of the President's legal authority in the process for approval.

"This was not an afterthought in response to concerns raised by others. It was part of our analysis from the beginning. We considered both common practice and the University's legal documents. We noted first, as in the provision that Gene Marsh has quoted, that under the NCAA Constitution, Article 2, it provides as follows:

'It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures.'

"By virtue of our membership in the NCAA, we agree to this description of the role and responsibility of the president and the institutional responsibility over intercollegiate athletics."

"This provision has special significance in this case because one of the critical issues involves the adequacy of institutional control. We also looked at the University's own governing documents. We did this before the Consent Decree was executed by President Erickson. Under the University's *Charter, Bylaws and Standing Orders* we concluded that President Erickson clearly had the legal authority to sign the Consent Decree on behalf of the University.

"The governing documents make the President the Chief Executive Officer with all that entails. They grant to the President the authority for management and control of the University, and for the establishment of policies and procedures for the operations of the University. The governing documents also delegate to the President the authority to sign agreements and contracts, which is what the Consent Decree is.

"Finally, these governing documents do have certain express exceptions to what is delegated to the President, and none of these exceptions applies to the circumstances of the Consent Decree. This is further evidence of the President's authority to accept and sign the decree. Furthermore, the President did take the Consent Decree to the chair and vice chair and to the Executive Committee of the Board for consultation. The Executive Committee is empowered to act on behalf of the board. The issue of authority was discussed with the Executive Committee. Although no vote was taken, the consensus of this meeting was that the President should proceed to accept and execute the Consent Decree. He did so only following the meeting with the Executive Committee.

"Following execution, some raised the issue of the President's authority. The Board's outside counsel gave his opinion that the President had the authority to sign. I agree with this opinion. I have heard no valid argument to the contrary.



"Some have noted that the original plan to vote today is inconsistent with the conclusion that the President had authority to sign.

"This is not true.

"The Consent Decree is validly executed. It is binding on Penn State and the NCAA, and it needs no vote by the Board. Whether a vote by the Board at another time may serve other useful governance purposes is for others to answer, but it is not necessary to have a vote for the University to move forward as it is required to do with compliance with the Consent Decree.

"Having said that, the Consent Decree expressly provides that it may be amended by agreement of the parties. Further, the Academic Integrity Agreement is still being negotiated. Some parts of the consent decree may be ambiguous or subject to different interpretations. It is always possible and appropriate for the parties to engage in good faith discussions as to the meaning of the decree, how it should be applied in a given instance, the terms of the yet to be signed Athletic Integrity Agreement, and whether the parties should consider amendments in the best interests of all concerned.

"Let me now take a few minutes and address the decision-making process that led up to the execution. You have heard of the Consent Decree. You have heard Gene Marsh and President Erickson describe the discussions with the NCAA. I wish only to highlight one aspect of these discussions, the choice the NCAA provided to the University between the terms of an imposed consent decree, and a multi-year death penalty that would also carry with it additional sanctions.

"This was a choice for the University as an entity. All of us, the Board, the President, the lawyers, others all work to take care of duties to Penn State University, the entity. We have duties to make the best decision for Penn State, not any particular constituent. The University had, as I have noted, delegated this decision to President Erickson. He was, therefore, authorized to speak for the University.

"He also chose to consult with the Executive Committee and Board leadership. If there had been a leak of the terms there was a very real possibility that the choice would evaporate and the University, the Board, the President, Penn State as a whole would be left with no choice at all and would simply have the death penalty imposed.

"In these circumstances it was the President's responsibility, after conferring with the Executive Committee, to decide how best to exercise that choice. He could discuss the choice publicly and likely lose the ability to have a choice. We could lose as a University the ability to decide how best to exercise that choice, or with the unanimous consent of the Executive Committee in the best interests of Penn State he could proceed to sign, which is what President Erickson did.

"In looking back at this choice it is important to understand that the President was trying to preserve the ability of the University to actually have a choice. I would submit that the President had his fiduciary duty, and with the support of the executive committee acted in the best interests of the University as a whole preserving the choice that best protected and served the University and the committee.

"Let me make a final few comments about due process and standards of proof because these are legal issues and concepts that have come up in some of the discussion. When I do this I do not want to comment about particular facts in this case, but more to try to clarify for the Board some of the general legal standards that apply here.

"There has been some discussion in recent days that the NCAA and indeed the University rushed to judgment in acting based on the Freeh Report, and that we should have waited for further legal proceedings, including the criminal trials, to play out. Part of this discussion criticizes the Freeh Report for not having subpoena power or following formal rules of judicial proceedings, and it criticizes the University for accepting the Consent Decree on this basis, and indeed for moving forward with taking action in response to the Freeh

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"Some have said that these actions mean that the due process was violated. It is not my role to argue the merits of this issue, but I do think there is a misunderstanding about the different legal standards of proof that may apply. Criminal cases are decided based on a standard of proof of beyond a reasonable doubt. Civil cases are decided based on the preponderance of evidence.

"Businesses and universities, the NCAA and all of us as individuals and governments in widely important matters make critical important decisions every day based on what they think is right, what is reasonable, what the evidence means to us and to them.

"Setting aside our specific situation, because I do not want to comment on that, but just in general, if we and governments and corporations and universities are faced with making a decision whether to hire or fire an employee, to buy or sell a business, to accept or reject a contract, to pass legislation, to make important policy judgments at the highest order involving large amounts of money, it makes no sense to wait for a definitive legal trial to prove a set of facts under a different legal standard.

"It makes no sense because burdens of proof are different. It makes no sense because most of us most of the time do not have subpoena power or the opportunity for a full judicial trial to determine all of the facts for all purposes, and it makes no sense because subsequent criminal and civil trials apply different standards of proof, and as a result of that they're not likely to determine facts in a way that change the current set of facts available to us.

"Rather, we take the facts as they are available, and as I noted this applies not just to routine, everyday matters, but to the matters of the highest importance for governments, businesses and universities. Without commenting one way or the other about the facts as found by the Freeh Report, given the different standards of proof and the fact that criminal law standards of proof and procedural notions of due process do not apply to decisions that universities and businesses must make every day, arguments that we should wait to act on the Freeh recommendations or wait to act on NCAA compliance until after further legal proceedings misunderstand this critical distinction.

"For the University to act based on the kind of factual development in the Freeh report does not deny due process. Due process is a constitutional concept that applies to the government to restrict taking property and other rights in certain circumstances. It does not tell universities, governments or businesses that they cannot act on recommendations or take other reasonable steps based on thorough investigation. Those are my comments, Karen."

Remarks by Kenneth C. Frazier, trustee and Chairman of the Special Investigations Task Force, are included in their entirety:

"I'll try to be brief because I believe a lot of what I'm about to say is well known and well understood. As all people understand, back in November of 2011 the Board of Trustees made an agreement to do a full and complete investigation to try to identify where failures occurred and what changes should be made within Penn State for the future.

"At that time we were under a great deal of scrutiny from both external constituencies, including the NCAA, the Big Ten, Congress, the Department of Education, the media, as well as internal constituencies, notably our own faculty. We then commissioned Judge Louis Freeh to do an independent investigation because we agreed that it was important that as a prominent institution we learn the facts.

"In that regard, we gave Judge Freeh complete discretion in how to conduct the investigation and unfettered access to the university's documents and people. We intended, and we said this from day one, to make Judge Freeh's findings, his conclusions and recommendations public.

"We also agreed that the board would have no editorial influence or control, or even any advanced look at Judge Freeh's findings, conclusions, and those recommendations he made as a part of his final report.

"We intended then and we intend now to use those findings to inform our decision-making going forward.

"So Penn State has done many good things, but to the extent that there were things that went wrong, we agreed that as a Board we need to look at how those things occurred and how to fix those going forward to insure that something like this never happens again, especially as it relates to children.

"Now, in that context the Board was very clear about what it was accepting responsibility for, and what the Board accepted, and we said this explicitly in the second sentence of our statement, is that, 'The Board of Trustees, as the group that has paramount accountability for overseeing and insuring the proper functioning and governance of the universities, accepts full responsibility for the failures that occurred,' period.

"Put differently, we agree that as an organization within Penn State that's responsible for fixing anything that went wrong we accept that responsibility for any failures that occurred. Now, because we agreed to make the Freeh report public at the very same time that it was made available to the board, we are not in a position to control how others use the report or what they say about the report.

"And indeed while Judge Freeh found many facts that we would not have known except through the quality of his investigation, including some of the seminal facts that take us back to 2001, including E-mails and internal notes, the fact of the matter is that like any investigation or any court case, for that matter, there are clear facts in evidence and then there are inferences, interpretations and conclusions that one can draw.

"Because the public got that report at the same time, individuals are free to reach whatever conclusions they want to reach on the basis of the report. From our standpoint, though, I want to be very clear that what we've done is we've accepted responsibility to fix those things which I think the report clearly makes abundantly clear that went wrong inside the University. So with that, Madam Chairperson, I will turn it over to you."

Remarks by Richard Edelman, President and Chief Executive Officer of Edelman, are included in their entirety:

"Thanks, Karen. Look, the school has lived through three major news cycles in the last two months, the Sandusky trial and verdict, the Freeh report, and then the NCAA sanctions. In all three of these situations we've been responding to events not in control of the events, but in each situation we've been able to provide consistent messages.

"And those are as follows: First, we take responsibility to insure this sort of thing never happens again, and that we are going to fix the shortcomings so we're a stronger institution in the future.

"Second, we're committed to developing and supporting specific programs to protect children on and off campus.

"Third, we have a plan to improve the school's governance which will be informed in part by the Freeh Report's recommendations and will make this great University even greater in the future. This University has received praise in many corners in the past two months, despite these three big events in the sense that you have been willing to hold nothing back in the investigation and to take very strong actions, such as the removal of the statue in front of the football stadium prior to the NCAA sanctions.

"However, the response by the University is now being clouded by some who are not aligned, and in our opinion this is impeding our ability to rebuild reputation. It requires that all of the Board face forward and align behind President Erickson.

"Whether you do a resolution tonight to me is not important.

"It is really important, however, that you have said that President Erickson has the authority to do what he's done, and that you have already released a statement of support, and we think that we have to stop looking backwards to decisions that were made and cannot be undone.

"I believe if you do not--I want to put this really clearly--you will see a whole new round of stories in the media about the board dysfunction and management in turmoil, and I say this just at the point when you can begin to rebuild the reputation of this great University. From a PR point of view this is a key moment.

"Moving forward we have to remind people that we are a great University, that Penn State will actually regain trust over time. We have a great heritage, talent and commitment. It's the beginning of the school year. It's the beginning of football. You have a whole new mass of students preparing to move in. Your own staff, your own students and even your football coach are asking you to take the reigns and move forward, and in our opinion it's time for you to be leaders and to stand by the decisions made and to be clear that you have a responsibility to accept what has been done."

Following a question and answer session, individual Board of Trustees members had an opportunity to express views and opinions. The majority, overwhelmingly, expressed strong support of President Erickson and commended his leadership and stewardship at this critical time in the University's history.

President Erickson responded by thanking the members of the Board "for the vote of confidence and support as we move ahead. It is time to move forward. Students are returning in a couple of weeks, and we need to focus on the future. Continued focus on our core missions of teaching, research and service is critical as these are the things that will continue to define us as a world-class University." He pledged to work hard every day to see that Penn State's future is bright.

He commended and expressed appreciation to the wonderful faculty, staff and students for their dedication to learning and discovery, and expressed admiration to our alumni for the great work that they do every day to change the world for the better.

Chairman Peetz closed the meeting and her remarks are included in their entirety:

"I'll just make very brief closing remarks, and I'd like to just end the meeting by addressing the emotional component of all that's happened to our University and to all of us in whatever way we're associated with the University.

"Many of us don't agree with how Penn State is characterized by the press and multiple other parties who have attacked us on many fronts since November. I would ask all of you to think about why Penn State is or was so special to you. For me it was my experience as a Title 9 athlete where I learned about winning, losing and teamwork on the playing fields of Penn State.

"For you it might have been in a lab, it might have been at the fraternity, a semester abroad, participating in fun or through a favorite professor. Whatever it is or was, it probably hasn't changed very much since November. It's still there to connect with.

"We need everyone to support Penn State and connect again now with the University more than ever. The board and I, in conjunction with President Erickson and his leadership team, plan to move forward now with specific plans not only to address the Freeh Report and the Consent Decree, but also the future of this great University.

"We'll be discussing those plans at our upcoming meeting in August, and we invite you to join us in that dialogue, too. As was already said, the students, faculty and staff will be in full swing on all of our campuses soon. We need to get back to our main mission, an educational objective now. We need to insure that the students we have today get a great education, and those that are thinking about attending Penn State in the future still want to do so. We need to move forward as a community, the Penn State community which we are all so very proud to be part of.

"I'm extremely confident that all of the passion that we have for our University can be brought together to create the positive energy and momentum to move us forward together. On behalf of the Board of Trustees, we appreciate you joining with us this evening, and we believe that the best days for Penn State University are still ahead. Thank you very much. "

The meeting adjourned at 6:48 p.m.

Respectfully submitted,

Paula R. Ammerman  
Associate Secretary  
Board of Trustees