PENN STATE BOARD OF TRUSTEES SPECIAL MEETING

Sunday, August 12, 2012

Job No.: 24909
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Transcribed by: Bonnie Panek
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PROCEEDINGS

17:00:00  2 CHAIRPERSON PEETZ: Okay. I think we should get started, please.

17:00:01  3 FEMALE SPEAKER: Trustee Alexander.

17:00:06  5 TRUSTEE ALEXANDER: Here.

17:00:06  6 FEMALE SPEAKER: Allan.

17:00:09  8 TRUSTEE ALLAN: Here.

17:00:08  7 FEMALE SPEAKER: Arnelle.

17:00:10  9 TRUSTEE ARNELLE: Present.

17:00:11 10 FEMALE SPEAKER: Broadhurst, Clemens.

17:00:14 11 TRUSTEE CLEMENS: Here.

17:00:15 12 FEMALE SPEAKER: Corbett.

17:00:16 13 TRUSTEE CORBETT: Here.

17:00:17 14 FEMALE SPEAKER: Cotner.

17:00:18 15 TRUSTEE COTNER: Here.

17:00:19 16 FEMALE SPEAKER: Dambly.

17:00:20 17 TRUSTEE DAMBLY: Here.

17:00:22 18 FEMALE SPEAKER: Deviney.

17:00:23 19 TRUSTEE DEVINEY: Here.

17:00:24 20 FEMALE SPEAKER: Eckel.

17:00:25 21 TRUSTEE ECKEL: Present.

17:00:26 22 FEMALE SPEAKER: Erickson.
17:00:27  1  PRESIDENT ERICKSON: Here.
17:00:28  2  FEMALE SPEAKER: Frazier.
17:00:30  3  TRUSTEE FRAZIER: Here.
17:00:31  4  FEMALE SPEAKER: Greig.
17:00:32  5  TRUSTEE GREIG: Here.
17:00:33  6  FEMALE SPEAKER: Hayes.
17:00:33  7  TRUSTEE HAYES: Here.
17:00:34  8  FEMALE SPEAKER: Hintz, Huber.
17:00:38  9  TRUSTEE: Here.
17:00:40 10  FEMALE SPEAKER: Khoury.
17:00:40 11  TRUSTEE KHOURY: Here.
17:00:42 12  FEMALE SPEAKER: Lubert.
17:00:43 13  TRUSTEE LUBERT: Here.
17:00:44 14  FEMALE SPEAKER: Lubrano.
17:00:44 15  TRUSTEE LUBRANO: Present.
17:00:45 16  FEMALE SPEAKER: Masser.
17:00:47 17  TRUSTEE MASSER: Here.
17:00:48 18  FEMALE SPEAKER: McCombie.
17:00:49 19  TRUSTEE MCCOMBIE: Here.
17:00:51 20  FEMALE SPEAKER: Myers.
17:00:52 21  TRUSTEE MYERS: Here.
17:00:53 22  FEMALE SPEAKER: Peetz.
17:00:54  1  CHAIRPERSON PEETZ:  Here.
17:00:55  2  FEMALE SPEAKER:  Shaffer.
17:00:56  3  TRUSTEE SHAFFER:  Here.
17:00:58  4  FEMALE SPEAKER:  Silvis.
17:00:58  5  TRUSTEE SILVIS:  Here.
17:00:59  6  FEMALE SPEAKER:  Strumpf.
17:01:00  7  TRUSTEE STRUMPF:  Here.
17:01:01  8  FEMALE SPEAKER:  Suhey.
17:01:02  9  TRUSTEE SUHEY:  Here.
17:01:03 10  FEMALE SPEAKER:  Surma.
17:01:05 11  TRUSTEE SURMA:  Here.
17:01:06 12  FEMALE SPEAKER:  Taliaferro.
17:01:07 13  TRUSTEE TALIAFERRO:  Here.
17:01:08 14  FEMALE SPEAKER:  Tomalis.
17:01:11 15  TRUSTEE TOMALIS:  Here.
17:01:11 16  FEMALE SPEAKER:  Branstetter.
17:01:13 17  TRUSTEE BRANSTETTER:  Here.
17:01:13 18  FEMALE SPEAKER:  Brosius.
17:01:15 19  TRUSTEE BROSIOUS:  Here.
17:01:16 20  FEMALE SPEAKER:  Conti, Cook, Coppersmith.
17:01:18 21  TRUSTEE COPPERSMITH:  Here.
17:01:19 22  FEMALE SPEAKER:  Frey, Huck.
17:01:20  1  TRUSTEE HUCK: Here.

17:01:23  2  FEMALE SPEAKER: Junker.

17:01:25  3  TRUSTEE JUNKER: Here.

17:01:26  4  FEMALE SPEAKER: Madigan, Metzgar, Robinson, Rowell.

17:01:32  5  Rowell.

17:01:33  6  TRUSTEE ROWELL: Here.


17:01:40  8  TRUSTEE ROBINSON: Robinson is on.

17:01:43  9  FEMALE SPEAKER: Thank you.

17:01:45 10  CHAIRPERSON PEETZ: Okay. And I would start

17:01:49 12  this as Karen Peetz. I would start by just asking

17:01:51 13  everyone who is not speaking to please mute your

17:01:53 14  phones. It helps with this kind of call. So I'm going

17:01:57 15  to make a couple of opening remarks, and then I will

17:01:59 16  introduce the speakers and we'll have a series of

17:02:02 17  presentations for this evening.

17:02:05 18  TRUSTEE LUBRANO: Karen, Karen?

17:02:06 19  CHAIRPERSON PEETZ: Yes.

17:02:07 20  TRUSTEE LUBRANO: Sorry to interrupt you.

17:02:07 21  This is Anthony Lubrano. I want to raise a point of

17:02:09 22  order I'd like you to rule on.
As publicly noted by another member of this board, proper notice of this special meeting as defined by university charter has not been given. And due to the lack of a specified physical location it is unclear whether it is being held in accordance with the Pennsylvania Sunshine Act. Therefore, this meeting should be immediately adjourned and rescheduled.

TRUSTEE MYERS: This is Joel speaking, Joel Myers. Without this meeting being official I want to second what Anthony said. What's the point of it? We have no authority. We cannot vote. Trustees must keep our comments limited. The debate is highly structured. Five people are speaking or scripted. We're told two hours in advance we can only speak for a minute or two, and that's not fair. We're the trustees. I recommend we receive written reports for us to read and study in advance of the next formal meeting.

And finally, I don't believe we can proceed today anyway. Roman numeral 8, number 7 of the standing order makes it clear that a meeting must be in a meeting room, and frankly if we can't get good legal
advice on a simple matter of what is a meeting and
where to hold a meeting how can we trust the legal
advice we're getting on the NCAA.

CHAIRPERSON PEETZ: Okay. Does anybody else
have any opening statements? Okay. Well, thank you
for that. I think I'll proceed with my statement.
TRUSTEE LUBRANO: I'd like a rule, Karen.
CHAIRPERSON PEETZ: I'm sorry?
TRUSTEE LUBRANO: There's a motion in front
of you. Joel seconded it.
CHAIRPERSON PEETZ: Actually, if you allow
me to begin my opening statements I'll address the fact
that we are not voting, nor will there be any motions
today, so perhaps I should continue.
So over the last few days questions 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
Freh report and how that report was used by the NCAA
as the basis for its actions. 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 which I think is what's being raised that prevents us from taking a vote this evening.

The university's charter, written in 1855, contains a provision that requires 10 days written
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17:05:47 1 notice of any meeting of the board. Our bylaws contain
17:05:50 2 a different provision requiring 3 days prior notice.
17:05:54 3 Because of this inconsistency and because by law an
17:05:58 4 organization's bylaws may not be inconsistent with the
17:06:02 5 law or its charter, out of an abundance of caution we
17:06:06 6 will not be taking any official action this evening.
17:06:10 7 In that regard, I will also not entertain
17:06:13 8 any motions this evening. Regardless of whether we
17:06:17 9 vote, however, I would like to clear -- be clear on one
17:06:20 10 thing. I absolutely support President Erickson and his
17:06:25 11 decision to accept the consent decree as the only real
17:06:28 12 option in the extraordinarily difficult circumstances
17:06:32 13 and the choices we were presented.
17:06:35 14 It is my sense that every member of this
17:06:37 15 board also fully supports President Erickson, even
17:06:40 16 though we may not agree with the process used by the
17:06:43 17 NCAA or with the harshness of the sanctions imposed.
17:06:47 18 President Erickson's leadership throughout this
17:06:50 19 extraordinarily difficult time has been invaluable and
17:06:54 20 is greatly appreciated by every member of the board.
17:06:56 21 On that we all agree.
17:06:59 22 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 multicampus 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've 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 is the best alternative available to it.

Indeed, I'm 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 of 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 consideration in the event of the university's outstanding performance. We continued to urge the NCAA to consider such provisions as late as Friday of this week, this past week. The NCAA rejected our request in each case, including by a vote of their executive (recording briefly inaudible).

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 (recording briefly inaudible). 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, 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’ve 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: 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. 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. Steve Dunham, the university's vice president and general counsel, will discuss President Erickson's authority to accept the consent decree. Ken Frazier will then discuss the Freeh report and the university's plans to implement Judge Freeh's recommendations. Finally Richard Edelman, our public counsel 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 interests 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, and with that as background I'd like to turn it over to Gene Marsh.

MR. MARSH: 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
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, et cetera, 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 forths 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 multiyear 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, and 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 decisionmakers. 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 scene 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 postannouncement, was the consideration was of the death penalty with additional violations 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.

CHAIRPERSON PEETZ: Okay. And what I'd like to do is continue with all of the speakers, then I'll open it up briefly for questions just from the trustees, and then we'll go into various statements that the trustees would like to make. So if we could go on to President Erickson.
PRESIDENT ERICKSON: Hi. This is Rod. Can you hear me?

CHAIRPERSON PEETZ: Yes, now we can.

PRESIDENT ERICKSON: Okay. 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 postseason 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 free investigation, and the fact, as Gene said, that the university had no previous major infractions, so -- 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 effect 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.
The -- 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.

CHAIRPERSON PEETZ: Thank you. Thank you, President Erickson. Okay. Next Steve Dunham, the university's vice president and general counsel.

MR. DUNHAM: Okay. Thank you, Karen. Can you hear me okay?

CHAIRPERSON PEETZ: Yes. Thank you.

MR. DUNHAM: So 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
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 as noted by (recording briefly inaudible) 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
17:35:33  consent decree may be ambiguous or subject to different
17:35:36  interpretations. It is always possible and appropriate
17:35:39  for the parties to engage in good faith discussions as
17:35:41  to the meaning of the decree, how it should be applied
17:35:45  in a given instance, the terms of the yet to be signed
17:35:48  Athletic Integrity Agreement, and whether the parties
17:35:51  should consider amendments in the best interests of all
17:35:53  concerned.
17:35:54  Let me now take a few minutes and address
17:35:58  the decisionmaking process that led up to the
17:36:02  execution. You have heard -- of the consent decree.
17:36:06  You have heard Gene Marsh and President Erickson
17:36:09  describe the discussions with the NCAA. I wish only to
17:36:12  highlight one as aspect of these discussions, the
17:36:15  choice the NCAA provided to the university between the
17:36:19  terms of an imposed consent decree, and a multiyear
17:36:21  death penalty that would also carry with it additional
17:36:23  sanctions.
17:36:25  This was a choice for the university as an
17:36:28  entity. All of us, the board, the president, the
17:36:31  lawyers, others all work to take care of duties to Penn
17:36:34  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 --
excuse me, 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 report.

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 (recording briefly inaudible) understand this critical distinction. With 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.

CHAIRPERSON PEETZ: Okay. Thank you very much, Steve. And I'd like to turn it to Trustee Ken Frazier who will talk about the Freeh report.

TRUSTEE FRAZIER: Thank you, Karen. This is Ken Frazier. 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 decisionmaking 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. 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.

CHAIRPERSON PEETZ: Thank you. Thanks, Ken.
Okay. Finally, Richard Edelman is on. He's our public relations and media firm advisor.

MR. EDELMAN: 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. Karen, over to you.

CHAIRPERSON PEETZ: Okay. Thank you, Richard. Now what I'd like to do is open it up for a brief Q and A session of the speakers that any of the trustees have questions for. I would ask that you identify yourselves as you begin.

TRUSTEE DAMBLY: Hey, Karen. This is Mark Dambly. I had a question for Gene Marsh. Gene, is it fair to say that the NCAA's position was that the
president, then president failed to have the institutional control at that time and that that was the basis for their decision?

MR. WALSH: I don't -- I honestly don't know if I can answer that without looking further. I mean, I think -- I read the statements that are in the consent decree, and as I said when I spoke, the matters relating to the bylaws are detailed, and I guess you can say conclusions to some degree, are detailed in the consent decree -- let me see. I guess it's about pages three more than anywhere and the top of four, and there's discussion which gets to that issue, but then, you know, we were essentially in a process that pulled up one step short of actual findings against individuals. I think that's a relevant point.

The language that's in the consent decree is clearly geared towards what is considered to be an institutional failing and, in fact, there are specific reservation of rights against individuals in the consent decree. There's a specific provision for reservation of rights, which I think answers your
question right on the mark.

And that is it is an institutional failing but there wouldn't be a reservation of rights against an individual, it seems to me, just logically, were they to be coming down with specificity on individual failures.

TRUSTEE DAMBLY: Thank you, Gene.

CHAIRPERSON PEETZ: Other questions?

TRUSTEE SILVIS: Yeah, Gene. This is Paul Silvis. I had a question for you regarding the vacation of our wins.

MR. WALSH: Uh-huh.

TRUSTEE SILVIS: Back in 1998, you know, there was a full investigation conducted by our district attorney at the time. You know, there was no wrongdoing found yet, you know, we lost those couple of years of wins, and then of course at the end of the season when Coach Paterno was asked to step down Tom O'Brien took over. We had control at that point. I mean, what's the basis for going all the way back to 1998 and then finishing the end of the year?

MR. WALSH: I don't and I can't speak for
the NCAA. That would be one for them to follow. I can only guess, and that's just a guess. We had a discussion about the vacation of win penalties, and you can see from the language in the consent decree, I mean, they clearly believe, right or wrong -- I could take the time to find the language, but they clearly believe that the problems started as far as institutional culpability and failure to respond to concerns.

They believe that the problem started in 1998, and they conclude specifically in the consent decree that a part of their belief is that there was a concern not to make a disclosure in order to avoid the negative effect on the football program which they believe would include recruiting, et cetera, and I don't want to get caught for speaking for the NCAA, but I don't -- but I can read, and that's the message that's coming from the consent decree.

CHAIRPERSON PEETZ: Other questions?

TRUSTEE MASSER: Yeah, Keith Masser --

CHAIRPERSON PEETZ: Okay.

TRUSTEE MASSER: -- for Gene Marsh. What is
the NCAA's rationale for limiting scholarships? I mean, we have these scholarships that fell off the face of the earth and we've denied the education of students who, with their athletic ability, could have gotten an education. What's the rationale for that type of sanction?

MR. WALSH: You're not going to like it, but, you know, the blunt rationale first, a significant loss of scholarships for institutional violations is not anything new. I mean, my -- when I was a law professor I was at Alabama and we had a case where we lost -- I forget the count, but it was something like 18 or 21. And then, you know, there have been recent cases where people have had just significant losses of scholarships.

I think I'm right that there's one highly ranked school this year that's dealing with a 75 total instead of 65, but it is clearly an attempt -- and again, this is my language -- to significantly impact the competitive level of the program, and that's stated expressly, and as I mentioned in a previous forum, I think, that whenever those arguments were made and they
were made with full force about the impact of these penalties on people who had nothing to do with it that their response is, and this is blunt but true, is well, the alternative was no football program at all. So a football program that is significantly hindered in the number of scholarship programs -- scholarships that can be given is, they think and some folks think, the institution thinks is better than no program at all. So this is clearly not the first case where scholarship losses had a huge impact on -- I mean, when you give scholarship loses you essentially in many cases are taking scholarships out of kids who are in high school.

You know, you're -- when you take initials away you're taking scholarships away from kids who are in high school, and a multiyear initial ban does exactly that, and so I completely agree with you, but that is exactly the philosophy of the NCAA, and it's been furthered by this discussion that's come up recently of this working group that will put in place in October a whole new procedural mechanism for the NCAA enforcement process and new penalties.
And there's an explicit discussion, nearly a page long or a half or three-quarters of a page in that document, that talks about the weighing of the idea that these penalties have an impact on innocent people, and they acknowledge fully that that's the case and acknowledge fully that going forward that is exactly what they are going to continue to do.

TRUSTEE MASSER: So it seems they'd have other options, that they could exercise other ways of doing that instead of denying students education. It just seems contradictory to their mission to me.

MR. WALSH: Binding penalties, scholarship limit -- I mean recruiting limitations, all -- making coaches sit out games, there are a whole array of things, but scholarship reductions have clearly always been the heart and soul of major infractions cases, and in every case they impact -- almost all the time impact people that have absolutely nothing to do with the violation.

TRUSTEE MASSER: Thank you.

CHAIRPERSON PEETZ: Any other questions?

TRUSTEE CLEMENS: Yeah, Gene this is Al
Clemens. Gene, this had nothing to do with the infractions of the football team at all, and they had the highest academic level, so it seems like -- you know, I understand what you were going through, but it seems like they don't draw any differentiation between the university and the student athletes. That's the problem I have with the whole thing. It just doesn't seem fair to the student athletes but, you know, you covered that I guess as much as you can.

MR. WALSH: For years I've covered it, including the nine years I was on the committee, including the two years I was chair when I would have to make a public announcement of cases it was usually the first or close to the first shot out of the gun that would come from the media or whatever, the school. And it's one of those answers that you give that if accurately given expresses the idea that we fully understand that, but that is exactly what we intend, and so what --

TRUSTEE CLEMENS: That always comes -- I'm sorry, but that usually comes from NCAA infractions.

There was no NCAA infraction here.
MR. WALSH: Well, there was an NCAA infraction -- I mean, if you read the consent decree, we don't want to get into a debate about that, I guess, but clearly at a minimum they believe there was a loss of institutional control and unethical conduct. I don't think anyone could read the consent decree and not think that that's what they thought, but there's also then this other culture thing, and also as I said before, to say -- I think in the week that I talked to those folks the word unprecedented got to be used so much that it just started to rub me raw because it seemed like you couldn't discuss it without the use of the word, and that's exactly where we are here. There's no critter like this. I mean, this is a completely different critter than has ever come along before, and these penalties are greater than anything that's ever come along before and that's, though, what breaks the link with -- to the extent there's any logic in the path that scholarships won't, innocent people, in this case that logic is broken even further because they make it clear that their great concern, or I think even a greater concern than bylaw
issues was culture.
So I don't disagree with everything -- no one could disagree with everything you say about how it negatively impacts, and I know you've been very -- it negatively impacts people who are not responsible, and you've been greatly concerned about the critical (unintelligible) to the point where it could affect the health and safety of players, and I promise you -- I promise you we with force made those arguments, and then here we are today.

TRUSTEE LUBERT: Gene this is Ira Lubert. Can I ask a question of you? Gene?

MR. WALSH: Yes, sir. I was just getting a whole bunch of background noise, but now you're clear as a bell.

TRUSTEE LUBERT: Thank you. Just a question. I know that members of the board have asked for the legal team and yourself to go back to the NCAA to see previous to today if we could get any leniency. Can you speak to any of that and what happened?

MR. WALSH: Well, we had a discussion, I think this was referred to in some of the earlier
comments from Chairman Peetz I believe, that we had a discussion with the NCAA. First we had a discussion during the week, that could there be any what people will call a reopen, in other words maybe two years, could we go ahead and post the idea of getting -- two years down the road, maybe getting a look see at where we were and maybe get some relief, and we argued that forcefully and got back a no answer.

The no answer was based on the idea that they believe that the culture problem would take more than a couple of years to fix. We more recently went back to them with the same hope and argument and got the same answer. So we had some hope maybe going forward that in the AIA, in the monitoring agreement there might be a little give there. But at least for the moment we've got what we've got, and I would also say probably (recording briefly inaudible) that in the NCAA infractions process regarding penalties there has never been up to this point, although this thing we're dealing with is its own critter, there has never been time off for good behavior. That is a concept that does not exist even
in cases where the committee on infractions imposed
like a 10-year show cause against the coach which is --
in many respects 10 years of -- you're not going to be
able to coach.

There's no concept of time off for good
behavior either in individual penalties or
institutional penalties. So it's fair and ripe to ask,
and it is consistent on their part to say at least as
to these penalties that they are not going to grant
that as they speak now. Even President Emmert said at
the press conference I believe that the NCAA is always
open to new information if new information develops,
but we've asked.

I think it's important to understand that
your lawyers, your in-house counsel and your outside
counsel from Reed Smith have been fierce advocates, and
this institution through your president has raised all
of these arguments not just once and got turned back,
but multiple times and got turned back, and that's a
fact.

TRUSTEE LUBRANO: Gene, this is Anthony
Lubrano. I don't recall hearing -- when did we
actually engage you?

MR. WALSH: Let me see. I think it was about the day -- I'd have to go back and look, but I think it was about the day that the Freeh report became public. I don't know when it was. I'm not sure. I'd have to look. It was right at the time about the Freeh report.

TRUSTEE LUBRANO: Thank you.

TRUSTEE SUHEY: Hey, Gene, it's Paul Suhey. If I understood Rod correctly, let's say we're not going to take this and we're going to appeal this, we're going to sue them or whatever, put you guys on top of the NCAA. Would we -- it sounds like, though, if we decided to do this they could keep us from playing football then. They'd shut us down until a court decided, you know, what the --

MR. WALSH: I don't know. I don't know how that would go. I don't know how that would go.

TRUSTEE SUHEY: I mean, if we decided to battle this they could shut us down and then we'd have to wait years until a court decided.

MR. WALSH: I just don't know how that would
TRUSTEE MYERS: Well, it could be the opposite. This is Joel. First let me say that I have great respect for Rod and Karen, and all the other board members here have worked long and hard and they're very dedicated to Penn State, which is a great institution.

A couple of points. The statement that the board issued right after the Freeh report came out was not passed. The board doesn't do anything official without voting because it's the corporate authority, so we have not accepted the accuracy in the Freeh report, and simply because we're working and implementing various procedures doesn't mean the board accepted all of the Freeh report as spec.

And we never anticipated the NCAA or any other party like accreditation agencies will use it against us. The report is not proven, and as I stated in my E-mail to the board we've not received full background on all aspects of it. We have committees working on various aspects of it, the administration and so on.
And we all noticed that some parts of the Freeh report have come under attack for a variety of reasons, so I don't believe we can accept the Freeh report for the purposes of the consent decree imposed by the NCAA, and then turn away any recommendations within the Freeh report.

So a vote -- before a vote on the consent decree imposed by the NCAA either now or in the future we need a full review and discussion and debate by the board and by these committees, and we need a model. We need to see what the impact of accepting the Freeh report in total will have on all kinds of economic effects, student, educational employment prospects, the university's fiscal affairs, potential accreditation of the institution, alumni and community effects, federal research dollars, turnover of faculty and staff, football revenue, impact on other sports, future enrollment, pending and future lawsuits, state and federal support for the institution, and so on.

And following the conclusion of that modeling then we'd be in a position to receive a full report and figure out, too, if there was improper or
illegal coercion brought to bear on the university to extract this document, questions about -- for us, we heard about these, did it prevent the president from bringing a discussion to the board which in itself would violate a major Freeh report recommendation. And we need a study and a report by the administration and attorneys detailing what effect a vote to accept the consent decree imposed by the NCAA would have on the university's fiscal affairs, and they're wide ranging and major, and I've mentioned these previously, so I think this is important. These are the kind of things we need to know the answer to before accepting any part of the Freeh report and binding the university. Now, the board is aware of the E-mail that I shared, and I shared this with some of my constituents, and I've been inundated with nearly 1,000 E-mails in the past 2 days. These are all alumni. They wrote incredibly passionate and lengthy comments, including one from a policeman serving in Afghanistan, and they're 99 and a half percent against ratification, and we need to think through what we're
doing here. These are our alumni and friends who fund
and support Penn State.

CHAIRPERSON PEETZ: Okay. Thank you.

Thanks, Joel. Other comments or questions? I think we
can take one more question and then we need to --

TRUSTEE CLEMENS: Yeah, Karen. This is Al
again. I don't want to beat a dead horse here, Gene,
but let me ask you something. This all seems to relate
back to the culture, mainly the culture, and what if
these trials come out and we find out that there wasn't
-- it really didn't relate to the football program, the
culture as much as they're pinning on us. I mean, it
could be a big change in that. Does that give us a
chance to go back to the NCAA at all?

MR. WALSH: Well, I think the NCAA made its
decision based on the Freeh report in part. It also,
as stated in the consent decree, speaks to the grand
jury report, and they note that I think there were
what, 430 interviews conducted and access to hundreds
and thousands, if not millions of E-mails, et cetera.
And this relates to the point that Steve
Dunham made a while ago, and that is that the standard
for the NCAA and the standard for -- in civil matters
and decisionmaking by universities is quite different
than criminal matters and, in fact, I would say that
the NCAA standard for basis of findings is even lower
than in the civil courts.

The bylaw provision 32-883 says -- and I
know we're not dealing with a committee on infractions,
but people keep liking to talk about the NCAA as though
it's one great big entity. Here is the standard. The
committee on infractions shall base its findings on
information presented to it that it determines to be
credible, persuasive and of a kind on which reasonably
prudent persons rely in the conduct of serious affairs.
I promise you after being on the committee
for nine years that comes down to listening to people
on each side and decide if you think it happened. It's
a low standard. It's not terribly low, but it's who do
you believe, so what the future brings in these
criminal proceedings, I don't know. Whether it causes
the NCAA to change its position, I seriously doubt it.
CHAIRPERSON PEETZ: Okay. All right. Thank
you very much. So now what we're going to do is just
18:09:19  go through with various trustees just because there's
18:09:21  so many of us having a chance to say what they
18:09:25  (recording briefly inaudible), and I think we will
18:09:26  begin with Marianne Alexander.
18:09:29  
18:09:31  TRUSTEE ALEXANDER: Yes, thanks. You've
18:09:33  already told me who I am, so I don't have to say that.
18:09:36  I appreciate the opportunity to speak, and I want to
18:09:39  make my position very clear. I strongly endorse
18:09:42  President Erickson's signing of the dissent decree --
18:09:43  He clearly had the authority to do so, and
18:09:45  in so doing saved our university from a far worse state
18:09:49  in the form of a death penalty for a football program.
18:09:53  He deserves our gratitude and praise for acting in Penn
18:09:55  State's interests. I also believe we're extremely
18:09:59  fortunate to have Rod Erickson at the helm of our
18:10:02  university at this critical time.
18:10:04  
18:10:06  Not only is he widely respected in American
18:10:09  higher education nationally, but is very trusted and
18:10:13  respected by Penn State's distinguished faculty. His
18:10:16  courage and steady hand have steered us through
have unflinching faith in President Erickson.

I urge all of us to move forward under his leadership for the sake of the entire Penn State community now and in the future. Thanks for this opportunity.

CHAIRPERSON PEETZ: Thank you so much.

Thanks, Marianne. Okay. I'd like to call on Trustee Allan.

TRUSTEE ALLAN: Yes, I'll be very brief here. Although I feel that the NCAA acted beyond their authority, I support the decision by the executive committee authorizing President Erickson to sign the consent decree in light of the alternative as was presented. President Erickson has my full support.

CHAIRPERSON PEETZ: Thank you. Trustee Arnelle.

TRUSTEE ARNELLE: Yes. Thank you very much.

I fully support the action taken by President Erickson made under the authority, it's clear under the charter and the bylaws of the university, and in consultation with the chairman and the vice chairman of the board of trustees with the full support of the executive
committee. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee Broadhurst.

FEMALE SPEAKER: Is not on the line.

CHAIRPERSON PEETZ: Okay. Thank you.

Trustee Clemens.

TRUSTEE CLEMENS: Yeah, I'd like to support Rod. I back up Marianne's statement totally, and the only issue I have again is the way the NCAA has come down on the student athletes, but totally support Rod in what he's done. Thank you.

CHAIRPERSON PEETZ: Thank you, Al. Trustee Corbett.

TRUSTEE CORBETT: Yes, thank you. I want to make that people understand that are listening to this, Penn State is, has been and will be a world class learning and research institution. Clearly mistakes have been made, and we must learn from those mistakes. President Erickson faced a dilemma of two very undesirable choices. He chose I think correctly the lesser of the two severe punishments. The NCAA handed down, as Gene Marsh said, unprecedented
sanctions against Penn State University that I believe went beyond the mission and oversight authority of the organization, but that argument is for another day.

It became clear that the university administration in my mind did everything within its power to work to mitigate the damage to Penn State, the region of central Pennsylvania and its economy, and to the commonwealth. Thank you.

CHAIRPERSON PEETZ: Thank you, Trustee Corbett. Trustee Cotner.

TRUSTEE COTNER: Yeah, I support Rod Erickson also through his very difficult decision. I also subscribe to the duty of loyalty and will always be supportive of our university. I just don't -- I can't put my arms around how harsh the penalties were, and that's about it.

CHAIRPERSON PEETZ: Thank you. Trustee Dambly.

TRUSTEE DAMBLY: Thank you, Madam Chair. I want to publicly state my wholehearted support for President Erickson as a leader of Penn State and his handling of the NCAA matter specifically, and his
authority to execute the consent decree.

Leadership requires individuals make very difficult decisions under very difficult circumstances, and as I think we've learned this evening, the university had very limited options and I believe President Erickson, with the consultation of the executive committee and the chair and the vice chair, chose the right -- made the right decision.

I know all of us, including Rod, believe that the sanctions are very, very harsh, but I also believe that for many of us it's now time to move forward. We need to move this great university forward, restore its glory, and I don't think we can do it on our own.

I think it's -- I think it's -- we've got a lot of work ahead of us, and I want to encourage everybody on the phone who is listening and who is not necessarily able to participate verbally, encourage all of us, the students, the faculty, the staff, the alumni to look forward, not back, and help us restore the glory here.

CHAIRPERSON PEETZ: Thank you. Trustee
Deviney.

TRUSTEE DEVINEY: Yes, I also support President Rod Erickson and our executive committee. I will not second guess the decisions that they were forced to make because of the NCAA. As Chairman Peetz and Steve Dunham acknowledged tonight, it is not legally necessary to ratify the consent decree since President Erickson had legal authority to enter into the consent decree.

My concern, and it is a narrow one, is that I do not want any decision I make to ratify the consent decree to be construed as an acceptance that the full board should not be consulted on certain issues in the future because of a concern of an inability of our board members to abide by our duty to maintain confidentiality.

This concern, though, arises out of the demands of the NCAA, not our board. As we proceed to address these difficult issues moving forward I keep in mind the words of Coach O'Brien. We all have to come together and realize why we're in the position we're in. We have to. We have to stop arguing about it. We
have to move forward. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee Eckel.

TRUSTEE ECKEL: I firmly believe our committee must be to our land grant mission, our 95,000 talented students and student athletes, as well as our exceptional and dedicated faculty. It is my belief that we must move forward, continuing our historic commitment to education and research for the benefit of every Penn State student and every Pennsylvanian.

It is critical that we unite as one behind the courageous leadership of our president, Rod Erickson. Indeed, as he leads this great university in a time of unprecedented challenge I'm confident in the future of this great university because of his leadership and the board's leadership and the entire Penn State family's commitment to an even better future tomorrow.

CHAIRPERSON PEETZ: Thank you. I don't know if Trustee Erickson would like to add anything to his prior remarks. Okay. Trustee Frazier, would you like to add anything to your prior remarks?
TRUSTEE FRAZIER: Yes, very briefly, Madam Chairman. I won't repeat what others have said other than I unequivocally support our president as he deals with an incredibly difficult and complex and unprecedented dilemma.

I'd like to make two quick points that have not come up so far. I want to ask fundamentally for all of our board members to reflect on the fundamental question why Penn State has trustees in the first place. I submit that the reason why we have a board of trustees is because the university faces issues of governance that are often extraordinarily complex with solutions that are hardly cut and dry.

For that reason we need to remember the importance of debate and collective action and decisionmaking are preferable to the mindset of any one individual trustee. Secondly, I want to make the point that while we recognize that mistakes have been made and we need to move forward, we also need to recognize that many of our constituents, and in particular our alums, they often believe that by agreeing to these sanctions we are accepting the most unfair and
slandered public betrayal of Penn State, our football
program and others.

They feel in short that this is a fundamental, unfair attack on our integrity, so in doing what we need to do to preserve the football program going forward we should be mindful of making it clear that we believe this is a great institution notwithstanding certain failures which we are obliged to correct going forward. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee Greig.

TRUSTEE GREIG: I -- can you hear me okay?

CHAIRPERSON PEETZ: Yes.

TRUSTEE GREIG: Okay. I have voiced my support for President Erickson in the past. I continue to support him and the executive board. In my travels I meet a lot of people who are not so friendly to Penn State, and according to them we may should have gotten harsh -- a more harsh penalty, but however, I think that we need to move forward and I support President Erickson and the board.

CHAIRPERSON PEETZ: Thank you. Trustee
TRUSTEE HAYES: Thank you, Karen. I've known Rod Erickson since he first came to Penn State as a faculty member. I had the distinct pleasure of interacting with Rod at that time in my previous life in public office, and from that time forward through provost and now president there is no question as to why Rod Erickson has risen to the plateau that he has. He is without any doubt a good academician. He is an honorable man, and he was faced with impossible alternatives. There was not some magical, easy done way through this thicket, and I support Rod in what he's doing. Karen, if I could, could I just ask Steve Dunham one quick question?

CHAIRPERSON PEETZ: Yes, please.

TRUSTEE HAYES: Steve, did I understand you previously to say that we're still going through the Clery investigation and they will be returning to campus tomorrow?

MR. DUNHAM: Yes.

TRUSTEE HAYES: Will you be sure to keep the board apprised of the actions and updates as we go
forward in that yet pending investigation, please?

MR. DUNHAM: Yes, we will do so.

TRUSTEE HAYES: Thank you, Steve. Thank you, Karen.


TRUSTEE HUBER: Yes, thank you, Karen. I fully support President Erickson in his decision to accept the consent decree. I believe he has the authority to sign the agreement on behalf of the university, and that what he signed was the best possible choice of a bad situation.

It was clear that the alternative would have had much more serious consequences to all of our athletes, as well as the central Pennsylvania economy. Because we're a member of the NCAA we have to abide by their decision even though we feel it's unjust. I think we've spent way too much time going over the same ground again and again.

It's time to move forward and continue making the changes we need to make and spend our time and energy in a productive direction. Thank you.
CHAIRPERSON PEETZ: Thank you. Trustee

Khoury.

TRUSTEE KHOURY: Thank you, Chairman Peetz.

I fully support the actions of President Erickson who I believe acted in the best interests of the university when faced with two incredibly difficult options to choose from. The fairness of the sanctions by the NCAA are highly debatable, but I am confident that our student athletes will surprise the nation with their sportsmanship and honorable play. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee Lubert.

Lubert.

TRUSTEE LUBERT: Yes. As I supported President Erickson when he agreed to take over as president in a very difficult time back in November, my continued support for him is unwavered. I, like many others, do feel, however, that the sanctions were very harsh, but that's what -- given that and the debate that's taken place we need to all come together and move ahead at this time. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee Lubrano.
TRUSTEE LUBRANO: Thank you, Karen. First, I have the utmost respect for President Erickson. I do believe he acted in what he felt was the best interests of Penn State. However, as I have already stated publicly, I am deeply disappointed with the process by which Penn State agreed to the consent decree. Specifically, as a trustee I was excluded from that process, yet our new head football coach was consulted. To me that seems rather ironic. Second, the board of trustees has been told by legal counsel that the NCAA relied upon both the grand jury presentment and the Freeh report. Today I've heard for the first time that Mark Emmert also relied upon information from the Sandusky trial, though I'm unsure as to how he received that information. As for the grand jury presentment, we now know the substantive flaws. I don't need to repeat them here. With respect to the Freeh report, its conclusions in my opinion are based on facts not in evidence. In fact, the full board never accepted the findings of the Freeh report. With respect to the
Freeh report, in my opinion its findings are so inconsistent with reality that I find them to be intentionally inflammatory. For example, Penn State athletics has served as a model program for other NCAA member institutions, contrary to the assertion that Penn State athletics had a culture problem. For those of us involved with Penn State athletics we know just how untrue that is, and of course we know just how absurd any reference to a lack of academic integrity is. To think that Penn State requires an academic integrity monitor is preposterous. No school graduated more student athletes over the past 61 years than Penn State. Finally, I too want to move forward but not at the price of our proud past, so for us to move forward we must build a bridge to that past rather than whitewash Penn State of that past. Too many of us in the Penn State community have a deep affection for Penn State because of the values and ideas shared with us by a man named Paterno. As I have said publicly, he had more integrity on his little finger than the leader of the NCAA has in his
entire body.

In time I am confident that this undeniable truth will be confirmed as due process unfolds. I am also very confident that the Penn State community will rise to the occasion and show the world how truly great we are.

CHAIRPERSON PEETZ: Thank you. Trustee Masser.

TRUSTEE MASSER: Thank you, Chairman Peetz.

I echo your earlier remarks and also fully support and trust our president. Furthermore, our board should find the wisdom to know the difference between the things we cannot change and the things we can change.

We need to accept the things we cannot change, the events of November, the failures outlined in the Freeh report, the unjust sanctions imposed by the NCAA. However, despite those harsh sanctions imposed on us we are still allowed to play a full schedule, we're still allowed to play in the Big Ten, and we're still allowed to be televised.

Along with this we need to focus on the bigger problems facing our university, the things we
can change. We are in the process of implementing best
class governance and oversight changes that will be
a model for other universities across the country. We
need to focus on beginning the search for a new
president. That must be concluded by the middle of
2014.

We need to get on with rebuilding of our
brand. In order to do these things we need to stop
looking back. Moreover, we need to promote open
debate. This is essential for our governing body to
reach decisions that are in the best interests of the
university and its stakeholders.

These stakeholders are the students, the
faculty, the staff, the alumni and all the supporters
of the institution. With that said, once those
opinions are offered and a consensus is reached we need
to align as a board with one voice.

The single voice is important so that we are
able to convey our corporate authority to our
stakeholders that we as a board wish to do what we feel
will better this institution. If dissent is heard
after consensus this further divides our institution
leaving our stakeholders to become disillusioned with any decision that is made. We still have an institution with academic and athletic excellence. It is now time to align with our president, our students, faculty and staff and our coaches. They all deserve our unified support. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee McCombie.

TRUSTEE MCCOMBIE: Thank you. My thoughts and comments have been stated in my recent communications to the trustees, including my letter on Friday which stated to allow for sufficient time for the full and deliberate review that Trustee Myers suggests I will instruct my counsel to refrain from further prosecution of pending appeals or consideration of legal actions. Since all of these communications have found their way into the public forum, I don't believe it's necessary to restate them all this evening. Thank you.

CHAIRPERSON PEETZ: Thank you. And Trustee Myers, you made a bit of a statement before. Would you
like to add anything?

TRUSTEE MYERS: I just want to emphasize again that I have great respect for Rod Erickson and all the other board members that we've heard from tonight. Everybody is doing what they believe is in the best interests of the university.

We've heard several of the trustees talk about how totally unfair and unjust the action by the NCAA is, and hopefully with time that will be changed. This is a great university in so many ways, and this is overshadowing all the great things that are happening throughout this university, the cure for cancer and all the different things that are helping society and America and education and research in general.

And it's necessary we get that message out, that we get -- so we need to unify ourselves and we need to come together, and we need to tell the story of this great university going forward, and -- so there are a lot of things here that we're very disappointed about, and they were unfair and unjust, but we must move forward for the greater good of Penn State University.
Chairperson Peetz: Thank you. Trustee Shaffer.

Trustee Shaffer: Thank you, Karen. I looked back at how we proceeded with this. We accessed the best outside counsel we could to get advice. The president (recording briefly inaudible) advice of the executive committee under the threat of any leakage of confidentiality and we'd be put in the death penalty for several years.

I fully support his decision and stand behind him a hundred percent. I really think that as Trustee Myers -- or, yeah, Masser said that we really now have to concentrate on work on things that we can make change. We have to take the advice of counsel and move forward, and also get back to what -- the mountainess work that's ahead of us. Thank you.

Chairperson Peetz: Thank you. Trustee Silvis.

Trustee Silvis: Thank you, Karen. Well, you know, Rod and Steve were given the authority to negotiate on the board's behalf, and to try to second guess them or say he could have or should have or done
something to get a better deal is just simply nonproductive, so I want to publicly thank Rod for stepping up in this unprecedented time. I know you did the best you could against a foe looking for blood. We've got to move forward as a community, as a university. We can't continue to rehash and relive the past. It's not going to change. I do want to make a statement, though, about the NCAA's consent decree statement that Penn State's football program was held in higher esteem than the values of the institution or of higher education. Penn State's culture has always embraced academic success for all students, especially for athletes in all collegiate sports. If another institution has placed on the field performance over academics, Penn State did not. Exhibiting excellence on the field and the classroom is and has always been the core value of Penn State. NCAA goes on to make a statement that unprecedented sanctions were justified by fear or deference beyond the football program, fear or deference. In a culture of reverence for Penn State
football I'd like to encourage the NCAA to think about that statement in the context of their own organization's culture creating a culture of fear, intimidation, adjustment without appeal, verification of facts, take it or leave it attitude could create an imbalance of power that will eventually rock all the foundations of all universities and what we stand for.

The question all universities have to ask is what is the appropriate balance of power between the NCAA and the institutions they regulate. Is it ever appropriate to force an institution to give up our right to appeal and clarify facts that were a basis for those sanctions. With that being said, I'll take the high road again and put all my support behind Rod's team to implement the sanctions in a manner that far exceeds our expectations.

Penn State has always been a best in class institution. We'll show the NCAA that we are Penn State just as Paul Suhey's grandfather, Steve Suhey, uttered in 1948 when SMU protested the playing of two black players, Wally Triplett and Dennie Hoggard in the Cotton Bowl. Thank you.
CHAIRPERSON PEETZ: Thank you. Trustee

TRUSTEE STRUMPF: Thank you, Karen. I fully
support Rod Erickson, and given the difficult choice
his signing the consent decree. For those alumni and
students and friends listening on this call, we
appreciate your anger, but anger is not a strategy for
running a university. We have to move forward, we have
to unite as a board, and I give my full support to Rod
Erickson. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee

Suhey.

TRUSTEE SUHEY: Thank you, Karen. It's sort
of hard to be at the end of the alphabet to say
something that hasn't been said already. For Trustee
Silvis, Paul, that was my father, not my grandfather,
and there was some very unique men at that time in the
history of our university.

I think -- I fully support Rod. It's
obvious that he's had a very tough job, and he's done a
great service to this university when we asked him to
step up, so I unequivocally support him. I think, you
I know, I know it in our heart, in our DNA in this university its fortunes are our history, that we're going to be successful because we are and we continue to be successful. I only hope that we can now move ahead. I'm ready to move ahead. I hope our alumni, our students, our staff and our fans will join us. Thank you.

CHAIRPERSON PEETZ: Thank you. Trustee Surma.

TRUSTEE SURMA: Madam Chair, in the interests of brevity I'll just join my distinguished colleagues in expressing the strongest possible support for President Erickson and his leadership team and the faculty, staff and all the returning students. The president had to make some very hard but necessary decisions under terrible circumstances, and I believe without any doubt in my mind that he acted at all times in good faith and with the best interests of the university at heart, and for that I both admire him and support him. We need to be behind our leader and our leaders and our faculty and our students. I urge us
all to look forward as we approach this new school year. Our great university is important, the land grant mission is paramount, and it's why we're all here, and it's what we need to focus on as we move forward I hope together. Thank you, Madam Chair.

CHAIRPERSON PEETZ: Thank you. Trustee Taliaferro.

TRUSTEE TALIAFERRO: Thank you, Madam Chair.

I want to thank Dr. Erickson and our executive committee for their leadership during these difficult times at Penn State. I believe everyone recognizes Dr. Erickson was put in an extremely difficult position by the NCAA, and at that time I truly believe he did what was in the best interests of the university.

You know, we are one team, we have to support one another. With that being said, I don't agree with the NCAA when they say we have problems with our Penn State culture. Culture is defined as the beliefs, behaviors, objects and other characteristics common to the members of a particular group or society. One person does not create a culture. A group of people don't create a culture. It's the
students, our professors, and our alumni that create
the culture of this university. I'd put our culture
against any school in the country, and we all support
President Erickson.
And I believe we're going to move forward
and do great things. As we move forward I'm fully
certain the NCAA will witness what our school's culture
is truly about, and that's all I have to say. Thank
you.

CHAIRPERSON PEETZ: Great. Thanks. And
then last is Trustee Tomalis.

TRUSTEE TOMALIS: Thank you, Madam Chair. I
just will be brief. I wanted to point out that I think
it was very appropriate that we have this public
meeting today. In fact, we -- I believe this is the
first time that the public has heard the history of the
discussions that have led up to this agreement with the
NCAA, but I believe it was the third or fourth time the
board has actually heard the chronology of events.
Having said that, that's been a lot of
discussion over the past couple of weeks about culture.
I think we should remember that the Penn State culture,
as great as it is, was best exemplified by those students that turned out last November, the thousands and thousands of students that turned out in the candlelight ceremony that showed what Penn State is all about. For that I applaud the Penn State community, and it is for those students that we need to move forward. Thank you.

CHAIRPERSON PEETZ: Thank you. And then Trustee Hintz was on but did not speak. Would you like to speak? Are you on?

TRUSTEE HINTZ: Am I on? Can you hear me?

CHAIRPERSON PEETZ: Yes, now we can hear you.

TRUSTEE HINTZ: Okay. Well, I make it unanimous in endorsing President Erickson. We're so fortunate to have an experienced administrator to help us through this difficult period. I reflect back to a time when we were selecting presidents, and they looked very carefully at how the board conducts its business. And if we want a rich pool to someday succeed Rod Erickson we need to get our act together and act as -- we're all going to have differences of
opinion. With 32 members I don't think it could be otherwise, but once a decision is made I think it's important that we move together in the best -- to the best future possible for Penn State. Thank you.

CHAIRPERSON PEETZ: Thank you, Ed. And with that, President Erickson.

PRESIDENT ERICKSON: Karen, Karen?

CHAIRPERSON PEETZ: Yes.

PRESIDENT ERICKSON: This is Rod Erickson.

I got cut off momentarily just at the time you were coming to me.

CHAIRPERSON PEETZ: Okay. Thank you. You have some comments?

PRESIDENT ERICKSON: Just very briefly. I want to thank members of the board for your vote of confidence and your support as we move ahead now. It is time to move forward. We have students coming back to campus in a couple of weeks, and we do need to focus on the future. We need to focus on our core missions of teaching, research and service because these are the things that will continue to define us as a world class
university, and I will continue to work hard every day
to see that our future is bright.

I can't thank our wonderful faculty, staff
and students enough for their dedication to learning
and discovery, and I admire our alumni for the great
work that they do every day to change the world for the
better. We're going to be fine.

CHAIRPERSON PEETZ: Okay. Thank you.

Thanks, Rod. Okay. 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 recorded telephonic meeting was concluded.)
CERTIFICATE OF TRANSCRIBER

I, Bonnie K. Panek, do hereby certify that
the foregoing transcript is a true and correct record
of the recorded proceedings; that said proceedings were
transcribed to the best of my ability from the audio
recording as provided; and that I am neither counsel
for, related to, nor employed by any of the parties to
this case and have no interest, financial or otherwise,
in its outcome.

____________________
BONNIE K. PANEK