
From: Erickson, Rodney <RAE@psu.edu>
Sent: Friday, July 20, 2012 9:52 AM
To: Gene Marsh; Guadagnino, Frank T.; Dunham, Stephen; William H. King, III
Subject: RE: Update

Gene,

Much as I hate to swallow this, I think you are dead on target. The PSU Board has already publicly embraced the findings of the Freeh Report. There's no going back on that. I think it's better to play football this fall—for the sake of our entire athletic program and the University—than it is to keep fighting; we only make ourselves look worse and unrepentant in the eyes of the nation. As you say, we are caught in the "perfect storm."

Rod

From: Gene Marsh [mailto:gmarsh@lightfootlaw.com]
Sent: Friday, July 20, 2012 9:35 AM
To: Guadagnino, Frank T.; Dunham, Stephen; William H. King, III; Erickson, Rodney
Subject: RE: Update

I think it is what they want - to cripple the program. After spending nearly three hours on the phone with those guys yesterday and hearing the tone of the conversation of the NCAA BD through those reports, I think most of the BD would not blink in giving PSU the death penalty for an extended period of time. I also think Emmert is fueling the fire. His comments in the interview a few days ago support my belief.

I don't know what to think of Donald Remy - I don't know him well enough - one way or the other. But I know Berst and David has been blunt with me and has tried with some passion to make it clear that the death penalty is really where most of the sentiment is. It is also clear to me they are making a bold stroke for reform of college athletics through this case, and this is the starting gun for all their Working Group reports that are close to being finished. David Berst made that completely clear yesterday.

And recall that Remy said all throughout the Freeh investigation the NCAA was getting reports every two weeks from his group. With the public report as intense as it was in tone, imagine what those private reports were like. So an "attitude" and momentum have been building for some time.

And since the Freeh Report, the information coming out of newspaper articles has been horrible. Two relating to the governor serving on the board and trying to serve two masters with his previous position and his comments on PSU officials not assisting the criminal investigation, and the board member who just resigned having been close to Spanier ... it's like The Perfect Storm - these stories that still keep coming out when folks are deliberating. And sports writers range from morons to very wise folks - and among the wise and respected, I have never seen such caustic commentary. They are especially mad because they drank the Koolaid and wrote glowing pieces back in time, so they are trying to get out in front of their own problem.

I also understand that Spanier was famous for getting preachy with other presidents regarding the PSU ethic and "the Penn State way" and that some leaders on other campuses did not appreciate it. If any of them are on the NCAA BD, there's more fuel for the fire.

I still go back to weighing a process where they tell me and Pres. Erickson \$30 million - then it's \$60 million roughly 48 hours later. Sounds like Remy lost control of his client. But I think what David Berst is reporting is correct - where the sentiment is.

After sleeping on it, here's what I think. What if Penn State were to reject this process and trigger a traditional infractions process? The enforcement staff would instantly hit a brick wall in the important interviews. But Penn State has embraced the Freeh Report publicly and I think publicly has said it will implement the recommendations. So the staff would have work off the report but they could - surely would - come to campus and start kicking around. They would interview folks in student affairs to see if there was special treatment, etc etc. They would charge other violations based on the Freeh Report (see Emmert's letter) and I don't see how the institution could run away from it - lack of institutional control, unethical conduct etc etc. But at least there would be an opportunity to be heard and an opportunity to appeal. But I think there is a very good chance the COI would impose draconian penalties and maybe the death penalty - David Berst was adamant yesterday that he believes the death penalty could be imposed. The pressure on the COI to do great damage would be terrific. But one thing is clear - it would take a long, long time to get to a resolution and the school would need to self-impose very harsh penalties immediately, now that we know where the leanings of the NCAA are.

Only a fool would predict where the COI would come out.

And does PSU want to invite all the criticism that would follow for continuing to fight?

We can still try to get some relief from some of the notions in Remy's draft, but I don't think it will be much.

This is close to a death penalty, but PSU can still have a football team and all that goes with it that contributes to life on campus in the fall.

So that's what I think this AM.

From: Guadagnino, Frank T. [FGuadagnino@ReedSmith.com]
Sent: Thursday, July 19, 2012 8:49 PM
To: Gene Marsh; Stephen Dunham; William H. King, III
Subject: RE: Update

I find it hard to believe that they wouldn't, just to be able to say that they used due process. The cumulative effect of these sanctions will cripple the football program, and as a consequence, the other 29 varsity programs, for at least a decade, maybe longer. Is that what they want?

-----Original Message-----

From: Gene Marsh [gmarsh@lightfootlaw.com]
Sent: Thursday, July 19, 2012 09:35 PM Eastern Standard Time
To: Guadagnino, Frank T.; Stephen Dunham; William H. King, III
Subject: Update

I spoke with Pres. Erickson just now.

Separate from that conversation - can you take this much away from a school without an opportunity to be heard?

Sent from my iPhone

 LIGHTFOOT
LIGHTFOOT FRANKLIN WHITE LLC
TRIAL & APPELLATE COUNSEL

Gene Marsh

Direct Dial:(205) 581-1507

The Clark Building
400 20th Street North
Birmingham, Alabama, 35203-3200
<http://www.lightfootlaw.com>

NOTICE: This email may contain information that is privileged or otherwise confidential. It is intended solely for the holder of the email address to which it has been directed. It should not be disseminated, distributed, copied or forwarded to any other persons. It is not intended for transmission to, or receipt by, any other person. If you have received this email in error, please notify us of the error by reply email or by calling Gene Marsh at (205) 581-1507, and please delete this email without copying or forwarding it.

* * *

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

* * *

To ensure compliance with Treasury Department regulations, we inform you that, unless otherwise indicated in writing, any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Disclaimer Version RS.US.1.01.03
pdc1