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**From:** Gene Marsh <gmarsh@lightfootlaw.com>  
**Sent:** Sunday, July 22, 2012 10:59 AM  
**To:** Erickson, Rodney; Stephen S Dunham; Guadagnino, Frank T.  
**Cc:** William H. King, III  
**Subject:** Thought - What If

This is what Frank would likely call a "stream of consciousness" email, but I think it is real important as you consider a press release, any Q and A, and as you deal with your various constituencies.

Part of PSU's calculation here had to be weighing this outcome against possible outcomes in the traditional infractions process.

The most recent draft makes it clear that the death penalty was in play in this process. You should speak to that.

But it also spills over to possible/likely outcomes in the other process. The NCAA would clearly have pursued the same end in the traditional infractions process. And in that process the institution would clearly have needed to go ahead and self-impose draconian self-imposed penalties right now. Once the Freeh Report was embraced by your board and you overlay the NCAA bylaws, there would have been no escape from the application of many/most of the bylaws that were in play. Prior to the Freeh Report, there was good faith disagreement - I was one of the doubters - on "whether this was an NCAA matter." The Freeh Report and the acceptance of same by the PSU board instantly changed that notion. The culpability of individuals in leadership positions at Penn State - beyond Sandusky - changed the minds of virtually everyone. There will always be a few doubters, but they don't matter. There would also have been this cloud hanging over the campus due to an ongoing NCAA inquiry. Don't say this anywhere, but part of the calculation is that they likely would have found some additional NCAA violations. I can spot a few possibilities in the Freeh Report and I understand there are others.

Several nights ago I went down the list of the current Committee on Infractions members and considered their personal slants, their recent interests and passions as demonstrated at recent hearings - especially Ohio State which dealt with a form of cover-up - and just what I know about them as friends and acquaintances. We'll never know, but I do believe there is a real chance they would have ended up with a death penalty - likely two years - not just one. Even short of that, they would set a record for NCAA penalties in some other form, and it would a year or likely more to get their.

I don't think they would have imposed \$60 million - likely less - but if they shut down the program for a couple of years, I don't know which would be worse or more expensive or disruptive ... I think I know.

It was only after looking at their faces and bios and their statements and actions in recent hearings that I concluded we could NEVER guarantee they would not shut down the program. I spent 9 years on the COI, two years as chair and felt and tasted the lobbying that goes on in the NCAA leadership to get the COI to a certain result. Such lobbying and pressure would have set a record here. Emmert would have been furious that PSU walked away from his "deal."

This is a terrible result for the school and as a faculty member of 28 years, I feel absolutely terrible for the school, as though it were my own. I watched the faces of students at PSU when the Freeh report was being announced. But I think this was the only choice to make, as lousy as it is.



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