

## Louis Freeh's Recent Debacles

-By Eileen Morgan 4-23-13

Louis Freeh Investigation: Wynn Resorts	Damage via Unsubstantiated Findings and Conclusions	Condemned/Overtured by:
<p>2-18-2012 Wynn Resorts commissioned Louis Freeh to investigate the affairs of Japanese gaming entrepreneur Kazuo Okada, who is a majority owner of Aruze USA, Inc., who owned 20% of Wynn Resorts' outstanding stock.</p> <p>Mr. Freeh and his law firm, Freeh, Sporkin &amp; Sullivan, were retained to investigate Mr. Okada back in October 2011 by a special committee of Wynn's board.</p> <p>Mr. Freeh's report contends that substantial evidence exists that Mr. Okada and his associates made gifts and payments to the two chief gaming regulators of the Philippines Amusement and Gaming Corporation in an amount exceeding \$100,000.</p> <p>In his report, Mr. Freeh states that these payments "appear to be prima facie violations of the United States Foreign Corrupt Practices Act." Mr. Freeh's report also alleges a number of other misdeeds by Mr. Okada in connection with the Philippine casino, including an allegation that Mr. Okada circumvented a Philippine law that requires that gaming operations be 60 percent owned by Philippine nationals.</p>	<p>Since the formation of the company, Wynn's articles of incorporation have provided that Mr. Okada's shares could be redeemed by Wynn if he were deemed "unsuitable". Unsuitable is defined in the articles as being deemed unsuitable by the Nevada Gaming Commission, but it also includes: a Person who, in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.</p> <p>Wynn Resorts, at direction of Steve Wynn, turned around and used the Freeh Report that same day to rationalize the forcible redemption of 24,549,222 shares of Wynn Resorts held by Aruze USA, Inc., a company whose ultimate majority owner is Mr. Okada. At the time, Aruze USA was the largest single shareholder in Wynn Resorts, owning close to 20% of Wynn Resorts' outstanding stock.</p>	<p>4-22-13: Judge Michael Chertoff, Former Homeland Security Secretary ruled on Freeh report. Judge Chertoff has also served as a judge on the U.S. Court of Appeals for the Third Circuit, Assistant Attorney General in charge of the Criminal Division at the U.S. Department of Justice, and U.S. Attorney for New Jersey.</p> <p>According to Judge Chertoff, the Freeh report was "structurally deficient, one-sided, and seemingly advocacy-driven." Moreover, its conclusions, "simply are not credible." Instead, Judge Chertoff found Freeh's report to be "deeply flawed" and "lack[ing] basic indicia of a credible investigation."</p> <p>Judge Chertoff has now found that the Freeh report's conclusions were "based on an incomplete legal analysis; a failure to collect evidence concerning most of the allegations; a disregard of evidence tending to undermine [Freeh's] assumptions; and a failure to investigate plausible alternate explanations."</p> <p>The Freeh report's "factual findings and inferences lack objectivity and lack factual support," Judge Chertoff explained. Freeh's law firm "viewed itself as an advocate first and an impartial investigator second" in preparing the Freeh report. Freeh and his colleagues "cherry-picked evidence and stretched to reach conclusions that would be helpful to the Wynn Resorts Board."</p> <p>"[T]he end result is a lopsided report that lacks even the appearance of objectivity," according to Judge Chertoff.</p>

Although Aruze USA's shareholdings had a market value of at least 2.7 billion U.S. dollars at the time, Wynn Resorts provided Aruze USA with just a non-transferrable, fully subordinated, \$1.9 billion (30% less than value), ten-year note in exchange. Wynn Resorts' stock price rose \$6.71, or 5.9%, per share the next day, providing tremendous financial gains to Steve Wynn and the other Wynn Resorts Directors who had just stripped Aruze USA of its shareholdings based on the Freeh report.

RESOURCES:

[\(http://dealbook.nytimes.com/2012/02/22/wynn-finds-itself-at-war-with-ousted-shareholder/\)](http://dealbook.nytimes.com/2012/02/22/wynn-finds-itself-at-war-with-ousted-shareholder/)

[http://online.wsj.com/article/PR-CO-20130422-905271.html?mod=wsj\\_share\\_facebook](http://online.wsj.com/article/PR-CO-20130422-905271.html?mod=wsj_share_facebook)

-- The Freeh report was tainted by the timing and circumstances of its creation because the Wynn Board moved within days to act on its content and redeem Aruze USA's 20 percent stake in the company without providing him the opportunity to respond to its allegations;

- The Freeh report's factual findings and inferences lacked objectivity and factual support;
- The Freeh report was "based on unreliable accounts of interested witnesses and implausible inferences";
- The Freeh report's legal analysis was superficial and inflammatory; and
- Freeh's investigative process was insufficiently documented and revealed a number of gaps.

The Freeh report's most significant shortcomings include:

- Timing that implies that Wynn Resorts commissioned the report for a clear purpose: to justify ousting Mr. Okada from the Board and redeeming Aruze USA's 20 percent stake in the company at a substantial discount;
- Consistently pairing grave and far-reaching conclusions with scant and unreliable supporting evidence and incomplete investigation and analysis, including broadly alleging a "practice and pattern" of Foreign Corrupt Practices Act (FCPA) violations without sufficient detail to meaningfully evaluate these incidents;
- Reaching legal conclusions through deficient legal analysis, including asserting a bad faith, possibly criminal violation of Philippine law while ignoring key aspects of the legal analysis Wynn Resorts commissioned from a local law firm; and,
- Failing to provide any meaningful explanation of its process and citing documents that are of dubious provenance or otherwise unreliable, as well as relying on potentially biased interviewees.

Louis Freeh Investigation: Penn State	Damage via unsubstantiated findings and conclusions	Condemned/Overtured by:
<p>In November 2011, Pennsylvania State University announced that Mr. Freeh and his law firm, Freeh, Sporkin &amp; Sullivan, were retained <b>to investigate Penn State's handling of the Sandusky matter by a special Task Force committee of PSU's board</b>. Freeh would lead an internal investigation into the Jerry Sandusky sex abuse scandal involving several high-ranking university officials.</p> <p>Freeh's damning report, released on July 12, 2012, referred to a pervasive and damaging culture at Penn State where the levers of power were tightly controlled by four men — university President Graham Spanier, head football coach Joe Paterno, Athletic Director Tim Curley and Vice President Gary Schultz — whose repeated failure to deal with troubling allegations lodged against Sandusky always seemed to be directed by one goal: "to avoid the consequences of bad publicity." "The most powerful leaders at Penn State University — Spanier, Schultz, Paterno and Curley — repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the Board of Trustees, the Penn State community, and the public at large," Freeh's report concluded</p>	<p>Freeh's 267-page review blamed Paterno, former university President Graham Spanier, suspended Athletic Director Tim Curley and ex-Vice President Gary Schultz for allegedly taking part in a cover-up to avoid bad publicity.</p> <p>The most scathing conclusion by Freeh: Paterno, Curley, Spanier, and Schultz knowingly enabled JS to molest children on and off campus for 14 years with total disregard for their well-being.</p> <p>The stellar reputations of these four men and Penn State University were dragged through the mud and tarnished forever.</p> <p>NCAA Sanctions: PSU hit with \$60 million fine, a four-year football postseason ban and the vacating of all wins dating to 1998.</p>	<p>On February 10, 2013 a report authored by former United States Attorney General and former Governor of Pennsylvania Dick Thornburgh concluded that the Freeh report was "seriously flawed, both with respect to the process of [its] investigation and its findings related to Mr. Paterno".</p> <p>Thornburgh and former top FBI profiler Jim Clemente, prominent Washington Attorney Wick Sollers and the director of The Johns Hopkins Sexual Behaviors Consultation Unit, Dr. Fred Berlin, conclude that the Freeh report was a failure that does not meet the basic requirements of a thorough, objective and fair investigation. "The experts determined that the conclusions of the (university) report are based on raw speculation and unsupported opinion -- not facts and evidence," Thornburgh said The Freeh report failed its client, the Penn State University Board of Trustees, and, more significantly, it failed Sandusky's victims by not finding the truth. The Freeh report ignored decades of expert research and analysis of the appropriate way to understand and investigate a child sexual victimization case, according to former top FBI profiler Clemente.</p> <p>"The Freeh report is a profound failure," Sollers said. "It isn't a little wrong on the minor issues. It is totally wrong on the most critical issues. That the Board and the NCAA relied on this report, without appropriate review or analysis, is a miscarriage of justice." Other major findings include:</p> <p>The allegation is false that Joe Paterno participated in a conspiracy to cover up Sandusky's actions because of a fear of bad publicity or for any other reason.</p>

<p>RESOURCES:</p> <p><a href="http://usatoday30.usatoday.com/news/nation/story/2012-07-12/louis-freeh-report-penn-state-jerry-sandusky/56181956/1">http://usatoday30.usatoday.com/news/nation/story/2012-07-12/louis-freeh-report-penn-state-jerry-sandusky/56181956/1</a></p> <p><a href="http://paterno.com/Media-Release/default.aspx#_UXX0n5PD_3g">http://paterno.com/Media-Release/default.aspx#_UXX0n5PD_3g</a></p>		<p>There is no evidence to support the allegation that the football culture at Penn State was somehow to blame for Sandusky's crimes. Former Attorney General Dick Thornburgh says that including such a claim, with no factual basis to support it, undermines the credibility of the entire report. Freeh's failure to conduct interviews with most of the key witnesses is a glaring deficiency. In the 1998 incident, for example, Freeh's investigators failed to interview at least 14 of the most important witnesses, including Curley, Schultz, the District Attorney's office, the Department of Public Welfare and the University's police department or its outside legal counsel. This pattern was repeated in the 2001 review. Having never talked with these individuals, the Freeh report still claimed to know what they did and why they did it.</p> <p>Freeh investigators did not have subpoena power, and no one testified under oath. Worse, witnesses were allowed to speak anonymously, something that would never happen in a legitimate legal proceeding.</p> <p>The conspiracy claim made by the Freeh report based on a string of three emails falls apart under scrutiny. Because of a technology switch in 2004, most of the Penn State emails for the time in question are not accessible. Moreover, there are no emails authored by Joe Paterno and none that he received. In fact, the emails referenced by the Freeh report show that Joe Paterno knew few details about Sandusky, that he acted in good faith and that he did what he thought was right based on what he knew at the time. The validity and thoroughness of the Freeh report was oversold to the public, leading to the report being accepted in full and without review by The Board of Trustees and the NCAA.</p>
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<b>Louis Freeh Investigation: FIFA</b>	<b>Damage via unsubstantiated findings and conclusions</b>	<b>Condemned/Overtured by:</b>
<p>6-29-11: Just a few weeks away from the election, Qatari Mohammed Bin Hammam, the former president of the Asian Football Confederation and challenger to the widely disliked incumbent FIFA president Sepp Blatter, was accused of corruption.</p> <p>Bin Hammam was investigated by Louis Freeh for allegations of colluding with former Fifa vice-president Jack Warner to distribute bribes of up to \$40,000 to members of the Caribbean Football Union in Trinidad last May.</p> <p>After a quick investigation, Bin Hammam was found to have bribed FIFA's ethics committee with gifts to the tune of \$1 million.</p> <p>FIFA's failed prosecution used evidence gathered by Freeh's team. It found "substantial credible evidence that cash was offered to and accepted" by Caribbean Football Union delegates after Bin Hammam made his election pitch at a Port of Spain hotel .</p>	<p>Bin Hammam was subsequently banned from FIFA for life, leaving the door open for Blatter to win the election unopposed.</p>	<p>7-19-12: Swiss Court of Arbitration for Sport (CAS) found Freeh's investigation of the case to provide "insufficient evidence" to support <i>that same investigation's conclusion</i>.</p> <p>FIFA probe led by former FBI director Louis Freeh's agency failed to find conclusive evidence.</p> <p>"It is a situation of 'case not proven,' coupled with concern on the part of the Panel that the FIFA investigation was not complete or comprehensive enough to fill the gaps in the record," sport's highest court said in a statement.</p> <p>RESOURCES:</p> <p><a href="http://bleacherreport.com/articles/1265466-ex-fifa-presidential-candidate-has-ban-annulled-and-how-it-connects-to-penn-st">http://bleacherreport.com/articles/1265466-ex-fifa-presidential-candidate-has-ban-annulled-and-how-it-connects-to-penn-st</a></p> <p><a href="http://usatoday30.usatoday.com/sports/soccer/story/2012-07-19/Mohamed-Bin-Hammam-wins-appeal-in-FIFA-bribery-case/56347494/1">http://usatoday30.usatoday.com/sports/soccer/story/2012-07-19/Mohamed-Bin-Hammam-wins-appeal-in-FIFA-bribery-case/56347494/1</a></p>