

## Case 2.17

## Penn State: Framing Ethical Issues

The Penn State Nittany Lions football team, begun in 1887, has been a powerhouse. The team has had seven undefeated seasons, two national titles, two Big Ten conference titles, and five other national championships. In addition, the team has tied with Stanford University for the number ten slot on player graduation percentages, with 87 percent in 2011. The team was referred to as a “grand experiment” for its devotion to performance both on and off the field. From 1966 through 2011, the late Joseph “Joe” Paterno, fondly known as PapaJo, coached the Nittany Lions. He was, until recent events, the “winningest coach” in college football, accumulating 409 wins to 164 losses and three ties.

The National Collegiate Athletic Association (NCAA) stripped Mr. Paterno of 112 of his wins (from 1998 through 2012), required Penn State to pay a fine of \$60,000,000, banned the team from bowl games, cut ten scholarships for the 2011–2012 season and twenty scholarships from 2012–2016. These levels of sanctions, just shy of the rare death penalty in college athletics in which a sports program is shut down, are generally the result of recruiting violations, payments to student-athletes, or falsification of academic records. However, the sanctions are not the result of violations in any of those areas. Penn State suffers from a near death-penalty from inaction related to the criminal activity of one of its assistant coaches, Jerry Sandusky, and the failure of Mr. Paterno, the athletic director, and other university officials to take action to stop Mr. Sandusky at any time during his long history of child abuse, from 1998–2011. Those “recent events” have resulted in a forever-changed atmosphere in State College, Pennsylvania, the home of Penn State that once carried the nickname, “Happy Valley.”

To help you as you read the case, the following is a chart that identifies all of the individuals involved in the case.

Name	Title/Role
Joe Paterno	Head football coach at Penn State from 1966–2011
Gerry Sandusky	Assistant football coach at Penn State from 1969–1999
Wendall Courtney	Attorney for Sandusky charity and outside counsel for Penn State for twenty-eight years
Alycia Chambers	Psychologist in State College, PA—first contacted about abuse
Ron Schreffler	Detective at Penn State University Police Department
Jerry Lauro	Case worker who handled the first Sandusky complaint
Graham Spanier	Penn State president during Sandusky years until 2011
Tim Curley	Penn State athletic director during Sandusky years
Gary Schultz	Penn State senior VP for finance and business
Thomas Harmon	Penn State police chief
Jim Calhoun	Penn State janitor in football facilities who witnessed a Sandusky incident in 2000
Michael McQueary	Grad student and assistant football coach under Paterno
Cynthia Baldwin	Penn State general counsel
Vicky Triponey	Penn State standards and conduct officer who left the university

## The First Investigation of Jerry Sandusky's Conduct

Gerald A. Sandusky (Jerry) was a Penn State University alum, having attended the university from 1962–1966. Following his graduation, Mr. Sandusky became a graduate assistant in the Penn State football program for one year.<sup>123</sup> He then left to take a position as a physical education instructor and coach at Juanita College for one year, from 1967–1968. He was also a physical education instructor and coach at Boston University from 1968–1969. Penn State hired Mr. Sandusky in 1969 as an assistant football coach and assistant professor of physical education, a position he held until his retirement in 1999.<sup>124</sup>

In 1977, with the help of attorney Wendall Courtney, Mr. Sandusky founded the “Second Mile,” a nonprofit organization dedicated to providing recreational and sports experiences for disadvantaged Pennsylvania children.<sup>125</sup> Second Mile has a Board of Trustees, and there were many Penn State employees or members of their families who served as trustees for Second Mile. In addition, Penn State employees and their families supported Second Mile with donations and through their service at events sponsored by Second Mile. Second Mile was permitted very open access to Penn State facilities for its events. Because of this access and sporting events held on campus for Second Mile children, Mr. Sandusky was seen frequently (prior to 1998) in the showers of the Lasch Building (showers used by the Penn State football team) with those children. None of those who saw this activity, including assistant coaches, reported the shower behavior to anyone at Penn State.

## Sandusky's Sexual Abuse of Second Mile Boys and University and Law Enforcement Responses

It was in 1998 that the unreported activities by Mr. Sandusky resulted in third-party involvement. On May 3, 1998, Mr. Sandusky picked up an 11-year-old boy at his home, based on a prior invitation to the boy and his mother to have the child use the exercise facilities at the Lasch Building. The young boy showered with Mr. Sandusky after exercising and was upset by Mr. Sandusky's touching and holding. Mr. Sandusky told the boy that he loved him and that they had a special relationship. When he returned home after these events, his mother was concerned because he explained that he had showered with Mr. Sandusky and also because he was behaving in a way that she knew indicated he was upset about something.

On May 4, 1998, the boy's mother called Alycia Chambers, a psychologist in State College, PA, who had been working with the young boy, seeking her advice on whether she was right to be concerned about what had happened between her son and Mr. Sandusky. Ms. Chambers told the boy's mother to report the incident to authorities.

The boy's mother then reported the incident that same morning (the morning after the shower events with her son) to Detective Ron Schreffler of the University Police Department. Detective Schreffler interviewed the boy one-half hour later and was given all the details, including the additional information that one of the boy's 10-year-old friends had experienced the same type of treatment by Mr. Sandusky in the Lasch showers.

After Ms. Chambers met with the boy, she called the Pennsylvania child abuse hotline and made a report. Her subsequent consultation with colleagues convinced her that what

<sup>123</sup>Freeh Sporkin & Sullivan, LLP, Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky (2012), p. 39. This report will hereafter be abbreviated as “Freeh Report.”

<sup>124</sup>Mr. Sandusky received tenure in 1980.

<sup>125</sup>Mr. Sandusky's book, *Touched: The Jerry Sandusky Story*, is an autobiographical tome that focuses on Mr. Sandusky's “passion for helping disadvantaged youth,” Freeh Report, at p. 40.

was occurring was a "pedophile's pattern of building trust and gradual introduction of physical touch, within a context of a 'loving, special' relationship."<sup>126</sup>

Detective Schreffler notified the Centre County Children and Youth Services (CYS) about the investigation, but was referred to the Department of Public Welfare because of connections between CYS and the Second Mile and Mr. Sandusky. Caseworker Jerry Lauro handled the case for the Department of Public Welfare. Detective Schreffler also contacted the Centre County prosecutor, but did not notify officials at Penn State. When asked why he did not talk with university officials, he said that he did not want to have to "worry about Old Main sticking their nose in the investigation," something he had experienced in the past.<sup>127</sup>

As the investigation progressed, Mr. Sandusky continued to telephone the boy, and those involved worked to develop reports and information. Ms. Chambers turned over her report to Detective Schreffler, a report that emphasized the gravity of the events. However, for some reason Mr. Lauro did not receive the Chambers report and only received a report from John Seasock, a counselor who had a contract with CYS. Mr. Seasock's report ruled out that there was a situation in which boys were being groomed for sexual victimization and recommended only that someone visit with Mr. Sandusky about acceptable behavior with children.<sup>128</sup> Mr. Seasock did not see a risk because he had never heard of a 52-year-old man becoming a pedophile.<sup>129</sup>

About a week after the shower incident, Mr. Sandusky returned to the boy's home and met with the boy's mother as Detective Schreffler and a local police officer hid and listened. Mr. Sandusky, when confronted by the mother about her son's acting odd, explained that he might have just worked him out too hard. The mother suggested that Mr. Sandusky should leave her son alone. Mr. Sandusky apologized.

One week after the apology, Mr. Sandusky again met at the home of the boy with his mother (with Detective Schreffler and a local police officer listening) and was asked about the bear hug in the shower. Mr. Sandusky said that "maybe" his private parts touched those of the boy. He denied having sexual feelings and explained that he showered with other boys. The mother asked Mr. Sandusky to stay away from her son, and he responded, "I understand. I was wrong. I wish I could get forgiveness. I know I won't get it from you. I wish I were dead."<sup>130</sup>

One week later, Detective Schreffler and Mr. Lauro talked with Mr. Sandusky in the Lasch building, and Mr. Sandusky assured them "honest to God nothing happened."<sup>131</sup> After that discussion, the investigation ended without anyone discussing what had happened with the district attorney.

Between May 4 and May 30, 1998, there were notes and e-mails among and between Penn State University president, Graham Spanier; Gary Schultz, the senior vice president for finance and business at Penn State; and Tim Curley, the Penn State athletic director. It is not clear how Mr. Schultz first learned of the May 4, 1998, events, but his notes reflect that he knew almost immediately and instructed University Police Department Chief Thomas Harmon to let him know everything as the investigation proceeded. His notes concluded

<sup>126</sup>Freeh Report, at p. 43.

<sup>127</sup>Freeh Report, at p. 43.

<sup>128</sup>The Freeh report quotes Mr. Seasock as writing, "The intent of the conversation with Mr. Sandusky is not to cast dispersion [sic] upon his actions but to help him stay out of such gray area situations in the future." Freeh Report, at p. 44.

<sup>129</sup>Mr. Seasock did have a contract with Penn State from 2000 through 2006, receiving payments of \$11,448.86 for counseling services. No one has made any connection between his relationship to Penn State and his decisions in the 1998 case.

<sup>130</sup>Freeh Report, at p. 45.

<sup>131</sup>Freeh Report, at p. 46.

that Mr. Sandusky's behavior was "at best—inappropriate @ worst sexual improprieties."<sup>132</sup> After he received more information about the second boy's experience and the hotline report, his notes ask, "Is this opening of pandora's box? Other children?"<sup>133</sup>

The correspondence and notes also indicate that Mr. Curley had notified Mr. Schultz and Coach Paterno, and both had asked to be kept informed about the investigation. Other documents indicate that Mr. Spanier was also notified, but he denied being aware of the issue and noted that he received many e-mails each day that keep him informed about an array of evolving concerns.

At some point Mr. Harmon made the decision not to make a crime log entry related to the Sandusky allegations. Mr. Harmon wrote to Mr. Schultz that "I can justify that decision because of the lack of clear evidence of a crime."<sup>134</sup> All the investigation paperwork was labeled "Administrative Information" and never classified as a criminal investigation.

Also, at some point the administrators and University Police made the decision not to notify the Penn State Office of Human Resources (OHR), a practice that was typical in other cases in which staff or faculty were under investigation.

As the investigation continued, inquiries came from the athletic department. On May 13, 1998, Mr. Curley sent an e-mail with the subject line "Jerry" to Mr. Schultz, asking, "Anything new in this department? Coach is anxious to know where it stands."<sup>135</sup> Mr. Curley also requested updates on May 18 and May 30, 1998.<sup>136</sup>

When the investigation was concluded, and after the investigators' meeting with Mr. Sandusky, Mr. Schultz sent the following e-mail to Mr. Spanier and Mr. Curley:

[Investigators] met with Jerry on Monday and concluded that there was no criminal behavior and the matter was closed as an investigation. He was a little emotional and expressed concern as to how this might have adversely affected the child. I think the matter has been appropriately investigated and I hope it is now behind us.<sup>137</sup>

None of the documents or correspondence indicates that Mr. Sandusky was warned not to shower with children. There was no discussion of whether Penn State should continue to allow its facilities to be used by Second Mile and no advice given to Mr. Sandusky to seek counseling. In addition, no one in risk management was notified about the incident or the investigation. In 1999, when Mr. Sandusky retired, there was considerable correspondence regarding Mr. Sandusky's request to continue to use Penn State facilities, particularly the Lasch Building, for Second Mile programs and events. When Mr. Sandusky wrote to request "access to training and workout facilities" in his retirement, risk management officials hand wrote their response on the request, "Is this for personal use or 2nd Mile kids. No to 2nd Mile. Liability problems."<sup>138</sup>

<sup>132</sup>Freeh Report, at p. 47.

<sup>133</sup>*Id.*

<sup>134</sup>Freeh Report, at p. 48.

<sup>135</sup>Freeh Report, at p. 49. When Mr. Paterno testified before the Sandusky grand jury in 2011, he testified that he knew no other incidents involving "Jerry" other than the Mike McQueary report (see *infra* for more information on this incident). Freeh Report, at p. 53.

<sup>136</sup>When the investigation of Mr. Sandusky was before the grand jury, Mr. Curley testified that he could not recall that any incident involving Mr. Sandusky and children in the showers was ever brought to his attention. Freeh Report, at p. 52.

<sup>137</sup>Freeh Report, at p. 50. When the investigation of Mr. Sandusky was before the grand jury, Mr. Schultz was called as a witness. When asked about the 1998 campus investigation, Mr. Schultz said, "I was never aware that Penn State police investigated inappropriate touching in a shower in 1998." Freeh Report, at p. 52. Mr. Spanier told investigators in the later Sandusky grand jury case that the first he knew of the 1998 incident was in 2011 when he appeared before the grand jury.

<sup>138</sup>Freeh Report, at p. 51.

## The Impact of Inaction—1998–2001

The 2012 convictions of Mr. Sandusky for child sexual assault involved the following incidents:

- Victim 2—assaulted in the Lasch Building in February 2001
- Victim 3—assaulted in the Lasch Building on dates between July 1999 and December 2001
- Victim 4—assaulted in Old Lasch and the Lasch Building between 1999 and 2000, as well as during a Penn State bowl game trip to Texas in December 1999
- Victim 5—assaulted in the Lasch Building in August 2001
- Victim 8—assaulted in the Lasch Building in November 2000

In Fall of 2000, Jim Calhoun, a janitor in the Lasch Building, told a coworker that he had witnessed Mr. Sandusky in the Lasch Building showers pinning a boy against the wall and sexually assaulting him. Mr. Calhoun told his coworker that he had “fought in the [Korean] War ... seen people with their guts blown out, arms dismembered ... I just witnessed something in there I’ll never forget.”<sup>139</sup> Later that night the janitor who listened to Mr. Calhoun’s report saw two pairs of feet in the same shower in the Lasch Building. He waited for the two to finish and then saw Mr. Sandusky and a young boy (about 12) leave the locker room holding hands. The supervisor for Mr. Calhoun and the other janitor who witnessed the Sandusky conduct advised them to report the incidents. Mr. Calhoun responded, “No, they’ll get rid of all of us.”<sup>140</sup> The second janitor responded that reporting the incidents “would have been like going against the President of the United States in my eyes. I know Paterno has so much power, if he wanted to get rid of someone, I would have been gone [because] football runs this University.”<sup>141</sup> No report was made, there was no investigation, and University officials were unaware of the incidents witnessed by the janitors.

As noted earlier, Mr. Sandusky retired from Penn State in June 1999 with a lump-sum payment of \$168,000. During the negotiations for his retirement, Mr. Spanier and Mr. Curley considered the possibility of giving Mr. Sandusky a position as assistant athletic director, but that possibility was abandoned. Mr. Sandusky had hoped to become head coach following Mr. Paterno’s retirement but was told by Mr. Paterno in February 1998 that there was no way he would become head coach. There was some discussion of making Mr. Sandusky the head coach at the university’s Altoona campus for a possible Division III football program there, but it proved financially unfeasible after Mr. Sandusky was given time to pull together a plan and resources for such a program. Mr. Sandusky was given emeritus rank, a retirement privilege awarded in colleges and universities on the basis of merit and career achievement. The Freeh Report concluded that Mr. Sandusky did not meet the eligibility requirements for emeritus status but also concluded that the retirement package awarded was not related to the 1998 investigation. The emeritus rank entitled Mr. Sandusky to access to university facilities, including Penn State’s East Area locker room and its showers.

## The 2001 Allegations against Jerry Sandusky

In February 2001, a graduate assistant with the football program, Michael McQueary, heard what he called “rhythmic slapping sounds” coming from the Lasch Hall showers at about 9:30 P.M. on a Friday evening. Using a mirror, Mr. McQueary looked into the showers and saw Mr. Sandusky with a “prepubescent” boy. Mr. Sandusky was directly

<sup>139</sup>Freeh Report, at p. 65.

<sup>140</sup>Freeh Report, at p. 65.

<sup>141</sup>Freeh Report, at p. 65.



behind the young boy and had his arms around the boy's waist. Mr. McQueary said that he believed Mr. Sandusky was sexually molesting the boy. Mr. McQueary slammed his locker, the conduct stopped, and Mr. Sandusky and the boy saw Mr. McQueary.

Mr. McQueary left the locker room and went to his office, where he called his father seeking advice. His father advised him to tell Mr. Paterno. Mr. McQueary called Mr. Paterno the next morning and requested a meeting. Mr. Paterno was somewhat gruff and told Mr. McQueary that he did not have a job for him and if that were the subject of the meeting, "don't bother coming over."<sup>142</sup> Upon Mr. McQueary's assurance that the matter was serious, the two met on the Saturday morning following the shower incident, and Mr. McQueary told Mr. Paterno that he had witnessed Mr. Sandusky involved in conduct with a young boy that was "extremely sexual in nature." Mr. Paterno told Mr. McQueary that he would figure out what needed to be done.

Mr. Paterno then had a meeting on Sunday in his home with Mr. Curley and Mr. Schultz, where he discussed what Mr. McQueary had seen. Mr. Schultz then called Penn State's outside legal counsel, Wendell Courtney, about reporting child abuse. Mr. Courtney had been Penn State's outside legal counsel for twenty-eight years, and his law firm had represented the university for almost fifty years.

The next day, February 12, 2001, Mr. Curley, Mr. Schultz, and Mr. Spanier met.<sup>143</sup> The three agreed to meet with Mr. Paterno later in the week to discuss their obligations to report the conduct to the state's Department of Public Welfare. Mr. Spanier asked Mr. Curley to meet with Mr. Sandusky and tell him that Second Mile boys could no longer use the showers. Prior to the meeting, Mr. Schultz had used the Internet to research the names of the Second Mile board members. Mr. Schultz also sent an e-mail to Mr. Harmon to inquire whether there were university records related to the 1998 event involving Mr. Sandusky. Mr. Harmon's e-mail response indicated that there were records and that they were in the university's "imaged archives."<sup>144</sup>

About ten days after he met with Mr. Paterno, Mr. McQueary met with Messrs. Schultz and Curley and discussed the incident. Messrs. Schultz, Curley, and Spanier then met again. Notes from the meeting reflect a three-step action plan of telling Mr. Sandusky that he was banished from the facilities, informing Second Mile about the incident, and notifying the Department of Public Welfare about the incident.<sup>145</sup>

One day later, on February 27, 2001, Mr. Curley proposed to Mr. Spanier and Mr. Schultz a different plan of simply talking to Mr. Sandusky first before involving third parties, explaining that he was uncomfortable revealing the information to others until they had Mr. Sandusky's response.<sup>146</sup> He then proposed that Mr. Sandusky then go with him to talk to Second Mile board members, after he was able to get

<sup>142</sup>Freeh Report, at p. 67.

<sup>143</sup>The notes of this meeting and other documents related to Mr. Sandusky were removed from Mr. Schultz's office in November 2011 by Mr. Schultz's assistant after the grand jury returned an indictment of Mr. Sandusky on criminal charges of child sexual assault. The existence of those files was not known until May 2012, as Mr. Freeh conducted his investigation of the university's actions involving Mr. Sandusky's conduct. Freeh Report, pp. 69–70. No one at the university made any attempt to find out who the boy in the showers was and inquire after his well-being.

<sup>144</sup>Freeh Report, at p. 71.

<sup>145</sup>At this point, Mr. Freeh's report indicates that the e-mails among and between university officials changed dramatically. In 1999 e-mails and pre-February 26, 2001, e-mails (those following the February 26th meeting involving Spanier, Curley, and Schultz that resulted in the three-part action plan) referred to Mr. Sandusky by name, but the 2001 e-mails referred to him as "the subject" or "person," Second Mile as "the organization," and the Department of Public Welfare as "the other organization."

<sup>146</sup>Mr. Freeh included some descriptions of Mr. Curley in his report, including that those at the university referred to Mr. Curley as Mr. Paterno's "errand boy" and that he was "loyal to a fault," someone who followed instructions regardless of consequences.

Mr. Sandusky to agree to disclosure to Second Mile's board. He also proposed that Mr. Sandusky be required to obtain counseling. Mr. Spanier's response was as follows:

Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed."<sup>147</sup>

Mr. Schultz also responded favorably:

Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization."<sup>148</sup>

Mr. Curley and Mr. Sandusky both agreed that the meeting was held, that he agreed to the proposed course of action, and that Mr. Spanier and Mr. Schultz were informed about the discussion and considered the matter closed.<sup>149</sup> During his grand jury testimony in 2011, Mr. Paterno reflected, "I didn't know exactly how to handle it and I was afraid to do something that might jeopardize what the University procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It didn't work out that way. In hindsight, I wish I had done more."<sup>150</sup>

Neither the 2001 nor the 1998 incidents and follow-ups were disclosed to the Penn State Board of Trustees. However, the Board of Trustees was asked to approve the sale of a parcel of land to Second Mile for \$168,500. Penn State had purchased the land in 1999 and then approved the sale to Second Mile in September 2001. At the time of the approval, Mr. Schultz, who handled the transaction as the vice president of finance and operations, issued a press release on the sale and lauded Mr. Sandusky for his efforts with Second Mile.

### The 2011 Grand Jury Indictment and Penn State's Response

In early 2010, the Pennsylvania Attorney General issued a subpoena to Penn State for documents and also subpoenaed Messrs. Spanier, Schultz, Paterno, Curley, and other members of the athletic department. On March 31, 2011, the first news report emerged about the Sandusky investigation as well as the Penn State subpoenas and the appearances before the grand jury of Penn State administrators. Prior to the news report, neither Mr. Spanier nor the university's general counsel informed the Board of Trustees about the incidents, the investigation that had begun, the subpoenas, or the testimony of university officials before the grand jury. At the May 2011 meeting, Mr. Spanier disclosed that there was an investigation after a trustee inquired about the press reports. Mr. Spanier's tone was dismissive regarding the events and the university's involvement. One trustee referred to Mr. Spanier's report on the matter as an "oh, by the way" report given at the end of the day. Several trustees noted that Mr. Spanier did not explain why university officials had been subpoenaed in the case if the issues were, as Mr. Spanier explained, involving Second Mile. The Board took no action and there were no

<sup>147</sup>Freeh Report, at p. 75.

<sup>148</sup>Freeh Report, at p. 76.

<sup>149</sup>Records reflect that Mr. Curley did meet with the executive director of Second Mile and informed him that Penn State would no longer permit Second Mile children on the campus "to avoid publicity issues." When the executive director talked with Mr. Sandusky, Mr. Sandusky indicated that he felt the restriction only applied to use of the locker rooms on the campus. Freeh Report, p. 78. Two trustees of Second Mile were told about the Curley meeting and outcome and concluded that it was a "non-incident" for Second Mile. *Id.*

<sup>150</sup>Freeh Report, at pp. 77–78.

additional reports until the Sandusky indictment became public in November 2011. The initial article on the investigation was not circulated to the Board members.

Prior to the indictment on November 4, 2011, on October 27, 2011, the university's general counsel, Cynthia Baldwin, was informed by the state attorney general's office that Mr. Curley and Mr. Schultz would also be indicted. This news started a series of meetings among the parties, as well as interaction with the Penn State Communications Office. One draft, objected to by communications staff members but not actually voiced because of the "sheep" atmosphere at the university was as follows:

The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance. With regard to the other indictments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee. Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity, and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.<sup>151</sup>

The above press release was issued on November 5, 2011. A board conference call resulted in several board members being concerned about the university's response. For example, despite the knowledge of the pending indictment, several Board members noted that Mr. Sandusky was in the Nittany Lion Club at the university's October 29, 2011, football game. In addition, several board members called for an independent investigation of what had happened but were opposed by both Mr. Spanier and Ms. Baldwin, who opined in an e-mail to Mr. Spanier, "If we do this, we will never get rid of this group in some shape or form. The Board will then think that they should have such a group."<sup>152</sup>

Following a board meeting on Sunday, November 6, 2011, the university announced that Mr. Curley would be placed on administrative leave and that Mr. Schultz would retire. The announcements also included the fact that there would be a special task force appointed to determine how to create appropriate policies and procedures for the protection of children on the campus. The press release with the information was, as the Freeh Report notes, a turning point for the board. Because its authority and decisions were not reflected in the language of the press release, several trustees began demanding additional meetings, a new chair, and other actions so that the board could know exactly what had happened and could control actions going forward. By November 8, 2011, the board issued its own statements expressing its outrage over the "horrifying details" in the Sandusky case and creating a task force to handle issues of university leadership going forward.<sup>153</sup>

Prior to the next board meeting, on November 9, 2011, Mr. Paterno announced his retirement following the end of the team's season (including its bowl appearances still looming). When the board met, it quickly acted to terminate Mr. Spanier for cause. The board's debate over Mr. Paterno was a lengthier and more contentious one, with some board members urging that the "worst mistake of his life" be weighed against the good that Mr. Paterno had done for Penn State. Some trustees urged administrative leave for Mr. Paterno; others felt the board was getting ahead of the facts; and others felt that board needed to take charge and that the retirement usurped the board's authority. The final decision was to terminate Mr. Paterno. There was no plan for communication to

---

<sup>151</sup>Freeh Report, at p. 90.

<sup>152</sup>*Id.*, at p. 92.

<sup>153</sup>*Id.*, p. 94.



Mr. Paterno of his termination and, as a result Mr. Paterno learned of his fate via a hand-delivered note from the board. Mrs. Paterno then called the board to protest the treatment of her husband. The result of this ill-managed situation was a series of student protests, some violence, and some destruction of property.

### The Interrelationships

Following the public disclosure of the indictment of Mr. Sandusky, and Messrs. Curley and Schulzte, additional information about the parties' activities became public. Mr. Schultz had contacted a bank for Mr. Sandusky, to encourage the bank to meet with Mr. Sandusky about a loan for Second Mile. Mr. Schultz wrote that Second Mile "are really good people and this is a great cause related to kids."<sup>154</sup> The bank did meet with Mr. Sandusky.

Penn State worked with Second Mile on many events, including the Second Mile Golf Tournaments that were held at the Penn State Golf Course. Second Mile had the distribution rights on cards that had pictures of the Penn State Football players along with the Second Mile and Penn State logos on the other sides of the cards. The sale of the cards raised money for both the university and Second Mile. Football players and other student-athletes worked routinely as volunteers for Second Mile and its events. Following his retirement from Penn State, Mr. Sandusky was paid \$57,000 per year plus travel expenses to serve as a consultant to Second Mile. From 1999 through 2008, Mr. Sandusky handled the six one-week-long camps that Second Mile held on university facilities. The camps involved the use of athletic fields, the outdoor swimming pools, and the football facilities on the campus.

### The Sandusky Guilty Verdict

A total of eight young men testified about Mr. Sandusky molesting them. There were a total of ten boys who were molested over a fifteen-year period. One juror noted that the young men were very credible witnesses, and there was nothing to indicate that they were not telling the truth. Mr. Sandusky was convicted on all forty-five counts of child sexual abuse. Mr. Sandusky is appealing his conviction on the grounds that his lawyers said they were "rushed to trial."<sup>155</sup> Mr. Sandusky received the maximum sentence of 442 years. When he was taken into prison, the other inmates sang some of the lyrics from Pink Floyd's "Brick in the Wall," to wit, "Hey, teacher! Leave them kids alone." Mr. Sandusky was placed in isolation because of the attitudes of general prisoner populations toward child molesters. One expert calls the fates of child molesters in prison, "a special circle of hell."

### The Conclusions of the Freeh Report

The special report, commissioned by the Board of Trustees, concluded that Mr. Paterno, Mr. McQueary, and Mr. Curley were all required, under the provisions of Pennsylvania reporting statutes, to report what they had seen or been told to the proper law enforcement authorities. Reporting the information to Mr. Schultz did not satisfy the statutes because they were required to report the information to a law enforcement official. The special report also concluded that the university had not done enough to establish policies and procedures related to the presence of children on the campus and had not trained employees on their reporting duties with regard to child sexual abuse. Indeed, even the administrators of these programs had not been given training on their

<sup>154</sup>Freeh report, at p. 108.

<sup>155</sup>Kris Maher, "Penn State Faces Years in Court," *Wall Street Journal*, June 25, 2012, p. A3.

responsibilities toward children in the campus programs. The report noted that the processes for background checks were not known or understood. The investigation revealed several occasions in which university employees expressed concerns about these policies, the failure to follow them, and the resulting risk to the university. Employees who raised concerns were dismissed because their concerns were not seen as consequential.

### Board Governance

The special report was scathing in its indictment of the inaction and inappropriate actions of the Board of Trustees in their responses to an evolving situation. The report also noted that strengthening the governance processes and procedures of the board would help it to be more effective in its role as a checks-and-balance mechanism for management actions and inactions.

### The "Penn State Way" and Culture

The report recommended changes in the culture of the university, noting that "The Penn State Way" philosophy had permeated the organization to such an extent that other perspectives or outside advice were seen as unnecessary. The report recommends creation of a values- and ethics-centered community as a substitute for the somewhat arrogant approach of "The Penn State Way." In addition to establishing values, the report also recommends ethics training for faculty, staff, and students so that values and rules are clear and that all who are on the campus have mechanisms for ethical decision making. Details in the report include the creation of an ethics council as well as the appointment of an ethics officer. The report also recommends additional efforts on transparency, communication, and reporting requirements.

In addition, the report recommends that decision processes and the interaction of departments and colleges, as well as the athletic department, be transparent and that the processes not be overridden through deference to the football program or collegiate athletics. Dissenting opinions were not a part of "The Penn State Way." One incident that was troubling in this area of culture involved a clash between Penn State's standards and conduct officer and Mr. Paterno over the level of discipline that was appropriate for student-athletes who violated the university's code of conduct (and worse). At one point, the then-standards and conduct officer, Dr. Vicky Triponey, wrote to Mr. Spanier about her concerns following assaults by football players on other students. "I would respectfully ask that you do something to stop this atrocious behavior before this team and an entire generation of Penn State students leave here believing that this is appropriate and acceptable behavior within a civil university community."<sup>156</sup> Dr. Triponey would soon resign her position, citing "philosophical differences."

### The Aftermath

Penn State faces years of litigation, as most of the 15 boys have retained counsel and some have already filed suit against the university for its failure to report the Sandusky early incidents. The university accepted the Freeh report without taking exception, and as of November 2012 had implemented one-half of the 199 changes Mr. Freeh had recommended. The first lawsuits were settled for undisclosed amounts in August 2013.

Mr. Curley and Mr. Schultz have entered "not guilty" pleas to their felony charges of perjury and failure to report. Mr. Spanier was fired when the indictments were announced but was given a \$2.5 million severance package in addition to his salary of \$700,000 that he had earned for 2011. The University said that it was bound to honor

---

<sup>156</sup>Reed Albergotti, "A Discipline Problem," *Wall Street Journal*, November 22, 2011, p. A3.

the terms of its contract with Dr. Spanier, and because he was “terminated without cause,” the severance package applied.<sup>157</sup> One year later Mr. Spanier was indicted on eight counts of conspiracy, endangering child welfare, and perjury.<sup>158</sup> The charges are related to what the state attorney general has called “a conspiracy of silence.”<sup>159</sup> In addition, the state attorney general is investigating the current governor’s role in the case, because he served as attorney general during the time that the case was first reviewed and also served as a trustee on Penn State’s board when he became governor.

Mr. Paterno, suffering from lung cancer that was revealed following the Sandusky indictment, died on January 22, 2012. His family still maintains that he did not know about the 1998 incident and felt that he did the right thing in reporting Mr. McQueary’s eyewitness report to university officials. Mr. McQueary has filed a whistle-blower lawsuit against Penn State, alleging that the University’s response has made it impossible for him to find employment as a coach and that the atmosphere at Penn State is hostile. Mr. McQueary is a key witness for many of the plaintiffs in the civil actions filed against the university.

As noted earlier, the NCAA imposed sanctions on the university’s football program, sanctions that the university accepted without protest or a hearing. The NCAA executive committee chair, Oregon State President Ed Ray, in announcing the sanctions, indicated, “I was so appalled at just the thought of those children and what was being done, and that nobody made a phone call, for God’s sake.”<sup>160</sup> When the NCAA sanctions were accepted, the University removed the statue of Coach Paterno from in front of the stadium during the wee hours of the morning.

After the first season following the trial and conviction and the revelations of the Freeh Report, Penn State disclosed that its operating revenue was down \$7.9 million, although its donations increased by 350 percent.<sup>161</sup> However, the case brings to mind poignant line of the prince in *Romeo and Juliet* as he realizes the loss of two young lives and those of so many of their family and friends: “All are punished.”<sup>162</sup>

## Discussion Questions

1. “Penn State is an honorable institution that is trying desperately to defend its [*sic*] ethics and all of the individuals who had nothing to do with this horrific scandal, which have been destroyed by the actions/inactions of a few individuals ...”  
The quote comes from a blog on the Penn State scandal. Evaluate the accuracy of the blogger’s thoughts. Why does it happen that many are punished for the actions of a few? Or is that an accurate assessment—is it the actions of a few?
2. Oregon State President Ed Ray, who announced the Penn State sanctions, said that what happened occurred because of the Penn State culture, that the football program had consumed the values of the university. What does he mean? What can you point to in the case that illustrates his point?
3. List all of the categories of ethical issues you see that occurred over the course of the events.
4. Make a list of all the stakeholders in this case.
5. What does the case teach us about the importance of speaking up? Of raising objections? Give examples of why people did not speak up in this case.

<sup>157</sup>Jack Stripling, “Penn State Paid Spanier \$3.3 Million in 2011,” *The Chronicle of Higher Education*, November 28, 2012, <http://chronicle.com/article/Penn-State-Paid-Spanier/135970/>.

<sup>158</sup>Kris Maher, “Penn State’s Ex-president Charged,” *Wall Street Journal*, November 2, 2012, p. A2.

<sup>159</sup>Steve Eder, “Former Penn State President Is Charged in Sandusky Case,” *New York Times*, November 2, 2012, p. B9.

<sup>160</sup>“NCAA Chair Ray: ‘I was so appalled,’” *USA Today*, July 30, 2012, p. 2C.

<sup>161</sup>Steve Berkowitz and Jodi Upton, “Athletics Revenue Falls at Penn State,” *USA Today*, April 9, 2013, p. 1C.

<sup>162</sup>William Shakespeare, *Romeo and Juliet*, Act V, Scene III, l. 295.

