

Hindsight Not an Option in Sexual Abuse Cases

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“With the benefit of hindsight I wish I had done more.” With these words, Joe Paterno’s record breaking career at Penn State University came to an end Wednesday, when he was fired by the university’s Board of Trustees. The board did what they had to do because Paterno didn’t do what he should have done.

Paterno was referring to the child sexual abuse scandal involving his longtime friend and assistant coach, Jerry Sandusky that has engulfed the University. Sandusky has been indicted by a Pennsylvania Grand Jury on charges that he sexually abused 8 young boys during a 15 year period. According to the Grand Jury one victim was only 10 years old when he was raped by Sandusky in the field house in 2002. The sexual abuse is alleged to have occurred while Sandusky was employed by Penn State as Paterno’s defensive coordinator for the Nittany Lions football team. It continued when Sandusky was head of The Second Mile, a charitable organization for disadvantaged youths that Mr. Sandusky ran on campus in the same facility where Paterno ran his football operations.

The Sandusky case is a classic example of institutional indifference to child sexual abuse. The indictment makes it clear that Penn State administrators ignored and covered up the sexual abuse rather than report it to the proper authorities. It is a reminder of just how often institutions like the Catholic Church, the Boy Scouts, public and private schools and, in this instance, a major university will go to great lengths to protect their reputations. The irony is that by being indifferent, these institutions expose themselves to greater criticism than if they had acted promptly and in the best interests of the victims. Instead of holding itself out as a shining example of “do the right thing,” Penn State has become the object of scorn.

Paterno claims that when he was told about an incident of observed child sexual abuse by Sandusky in the Lasch Football building in 2002, he did what he was legally obligated to do. He reported the incident to his superior, the school’s Athletic Director. According to his Grand Jury testimony, Paterno told the AD that a graduate assistant saw Sandusky in the showers “fondling or doing something of a sexual nature to a young boy.” Despite this testimony, Paterno admits that he did nothing further and contends that he had no legal duty to do so. Paterno may be correct that he had no further legal duty. While it seems beyond debate that Paterno failed to follow the proper course of action from a moral or ethical point of view, the legal issues regarding his personal responsibility are less clear.

Unlike the laws in New Jersey which require *any person* who reasonably suspects child abuse to report it to the proper agencies, Pennsylvania limits the categories of persons who are legally obligated to report suspected cases of sexual abuse. The law includes members of the medical profession, clergy, school teachers and administrators, and others who “...in the course of their employment, occupation or practice of a profession, comes into contact with children...” as well as certain other licensed professionals. In this case Paterno’s exposure to possible criminal prosecution for failure to report the suspected abuse to the proper authorities will turn on the specific nature of his employment by the

university. If he is nothing more than a very highly paid football coach who reported the incident to his superior, he may well have a valid defense to his failure to report the abuse to child protection agencies. Only time and investigation by law enforcement authorities will tell.

What is clear, however, is that civil remedies are available that can serve as a basis for the victims of these heinous crimes to recover some measure of payment for the terrible and, in some cases, irretrievable, injuries they have suffered. In Pennsylvania, while there is no apparent statutory basis for recovery, there are multiple common law grounds for suit, including the school's negligent supervision of Sandusky. In addition, victims of child sexual abuse in Pennsylvania have until age 30 to initiate such a lawsuit. In any such case, it is likely that the individuals who were in a position to observe Sandusky and possibly put a stop to his conduct will be included. Not only would this include Paterno, but also the persons above him, two of whom have been indicted by the grand jury, and University President Graham Spanier who also, according to the indictment, knew of the reports and did not report them to the appropriate authorities. Perhaps the most shocking development was the University's complete lack of interest in the welfare of the children. The indictment reports that at no time did anyone from Penn State attempt to learn the identity of the child involved in the 2002 reported incident.

New Jersey not only has common law remedies for child sexual abuse, it has also had a law in place since 1992 called the New Jersey Child Sexual Abuse Act. The CSAA creates a legal basis upon which child sexual abuse victims can file suit against their abusers and the institutions that employ them. Claims may include negligent hiring, supervision and retention of the alleged abusers. The CSAA allows a victim to recover his or her legal fees as well as punitive and compensatory damages. Unlike Pennsylvania's statute of limitations, under New Jersey law, a victim must file suit within 2 years of turning 18. While this time frame may be tolled in certain circumstances, it can be very difficult for victims to overcome the 2 year requirement. A bill is currently pending in the New Jersey State Senate (S2405) that would eliminate the statute of limitations in child sexual abuse cases, but it has been stalled in committee for a year.

Unless you have known or worked closely with victims of childhood sexual abuse, it is impossible to fully understand the terrible toll it takes upon a victim's psyche. While some victims are able to recover and get on with their lives, untold numbers of victims suffer in silence for many years and in some cases forever. While a recovery under the CSAA brings a measure of financial compensation, no award can give a child and his or her family back their lives. The abuse changes everything forever. It has been my experience that many institutions will not take the necessary steps to safeguard the minor children in their care unless and until they are forced to do so by having to respond in damages for their negligence. It is less expensive and less troublesome to simply sweep such allegations under the rug and hope they never see the light of day, ignoring the impact on the child victims. That is why it is so important for institutions such as Penn State to adopt and enforce policies that make it as difficult as possible for sexual predators to carry out their horrible crimes and to learn how to observe, detect and immediately put a stop to any such abuse. That was not the situation in the Sandusky case, and for that Penn State and the individuals responsible must pay, criminally and civilly. Nothing less is acceptable.