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Spring 5-1-2014

### Over the Line: Ethical Issues in the Media Coverage of the Bernie Fine Scandal

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# **Over the Line: Ethical Issues in the Media Coverage of the Bernie Fine Scandal**

A Capstone Project Submitted in Partial Fulfillment of the  
Requirements of the Renée Crown University Honors Program at  
Syracuse University

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May 2014

Honors Capstone Project in Newspaper and Online Journalism

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Date: April 23, 2014

### **Abstract**

On Nov. 17, 2011, sports media conglomerate ESPN aired a story in which Bobby Davis and Mike Lang, stepbrothers and former ball boys for the Syracuse University men's basketball program, accused Bernie Fine, then an assistant coach for the Syracuse men's basketball team, of sexually abusing them as children. As the story developed, the reporting methods used by ESPN and The Post-Standard, the daily newspaper in Syracuse, were put into question. This report looks at what these news organizations did in their investigative reporting of the allegations against Fine and analyzes whether or not it was morally acceptable. To do this, the report considers the accepted ethics of journalism to use as a lens through which these events can be examined, as well as articles and interviews, including those about the investigation and those looking at the reporting that went behind it. It concludes that while both ESPN and The Post-Standard were correct in not publishing the allegations when they were first received in the early 2000s, these media outlets did not act as ethically as expected at various points throughout their investigations.

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## Chapter 1

### **Ethics: How journalists apply it on the job**

Modern journalism as we know it was born in the early 17th century out of English coffeehouses and American pubs. Bar owners conversed with patrons about what travelers had seen and heard, which was logged in books at the bar. From the coffeehouses emerged the first newspapers, created by printers who collected shipping news, gossip, and political arguments and put it all on paper (Kovach & Rosenstiel, 2001).

Since the early days of newspapers, journalists have been driven by the truth and have insisted upon a free press in order to be fully functional. In 1720, English journalists stated for the first time that truth should be a defense against accusations of libel from politicians, at a time when English common law held that any criticism of government was a crime (Kovach & Rosenstiel, 2001). Fifteen years later in America, John Peter Zenger, a printer, went on trial for criticizing the royal governor of New York. Zenger was acquitted using the defense that people had a right to oppose those in power by writing the truth (Kovach & Rosenstiel, 2001).

According to Kovach and Rosenstiel (2001), “The concept became rooted in the thinking of the Founders.... A free press became the people’s first claim on their government.” Benjamin Franklin, a printer himself, republished what those English journalists had written years earlier. James Madison included the existence of a free press in the Virginia Declaration of Rights, as did John Adams in the state constitution of Massachusetts. Franklin and Madison did not think such a law needed to be included in the federal Constitution, but others, like

Thomas Paine and Samuel Adams, encouraged the public to insist upon a written bill of rights as a condition of approving the Constitution (Kovach & Rosenstiel, 2001). Thus, the First Amendment came to be included among the Bill of Rights, stating, “Congress shall make no law...prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press” (U.S. Const. amend. I).

While the press made its way into the Constitution, as Michael Davis, philosophy professor at the Illinois Institute of Technology, said, journalism is often not considered a profession. Among the reasons why: journalists are not licensed; cannot exclude non-journalists (i.e. bloggers) from reporting the news; are employees rather than independent consultants; serve employers rather than clients; many are not members of any professional organization (although such organizations do exist) and for the most part do not hold a high status or have a high income. Journalism also lacks a body of theoretical knowledge and has no required curriculum through which journalists must pass (2010).

Some people, Kovach and Rosenstiel said, assert that defining journalism can be dangerous. Doing so could prevent journalism from adapting to the times, and violates the spirit of the First Amendment. It is also why journalists have avoided licensing, like other professions (2001).

However, the resistance to defining journalism is not an ingrained principle born out of the First Amendment, but a commercial strategy. As journalism became more corporatized and monopolistic, lawyers advised media companies against putting their principles in writing for fear those codes would be used against them in court (2001).

Davis, though, believes providing a definition is suitable. Using a philosophical approach, he is able to give meaning to what a profession is and how journalism fits into that view. He used the Socratic method, working out a definition through conversation with those in the field and testing those answers by the examining the consequences of using such definitions.

Through the Socratic method, Davis (2010) developed this definition for a profession:

A number of individuals in the same occupation voluntarily organized to earn a living by openly serving a moral ideal in a morally permissible way, beyond what law, market, morality, and public opinion would otherwise require.

While journalism may not appear to be a profession under conventional thinking, it can under this view. Davis' definition of a profession requires journalists to openly declare themselves journalists and be accepted as such. It does not call for journalists to act as independent consultants. If it did, "even a majority of doctors and lawyers would now lack professional status, given the rise of managed care" (Davis, 2010). It does not call for membership to professional organizations, either. "The only organization that journalists must belong to if journalism is to be a profession is the profession of journalism, and their membership comes with justifiably declaring membership" (Davis, 2010).

This description does mandate that journalists be able to act independently, but it does not mean journalists cannot be employees. "That," Davis said, "is as possible in most large organizations as it is with most individual clients" (Davis, 2010). Not everyone is in agreement with Davis, though. Karen Sanders, journalism professor at the University of Sheffield in England, said

journalists are not morally autonomous. “They,” she said, referring to journalists, “must work within business enterprises whose owners and managers are concerned, as much as anything, with profits, increased circulation, audience figures and, in some cases, disseminating propaganda” (2003).

The effects of business on the practice of journalism are further complicated because news does not fit in the standard economic relationship of supply and demand. “Reading, watching, or listening to news doesn’t diminish someone else’s ability to enjoy it, which means news defies ‘the very premise on which the laws of economics are based—scarcity’” (Richards, 2010).

Jay Black, former journalism professor at the University of South Florida St. Petersburg, offered his own view of defining journalism. “The issue of ‘who is a journalist?’ and ‘who deserves privileges?’ should not center on where one works,” he said, “but on how one works” (2010). This view is important to journalism and ethics because it ties the two together. According to Black, a person cannot be considered a journalist if he or she does not act as an ethical journalist would.

Davis established the same concept that ethics is at the very core of defining journalism as a profession. He defined ethics as, “morally permissible standards of conduct governing members of a group simply because they are members of that group” (2010). Unsurprisingly, Davis used the same phrase, “morally permissible,” in both his definition of profession and ethics.

Davis (2010) makes a clear distinction between ethics and law. Law applies to all people within a particular government’s jurisdiction, and as such requires external means of enforcement. Journalistic ethics, though, apply only to



those who choose to be members of the journalistic profession, and so morality, one's internal guiding principles, acts as the primary means of enforcement.

That is how journalism came to be and how it is practiced. But why is journalism practiced the way that it is? What purpose does it serve? "The primary purpose of journalism," Kovach and Rosenstiel wrote, "is to provide citizens with the information they need to be free and self-governing" (2001). This purpose is defined by the role news plays in our lives. Kovach and Rosenstiel said people have an "awareness instinct," meaning they desire news innately and use the news as a way to bond with others. "Knowledge of the unknown gives them security, allows them to plan and negotiate their lives," they wrote. "Exchanging this information becomes the basis for creating community, making human connections" (2001).

Journalists give the people both what they want to know and what they need to know to live better lives. To this end, communications theorist James Carey said, "Perhaps in the end journalism simply means carrying on and amplifying the conversation of people themselves" (Kovach & Rosenstiel, 2001). However, it is important to note, that the public often requires more than an amplification of its own conversations. The information society wants is not needed for social functioning. Thus, in regards to journalism's professional obligations, the public's needs outrank its desires (Elliott & Ozar, 2010).

In order to provide people the information they need to be free and self-governing, to satiate their awareness instinct, and to carry on the conversation of the people, journalists must seek and report the truth. More than anything else, a journalist must be truthful in everything he or she does if he or she wishes to be

successful. Not surprisingly, this tenet also happens to be the first guideline listed in the Society of Professional Journalists' code of ethics (SPJ, 1996).

So, to be ethical, a journalist must first and foremost be truthful. But what exactly is the truth? As Kovach and Rosenstiel (2001) point out, not all journalists are so quick to agree on a single answer: "Everyone agrees journalists must tell the truth. Yet people are befuddled about what 'the truth' means."

Reporting the truth is often tied to being objective, but that is not necessarily the case. By the 1950s, many newsrooms operated under a doctrine of objectivity, which was made up of six standards. They included: factuality, basing reports on verified information; balance and fairness, representing the main viewpoints of a story; non-bias, not allowing reporter's prejudices to distort the story; independence, letting journalists report without "fear or favor;" non-interpretation, meaning reporters did not put their own analysis into stories; and neutrality, meaning reporters did not take sides (Ward, 2010).

Stephen J.A. Ward, former Burgess Professor of Journalism Ethics and founding director of the Center for Journalism Ethics at the University of Wisconsin-Madison, wondered why newspapers used this doctrine of objectivity, which he referred to as a "language of restraint and exclusion." This happened because of what occurred just prior, in the early 1900s. Yellow journalism, which was sensationalistic in order to drive sales, and propaganda, used during World War I, created doubt in the public's mind that journalism could be a reliable source of information and act as a driving force of democracy.

According to Ward (2010), "trends in journalism and in society threatened the naïve idea that reporters could easily obtain the truth through mere

observation.... An impulse to chronicle the world was not enough for truthful, independent journalism.” As a result, the doctrine of objectivity was used to discipline reporters and ensure the separation of opinion from fact. It was journalism’s answer to the ethical problems brought about by its own reporting.

Going back to Davis’ view of ethics and journalism as a profession, it could be suggested that being objective is the morally acceptable, or as Davis would put it, ethical way for journalists to act on the job. Andrew Edgar (1992), ethics professor at Cardiff University in Wales, said, “The argument would be, that if the propositional content of the report corresponds to events as they actually occurred, and without subjective comment, then while the report could be shocking or boring, it could not be immoral or unjust” (1992).

However, Edgar himself admitted this is not reasonable, as individuals view everything with their own biased lens. With so many viewpoints, it is impossible to determine what version is most objective. “Journalism cannot be objective,” he said, “for that presupposes that an inviolable interpretation of the event as action exists prior to the report” (1992).

Various journalists have arrived at this same conclusion through their own experiences. Martin Bell, former reporter for the BBC, dealt with a tradition of what he called “bystander journalism,” characterized by distance and detachment. His experiences led him to believe that objectivity is “an illusion and a shibboleth.” Bell’s problem with objectivity is that it promotes the idea of morally neutral journalism. “What is the justification,” he asked, “for a disengaged journalism which would require its practitioners, as special people with special privileges, to close their hearts to pity?” (Sanders, 2003). Patty Calhoun, editor of

the Denver weekly newspaper, *Westword*, also said natural biases prevent true objectivity. However, she added, “You can certainly pursue accuracy and fairness and the truth, and that pursuit continues” (Kovach & Rosenstiel, 2001).

That is why the traditional view of objectivity ultimately fails in the real world. “In practice, fewer journalists embrace the ideal; objectivity gradually disappears from codes of journalism ethics, while newsrooms adopt a reporting style that includes perspective and interpretation,” Ward said (2010). Instead, Ward advocates what he calls pragmatic objectivity, which unlike traditional objectivity embraces the concept that journalism is inherently an interpretative pursuit. Ward described the function of objectivity as seen through this lens:

The task of objectivity, then, is not to eliminate active inquiry and interpretation, let alone to arrive at some perspectiveless “absolute” description of reality but to develop methods for testing the story’s selection of alleged facts, sources, and story angles. The goal of the objective newsroom is to produce well-grounded interpretations, tested through criteria appropriate to the evaluation of journalistic inquiry, that is, criteria that detect bias, challenge alleged facts and viewpoints, ask for evidence, and prevent reckless, uncritical reporting. The central question thus is not, “How can I report only the facts and avoid values and interpretation?” but “How well does my report, as an interpretation, satisfy objective criteria of evaluation?”

The truth also is not necessarily the same as the news. According to Lippmann (1922), “News and truth are not the same thing.... The function of news is to signalize an event, the function of truth is to bring to light the hidden facts, to set them into relation with each other, and make a picture of reality on which men can act.”

Kovach and Rosenstiel offer their own view on finding the truth in reporting, a method characterized by ongoing exchanges between journalists,

sources, and the public. “The truth here, in other words, is a complicated and sometimes contradictory phenomenon, but seen as a process over time, journalism can get at it” (2001). Ultimately, the truth should be viewed as a goal toward which reporters should strive, but one they may never fully achieve.

Just as journalists’ first obligation is to the truth, its first loyalty is to its citizens (Kovach & Rosenstiel, 2010). As was previously mentioned in the conventional view of what makes a profession, journalists are employees working for larger organizations. However they serve another group as well: the public. “‘The public,’ in this context, refers, to a geographic population, a whole society, the whole group of people living in a particular society at a particular time” (Elliott & Ozar, 2010).

Serving the public can create problems, especially when balancing its wants versus its needs. The business side of journalism can sway reporters away from focusing on the public’s needs, and even away from the basic tenets of reporting. According to former Australian media executive Cameron O’Reilly, “In terms of content, there is no doubt that the consumer is more promiscuous than ever before, and that the only way to ensure that your relationship with him or her is more than a one night stand is to make the experience compelling.” If a news organization merely reports the news fairly and accurately, O’Reilly said, it does not have a chance of surviving (Richards, 2010).

As Sanders (2003) said, “Nothing wrong with making money except where the drive for profits and audience become the only determinants of what reporters can do.” The news and business sides of a media company both try to reach out to the public, but in conflicting ways that creates a tug of war. “They

[journalists] have a social obligation that can actually override their employers' immediate interests at times, and yet this obligation is the source of their employers' financial success" (Kovach & Rosenstiel, 2010).

What makes all the difference is how journalists view their relationship with the public. It should be based upon society's values, while the business side should be left to advertisements, a larger revenue source. Kovach and Rosenstiel said journalists are building a relationship with their audience based on their values, not just selling customers content. News organizations then "rent" this bond to advertisers, who capitalize on it (2010). The best way to ensure this healthy relationship and that reporters stay true to their journalistic ideals is to give newsrooms, not business executives, the final say over news.

Another function journalism has in society is to give a voice to the voiceless. The cliché associated with this role is that journalists "comfort the afflicted and afflict the comfortable." However journalism serves more of a watchdog role, "watching over the powerful few in society on behalf of the many to guard against tyranny" (Kovach & Rosenstiel, 2010).

Even if the above cliché is not the best definition of journalism's watchdog role, it is true that it requires journalists to afflict harm. "Thus, they must be able to effectively evaluate when they can prevent or reduce harm, when such harm is fully justified, and how to explain their choices both to those they harm and to the citizens they serve" (Elliott & Ozar, 2010).

To help journalists through these dilemmas in which they may cause harm, Elliott and Ozar developed what they call a professional-ethical decision guide. The first step in this process is a systematic moral analysis in which a journalist

identifies all courses of action and analyzes them using the following steps: whether or not the action fulfills a professional journalist's role-related responsibilities, whether or not the action will cause harm, and whether or not causing that harm is justified. The second step is to determine how ethical that action is. In a best-case scenario, the action would be described as ethically ideal, while in a worst-case scenario an action could be ethically prohibited. In between is what is ethically required and ethically permitted. What is ethically required is the bare minimum expected of a professional journalist to fulfill his or her role-related responsibilities. What is ethically permitted may overlap with what is required, but also includes other actions that are not necessarily mandatory of a professional journalist (Elliott & Ozar, 2010).

## **Chapter 2**

### **Bernie Fine: The man, the scandal**

When Jim Boeheim became the head coach of the Syracuse University men's basketball program in 1976, the first assistant coach he hired was Rick Pitino. Boeheim convinced him to start right away; the only problem was that it was Pitino's wedding night. The new assistant canceled his honeymoon and instead left immediately to begin recruiting (Thamel, 2013).

The second assistant coach Boeheim hired was Bernie Fine. Like Boeheim, Fine is considered a Syracuse lifer. Except for a brief stint playing in the American Basketball League in the late 1960s, Boeheim has been a part of the Syracuse men's basketball program as either a player or coach since 1962 (Syracuse University Athletics, 2013). Fine, though, is not far behind. He enrolled

at Syracuse University in 1963, a year after Boeheim, and served as a student manager when Boeheim played (McAndrew, 2012).

His period away from the university was slightly longer than Boeheim's, but even then Fine did not stray far. He coached basketball and football at Lincoln Junior High School in Syracuse for a year in 1970 before moving on to coach the junior varsity and later varsity basketball team at nearby Henninger High School. He stayed there until accepting Boeheim's offer to be his assistant in 1976 (McAndrew, 2012).

Boeheim and Fine came at a unique time in the athletic history of the city of Syracuse. In the spring of 1963, Irv Kosloff and Ike Richman bought the Syracuse Nationals of the National Basketball Association and moved the team to Philadelphia (NBA, 2014). The Nationals' exodus left a hole in the city, eventually filled by the Syracuse University men's basketball team. In Boeheim's senior season, three years after the Nationals left Syracuse, the Orangemen earned their second ever NCAA tournament berth, advancing to the regional final (Syracuse University Athletics, 2003). Once the two paired up on the Syracuse bench, the team enjoyed even more success. With Boeheim at the helm and Fine as his assistant, Syracuse appeared four Final Fours and three national championship games, including winning the 2003 national championship.

Syracuse's success gave the city a team it could be proud of again. Charlie Miller, both the former sports editor of The Syracuse Post-Standard and a current journalism professor at Syracuse University, appreciates the connection the program has with the city. He said that without a professional team in the city,



Syracuse University unites everyone, and the winning takes their mind off of the harsh central New York weather.

“It means a lot to the community,” Miller said of the program. “People here are very passionate about Syracuse athletics, especially basketball. It gets people through the winter” (personal communication, March 31, 2014).

As an assistant coach with the program, Fine worked primarily with the team’s big men, its forwards and centers. He helped develop several successful players over the years, including Rony Seikaly, Derrick Coleman, Billy Owens, John Wallace, and Etan Thomas, all of whom had successful careers in the NBA as well.

Off the court, Fine was involved heavily with both the university and city communities. He served as an adviser to both a social fraternity and an honor society on campus, and worked with the local Boys Club and Make-a-Wish Foundation (Berman 2006).

Even as late as 2006, 30 years into his assistant coaching career, Fine said he was still interested in a head coaching position. But he never left Syracuse. He said he did not want to uproot his family to different places across the country as he changed jobs, and that he did not want to be too quick to accept any opportunity as the best opportunity for him.

“I wanted to be a head coach, and I probably should be one,” Fine said at the time. “I had opportunities to leave, but the schools I had interest in weren’t interested in me and the schools that had interest in me, I wasn’t interested in them” (Berman 2006).

By the start of the 2011-12 season, Fine entered his 36th year as Boeheim's right-hand man, making Fine the longest-tenured assistant coach in the country. The team was extremely talented that year, winning a school-record 34 games. However, Fine was not around to enjoy the success. As great as the season was for the team on the court, that is how difficult it was off of it.

On Nov. 17, 2011, just three games into the year, ESPN aired a story in which stepbrothers and former Syracuse ball boys Bobby Davis and Mike Lang accused Fine of molesting them as children. The next day, the university, led by then-chancellor Nancy Cantor, put Fine on administrative leave. Ten days after its initial report, ESPN released an audiotape of a telephone conversation Davis had with Fine's wife, Laurie, about the allegations. Cantor promptly fired Fine.

At that point, it was clear that something was going on behind the scenes of the Syracuse basketball program, and people wanted answers. However, the situation became more interesting when the media themselves became part of the story. It was soon discovered that both ESPN and The Post-Standard were made aware of the allegations against Fine nine years before, in 2002 and 2003, respectively. Howard Kurtz of The Daily Beast and CNN's Reliable Sources said when the news broke, his first reaction was that both organizations sat on a story they should have reported. But as Kurtz wrote himself, "It's a little more complicated than that" (2011).

Davis first approached The Post-Standard in September of 2002. Mike McAndrew, now managing producer of public affairs at The Post-Standard, was a general assignment reporter at the time. He was the first reporter at the newspaper to talk to Davis, and he spearheaded the newspaper's initial investigation into the

matter. His original reporting spanned six months, from the fall of 2002 into the spring of 2003. McAndrew said Davis left a vague voicemail message on Labor Day 2002 on the newspaper's sports desk referencing sexual abuse and a Syracuse University coach. McAndrew was brought in to investigate because of his experience covering sexual abuse cases involving the Catholic Church. From his previous work, McAndrew said he understood what type of standards the story would have to meet.

“Because I had done a number of priest stories, I knew what it would take to get a story published,” McAndrew said. “We wouldn't have published a story based on one anonymous tipster identifying a person and saying, ‘That person sexually abused me.’ So I told Bobby up front, ‘The hurdle is high’” (personal communication, January 16, 2014).

McAndrew said he made it clear to Davis that Davis would have to be named in the story. He also said that in order to publish Davis' allegations, the newspaper would need either some proof corroborating that he had been molested or another victim who would go on record saying Fine molested him. He said Davis understood, and so McAndrew conducted initial interviews over the phone. McAndrew said the first thing he did was look into Davis' personal history.

“The first thing I'm going to do is investigate you,” McAndrew said he told Davis. “Before I even investigate Bernie, I want to know about all the skeletons in your closet” (personal communication, January 16, 2014).

He asked Davis all sorts of background questions. Had he ever been arrested? Had he ever been sued? Did he own property? McAndrew said Davis answered all of his questions, and so he turned to Davis' stories about Fine. From

his first conversations with Davis, McAndrew could see that Davis and Fine had an unusual bond, but substantiating Davis' claims would not come as easily.

“It became quickly clear to us that he had had a personal relationship with Bernie Fine, that they had spent a lot of time in each other's company,”

McAndrew said of Davis. “But there were no eyewitnesses that were readily available, no letters from Bernie where he made confessions, no proof that he had given him hush money—none of that stuff that would prove what he was saying was true” (personal communication, January 16, 2014).

Matt Michael, a sports reporter at the time for The Post-Standard, worked with McAndrew on the investigation. He said that although Davis lacked anything to back up what he was saying, Davis' father-son like relationship with Fine was something the newspaper could not overlook. Davis told him about a basketball game he played that Fine attended. Davis felt he played well, but Fine, who drove Davis home after the game, criticized his play the whole drive back. As Michael listened to Davis tell the story, he saw how hurt he still was over something that had happened years ago.

“This doesn't mean that, ultimately, the allegations occurred. But there were a couple moments where he was extremely credible in the sense that his pain was real,” Michael said of Davis. “You could see it, you could feel it. You could hear it in his voice” (personal communication, January 24, 2014).

Michael also had experiences with Fine during that time. Early in the 2002-03 season, about three months into The Post-Standard's investigation after Davis' first call to the newspaper, Michael attended a basketball game at the Carrier Dome that Syracuse was not playing in. Sitting courtside a few chairs

down from him were Fine and fellow Syracuse assistant head coach Mike Hopkins. Michael said Hopkins came over to say hello and make small talk, while Fine stayed in his seat, not saying a word. While Michael felt the coaches' actions fell in line with the general personalities, he also could not help but feel that Fine ignored him because he knew that Michael was investigating him. He thought Fine's actions were somewhat alarming, but that it would be unfair to conclude something more from the incident. "If that's you, and it's not true, don't you come over to me and say something?" Michael said of Fine. "I don't know, maybe not. But we can't put what we would do on somebody else, that's a big mistake" (personal communication, January 24, 2014).

The newspaper decided Davis' allegations were serious enough and that he had provided enough specific information to warrant flying McAndrew out to Utah to meet Davis in person. The two spoke multiple times while McAndrew was in Utah. During one interview, McAndrew said he and Davis got so tired that they left McAndrew's hotel room and drove to a nearby park. They continued for a while before needing another break, so they headed back to the hotel. That particular interview lasted 12 hours. "It was grueling, for both of us," McAndrew said (personal communication, January 16, 2014).

McAndrew also warned Davis numerous times throughout the investigation that there would be no chance of the story being published if Davis was ever caught in a lie, no matter how small. McAndrew told Davis he would have to recount his memories in as much detail as possible.

"Going into this, I said look, 'I want to take you back through specific incidents that you generally told me about,'" McAndrew said. "Like, 'What was

the first time you were molested? Tell me every single thing you remember, to the degree of, what clothing were you wearing” (personal communication, January 16, 2014).

Davis never shied away from anything, answering all of McAndrew’s questions. He also provided either proof or names of witnesses who could verify every part of his story. Davis said Laurie once saw Bernie molesting him through the basement window of the Fines’ house. McAndrew’s next move was figuring out how he could get Laurie to talk.

“That became really important, because that was the only person that he said had ever witnessed anything,” McAndrew said. “But I knew if I called [Laurie] up and asked her that question, it wasn’t going anywhere. I wasn’t going to get an interview” (personal communication, January 16, 2014).

Davis told McAndrew that he and Laurie still kept in touch, so they agreed that Davis would record a phone conversation between the two of them, during which he would try to elicit an affirmation that Laurie had seen her husband molesting Davis. McAndrew admitted that the manner in which the decision to have Davis record his conversation with Laurie was “dicey.” He said he tried to phrase it in a way that made it seem like the idea was Davis’.

“I planted a seed and Bobby said, ‘What if I tape her?’ And I encouraged that,” McAndrew said (personal communication, January 16, 2014).

However, when Davis provided McAndrew with the tape, McAndrew found that what it contained was far from conclusive evidence that a crime had been committed. “You think, ‘Oh my god, it’s the smoking gun,’” McAndrew said of hearing the tape for the first time. “And then you listen to it again, and you

transcribe it. And you listen to it for the 12<sup>th</sup>, and 15<sup>th</sup>, and 20<sup>th</sup> time, like I did, and you come to the realization that it isn't the smoking gun" (personal communication, January 16, 2014).

Michael said the tape was too vague to come to any concrete conclusions, telling a different story each time. "You could listen to that 100 times and come up with at least 50 different interpretations," Michael said. "Clearly their relationship was not a normal or innocent relationship, but did it say he was molested or abused? No" (personal communication, January 24, 2014).

McAndrew pointed to a key part in the tape in which Davis brings up the incident when he said Laurie saw her husband and Davis in the basement (The Post-Standard, 2011):

Bobby: That one time you told me you saw him, like when I was really young, you saw him through the basement window when you were taking the garbage out?

Laurie: Right. I don't know. Is this bothersome to you?

Bobby: Yeah it is. Lately it has been. It hit me hard. I really don't know why."

At that point, the conversation changed subjects. What McAndrew noted about this portion of the discussion was that although Laurie acknowledged what Davis was saying, she never explicitly said that she saw anything occur.

"As a journalist, you look at that and you have to say, 'What does that mean, her response?'" McAndrew said. "She offered no specifics. She gave no details. She didn't say what she saw in her own words" (personal communication, January 16, 2014).

Although Laurie painted a very unfavorable picture of her husband, she said nothing incriminating. "She certainly said a lot of things about her husband

that sound really awful,” McAndrew said of Laurie. “You could conclude that she doesn’t like her husband, that maybe she suspects that he molests kids. But you couldn’t say there’s anything on that tape that proves she has any knowledge, any real proof, that he molested anyone” (personal communication, January 16, 2014).

John Lammers, McAndrew’s and Michael’s editor on the story, called the tape “problematic.” He said it certainly explained parts of the story, illustrating the Fines’ relationship and suggesting that Bernie may be bisexual or homosexual, but it did not advance the story any closer to publication.

“People who have any kind of journalism or investigative background backed away from the idea that it was conclusive proof,” Lammers said. “Being gay is not the same as being considered a pedophile” (personal communication, January 30, 2014).

Michael said that although he thought the tape did not give the newspaper enough to publish a story, it made it worthwhile to continue pursuing leads. McAndrew reached out to Laurie about the tape. He went to her home at a time when Bernie was away so he could talk to her without her husband around. She dodged McAndrew’s initial attempt, saying she could not talk because her child was home sick from school. She suggested he try to reach her at work, so McAndrew did that. He drove to where Laurie worked, sat in the parking lot and called her office. Laurie’s boss answered the phone and warned McAndrew that his car was on his property and that he would have him arrested if he did not leave. McAndrew argued that Laurie had said she was willing to talk, and that unless she said otherwise, he would not leave. Laurie took the phone, said she had no comment, and hung up.



“We took our best shot at her and it didn’t work,” McAndrew said (personal communication, January 16, 2014).

After the newspaper’s initial six-month investigation, spanning from the fall of 2002 to the spring of 2003, it was unable to get a witness to confirm that Fine had molested Davis. This was the one of the newspaper’s prerequisites for publication. McAndrew’s next step was to find out if there were any other victims. Davis believed Fine had molested other children as well. He thought he saw evidence of Fine grooming other children, a process by which perpetrators of sexual abuse establish a trusting and intimate relationship with their victims (Welner, 2010). McAndrew said Davis gave him the names of 10 other people who were possible victims.

McAndrew said he contacted these people. Some of the people Davis provided had died; in those cases, McAndrew spoke to the family of the deceased. He said there were some things he heard that made him suspicious, but again, nothing definitive.

“One widow thought her husband had been molested by Bernie, but that isn’t good enough,” McAndrew said. “She saw something that on the surface, sounds a little abnormal, but that wasn’t proof of anything” (personal communication, January 16, 2014).

Of all the names Davis provided, though, the one he seemed most sure of was his stepbrother, Lang. McAndrew said he made the 30-minute drive from Syracuse to Constantia, N.Y., countless times, sitting in the diner Lang owned for hours hoping he could persuade him into an interview. Eventually, Lang acquiesced. McAndrew remembered one interview in particular that lasted about

20 minutes, in which Lang stated 13 times that Fine had not molested him. Lang questioned why Davis would accuse Fine and include him. He said Fine was a good person and had treated him well.

“I pushed him really hard,” McAndrew said of talking to Lang. “I told him, ‘Your brother’s out on a limb here, he said he was molested; nobody’s going to believe him. You sure it didn’t happen to you? He thinks other kids might be at risk and it’s really important to protect. Are you sure there was nothing even remotely weird that happened?’” (personal communication, January 16, 2014).

After six months of investigating, McAndrew said he and Michael put together a story based on everything they had up to that point. A team of reporters and editors decided that the story was not publishable. It did not meet the standards the newspaper set out at the beginning; it lacked both proof that Fine had sexually abused Davis and a second named victim. Lammers was confident the story should not be published, although it was difficult to say no because of all the energy the newspaper had put into it.

“The kind of conclusive proof you have to have to publish such a strong accusation, we didn’t have that—and it wasn’t for a lack of effort,” Lammers said. “It was expensive for an organization our size to put two of our best reporters on a story for months and not have anything to show for it. We just wanted to be right. There was a lot at stake” (personal communication, January 30, 2014).

McAndrew agreed with the decision not to publish, but was upset with it nonetheless. “I was very frustrated because we had worked really hard,” McAndrew said. “This was the hardest I had ever worked on any story in my life

to that point, and I didn't feel like we were all that much closer to knowing the truth" (personal communication, January 16, 2014).

Davis was not even sure at first that he wanted a story written, and he expressed no interest in suing at the time; he just wanted to get the word out. However, his tune changed at the conclusion of The Post-Standard's investigation. McAndrew said Davis was noticeably upset and frustrated when he was told there was not going to be a story. Davis had gone to Syracuse police in 2002 prior to approaching The Post-Standard, however they did not investigate the matter because the statute of limitations had passed (Associated Press, 2011).

With the local newspaper deciding not to publish his story and the local police not conducting an investigation, Davis turned to ESPN. Vince Doria, senior vice president and director of news at ESPN, tells a similar story to that of The Post-Standard's. Davis, Doria said, came to them accusing a high profile assistant coach with, "No previous track record of this kind of behavior" (Krulewitz, 2012). ESPN sent "Outside the Lines" reporter Mark Schwarz and producer Arty Berko to Utah to interview Davis. They found the same tormented man McAndrew and Michael did. Much like McAndrew, Schwarz described his interview with Davis as one of the most difficult interviews he had ever conducted (Deitsch, 2011).

Davis gave ESPN the names of three people who he said either were also victims of Fine or could corroborate his claims. Those sources, which included Lang, told ESPN either that such was not the case, or that they simply did not want to talk.

Davis also provided ESPN the audiotape of the conversation he had with Laurie Fine. Again, Doria expressed similar views that people at The Post-Standard had; that although Laurie did not speak highly of her husband, it was far from a smoking gun that proved anything. Doria was also wary of the tape because ESPN was not there when it was recorded. Not surprisingly, ESPN ultimately came to same conclusion as the Syracuse newspaper as well, that the story did not warrant publishing. “Based on that tape which we had not generated; which we had no real knowledge of how it was made and Bobby Davis’ story—which was one person with no corroboration—we felt in 2003 that the material we had did not meet the standards for reporting the story. This is consistent with how we have viewed these types of stories in the past” Doria said (Krulowitz, 2012).

However, just as McAndrew and Michael felt after their investigation, Schwarz and Berko still believed they could not fully dismiss Davis’ claims.

“Arty Berko and I looked in this kid’s eye and listened to his stories of terror. There was nothing that wasn’t credible about them,” Schwarz said. “He was reliving a train wreck every moment when we asked him these questions, and he talked in great detail about everything that happened to him” (Deitsch, 2011).

Things changed after the Penn State scandal broke earlier in 2011. Seeing the acts of sex abuse Jerry Sandusky, former assistant football coach at Penn State University, committed encouraged Lang to step forward. He told Davis that he was willing to help him now, and Davis directed Lang to Schwarz (O’Brien 2012a).

Having Lang step forward was the turning point. When he agreed to go on tape, ESPN had the second alleged victim it had been looking for the first time around in 2003. Doria said the police's involvement also gave him confidence that the story was ready to go (Newhouse, 2012):

We knew through a pretty good source that officials from the university here were meeting with the Syracuse police department about the story. We knew that the Syracuse police department was looking for Davis and Lang because they had to come because they heard that they were with us, which they were. That, rightly or wrongly at that point, gave the story some immediacy in our mind.

Michael Connor, then executive editor of The Post-Standard, said McAndrew reached out to Davis after the Sandusky story broke and was unsuccessful. At that point, he correctly assumed Davis was talking to ESPN or some other news organization. He then heard rumors that a story was going to break, potentially with additional accusers, so the newspaper went back and reviewed its work in case anything happened.

On Nov. 10, 2011, a day after Penn State fired former head coach Joe Paterno as a result of the Sandusky scandal, Danielle Roach, a friend of Davis', told Syracuse police her friend had been abused by Fine. One week later, the day ESPN initially aired its interviews with Davis and Lang, Roach gave Syracuse police a copy of the audiotape between Davis and Laurie Fine. That night, Syracuse police confirmed what Doria had suspected, that they were investigating the allegations against Fine (McAndrew, 2012).

Once ESPN broke the story, Connor said The Post-Standard had no choice but begin reporting it as well. "It's a national story at that point; it's out there," Connor said. "It's our program, it's our community, we owe it to our readers to

try to make sense of it, to report and advance the story to the extent we can. There is a story to tell going back to 2002-03 that had never been told” (Newhouse, 2012).

The Post-Standard published its version of the story that night and reopened its investigation. Ten days later, it published a story revealing a third accuser against Fine: Zach Tomaselli. He alleged that Fine molested him in a Pittsburgh hotel room in 2002 the night before the team played a road game against the University of Pittsburgh (McAndrew & O’Brien, 2011). At the time, Tomaselli faced sexual assault charges. He later pleaded guilty and was sentenced to three years and three months in prison (Associated Press, 2012).

McAndrew said the situation was interesting because they had less proof with Tomaselli than they had with Davis a decade earlier. However, like Connor said, ESPN publishing the story changed things. “At that point Bernie Fine had already been identified as a person who had been accused of sexual abuse,” McAndrew said. “We were not ruining his reputation; his reputation had already been ruined” (personal communication, January 16, 2014).

Another difference between Tomaselli and Davis was that Tomaselli’s accusation fell under the statute of limitations. Tomaselli told McAndrew that he gave a statement to Syracuse police and he had witnesses who could verify that the police interviewed him (personal communication, January 16, 2014). Police used Tomaselli’s statement to obtain a search warrant of Fine’s house (McAndrew & O’Brien, 2011). The police’s involvement also made the newspaper’s decision to publish a lot easier.

“We had what we didn’t have in 2002,” McAndrew said, comparing Davis and Tomaselli, “which was an official investigation into an allegation” (personal communication, January 16, 2014).

The Post-Standard’s story about Tomaselli was published Sunday, Nov. 27, 2011. Before that happened, ESPN had begun editing the audiotape between Davis and Laurie Fine, planning to air it either that Monday or Tuesday. However, in the same way ESPN breaking the story in the first place sprung The Post-Standard into action, The Post-Standard reporting that Tomaselli’s affidavit helped police obtain a search warrant for Fine’s house prompted ESPN to move more quickly. Doria said ESPN had initially contacted Fine’s lawyer for comment on the tape before releasing it. Its initial plan was to give the law firm until the beginning of the week to respond, but after Tomaselli emerged, ESPN decided it had waited long enough (Spire, 2011).

“We felt the story had now risen to the level where we were comfortable putting the tape out,” Doria said. “In discussions, we believed that we had given Fine’s lawyers enough time to respond and they had not done so (Krulewitz, 2012).

### **Chapter 3**

#### **Ethical analysis: Investigating the morality of the investigation**

For all the criticism The Post-Standard and ESPN received for their coverage of the Bernie Fine scandal, both organizations do deserve credit for the way they handled the aftermath of their reporting. According to Steve and Emilie Davis, journalism professors at Syracuse University, the goal at the end of any ethical decision-making process is to be transparent. If someone on the outside were to ask a news organization about a controversial decision, that organization should be comfortable revealing the following information: who met and talked



about it, how the discussion proceeded, what viewpoints were raised, and how the decision was reached (2014).

The Post-Standard and ESPN met those standards of transparency, explaining their processes, defending what they believed to be correct and admitting any wrongdoings. They spoke to the public and other members of the media, and produced their own content, all in an attempt to be transparent in the face of criticism.

Both organizations also did a good job of putting experienced reporters on the story. Tom Rosenstiel, media critic and executive director of the American Press Institute, said one distinction sports journalists have from other journalists is the skill set used for their jobs. Sports writers are trained to describe what happens on the court or field, and are not very concerned with digging deeply into off the playing field that does not directly pertain to what is happening on it.

“That’s a lot to ask for a guy who’s a spectacular beat reporter, who has a lot of sources inside the sports department, and who may be one of the best analysts of that particular sport, to say, ‘OK, let’s look at university structures, and the culture of universities and crisis management.’ That’s just a whole other set of topics,” Rosenstiel said (Newhouse, 2012).

However, that is exactly what this story required, and both news organizations were prepared. The Post-Standard teamed Michael up with McAndrew, who as previously mentioned had considerable experience reporting on sexual abuse. ESPN put Schwarz, not just a sports reporter but an experienced investigative reporter, on the story. When Lang called Schwarz in 2011, Schwarz was on Penn State’s campus reporting on the Sandusky scandal. Davis also said

he was compelled to reach out to Schwarz in 2003 after seeing Schwarz's "Outside the Lines" report on a former NHL player who had been abused by his junior hockey coach (Deitsch, 2011).

Despite the smart choices both media outlets made going into their investigations and the transparency they exhibited afterwards, neither escaped criticism. The first question both received when they revealed they had been investigating the situation for nearly a decade was: Why wait so long to publish the story? The short answer: neither organization felt that what they had found in their initial reporting was suitable for publication.

Connor wrote an article in 2011 explaining the newspaper's decision-making process during its investigation. In it, he said that the newspaper decided early on it would not approach Fine himself unless it reached its standards for publication: either corroborating Davis' claims or finding a second named accuser (Connor, 2011a). Doria made it clear that ESPN had similar standards set; as previously mentioned, Lang coming forward to ESPN gave it the second victim it required to publish the allegations.

Were The Post-Standard and ESPN worried about publishing damning allegations about someone in the Syracuse program? The Post-Standard was dealing with its readers' hometown team. While journalists aim to independent, sports journalists in particular do not always have that luxury.

"Pure independence, or what some journalists portray as neutrality, don't apply to sports journalism in the same way," Rosenstiel said. "Everybody in the town is rooting for the team to do well, and your coverage is always presented in that context" (Newhouse, 2012).

ESPN, meanwhile, was investigating a team whose games it broadcasts prominently. Syracuse University was a founding member of the Big East Conference, with which ESPN had a very interdependent relationship. That connection was featured prominently in “Requiem for the Big East,” a documentary ESPN showed as part of its independent film series, *30 for 30*. In September of 2011, just two months before the Fine story broke, Syracuse University announced plans to join the Atlantic Coast Conference, a league with which ESPN had a nearly \$1.9 billion deal at the time (Kriegel, 2011).

When the idea of journalism’s role as a watchdog of those in power is discussed, it is often thought in terms of the government. However this also applies to sports, where journalists are watchdogs of powerful institutions such as the NCAA or its member institutions. Unfortunately, sports journalists also get entrapped by what David Rubin calls the “master narrative.” Rubin, professor and dean emeritus at the S.I. Newhouse School of Public Communications at Syracuse University, described the master narrative as a “lazy” line of storytelling in which writers fall in line with the same storylines everyone else is telling. In the case of Fine or other figures later accused of wrongdoing, it is the type of “fluff” story about who the person is off the court or playing field.

Such stories are abundant, such as the 2006 profile former Syracuse University student Zach Berman wrote for *The Daily Orange*, the campus’ independent newspaper. However, Rubin warned that much of what we read about sports, particularly profiles of athletes and coaches, cannot be believed because we do not know for sure who these people really are. The issue of going against both a powerful institution in Syracuse University and the idea of the

master narrative of the men's basketball program made reporting on it extremely difficult.

“To pursue a story at SU that Bernie Fine is molesting children is hardly the master narrative of this basketball team,” Rubin said. “So putting aside how difficult it is to get that kind of story...this is why it's so difficult to go after any center of power. If you're going to go after those people, then you have to go against the narrative, and that takes enormous courage, and a lot of evidence” (Newhouse, 2012).

What also made the decision not to publish the story interesting was that it came on the heels of Syracuse winning its first men's basketball national championship in the spring of 2003, which certainly made the master narrative of the team overwhelmingly positive. Kurtz wondered if The Post-Standard was worried about angering its local readers and loyal Orange fans (2011).

“We were making a lot of money off that championship,” Michael, the Post-Standard sports reporter, said. “If we write the story in January or February [of 2003], what happens to that season?” (personal communication, January 24, 2014).

McAndrew said that after the story broke in 2011, he heard the same complaints. People said that there was a conspiracy to cover up the story in order to protect the university, which the newspaper relies upon for money and media access to the basketball team (personal communication, January 16, 2014). However, Lammers thought The Post-Standard proved its integrity by investigating the story for so long and not publishing it.

“It was expensive for an organization our size to put two of our best reporters on a story for months and not have anything to show for it,” Lammers said. “We just wanted to be right. There was a lot at stake” (personal communication, January 30, 2014).

New York Times Op-Ed columnist Joe Nocera accused The Post-Standard of poor journalistic practices, and blamed the newspaper for protecting the basketball program, a staple of the Syracuse community (2011):

Even in the Bernie Fine matter, one can't help thinking that he got the kid-gloves treatment because of his association with Syracuse basketball. In 2002, The Post-Standard in Syracuse spent six months investigating Davis' allegations. Yet it never even tried to interview Fine. Nor does the paper appear to have directly asked sources if Fine abused Davis. The paper's executive editor, Michael Connor, wrote recently that the paper abandoned it because it didn't have enough proof to publish an article that would inevitably “ruin a person's life.” Is that really the same standard it uses when it investigates someone not part of Syracuse basketball?

Michael said the opinion that the newspaper did not ask sources directly about Fine abusing anyone was a result of choosing his words wisely in interviews. He tried to balance a line between obtaining information and accusing Fine of a crime he may or may not have committed. Even when doing so, though, the conversation would quickly shift to Fine.

“We tried to be really careful with what we were saying in all these interviews,” Michael said. “We would never say, ‘Bernie Fine’ first. We would say, ‘Hey, somebody came to us with an allegation, we’re just trying to see if there’s anything to it.’ Inevitably every time, that name came up. And it didn’t

come sixth or seventh after Wayne Morgan, Jim Boenheim, or Mike Hopkins. It came first” (personal communication, January 24, 2014).

Nonetheless, no matter how careful the newspaper was, keeping an investigation of this nature quiet was no easy task. Merely avoiding directly asking sources about Fine did not mean word would not get around to him. Talking to current and former Syracuse players and coaches meant circulating the sexual abuse allegations around a network of people within which Fine was firmly entrenched.

“We’re trying to say all the right things; we’re trying to be sensitive,” Michael said. “But after [former Syracuse player] Ryan Blackwell gets up from lunch with me, what do you think he’s doing? Who do you think he’s talking to?” (personal communication, January 24, 2014).

Some thought The Post-Standard and ESPN already had a key piece of evidence years earlier that warranted publishing the story: the audiotape between Davis and Laurie Fine. The Post-Standard possessed the conversation between Davis and Laurie Fine since it was recorded in 2002. ESPN received a copy of it when Davis approached them in 2003. Yet it was not released until 2011. The tape itself was certainly considered damning by some; after all, it persuaded Syracuse University to fire Fine. Chancellor Cantor said that had she received the audiotape in 2003 she would have done the same thing then.

“Those who held onto the tape for nearly 10 years owe everyone an explanation,” she wrote when the tape was released (2011).

It has already been stated that The Post-Standard and ESPN did not see the tape as the “smoking gun” others made it out to be. Connor pointed to the same

portion of the tape McAndrew did, in which Davis tried to confirm that Laurie Fine had seen Davis and her husband through the basement window of her house, and how vague Laurie was. “Laurie gives no confirmation that she saw anything. There’s no time frame given, so we don’t know when this incident occurred,” Connor said. “There’s no actual description of what the incident was. That was the crucial moment that we thought would occur on the tape that would give us the confirmation to publish, meet that threshold” (Newhouse, 2012).

In addition to the first piece explaining why The Post-Standard did not report the allegations in 2003, Connor wrote a second article dedicated solely to the newspaper’s handling of the audiotape. In it, Connor asked readers to put themselves in the newspaper’s shoes at that time, when much less evidence was available.

“Think back to 2003—before a second and third accuser, before a massive search and the firing of Fine, and ask yourself: Is there enough proof here to ruin a person’s life?” Connor wrote (2011b).

When the tape did emerge and Connor wrote that article, he was questioned as to why he did not mention the tape in the first article he wrote, published a week before the tape went public, about the newspaper’s methods in investigating the case. Connor said a lot of details went unpublished from its reporting in 2002 and 2003 because The Post-Standard was still reporting on the story, and that the tape in particular was not mentioned because, again, the newspaper did not view it the same way its critics did.

“We would not list the unpublished material because we’re still working on the story,” Connor said. “We didn’t know how that tape might come out if it

came out, and we also didn't think it was explosive as it turned out to be, perhaps naively on our part" (Newhouse, 2012).

Even when ESPN did finally release the tape in 2011, it was criticized for not releasing it with its initial report 10 days earlier. However, ESPN did not do so because it was not able to confirm that the person talking to Davis was in fact Laurie Fine until shortly before publishing it. Doria said ESPN had never had the tape analyzed because it did have any other recordings of Laurie Fine with which to compare the tape in order to confirm it was her voice. He said that although there was pressure to get the tape out to the public, ESPN had reached its standards of publication without the tape that it could go forward without having to take the risk of airing the tape before analyzing it.

"With the story looking like it was very likely going to come out, either through the police, the Syracuse administration, or The Post-Standard, we felt there was a real competitive aspect here," Doria said. "We were at a point here, with Mike Lang coming forward, we believed we had enough sourcing" (Newhouse, 2012).

After airing Davis' and Lang's interviews without the tape, ESPN was able to find more tape of Laurie Fine. It had a voice recognition expert compare the two and confirm to the best of his abilities that it was same person on Davis' audiotape. Only then was ESPN comfortable with releasing the tape, which it did.

Despite The Post-Standard's decision to not publish the story in 2003, McAndrew said it would have been wrong to dismiss Davis as not being a credible source. McAndrew had the aforementioned deal that he would drop the



investigation if he caught Davis lying, and Davis had not done so. At that point, McAndrew said he was legitimately unsure if Fine had done anything wrong.

“My answer would’ve had to have been, ‘I don’t know,’” McAndrew said, of how he would have answered questions about whether or not Davis had been molested. “Could it have been that Bernie only molested one kid, and all these other kids we talked to, nothing weird happened to them? That sort of runs against the grain of what you think a pedophile would do” (personal communication, January 16, 2014).

Lammers also found it interesting that up to that point Davis was still the only named accuser.

“A second victim was always crucial,” Lammers said. “It was not impossible, but hard to imagine that over a period of many, many years that Bernie Fine would only have one victim. We felt enough time had passed that if what Davis said was true, there would be another victim, and we would find him” (personal communication, January 30, 2014).

Not publishing the story meant not informing the public that a possible pedophile was living right in Syracuse. Did The Post-Standard and ESPN owe it to the local community to say something? Michael, who had a young child at the time, wondered this himself.

“My son was at basketball-camp age at that time,” Michael said. “We know what we know; you sitting at home with your 11-year-old don’t know what I know. Does the public need to know? Should they know that Bernie Fine is running this basketball camp and not the upstanding citizen everyone thinks he is? Knowing what I know, I would not want my son to attend this camp, and that has

nothing to do with whether he abused Bobby Davis or not” (personal communication, January 24, 2014).

Running the story would have meant approaching the public without police backing with a story people would not have wanted to hear about their basketball team.

“We would’ve been completely on our own at that moment,” McAndrew said. “No police agency was investigating him. You couldn’t write a story that said, ‘We’re not sure if he molested anybody, but the police are investigating him.’ They would’ve said, ‘Where is your proof?’ And we would’ve said, ‘We have none.’ We would have been crucified” (personal communication, January 16, 2014).

The lack of backing from the police begs the question: Even if the story was not going to be published, why did The Post-Standard or ESPN not bring their investigation to the attention of local authorities?

“We’ve got the district attorney saying that The Post-Standard should’ve turned the tape over to him ten years before and we didn’t do our civic duty. We have Syracuse police blaming us that we should’ve given them that tape. We have the chancellor saying, ‘If they had given us that tape 10 years ago, we would’ve fired him then,’” McAndrew said (personal communication, January 16, 2014).

However, McAndrew said the spotlight should have been turned on the police, who did nothing when Davis approached them before talking to The Post-Standard and ESPN.

“They had every opportunity to make their own tape,” McAndrew said of the police. “They could’ve gotten a search warrant. They could’ve gotten a

wiretap. They had so many more tools at their disposal, and they chose to do nothing at all. Not even bother to call other boys and find out if eight-year-olds were staying at his house. For the police to criticize us of not giving them that tape is the epitome of hypocrisy” (personal communication, January 16, 2014).

When Davis approached Syracuse University with the allegations in 2005, it looked into the matter as well. However McAndrew said that, similar to the police, the university’s efforts were lacking.

“I give the chancellor credit that she had the university’s lawyers conduct an investigation,” McAndrew said. “But their investigation was more about protecting the university than anything else. They wrote a report that’s full of holes. They didn’t even interview a quarter of the people we interviewed” (personal communication, January 16, 2014).

He thought it was clear that the university did not even bother to ask Davis if he had a tape recording or other evidence of any kind to back up his claims, because if it had, he was confident Davis would have turned over the tape to the university (Newhouse, 2012).

Journalists search for the truth because it is their ethical responsibility, but the police, and even the university, are legally required to do so in a situation like this. They did not do so to the best of their abilities.

“The Post-Standard didn’t have any legal obligation; we had a moral obligation to pursue a story and to find out if this is true, and if so, to publish it,” McAndrew said. “We fulfilled as best as we could that moral obligation, but we did far more than the people with the legal obligation did” (Newhouse, 2012).

McAndrew said others were at fault for viewing journalism as a “tool” of law enforcement.

“We don’t routinely look into things and then, if we don’t have enough to publish, call the police and say, ‘Hey, you guys should look into this.’ That’s not our role in society, and I don’t think it’s a role that people would want us to take, to be an operative of law enforcement” (personal communication, January 16, 2014).

Connor said the thought of turning over any unpublished material to police was “unthinkable,” and challenged critics to find an example of it happening. In the same way he said he would never expect law enforcement to give news organizations investigative material when they do not have enough evidence to prosecute so the organization can get a good story.

“It doesn’t happen,” Connor said. “That’s not the way the relationship works. We are independent, we’re separate, and society is freer and healthier because of that I think. So if that’s true, then the idea of us turning over a tape or any unpublished material that’s potentially defamatory to a private employer of somebody to act on is absurd” (Newhouse, 2012).

Doria agreed with Connor: journalists do not operate that way in relation to the police, even if the general public would have done so.

“We operate with a set of standards and principles as journalists that are not necessarily accepted by the public at large,” Doria said. “If we were just to abandon them for short-term gain, then we might as well go into the business with the police” (Newhouse, 2012).

However, an external assessment of ESPN's efforts suggested otherwise. The organization cooperated with the Poynter Institute to create the Poynter Review Project, in which Poynter provided an independent ombudsman to evaluate ESPN's work. Kelly McBride (2011), who served for ESPN as a representative of Poynter at the time, said the network gave up prematurely. Had ESPN contacted Syracuse police, they would have discovered that the police chief, Dennis Duvall, was also a former Syracuse basketball player, which would have raised questions as to why the police were not investigating.

Rosenstiel agreed with McBride, suggesting that such a two-way flow of information does in fact exist between journalists and police. "This notion that there is no modern precedent for journalists to cooperate with law enforcement, that's actually just false," Rosenstiel said. Journalists cooperate often with law enforcement, he said, and law enforcement sometimes shares information with journalists to pressure suspects as well (Newhouse, 2012). Rosenstiel said he might well have ended up making the same decisions The Post-Standard and ESPN did not to share information with the police, but not because of the idea that journalists never do so.

Rosenstiel criticized both news organizations of clinging to the common practices of journalism and insisting that what they did was morally right as journalists. Every situation is different, so to say journalists should respond the same way they have in past instances is not necessarily true (Newhouse, 2012):

To say, 'We're journalists and we hold these principles highest,' I think, in trying to explain yourself, is really counterproductive. To hold yourself out as some kind of separate species who are not also citizens of the community, who are not caring people, who hold certain set of values higher

than other values is not only tactically a mistake, it's also not accurate. I think that journalists are always, as we all are, weighing different rights and different concerns, and struggling to make decisions. They have a job to do as journalists but that doesn't mean that they actually don't care about victims.... Yes you're trying to figure out whether you can write a story, but that is actually not the totality of your job or your responsibility.

Rosenstiel said one's role-related responsibilities as a journalist are weighed alongside one's responsibilities as a human being, not viewed in two separate spheres of existence. By viewing themselves strictly as journalists, which is not a commonly held approach, the people who investigated Fine limited themselves.

"I think they hurt themselves in their public explanations of their decision-making by suggesting that they weren't also weighing those other factors,"

Rosenstiel said. "We can explain what the journalist's responsibility is but to suggest that we don't have these other responsibilities isn't how most of us think about this in journalism" (Newhouse, 2012).

McAndrew said the newspaper also received criticism for not helping Davis as a possible victim of sexual abuse. If he could go back, Michael said he would have also offered Davis assistance from an organization like Vera House, which supports people affected by domestic and sexual violence.

"I think one thing that I would do differently with Bobby is try to steer him in the direction to get some help," Michael said. "I think we could've helped facilitate that. Whether it happened or it didn't happen, he needed help" (personal communication, January 24, 2014).

The SPJ (1996) code of ethics suggests that journalists should "recognize that gathering and reporting information may cause harm or discomfort. Pursuit of

the news is not a license for arrogance.” Ward wrote how the public views journalists reporting on tragedies (2009):

Reporters and their news organizations are frequently accused of exploiting people who are vulnerable, or in the grip of personal tragedy. The journalist is portrayed as a vulture swooping down to feast on the afflicted. Author Janet Malcolm once compared the journalist to ‘a kind of confidence man, preying on people’s vanity, ignorance or loneliness, gaining their trust and betraying them without remorse.

In its pursuit of the truth, the newspaper had Davis talk about what he described as extremely traumatic events in his life. Journalists are working professionals with a job: to seek the truth and report it. But like Rosenstiel said, journalists are citizens of the community, also. Should The Post-Standard have done more for Davis? McAndrew does not think so.

“He was 30 at the time,” McAndrew said of Davis at the time of his initial investigation. “He was old enough to contact the police on his own, he was old enough to contact The Post-Standard on his own; if he wanted to talk to Vera House, he was old enough to contact them” (personal communication, January 16, 2014).

Davis told McAndrew he did not think he needed help from any sexual abuse experts or mental health professionals, and so McAndrew did not push that discussion any further.

“He wasn’t helpless; it was his decision,” McAndrew said. “I understand that child sex abuse is a very emotional issue, and a lot of the reaction was emotional. But as journalists, we can’t let emotions rule our decisions. There are principles we have to follow” (personal communication, January 16, 2014).

Lammers agreed with McAndrew. He did not consider taking care of Davis to be under the realm of the newspaper's responsibilities.

"Our job is to get the story. We treated Bobby professionally; we gave him great credence and we protected his secret," Lammers said. "I think it's misplaced to think that somehow we're supposed to hold him by the hand" (personal communication, January 30, 2014).

Connor said after the story broke he went to Vera House and talked to them about the newspaper's approach to the story. He said that looking back, it would have been helpful to throughout the whole process to arrange a meeting with Vera House.

"When I think of the room full of editors and reporters that we had discussing this, we had no experts on this type of behavior in the room, nobody who could speak credibly based on how this fits generally with patters that have been observed," Connor said. "So, yes, I still believe that one way we could've improved the process is to have connected Bobby with some of those people at a high level in the organization so that they also were very keenly aware, balancing reputational stake versus the veracity and credibility of the accusations" (personal communication, March 9, 2014).

While some thought The Post-Standard and ESPN were wrong to hold onto the information they had for so many years, others condemned ESPN for going forward with the story when it did. ESPN columnist Jason Whitlock, then with FOXSports.com, thought adding Lang's testimony to Davis' still was not enough proof. He harshly criticized Schwarz' and Berko's work for ESPN. He



called Schwarz's reporting both "irresponsible" and "juvenile," stating that ESPN did not have the evidence necessary to air such a damaging story.

"Schwarz acquired just enough information—two vague, mumbling on-camera interviews from Fine's accusers—to protect ESPN from a lawsuit," Whitlock said. "Schwarz did the legal minimum" (2011).

Whitlock said Davis' and Lang's accounts were "two highly flimsy accusations," and that Schwarz failed to address this by not asking and probing questions. Schwarz's reporting left Whitlock with questions of his own.

"Lang was a Syracuse ball boy years before Davis," Whitlock said. "So we're now to believe Lang was molested by Fine but told his younger stepbrother to be a Syracuse ball boy and it was cool to hang out with Bernie Fine. Really?" (2011).

Whitlock also criticized Schwarz for putting Davis in contact with Tomaselli once the latter emerged as another alleged victim. He called the move "completely inappropriate," saying it could potentially cause legal problems.

"It could be argued, if they got search warrants based off of Tomaselli, and Tomaselli was put in contact with Bobby Davis and a defense lawyer argues that Davis gave him information to tell the police, those search warrants might be thrown out," Whitlock said (Spire, 2011).

Doria admitted doing so was a mistake, and acknowledged that Schwarz realized this as well. He said Schwarz's motivation was to have Davis, someone who spent a lot of time with Fine, determine if there were any holes in Tomaselli's story.

“Sometimes reporters, in an effort to try to advance a story, which was going on here, make some decisions that they shouldn’t have made, and that was the case here,” Doria said (Newhouse, 2012).

For better or worse, the Bernie Fine story has been closely tied to the Jerry Sandusky case at Penn State. The reporting on Sandusky created a society that was more attune to this type of story involving a coach at a high-level college athletics program committing an act of sexual abuse. As previously stated, the Penn State story going public is what encouraged Lang to step forward and join Davis in his accusations against Fine (O’Brien, 2012a). The Sandusky scandal made it easier to talk about Fine, even if, as Whitlock suggested, the reporting was not up to normal standards.

Doria said he felt confident that ESPN would have went ahead and broke the Fine story even if the Sandusky story had never come out, but also that it was impossible to know for sure.

“I’d like to think that the sourcing of it and the facts that we had at the time would’ve compelled us to report it, but can I tell you Penn State wasn’t in my head here? I can’t tell you that,” Doria said (Newhouse, 2012).

The relationship between the Penn State and Syracuse cases also created an interesting dynamic for ESPN, which was accused to being slow to report on Sandusky. As a result, people argued that ESPN overcompensated with the Fine story.

“After being embarrassingly slow to react to the legitimate Penn State story, ESPN decided to ‘own’ the Syracuse story,” Whitlock said (2011).

Doria responded to critics by saying that while the two cases were similar in certain respects, it was unfair to compare them in this respect.

“As far as being slow on the story,” Doria said in reference to Penn State, “maybe compared to the Syracuse story, which we broke, we were slow. But this was a different kind of story. The Syracuse story was a story without any real law enforcement or legal process involvement in it when we broke it” (Newhouse, 2012).

NFL Network analyst Mark Kriegel, then a colleague of Whitlock’s at FOXSports.com, was impressed by ESPN continuing its reporting not only years later, but investigating under “conflicted circumstances” considering its relationship with Syracuse. As for looking at the Fine situation within the context of Sandusky, he believed any effects that latter had on the former was not all that bad.

“If the coverage was influenced by Penn State? On balance, is that necessarily terrible?” Kriegel asked. “The world has changed the last month or so. Sexual abuse in sports looks less like periodic if isolated incidents, and more like a systemic problem” (2011).

That is why a year after condemning The Post-Standard, Nocera wrote another column for the New York Times, this time congratulating the newspaper on what was “responsible journalism rather than a dereliction of duty” (Nocera, 2012). ESPN now looked like the irresponsible party, publishing allegations that have looked less and less credible as time has passed. The problem, he said, was how an accusation alone can serve as a sentence in the eye of the public.

“Today we’re all sensitized to the damage that child sexual abuse can do. That is all to the good,” he wrote. “But as long as an accusation alone can be ruinous, there will always be some reluctance to report a suspected child molester” (Nocera, 2012).

Bob Steele, professor of journalism ethics at DePauw University, said he has two questions for reporters who are deciding whether or not to publish a story. The first is: What does the public need to know? The second: When do they need to know it (Newhouse, 2012)?

The public needed to know that there was a potential child molester in the community, it needed to know as soon as any news organization could confirm that there was such a threat. Applying the professional-ethical decision guide outlined by Elliott and Ozar, one can better analyze the situation.

Reporting the allegations in 2003 would not have fulfilled a professional journalist’s role-related responsibilities because neither The Post-Standard nor ESPN were nearly close enough to the truth to report anything. Doing so would have caused Fine harm, which would not have been justified because Davis’ claims could not be confirmed. Publishing the story in 2003 would have been considered ethically prohibited.

Not publishing anything, which is what happened, is the better alternative. It fulfilled a journalist’s role-related responsibilities because it meant not giving the public any potentially false information that news organizations could not confirm. Harm could have been done to any sexual abuse victims of Fine, which while not entirely justifiable, was a risk worth taking, considering The Post-Standard and ESPN could not confirm at the time that Fine had molested anyone

at all. What these two organizations did was ethically permitted; it fulfilled their role-related responsibilities and avoided causing unjustified harm.

Lang coming forward in 2011 created a different dynamic for ESPN. He already had his credibility questioned for initially denying that Fine abused him in 2002. Why should he be believed now? He said he was embarrassed at the time and did not want his father, who died in 2010, to see him caught up in a media frenzy (O'Brien, 2012a). ESPN did believe him, and went with the story. This fulfilled its role-related responsibilities, because it alerted the public of a possible child molester who now had multiple alleged victims. Doing so caused harm to Fine, but it would be justified if it meant keeping children safe. What ESPN did could be categorized as ethically required.

Not publishing the story after finding a second victim however would have been ethically prohibited. This would have meant not going forward with a story that met the news organization's threshold for publication and denying the public information. It would have caused harm to the public as well, in particular any potential victims of sexual abuse.

It should be noted that in both of these scenarios, in 2003 and 2011, none of the options are ethically ideal. This illustrates how difficult of a situation The Post-Standard and ESPN faced. While they both chose the lesser of two evils at the time, hindsight has not been so kind to every decision made.

## **Chapter 4**

### **The aftermath: What we do know? What have we learned?**

In the section on ethics, the truth was described as an ideal toward which journalists should strive, not necessarily a destination that will ever be reached. This is particularly applicable in the case of Bernie Fine, in which more than two years after the story broke, and more than 11 years after journalists began investigating, the truth has still not been discovered.

When the story broke, Boenheim was quick to defend his longtime assistant. He accused Davis and Lang of lying for money. But when a third accuser came forward and the audiotape was released, Boenheim apologized for his original comments (Katz, 2011).

His backtracking did not save him from legal action, however. Davis and Lang sued Boenheim and Syracuse University for slander for calling them liars (McAndrew, 2012). Slander requires the plaintiff to prove the defendant made a false statement of fact that was published negligently and caused damages.

A state appeals court dismissed Davis' and Lang's case, a motion that was upheld the Appellate Division of the state Supreme Court. The court ruled that Boenheim's statement was one of opinion, not fact. Davis and Lang have not given up, though, and have appealed to the state Court of Appeals, the highest court in New York (O'Brien, 2013).

The Post-Standard also discovered that Lang, who had already had his credibility questioned when he came out in 2011 after denying in 2002 that Fine molested him, still had a relationship with Fine. He said he went to Fine's birthday party in 2006, and asked him for favors, such as Syracuse basketball tickets, because he felt Fine owed him for what happened. Lang also asked if his

son could be a ball boy, the very position he and Davis held when Fine allegedly abused them (O'Brien, 2012a).

Fine's two other accusers, meanwhile, have not stuck by their stories. Less than a month after Tomaselli stepped forward in November of 2011, Floyd VanHooser became the fourth person to accuse Fine of molesting him as a child. Just a month after making those accusations, though, VanHooser recanted his allegations (McAndrew, 2012).

Shortly after the story broke in November of 2011, VanHooser told police that Fine, who took VanHooser in as a child after both of his parents died, molested him. Days later, VanHooser wrote letters confessing that he lied to the police. The Post-Standard obtained copies of those letters in January in 2012, and quickly confirmed that VanHooser had lied about the allegations. He said he did so to get at Fine for not hiring him a lawyer for a burglary conviction he faced at the time (Kulkus & O'Hara, 2012).

VanHooser was not the only one caught in lies. Tomaselli took the media and public on a whirlwind ride of numerous lies. On Dec. 7, 2011, Onondaga County District Attorney William Fitzpatrick said Tomaselli and a fourth unnamed accuser, which turned out to be VanHooser, were not credible. But a day later Tomaselli filed a civil suit against Fine. On Jan. 20, 2012, he admitted that he doctored emails to strengthen his story and wanted to drop the civil suit (Thamel, 2012). The next day, Tomaselli changed his story again, saying he had no plans to drop his lawsuit against Fine (Smith, 2012).

Following his sentencing in April of 2012, Tomaselli had more to say: he admitted that he too lied about his accusations against Fine. Tomaselli said he did

it because he was upset with Syracuse men's basketball program for winning the national championship in 2003, and enjoyed the media attention. He claimed Davis coached him on what to tell the police, which Davis denied (O'Brien, Kulkus & Dowty, 2012). Tomaselli was not done though. Five days later, admitting his credibility was shot, he once again accused Fine of sexually abusing him as a child (ESPN, 2012).

Tomaselli was certainly correct in saying his credibility was shot. About a month after half of Fine's accusers recanted their statements, Laurie Fine filed a federal libel lawsuit against ESPN. She accused ESPN, Schwarz, and Berko of irresponsible reporting and casting Laurie Fine in a false light, all for financial gain (O'Brien, 2012b). False light, while considered similar to libel, is a privacy tort regarded as "The dissemination of highly offensive falsely publicity about someone with knowledge of, or reckless disregard for, the falsity" (Middleton & Lee, 2013). She said ESPN took statements she made in the recorded conversation between her and Davis out of context to imply that she did nothing to stop her husband from sexually abusing children and that she was having sex with Davis (O'Brien, 2012b).

Throughout all of this, federal prosecutors investigated Fine. Their investigation lasted nearly a year, and included more than 100,000 pages of seized documents and interviews with 130 witnesses, but no charges were ever filed against Fine (O'Brien & Kulkus, 2012). The following March, Fine filed his own defamation lawsuit against ESPN. But in July of 2013, Fine dropped the suit, citing his desire to put all of the events behind him (ESPN, 2013).



Try as he might, though, Fine may never be able to fully put this behind him. It cost him his job, a decision the university stood by after the federal investigation led to nothing (Coin, 2012). It also cost him his reputation, something every journalist wrestled with while reporting this story.

This tug of war can be difficult. Rubin said he defines ethics as, “Any decision journalists can make that the law doesn’t make for them” (Newhouse, 2012). While this view may be broad, it does make the point that ethical dilemmas often lack a clear solution, and that the solution must come from within.

Doria said ESPN has always been cautious—to a fault—in reporting allegations of sexual abuse because of how damaging they can be, even if there are not any arrests or convictions made, as was the case here. The alleged abuser is often considered guilty in the public’s mind, even if nothing is ever proven. That is what ESPN had to balance on one side, against the public’s complaints that they were protecting a coach at a notable program and endangering children.

“That’s a tough assertion to accept,” Doria said. “But if that’s what we have to accept to do our jobs, then I can live with it” (Newhouse, 2012).

During all of this, Connor said his sister, a psychologist, advised him to, “Do justice to the complicated truths” (Newhouse, 2012). This is especially pertinent for a story like this one, where the “truth” is either vague or constantly changing.

To McAndrew, justice meant holding onto the story even when others would have published it, a move he defends to this day.

“The answer then was ‘No,’ the answer in 2012 was ‘No,’ and the answer today is still ‘No.’ We should not have published that story in 2002,” he said (personal communication, January 16, 2014).

While he still is not sure what the truth is, McAndrew is confident that he did the right thing.

“I’m proud of the reporting we did on this story,” McAndrew said. “We may not be any closer to knowing exactly what the truth is, but we tried” (personal communication, January 16, 2014).

### **Works Cited**

Associated Press. (2011, December 7). DA: Statute of limitations prevents Fine charges. *CBS News*. Retrieved from <http://www.cbsnews.com/news/da-statute-of-limitations-prevents-fine-charges/>.

Associated Press. (2012, April 11). Bernie Fine accuser Zach Tomaselli sentenced to prison for more than 3 years for sex crime. *The Post-Standard*.

Retrieved from

[http://www.syracuse.com/news/index.ssf/2012/04/bernie\\_fine\\_accuser\\_zach\\_tomas\\_3.html](http://www.syracuse.com/news/index.ssf/2012/04/bernie_fine_accuser_zach_tomas_3.html).

- Berman, Zach. (2006, February 21). One Fine coach: Bernie Fine has spent 30 seasons building bonds with SU players. *The Daily Orange*. Retrieved from <http://www.dailyorange.com/2006/02/mbb-one-fine-coach-bernie-fine-has-spent-30-seasons-building-bonds-with-su-players/>.
- Black, Jay. (2010). Who is a journalist? In Christopher Meyers (Ed.), *Journalism ethics: A philosophical approach* (pp. 103-116). Oxford: Oxford University Press.
- Cantor, Nancy. (2011, November 30). Syracuse chancellor: we didn't know of the tape until Sunday. *USA Today*. Retrieved from [http://usatoday30.usatoday.com/news/opinion/editorials/story/2011-11-30/Syracuse-tape-Nancy-Cantor/51513396/1?csp=34news&utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+News-Opinion+%28News+-+Opinion%29](http://usatoday30.usatoday.com/news/opinion/editorials/story/2011-11-30/Syracuse-tape-Nancy-Cantor/51513396/1?csp=34news&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+News-Opinion+%28News+-+Opinion%29).
- Coin, Glenn. (2012, November 9). Syracuse university: firing of Bernie Fine last year was "appropriate step." *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2012/11/syracuse\\_university\\_on\\_bernie.html](http://www.syracuse.com/news/index.ssf/2012/11/syracuse_university_on_bernie.html).
- Connor, Michael. (2011a, November 20). Why we didn't publish the Bernie Fine story in 2003. *The Post-Standard*. Retrieved from [http://blog.syracuse.com/opinion/2011/11/why\\_we\\_didnt\\_publish\\_fine\\_story.html](http://blog.syracuse.com/opinion/2011/11/why_we_didnt_publish_fine_story.html).
- Connor, Michael. (2011b, November 30). Why the post-standard didn't give Bobby Davis' tape to police in 2003. *The Post-Standard*. Retrieved from [http://blog.syracuse.com/opinion/2011/11/why\\_the\\_post-standard\\_didnt\\_gi.html](http://blog.syracuse.com/opinion/2011/11/why_the_post-standard_didnt_gi.html).
- Davis, Michael. (2010). Why journalism is a profession. In Christopher Meyers (Ed.), *Journalism ethics: a philosophical approach* (pp. 91-102). Oxford: Oxford University Press.
- Davis, Steve & Davis, Emilie. (2014). *Think like an editor: 50 strategies for the print and digital world* (2nd ed.). Boston, MA: Cengage Learning.
- Deitsch, Richard. (2011, December 1). Reporter defends ESPN's coverage of

Bernie Fine allegations. *Sports Illustrated*. Retrieved from [http://sportsillustrated.cnn.com/2011/writers/richard\\_deitsch/12/01/espn.mark.schwarz.syracuse.bernie.fine/](http://sportsillustrated.cnn.com/2011/writers/richard_deitsch/12/01/espn.mark.schwarz.syracuse.bernie.fine/).

Edgar, Andrew. (1992). Objectivity, bias and truth. In Andrew Belsey & Ruth Chadwick (Eds.), *Ethical issues in journalism and the media* (pp. 112-129). London: Routledge.

Elliott, Deni & Ozar, David. (2010). An explanation and a method for the ethics of journalism. In Christopher Myers (Ed.), *Journalism ethics: A philosophical approach* (pp. 9-24). Oxford: Oxford University Press.

ESPN. (2012, April 19). Zach Toomaselli claims sexual abuse. *ESPN*. Retrieved from [http://espn.go.com/mens-college-basketball/story/\\_/id/7829962/bernie-fine-accuser-zach-tomaselli-again-changes-tune-claims-sexual-abuse-child](http://espn.go.com/mens-college-basketball/story/_/id/7829962/bernie-fine-accuser-zach-tomaselli-again-changes-tune-claims-sexual-abuse-child).

ESPN. (2013, July 2). Bernie Fine drops suit vs. ESPN. *ESPN*. Retrieved from [http://espn.go.com/mens-college-basketball/story/\\_/id/9445277/bernie-fine-drops-defamation-lawsuit-espn](http://espn.go.com/mens-college-basketball/story/_/id/9445277/bernie-fine-drops-defamation-lawsuit-espn).

Katz, Andy. (2011, December 5). Jim Boeheim issues unabashed apology. *ESPN*. Retrieved from [http://espn.go.com/mens-college-basketball/story/\\_/id/7308747/syracuse-orange-coach-jim-boeheim-sorry-questioning-bernie-fine-accusers](http://espn.go.com/mens-college-basketball/story/_/id/7308747/syracuse-orange-coach-jim-boeheim-sorry-questioning-bernie-fine-accusers).

Kovach, Bill & Rosenstiel, Tom. (2001). *The Elements of Journalism* [Kindle Keyboard version]. Retrieved from Amazon.com.

Kriegel, Mark. (2011, November 29). Did Boeheim look other way with Fine? *FOX Sports*. Retrieved from <http://msn.foxsports.com/collegebasketball/story/did-syracuse-coach-jim-boeheim-look-other-way-on-bernie-fine-investigation-112911>.

Krulewitz, Josh. (2011, Nov. 28). ESPN's Doria on Syracuse coverage. *ESPN*. Retrieved from <http://frontrow.espn.go.com/2011/11/espn-doria-on-syracuse-coverage/>.

Kulkus, Emily & O'Hara, Jim. (2012, January 15). Bernie Fine's fourth accuser, Floyd VanHooser, recants: 'I told a lot of lies.' *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2012/01/bernie\\_fine\\_fourth\\_accuser\\_floyd\\_vanhooser\\_recants.html](http://www.syracuse.com/news/index.ssf/2012/01/bernie_fine_fourth_accuser_floyd_vanhooser_recants.html).

Kurtz, Howard. (2011, November 28). Why news organizations were silent about Syracuse abuse allegations. *The Daily Beast*. Retrieved from <http://www.thedailybeast.com/articles/2011/11/28/why-news-organizations-were-silent-about-syracuse-abuse-allegations.html>.

- Lippmann, Walter. (1922). *Public opinion*. New York, NY: Harcourt, Brace and Co.
- McAndrew, Mike. (2012, May 16). A chronology of the Bernie Fine case. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2012/05/a\\_chronology\\_of\\_the\\_bernie\\_fin.html](http://www.syracuse.com/news/index.ssf/2012/05/a_chronology_of_the_bernie_fin.html).
- McAndrew, Mike & O'Brien, John. (2011, November 27). Third accuser says Syracuse coach Bernie Fine sexually abused him as child. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2011/11/third\\_accuser\\_says\\_su\\_coach\\_be.html](http://www.syracuse.com/news/index.ssf/2011/11/third_accuser_says_su_coach_be.html).
- McBride, Kelly. (2011, December 1). ESPN should have pressed Fine allegations. *ESPN*. Retrieved from [http://espn.go.com/blog/poynterreview/post/\\_id/187/espn-should-have-pressed-fine-allegations](http://espn.go.com/blog/poynterreview/post/_id/187/espn-should-have-pressed-fine-allegations).
- Middleton, Kent R. & Lee, William E. (2013). *The law of public communication* (8th ed.). Boston, MA: Pearson.
- NBA. (2014). Sixers history. *NBA*. Retrieved from <http://www.nba.com/sixers/history/index.html>.
- Newhouse. (2012, February 23). When games turn grim. *S.I. Newhouse School of Public Communications*. Retrieved from <http://sportsandscandal.syr.edu>
- Nocera, Joe. (2011, December 2). It's not just Penn State. *The New York Times*. Retrieved from <http://www.nytimes.com/2011/12/03/opinion/nocera-its-not-just-penn-state.html>.
- Nocera, Joe. (2012, October 19). Why Syracuse isn't Penn State. *The New York Times*. Retrieved from <http://www.nytimes.com/2012/10/20/opinion/nocera-why-syracuse-isnt-penn-state.html>.
- O'Brien, John. (2012a, May 17). Mike Lang speaks: Glad he lost slander suit vs. Boenheim, details favors he sought from Bernie Fine. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2012/05/mike\\_lang\\_speaks\\_glad\\_he\\_lost.html](http://www.syracuse.com/news/index.ssf/2012/05/mike_lang_speaks_glad_he_lost.html).
- O'Brien, John. (2012b, May 16). Laurie Fine to sue ESPN for libel, says the network "spitefully destroyed" her reputation. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2012/05/laurie\\_fine\\_to\\_sue\\_espn\\_for\\_li.html](http://www.syracuse.com/news/index.ssf/2012/05/laurie_fine_to_sue_espn_for_li.html).

- O'Brien, John. (2013, October 4). Bernie Fine accusers Davis, Lang plan to appeal ruling in Boenheim slander suit. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2013/10/bernie\\_fine\\_accusers\\_davis\\_lang\\_plan\\_to\\_appeal\\_ruling\\_in\\_boenheim\\_slander\\_suit.html](http://www.syracuse.com/news/index.ssf/2013/10/bernie_fine_accusers_davis_lang_plan_to_appeal_ruling_in_boenheim_slander_suit.html).
- O'Brien, John & Kulkus, Emily. (2012, November 9). Former Syracuse basketball coach Bernie Fine won't be charged. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2012/11/former\\_syracuse\\_basketball\\_coa.html](http://www.syracuse.com/news/index.ssf/2012/11/former_syracuse_basketball_coa.html).
- O'Brien, J., Kulkus, E. & Dowty D. (2012, April 13). Zach Tomaselli says he lied about abuse allegations against Bernie Fine. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2012/04/zach\\_tomaselli\\_says\\_he\\_s\\_never.html](http://www.syracuse.com/news/index.ssf/2012/04/zach_tomaselli_says_he_s_never.html).
- Richards, Ian. (2010). Journalism's tangled web: Business, ethics, and professional practice. In Christopher Myers (Ed.), *Journalism ethics: A philosophical approach* (pp. 171-184). Oxford: Oxford University Press.
- Sanders, Karen. (2003). *Ethics & journalism*. London: Sage Publications.
- Smith, Erick. (2012, January 21). Tomaselli says he's not dropping lawsuit against Bernie Fine. *USA Today*. Retrieved from <http://content.usatoday.com/communities/campusrivalry/post/2012/01/zach-tomaselli-police-drop-investigation-syracuse-assistant-bernie-fine/1#.U1bl4l71uEQ>.
- Spire, Hardy (Producer). (2011, December 4). *Reliable sources* (Television broadcast). Washington, D.C.: Cable News Network.
- SPJ. (1996). SPJ code of ethics. *Society of Professional Journalists*. Retrieved from <http://www.spj.org/ethicscode.asp>.
- Syracuse University Athletics. (2003). 1965-66 final statistics. *Syracuse University Athletics*. Retrieved from <http://cuse.com/sports/2003/7/9/1965-66mbbstats.aspx?id=508>.
- Syracuse University Athletics. (2013). Staff directory. *Syracuse University Athletics*. Retrieved from <http://cuse.com/staff.aspx?staff=15>.
- Thamel, Pete. (2012, January 20). Accuser of Syracuse coach admits doctoring emails and drops civil suit. *The New York Times*. Retrieved from <http://www.nytimes.com/2012/01/21/sports/ncaabasketball/bernie-fine-accuser-drops-civil-suit-against-him.html>.

- Thamel, Pete. (2013, March 16). Relationship of Boeheim, Pitino a memorable product of Big East. *Sports Illustrated*. Retrieved from <http://sportsillustrated.cnn.com/-college-basketball-mens-tournament/news/20130316/rick-pitino-jim-boeheim-big-east/>.
- The Post-Standard. (2011, November 27). Read the transcript: Excerpts from the taped phone call between Laurie Fine and Bobby Davis. *The Post-Standard*. Retrieved from [http://www.syracuse.com/news/index.ssf/2011/11/read\\_the\\_transcript\\_excerpts\\_f.html](http://www.syracuse.com/news/index.ssf/2011/11/read_the_transcript_excerpts_f.html).
- U.S. Const. amend. I.
- Ward, Stephen J.A. (2009). Covering suicide: Do journalists exploit tragedy? *Center for Journalism Ethics, School of Journalism & Mass Communication at the University of Wisconsin-Madison*. Retrieved from [http://www.journalismethics.info/ethics\\_in\\_news/suicide.html](http://www.journalismethics.info/ethics_in_news/suicide.html).
- Ward, Stephen J.A. (2010). Inventing objectivity: New philosophical foundations. In Christopher Myers (Ed.), *Journalism ethics: A philosophical approach* (pp. 137-152). Oxford: Oxford University Press.
- Welner, Michael. (2010, October 18). Child sexual abuse: 6 stages of grooming. *Oprah.com*. Retrieved from <http://www.oprah.com/oprahshow/Child-Sexual-Abuse-6-Stages-of-Grooming>.
- Whitlock, Jason. (2011, November 23). A fine mess ESPN has created. *FOX Sports*. Retrieved from <http://msn.foxsports.com/collegebasketball/story/bernie-fine-syracuse-story-irresponsible-reporting-by-espn-112111>.

### **Executive Summary**

For my Capstone Project, I decided to conduct a retrospective case study in journalism ethics. The topic I chose to analyze was the investigation of Bernie Fine, a former Syracuse University men's basketball assistant coach who was accused of sexual abuse. I was drawn to this idea because of how deep and complicated the story became as its details unfolded. On the surface, the issue at hand was determining whether or not a coach molested children. However, the media became part of the very story they were reporting when the public starting

questioning their methods. My Capstone Project is an attempt to answer those questions.

The first section of the project is a look at the key points of journalistic ethics. It includes a look at how journalism came to be and is defined as a profession. From there, it outlines journalism's function in society, which is to give people the information they need to self-govern. In order to fulfill that role ethically, journalists must be dedicated to seeking the truth and remaining loyal to their audience. Other ethical guidelines for journalists beside those two basic tenets are discussed as well, such as objectivity, balance, non-bias, and conflicts of interest.

Finally, I included a systematic moral analysis, a process for journalists to use when working through an ethical dilemma. This decision-making guide can be applied when no clear or simple solution appears evident. This section in its entirety, combining both a look at what it takes for journalists to be ethical and a guide for making ethical decisions, acts as a lens through which the example in this case study can be viewed.

The second chapter of the project details how the Bernie Fine allegations were investigated. I looked at The Post-Standard, the main daily newspaper in Syracuse, and sports media conglomerate ESPN because those two organizations reported on the story longer than anyone else. They first looked into the allegations when Bobby Davis, a former ball boy for the Syracuse basketball team, approached each of them in 2002 and 2003, respectively. Both organizations exercised care with the situation, putting experienced reporters on the assignment that carefully and thoroughly investigated Davis' claims. They



also both established a clear threshold their reporting would require to publish the story, and stuck with those guidelines. Both said that to publish the story they would have to either corroborate Davis' allegations or find a second accuser. However The Post-Standard and ESPN could not find either after looking into the situation for several months. Both decided in 2003 that the story was not worthy of publication.

The decision of publication became an issue again when the story resurfaced in 2011. Davis' stepbrother, Mike Lang, came forward to ESPN and said he was also abused by Fine as a child. Now ESPN had a second named accuser, one of the main points for reaching its threshold of publication. ESPN decided to go with the story the second time around, and it quickly gained national media attention from there.

The third chapter of the project analyzes the morality of the decisions The Post-Standard and ESPN made in their reporting. I found that both organizations have been very transparent in the aftermath of the incident, which is critical to maintaining one's ethical standards in these situations. However both still faced numerous criticisms. Chief among them were not publishing the story back in 2003 and holding on to a recorded conversation between Davis and Fine's wife, Laurie, in which the two discuss Fine.

The audiotape has been the source of a lot of controversy due to the wide range of opinions on it. Upon its first release in November of 2011, the tape prompted Syracuse University to fire Fine. When the public discovered that The Post-Standard and ESPN had the tape for years, they wondered why it was not released sooner, or why, if it was not going to be released, they did not at least

bring it to the police. The view from journalists and ethicists have been somewhat mixed, but the majority held that the tape was not nearly as damning as many originally thought in terms of proving Fine had molested anyone. Many also said the tape should not have been given to the authorities because it would make journalists an arm of law enforcement, which is not their role in society.

As already discussed, The Post-Standard had levels of proof the story needed to reach in order to be published, a policy consistent with what they and other journalists have done with similar stories. Using the systematic moral analysis outlined in the chapter on ethics, I concluded that both The Post-Standard and ESPN were right not to publish the story in 2003. I also felt that, using those same ethical guidelines, that ESPN was right at the time to publish the story in 2011 given the circumstances. However, hindsight, as they say, is 20/20.

The final chapter in my project is a look at the events that transpired after the story broke in 2011. Multiple defamation lawsuits were filed: by Davis and Lang against Syracuse men's basketball coach Jim Boeheim, and by the Fines against ESPN (although Bernie later dropped his lawsuit). Two additional accusers came out against Fine as well, bringing the total to four. However both later recanted their statements, and Lang had his credibility questioned when the nature of his relationship with Fine was revealed. A federal investigation spanning nearly a year led to no charges against Fine, making the decision to publish. All of this made the decision to publish a more difficult position to stand behind, however I maintain that The Post-Standard and ESPN did the best they could given what they knew at the time.

To complete this project, I consulted various books and articles on journalistic ethics, as well as journalistic codes of ethics. I also used numerous news articles, both about the Bernie Fine scandal itself and about the reporting of the Bernie Fine scandal, and spoke to journalists and ethicists who were either directly involved or familiar with the situation.

As an aspiring journalist, I know that my ability to act ethically is just as important as my ability to report or write. I knew this topic would be interesting because I saw how the ethical issues of reporting this incident, the story behind the story, really, grew as large as the actual scandal itself. It was a great example of a difficult ethical dilemma journalists have had to face due to all of the twists and turns it has taken since Davis first came to The Post-Standard in 2002. As such, I felt it deserved a closer look into what these journalists did and why. I hope my Capstone Project serves as a valuable case study for journalists to examine and from which they can learn more about the ethics of the profession.