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1-7-2012

# Penn State and the Blame Game

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## Recommended Citation

Sepinwall, A. J., & Rosner, S. (2012). Penn State and the Blame Game. *Huffington Post*, 1-. Retrieved from [https://repository.upenn.edu/lgst\\_papers/67](https://repository.upenn.edu/lgst_papers/67)

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# Penn State and the Blame Game

## **Abstract**

It has now been two months since scandal rolled into the Happy Valley, with the news that Jerry Sandusky has been charged with 52 counts of child molestation. Much is still uncertain and yet the university, the surrounding community, and the nation as a whole remains fixated on the question of responsibility. In particular, does Penn State bear responsibility for any of the alleged acts of abuse and, if so, on what grounds? If the institution does bear responsibility, ought we to transmit that responsibility to members of the Penn State community? To which members? And what measures should Penn State undertake in response? We address each of these questions in turn.

## **Disciplines**

Business Organizations Law | Civil Law | Law | Nonprofit Organizations Law | Sexuality and the Law

THE BLOG 01/07/2012 03:50 pm ET Updated Mar 08, 2012

# Penn State and the Blame Game

By Amy Sepinwall and Scott Rosner

It has now been two months since [scandal](#) rolled into the Happy Valley, with the news that Jerry Sandusky has been charged with [52 counts](#) of child molestation. Much is still uncertain and yet the university, the surrounding community, and the nation as a whole remains fixated on the question of responsibility. In particular, does Penn State bear responsibility for any of the alleged acts of abuse and, if so, on what grounds? If the institution does bear responsibility, ought we to transmit that responsibility to members of the Penn State community? To which members? And what measures should Penn State undertake in response? We address each of these questions in turn.

## Official Responsibility

Suppose that the facts alleged in the grand jury report and at the preliminary hearing for Tim Curley and Gary Schultz several weeks ago turn out to be true: In 2002, Mike McQueary, then a graduate assistant coach and, until the scandal broke, receivers coach for the team, witnessed Sandusky sodomizing a young boy in the showers. McQueary told head coach Joe Paterno, though he apparently spared the coach the graphic details of what he witnessed out of respect and instead told the coach that he witnessed something “extremely sexual” in nature. According to Paterno’s grand jury testimony that was read into the record at the preliminary hearing (the coach was excused from testifying due to his ongoing cancer treatment and recuperating from a broken pelvis), he did not push McQueary for additional information because the assistant coach was so upset. Paterno subsequently reported this information to Tim Curley, athletic director, and Gary Schultz, vice president for finance and business who was charged with overseeing the Penn State police department. Pursuant to this conversation, Curley and Schultz met with McQueary nine or 10 days later where he reiterated what he had witnessed occurring in the locker room shower between Sandusky and the victim. By the time news of the incident reached Graham Spanier, then university president, it had apparently been downgraded from sodomy to “horsing around” and “inappropriate conduct.”

Paterno, Curley, Schultz and Spanier admit that they alerted neither campus nor municipal police. Instead, they claim to have confiscated Sandusky’s keys to the locker room,

prohibited him from bringing boys to the athletic facilities, and communicated the information they had received to the Second Mile, the charity Sandusky had founded ostensibly to help kids from disadvantaged families, and from which he is alleged to have drawn his victims.

The Penn State officials' response was grossly inadequate as a matter of both law and ethics, with potentially devastating consequences: Pennsylvania law requires that a set of specified individuals, including school administrators, immediately report any suspected child abuse to the head of the institution who must, within 48 hours, convey the report to the appropriate state agency (e.g., police department or Pennsylvania Department of Public Welfare). Curley and Schultz have been charged with a failure to report in light of their violation of this provision.

The moral cost of this violation may have been far greater than the mere dereliction of duty for which Curley and Schultz have been indicted and ordered held on one count each of perjury and failure to report. The grand jury presentment specifies that Sandusky victimized at least one other boy subsequent to the 2002 shower incident, and other victims have since come forward, alleging more recent acts of abuse. These purported offenses might never have occurred had Schultz et al. fulfilled their duties to report and, if these offenses did occur, moral responsibility for them must lie in part with the officials who could have, but did not, prevent them. It was incumbent upon these officials to act in a manner that afforded a reasonable belief that Sandusky would not harm other children. This they apparently failed to do. Even if they did prohibit Sandusky from bringing kids into the Penn State football complex, they did nothing that would have denied Sandusky access to future victims elsewhere. Evidently, child molestation was tolerable for these officials so long as it didn't occur on their turf.

## **Institutional Responsibility**

Given that the officials in question go all the way up to the top of Penn State's chain of command, is it fair to think that their lapses render Penn State as a whole responsible for the alleged abuses occurring after 2002? Yes, if one can identify an element in Penn State's culture that explains the officials' dereliction. Two possibilities come to mind.

First there is the possibility that the officials swept the information about the alleged rape under the rug because of a perceived imperative to protect their own — an imperative they

were willing to fulfill even at the expense of possible future victims of Sandusky's purported pedophilia. This would be an egregious failure, but it is hard to identify some element in Penn State's culture — even considering the hero worship that JoePa and his associates enjoyed — that produced or even permitted a sense of impunity to this degree.

Less nefarious, but more damning for the institution, is the possibility that the officials believed that they were acting in the institution's best interests. This rationale for keeping the scandal under wraps would have been deeply misguided, but one can readily see how the school's relationship to the team might have enabled, if not entailed, it. The football apparatus, with Joe Paterno at its helm for the last four decades, has been credited not just with placing the team within the Big 10 but also with putting the school on the national map, taking it from an agricultural backwater to a first-class research institution, along the way, transforming a virtually non-existent endowment to one that exceeds \$2 billion today. In exchange for this enhanced prominence, the school appears to have accorded the football team its own fiefdom, conferring great discretion upon its leaders and exempting it from the full force of the standard university disciplinary process. The *Wall Street Journal* [reports](#), for example, that Paterno once threatened to cease fundraising for the school unless it fired Dr. Vicky Triponey, its then standards and conduct officer, who challenged Paterno's demands that football players be treated differently from other students who violated the school's code of conduct. Triponey eventually resigned as a result of the conflict.

The Triponey incident may well be reflective of a more general attitude that sought to maintain the lily white image of Penn State football, given that the university relied on basking in its halo. So it is that the Penn State officials may have wanted to handle the 2002 Sandusky allegation quietly, and so it is that the institutional structure and culture would have allowed them to do so. This culture, of course, has long been thought to be endemic throughout big-time college sports regarding student-athletes and coaches involved in NCAA violations and other legal transgressions of both the minor and major variety — though rarely to this extent, and never with this much media attention.

If, in keeping mum about the allegations, the officials had in fact been motivated by a desire to protect the school's image, we would have a tragic lesson in official hubris on our hands. Importantly, though, that hubris has been licensed and sustained by a culture that places football at the center of university life, and intertwines the two to the extent that the

fate of the former greatly determines the fate of the latter. Given that the university is to blame for what now appears to be excessive solicitude to the football fiefdom, and that that solicitude would have allowed a suspected child molester to continue preying on young boys, responsibility for any acts of abuse committed after 2002 must lie in part with the university as a whole.

## **Blame**

“We Are Penn State!” So goes the cheer that Penn State fans — students, faculty, local residents and alumni — chant to support their football team. There is clearly a strong sense of identification between the team and those in the stands who cheer them on. That sense of identification grounds pride in the team’s accomplishments and, as a matter of psychological consistency, it ought also to ground a sense of shame in the team’s — or the university’s — missteps. And that shame gains credibility as it moves beyond mere expressions of regret to a genuine recognition that the community bears a set of obligations to help right the wrongs that fans of other teams — even those that are lionized to the extent that the Nittany Lions are — do not bear.

Penn State fans have already taken steps in this direction. Alumni have raised close to \$500,000 in support of the Rape, Abuse and Incest National Network (RAINN), and have thus admirably and amply demonstrated that their Penn State does not include support for child abuse or the abusers.

But some observers called for a more drastic response: They demanded that the team cut its season short, or withdraw from participation in a bowl game. Yet we believe that this would be too narrow and too severe a response. It is not clear that the team deserves to bear the institution’s punishment alone, and to cancel games would have been to deny the team and the institution an opportunity for more far-reaching reform. Instead, the university and the team need to come together to engage in acts of repair and rehabilitation.

## **Remedying the Wrong**

While it may be wryly noted that the university made its bed by using football to build its reputation and now it must sleep in it by dealing with the repercussions, Penn State officials are currently re-evaluating the role that its football team plays at the university according to a front-page story that ran in USA Today in early December. New university

President Rodney Erickson would like to shift the public image of the university from a football powerhouse to a research powerhouse, [stating](#), “We want that to be the front face of the university.” This is likely a fruitless endeavor. The somewhat disconcerting reality is that major college athletics are the front porch of their universities, no matter their academic prestige. Real estate professionals refer to this as “curb appeal.” The aforementioned halo effect is wonderful when times are good and the team is winning, but when the wins turn to losses or scandal hits the opposite occurs. To wit, three more prestigious bowl games passed over Penn State in favor of lesser teams in order to avoid the taint currently associated with the university. Though hardly beyond repair, Penn State’s front porch is in disastrous shape at the moment. It has little curb appeal.

So what can be done? Again, the key words are repair and rehabilitation.

To begin with rehabilitation, the institution needs to overhaul its disciplinary process to ensure that the football team — both players and officials — are subject to the very same rules and procedures that govern others in the university. Related, the team should be subject to a probationary period during which a university administrator, with no prior connection to the team, acts as a disciplinary czar for the team, ensuring that any violations get referred to the university’s disciplinary process.

While rehabilitation focuses on steps the university ought to take moving forward, repair requires it to remedy the transgressions that have already occurred. The institution will never be able to make whole those individuals who may have been victimized as a result of its silence. But it can seek to help victims of sexual abuse and the programs that support them. The university announced two such initiatives in December. Penn State pledged to donate the [\\$1.5 million](#) in revenue it earned from its losing TicketCity Bowl appearance to two national charities devoted to preventing child abuse. In addition, it plans to use some of the revenue as seed money to establish a national Center for the Protection of Children at Hershey Medical Center’s Children’s Hospital to conduct research and treat sex abuse victims across the country. This Center will involve experts from across the two dozen Penn State campuses. This is a meaningful step, but the university must demonstrate that it will sustain its commitment to preventing abuse and putting its members, and not just its money, to work for the cause. To that end, the university should overhaul its abuse prevention and reporting policies, and ensure that each staff and faculty members receives training in how to identify and report any suspected abuse. As part of the newly created

Center, the university could also make available special grants for research related to child abuse. More significantly still, the university could establish shelters at both its main and satellite campuses for child-victims of abuse and victims of domestic violence and their families. Faculty, staff and students - especially those connected with Penn State football — could be encouraged to volunteer at these shelters, doing everything from administrative work to serving meals to entertaining and supporting the kids to teaching residents abuse prevention techniques. Finally, just as important as any of these measures is the message they impart: If the school's inaction facilitated child abuse in the past, let it actively work to prevent and redress acts of abuse in the future.



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