

Sandusky scandal offers opportunity to learn lessons

By *Howard M. Talenfeld*

Jerry Sandusky, a former assistant football coach at Penn State University, has been tried and convicted. He'll likely spend the rest of his life in prison for his sexual abuse of young boys. Yet, what have we learned?



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For lawyers, leaders at large organizations like a university, administrators at a governmental agency like Florida Department of Children & Family Services, and company whistleblowers — and society at large — the entire episode offers compelling, important lessons.

Child sexual abuse — whether by Sandusky, a priest, or those at state- or privately run child welfare services — is an epidemic. Leaders embrace a holier-than-thou, we-can-do-no-wrong attitude. They blame the accuser and question the motives. They sweep accusations aside, hoping they never will be exposed to public light. In short, many lack transparency and most refuse to take ownership of their mistakes.

As the Sandusky affair proved, sweeping is futile. One day, leaders — in this case, school officials — awoke to witness the core of their institution tarnished, their actions questioned and their liability exposed. And a report released Thursday concluded university officials, including former head coach Joe Paterno, President Graham Spanier, athletic director Tim Curley and vice president Gary Schultz, "repeatedly concealed critical facts relating to Sandusky's child abuse." The internal investigation was led by former FBI director Louis Freeh, who called the officials' disregard for the victims "callous and shocking."

Organizations need a culture of transparency with zero tolerance for lies, deceit or hiding of embarrassing or criminal activities. When a university athletic program goes horribly awry, through recruiting violations, player payments, or other problems, it's called "loss of institutional control." At Penn State, there was no institutional accountability.

Simply put, school officials and leadership knew of Sandusky's actions. They failed to reel him in after the initial report in 2002. They reportedly didn't prevent his access to school facilities. They also never contacted or followed through with law enforcement — even after years of complaints against Sandusky. It amounts to deliberate indifference. The school now is owning up. According to news reports, the school reached out to the victims immediately following Sandusky's guilty verdict. But liability could be significant. The school likely faces millions of dollars in settlements.

The payouts could be problematic. Some have estimated they could reach \$1 million per victim.

Yet, the school's insurance provider may balk at paying civil settlements, given apparent revelations that administration officials neglected to address years of abuse. The insurance provider for Second Mile Foundation, Sandusky's organization for neglected children, reportedly wanted to be released from its obligations in paying executives' claims, including Sandusky's legal fees and any judgments. The insurer cited a Pennsylvania law against indemnifying deliberate "reprehensible" behavior, like sexually abusing children, according to The New Yorker.

Individual culpability in these situations is harder to assess. Under Florida law, an organization generally bears no liability when an employee transgression is outside his scope of authority. There are some exceptions. One is when management is aware of the actions, and fails to act and protect others. Though whistleblower Michael McQueary came forward, his first report was lodged with his superiors years ago. Under Florida law, a person in his position — and others who knew but failed to stop the abuse — could be civilly liable and may even be held responsible for punitive damages as bearing some fault for such an intentional tort.

For society and those not directly involved with an institution where such crimes may take place but who witness it just the same, the lesson is plain: Take ownership of what you've seen or heard. Don't stay quiet. If you're suspicious, inquire, and then report any incident. Unlike McQueary, don't stop with your report. Escalate the matter until your suspicions are quieted or the proper authorities are actively handling the situation.

Floridians will have more reason than ever to act on their suspicions. The state's new Protection of Vulnerable Persons law requires educational institutions and their law enforcement agencies to report known or suspected child abuse, abandonment, or neglect in certain circumstances. It also requires, among other provisions, the DCF to provide for web-chat and update other web-based forms for reporting.

As of Oct. 1, 2012, any educator, administrator or student in Florida who "willfully and knowingly" fails to report any suspicious sexual abuse can face criminal charges and fines of up to \$1 million per incident.

Society must fight the culture of no accountability amid a pervasive tolerance for under-the-radar institutional abuse. Bystanders must speak up. Whistleblowers must be taken seriously. Executives and administrators must act on what they're told. And society must pursue such claims with the vigor and relentlessness exploited and sexually abused children deserve. These are the lessons we must learn.

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