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Penn State Sex Abuse Scandal Rocks Families, Institutions, Laws

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In a case with echoes of the Catholic Church sex abuse scandal, Penn State University and indeed the State of Pennsylvania face [horrific charges](#) of ignoring the sexual abuse of eight children at the hands of former Penn State football defensive coordinator Jerry Sandusky.

- Penn State sex abuse scandal shakes youth sports foundations, icons
- Governmental immunity stands between victims and civil redress
- Institutional reform needed to protect vulnerable kids

The fallout spiked overnight with the firing of Penn State's iconic football head coach Joe Paterno and President Graham Spanier. Word of Paterno's firing sparked chaos on campus, with students rampaging in protest and clashing with police.

Despicable Crimes by Youth Mentor

Sandusky, 67, was arrested last Saturday on charges of sexually abusing eight boys over a 15-year period. He retired from coaching in 1999, but continued to have access to the Nittany Lions' athletic facilities after that, in part for his charitable program, Second Mile Foundation. He's alleged to have molested boys there both during his coaching career and after his retirement. Rumors have now surfaced that Sandusky also "pimped out" boys to wealthy donors.



Penn State Coach Joe Paterno in 2006

The victims have testified that Sandusky befriended them through Second Mile. According to reports, he mentored the boys and gave them gifts and access to sporting events and the Penn State football facilities. Having gained their trust, he then sexually assaulted them. The mother of one of the boys Sandusky allegedly molested says that Sandusky confessed his crime to her.

Officials Ignored Evidence, Failed to Stop Abuse

Penn State's response – or lack of one – to the crimes has come under intense criticism. In 2002, President Spanier was told that a graduate assistant to the team saw Sandusky sexually assault a young boy in a shower in the team's football locker room.

Athletic director Tim Curley and vice president Gary Schultz face charges they covered up the scandal. They've been charged with perjury and failure to report to authorities what they knew of the allegations, as required by state law.

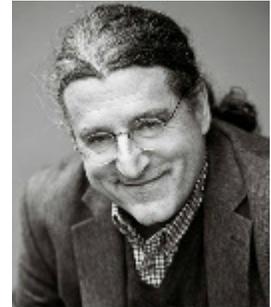
Paterno himself has reportedly admitted that information about Sandusky's behavior reached him in 2002 and that he believed in the truth of the allegations. Though he sought to forestall action against him by announcing he would retire at year's end, University Trustees fired him nevertheless.

Besides the tragic exploitation and harm suffered by these adolescents, the case surfaces two recurring and seemingly intractable problems. First is the failure of institutional response and coverup. Large, powerful institutions like the University and the Catholic Church refuse to accept accountability for these acts when they first surface and indeed obstruct justice, civil and criminal, time and time again. In this case the emerging facts show that the highest ranking athletic and university officials were informed of Sandusky's crimes yet did little or nothing about them, or to prevent them from recurring. This, in fact, enabled Sandusky.

The second problem is the lack of accountability to the victims on the part of anyone who can possibly begin to compensate them for their injuries. Although the individual actors – from Sandusky to those who knew of his acts but did nothing to stop them – may be liable civilly to the victims, the University itself and indeed the State it serves is not. Let's look at this problem immediately.

Civil Immunity for the One Entity Capable of Making Redress

The "State, and the University as a state entity, have sovereign immunity," says noted attorney [Norm Pattis](#), who's represented sex crimes defendants and prosecuted civil claims on behalf of sex abuse victims, and who's written about it separately on [his blog](#). "Unless they waive this immunity and consent to be sued there's nothing these victims can do about it."



Norm Pattis

Pennsylvania's Sovereign Immunity Act is typical of laws in every state shielding the government from monetary claims of people who've been injured by the state's employees, officers and agents. The Act has certain exceptions, most notably for harm caused by the operation of motor vehicles. But none of these exceptions includes the intentional or even forcible sodomy of a young boy by a Penn State coach in a Penn State locker room.

If you read the exceptions, you may grasp a truly sick and perverted irony. The law provides exception for harm caused in the

Care, custody or control of animals in the possession or control of a Commonwealth party, including police dogs and horses

So if Coach Sandusky forcibly rapes a young boy entrusted to his care, that boy can't sue the state. If Coach Sandusky bestially rapes that young boy's horse, the boy can sue the state - for harm to the horse.

The concept of sovereign immunity has been criticized before. Pattis is reminded of constitutional law scholar Erwin Chemerinsky's remark about sovereign immunity as it pertains to the United States: "this is a republic, not a monarchy. There's no room for sovereign immunity in a republic."

Pattis has suggested the University set aside \$100 million from its endowment to settle the claims of these boys, and the claims of others that will undoubtedly surface now that the story has broken. That's certainly the stand-up thing to do.

It's been suggested already though that the University and State could be liable under the Sovereign Immunity Act's exception for dangerous conditions existing on state real estate. In this view, Sandusky would be the "dangerous condition," although typically these conditions are more commonly things like malfunctioning elevators, construction hazards, and the like.

Penn State Football Program Among Most Profitable

In this context it's worth pointing out something else. College football, as it exists at the NCAA Division I level, bears more resemblance to a huge, lucrative industry than a system for educating student athletes. According to a CNN.com report, [college football earned over \\$1 billion](#) in 2010. Penn State had the third-highest income – profit, not revenue – of any school, taking down just over \$50 million.

The schools are well aware how much they resemble for-profit enterprises. The [NCAA has gone to great lengths](#) to ensure that college athletes don't qualify under the law for workers' compensation for injuries they sustain in these programs, despite the obvious economic value the players confer on the schools.

This is all relevant because of a wrinkle in the traditional concept of immunity, at least as it applied to cities and counties. Those political subdivisions generally had immunity only for "governmental functions." These are the things

cities and counties do that are necessary to governance. They did not have immunity for "proprietary functions." These are business-like things they choose to do. Proprietary functions share three characteristics:

1. the activity is one that government is not statutorily required to perform
2. the activity also may be carried on by private enterprise
3. the activity is used as a means of raising revenue

That describes college football as run by public universities.

Institutional Concerns: "Money, Reputation, Image" – Not Youths

It remains a mystery that many large, powerful institutions have difficulty facing up to these problems and taking quick and effective action to stop them. The Catholic Church knew of its many "problem priests," sometimes for decades, yet failed to deter them or acknowledge the problems publicly. It can be the same in large, secular organizations.



California attorney [Robert Allard](#) represents victims in a strikingly similar matter. Allegations surfaced in 2009 of sexual abuse and molestation of kids enrolled in swimming programs certified by USA Swimming (USAS), the National Governing Body for the sport of swimming in the United States. According to Allard, the abuse of young athletes by coaches of member swim clubs has turned out to be widespread, enduring and ineffectively addressed by the national organization.

Robert Allard For institutions like these, Allard says, "what it comes down to is money, reputation, and image. They refuse to acknowledge any wrongdoing for which they may be held accountable. They're afraid of losing sponsorships and revenue from corporate partners."

And there is more to it. "The USAS itself has said its mission is to win gold medals," Allard notes. "The safety and welfare of the kids in the programs comes way down on the list."

According to Allard, the problem of abuse in this sport is not new. He points out that in the early 1990s, USA Swimming resisted Olympic Gold Medalist David Berkoff's proposals to form an internal unit to deal with the issue of abusive, exploitive coaches and staff. As a result, Allard claims, many more kids suffered the harm and indignity of this criminal behavior.

Berkoff, who is an attorney, a swim coach, and a member of USAS' Board of Directors, responded to an email request by stating, in part, "in the last year USAS enacted what I believe are the most ground-breaking athlete protection policies for any sports governing body. We came back to our House of Delegates this year to make even more positive changes that address bullying and on-line behavior. I am very pleased that USAS has moved rapidly in passing these new rules and guidelines and the support for this new legislation by our membership is overwhelming."

Berkoff also noted he's a native Pennsylvanian, and is "ashamed" of the inaction of Penn State officials despite their awareness of Sandusky's conduct.

The defensive response of institutions, given that young lives are at stake, is reprehensible. It's also confounding given the nature of pedophilia and sexual predators. Dr. John Mayer is a psychologist and an expert on teens and families. He notes that pedophiles and sexual predators are serial offenders, and this characteristic is generally widely understood among the general public. It must also be grasped by the leaders of youth organizations like football and swim programs. It should also not escape these leaders that pedophiles are drawn to where kids are.

Mayer notes the commonality of factors where these crimes are perpetrated across all organizations. "Under the veil of a revered institution, the perpetrators prey on vulnerable youth, often at-risk children, using goodwill and often religious intentions and power to grant or withhold rewards to enslave young people to submit to sexual depravity. This is an old formula that works for sexual predators."

Mayer also observes the distressing commonality of institutional response. "The response of the perpetrators' superiors to reports of impropriety follow the same pattern of action that appears to be the response of the Penn State authorities: sweep it under the rug and move on like business as usual."

Mayer's son Justin has established the [Center for Ethical Youth Coaching](#) to address the stunning failures in this sphere. According to Justin Mayer, youth coaching is subject to little or no regulation at any level. He hopes programs will adopt a certification system that will ensure the integrity of the coaches and staff who have such intimate and powerful influence over our young and vulnerable children.

[Art Buono](#) co-authors the Lawyers.com blog.

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