Readers' Comments

To the Editor:

In reading the Fall 2012 issue of The Philadelphia Lawyer, I was troubled by representations in the article "Joe Paterno: Bad Samaritan" by Jennifer Ewing relating to Paterno's legal duty to report child abuse. I hope that we can soon discuss some way to correct the public record that these representations dangerously create.

Specifically Ewing writes: "As a citizen of Pennsylvania, Paterno did not have a legal duty to report what he heard about Sandusky's possible criminal acts" and "Paterno was not a school administrator or school teacher; he did not have training or experience related to child abuse and he was not in charge of a school. Therefore, Paterno had no obligation under Pennsylvania law to report Sandusky's child abuse."

To the contrary, we believe that Paterno is precisely the type of administrator that the Child Protective Services Law (CPSL) envisions in its chain-of-command reporting schema (23 Pa.C.S.A. §6311 (c)), and as well probably had sufficient personal knowledge to create his own duty to report suspected abuse to the authorities. It is now public knowledge that he did the former in apparent but perhaps only partial satisfaction of law, and did not do the latter.

The forthcoming trials of former Athletic Director Tim Curley and former university Vice President Gary Schultz set forth the analysis of the chain-of-command duty to report. At the moment Assistant Coach Mike McQueary suspected child abuse in the shower incident, he became a mandated reporter. When McQueary told his superior, Paterno, the duty immediately attached to Paterno – with no requirement that Paterno have contact with the child or have any specialized training or expertise. Then, when Paterno told his superiors Curley and Shultz, McQueary's duty attached to them, yet the law did not then relieve Paterno of his own attached duty. The law did not allow any of these superiors to investigate, to weigh the evidence or to decline to report.

As well, Paterno arguably had his own duty to report abuse that he had cause to suspect, based on information he personally acquired over the years related to Sandusky's behaviors. While we may never know the full extent of his knowledge or suspicions, what is clear is that the law sets a low bar of suspicion. Contrary to your article, Paterno was certainly a person "who, in the course of [his] employment, occupation or practice of their profession, come[s] into contact with children" (23 Pa.C.S.A. §6311 (a)). Consider that some number of freshman football and other student-athletes matriculate before their 18th birthday, and he undoubtedly encountered many high school students and even younger children in his various public functions associated with such a high-profile job. To his and the university's credit, they opened their athletic facilities to many community groups and others who served young people – all of those "count" for this statute.

It might be said that because the child in the McQueary

shower incident did not "come before" Paterno in person, the personal duty to report did not arise. Indeed, one part of the CPSL was amended in 2006 to expand the circle of protection to include children "under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated." The 2005 Philadelphia grand jury report had revealed that pastors in various churches avoided the responsibility to report incidents involving children in their parishes or schools because they did not personally see them. The old law arguably provided a loophole that is now thankfully closed. Certainly as to the prior definition, given the years, numbers of youths, and their exposure to Penn State events and facilities, Paterno may have had occasion to meet ("come before") some of the youths with whom Sandusky kept company. That his acute knowledge or awareness of events related to his team and school were virtually legendary in Happy Valley only increases the likelihood that he had cause to suspect child abuse.

Finally, the implication that one might be required to notify law enforcement rather than child welfare authorities is also misleading. There is a distinction in the law relating to "school abuse," which is the pathway set forth in the CPSL for suspected abuse in public or private schools, intermediate units or area vocational-technical schools. This is the only part of the law that may require the notification of law enforcement rather than child welfare authorities – and this different approach to school personnel has been widely criticized in law reform discussions. I believe it is well established that a university such as Penn State is not considered a school under the CPSL, but we might research this further.

I published some of these thoughts earlier this year in response to the Schultz/Curley defense claims at pennlive.com.

We should be reluctant to excuse Paterno's conduct as not criminal. More importantly, we must not mislead other caregivers about their duty under law. ■

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