

**Analysis of the Special Investigative Counsel Report and the  
Crimes of Gerald A. Sandusky**

**&**

**Education Guide to the Identification and Prevention of  
Child Sexual Victimization**

**James T. Clemente  
February 2013**

## TABLE OF CONTENTS

<b>I.</b>	<b>The SIC Mandate and Conclusions.....</b>	<b>6</b>
<b>II.</b>	<b>How the SIC Got It Wrong .....</b>	<b>6</b>
<b>III.</b>	<b>Behavioral Dynamics of Acquaintance Child Sex Offenders .....</b>	<b>7</b>
	A. Preferential Child Sex Offenders .....	8
	B. “Nice-Guy” Acquaintance Offenders .....	8
	C. Grooming .....	9
	D. Compliant Victimization.....	9
	E. “Conspiracy of Silence” Surrounding Child Sexual Victimization.....	10
	F. How Offenders Use These Complicated Dynamics to Their Advantage .....	11
	G. The Case of Richard Taus.....	14
<b>IV.</b>	<b>Analysis of the SIC Findings.....</b>	<b>15</b>
	A. Analysis of 1998 Incident .....	15
	B. Analysis of 2001 Incident .....	17
	C. Paterno Not Part Of Any “Active Agreement To Conceal” .....	32
	D. Paterno’s Subsequent Actions.....	42
<b>V.</b>	<b>Difficulties Investigating “Pillar of the Community” Cases .....</b>	<b>47</b>
<b>VI.</b>	<b>Additional Biases, Limitations, and Erroneous Conclusions in the SIC Report .....</b>	<b>49</b>
	A. Report Bias.....	49
	B. Limitations of Mandate.....	52
	C. Other Errors and Erroneous Conclusions .....	53
<b>VII.</b>	<b>Conclusions.....</b>	<b>64</b>
<b>VIII.</b>	<b>Recommendations .....</b>	<b>67</b>
	A. What the Freeh Group and SIC Report Should Have Done .....	67
	B. A Way Forward.....	67

## **Appendices**

Appendix 1 Qualifications

Appendix 2 Curriculum Vitae

Appendix 3 Additional Background on Child Sexual Victimization

Appendix 4 References and Resources

## INTRODUCTION

When I was asked by representatives of the Paterno family to conduct an independent review and assessment of the findings and conclusions in the SIC report,<sup>1</sup> I was reluctant to do so. I have tremendous respect for my former boss and FBI director, Louis Freeh, and I thought I knew everything I needed to know about the case by reading various news accounts.

Nonetheless, I was told that the Paterno family wanted to find out the truth, whether it condemned or exonerated Joe Paterno. I decided to read any additional news accounts I could find. In one, it was recounted that immediately after Joe Paterno was fired by phone late at night, his wife called back and said, “After 61 years, he deserved better.” I also read that he died less than three months later and one of his dying wishes was that the public would learn the truth about what actually happened at Penn State. People may disagree as to whether Joe Paterno did deserve better, but there is no question that the public deserves to know the truth. That is why I agreed to read the full SIC report. After reading the report, it was clear to me that a number of the SIC’s conclusions were not supported by the evidence presented and many of the findings were based on common, yet erroneous, stereotypes of child sex offenders. I therefore decided to undertake a full analysis of the SIC investigation.

My analysis is based on my review of the SIC report, grand jury testimony, preliminary hearing testimony, the Sandusky trial transcripts, as well as articles, books, investigative reports, interviews, documents, and my education, training, experience, and expertise in the field of child sexual victimization. That expertise was developed over three decades of work and study in the field; first as a prosecutor for the New York City Law Department in the Bronx Family Court, then as a Federal Bureau of Investigation (FBI) Special Agent on the Joint FBI/NYPD Sexual Exploitation of Children Task Force, then on the MPD Cold Case and Major Crimes Task Force, followed by more than a decade as a Supervisory Special Agent on the Behavioral Analysis Unit, Crimes Against Children section in the FBI’s National Center for the Analysis for Violent Crime (NCAVC), and as an expert witness in the field of child sexual victimization.

In my private and professional life, I have worked with child advocacy groups, government organizations and non-government organizations concerned with the protection of children from sexual victimization. I have also worked with mental health professionals and organizations that treat, counsel, and monitor child sex offenders. In addition, I have lectured extensively on child sexual victimization and spoken publicly across the United States and around the world, sharing my story as a survivor of childhood sexual victimization. For a more complete record of my background and qualifications, please see my qualifications and curriculum vitae in appendices 1 and 2.

When the crimes of a prolific child sex offender are fully uncovered, people often think that a “monster predator” like that can not get away with such wicked acts for so long without detection or a cover up. I am here to tell everyone who reads my analysis, acquaintance molesters like Jerry Sandusky get away with their hidden crimes without any help every single

---

<sup>1</sup> Freeh Sporkin & Sullivan, LLP, Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky (2012) (also known as the “SIC report” or “Freeh report”) [hereinafter SIC report].

day; they spend a lifetime honing their grooming skills and, through thousands of individual benevolent acts, they convince the rest of us that they are the opposite of a molester, despite warning signs that are obvious only in hindsight. Understanding, detecting, and investigating acquaintance child sex crimes require us to think counter-intuitively and throw out everything we thought we knew about offender and victim behavior. Above all, it requires us to be educated and to have open dialogue about this difficult and complicated subject. My hope is that this analysis will serve as an educational tool so that every community, organization, and family can be better equipped to identify and prevent every type of child sexual victimization.

The SIC report makes a number of errors and draws incorrect conclusions, but above all, the report ignores everything we know about how acquaintance child molestation cases differ from child abuse,<sup>2</sup> and stranger and abduction-related child sex crimes. This case, therefore, is not just about Penn State football, or State College, Pennsylvania, or Joe Paterno; this case is about preferential, nice-guy, acquaintance child sex offenders and how they groom, deceive, and defraud all of us right under our noses. This case is about compliant victimization and the shame, embarrassment, and guilt that drive victim behavior. It also is about the exacerbating circumstances involved in male on male acquaintance child sex crimes.

I was told the Paterno family wanted to know how Sandusky got away with it. They wanted to understand what actually happened at Penn State, so they could help prevent child sexual victimization in the future. I have dedicated my career and a good part of my life to studying, investigating, and attempting to eradicate child sexual victimization. So, I seized this opportunity to educate the public in furtherance of that goal.

---

<sup>2</sup> Although the SIC report employs the often misused moniker of “sexual abuse” to describe the victimization crimes committed by Jerry Sandusky, this report will use the more accurate and generic description of “sexual victimization.” Sexual abuse is the term used by professionals in the field to describe sexual victimization of a child within the ring of care and custody, and is more applicable to intra-familial victimization, as opposed to the acquaintance molestation that is demonstrated in the majority of Sandusky’s known victims. However, in instances in which Sandusky victimized his foster or adoptive children, those cases are properly categorized as “sexual abuse.”

## STARTING POINTS

First, Jerry Sandusky is a rightfully convicted preferential child sex offender (PSO)<sup>3</sup> who is guilty of numerous serious and repeated sex crimes against a number of boys.<sup>4</sup> As I will explain, Sandusky is a skilled and masterful manipulator, and in my expert opinion, he is in the top one percent of effective “groomers.”<sup>5</sup>

Second, as a career federal investigator, former prosecutor and former child sex crimes expert for the FBI, an expert witness in the field of child sexual victimization, and as a survivor of child sexual victimization myself,<sup>6</sup> I am first and foremost concerned about the health, safety, and welfare of the children who were victimized by Sandusky and other offenders. It is my hope that my efforts documented herein will help educate the public about acquaintance child sexual victimization in general, and male sexual victimization in particular.

Third, I hope that those victimized by Sandusky and other offenders will be encouraged by this opportunity for open dialogue and discussion to come forward into an environment that is both more understanding and supportive of their plight, as well as helpful and restorative to their futures, so they can heal, find justice, and go on with their lives. I stand as a living example that being victimized does not mean you are less of a person, or your life is ruined. With the help and support of family, friends, the community and mental health professionals, children who are victimized can and do grow up to lead happy, healthy, and productive lives.

Fourth, I have no interest in or connection with Penn State football, I had no personal or professional interaction with Joe Paterno, and I have not followed his career in any way or seen any game that he coached.<sup>7</sup> I do not follow college or professional football. Though I am being paid for my time to research and write this report, I have maintained independence while conducting my review of the SIC investigation and supplementing it with my own investigation.

---

<sup>3</sup> Though the SIC report uses the term “pedophile,” this term actually denotes a clinical diagnosis regarding those who have recurring and intense fantasies, urges, or behaviors aimed at prepubescent children. Instead, law enforcement uses the descriptive term preferential child sex offender for offenders who have not been clinically diagnosed as pedophiles but exhibit a long-term and persistent pattern of sexual attraction to children of any age.

<sup>4</sup> Based on my expertise in this area, I believe there are likely far more prior victims, similar to Matt Sandusky, who have not yet come forward. See Sara Ganim, *Matt Sandusky says he, too, was abused by his adoptive father*, The Patriot-News, June 22, 2012; Michael Isikoff, *Matt Sandusky details alleged sex abuse by his father*, NBC News, June 26, 2012.

<sup>5</sup> Some of the terminology and phraseology will be repeated at times in this analysis due to the relevance of those terms to various concepts and the fact that they are necessary to explain those various concepts.

<sup>6</sup> I was victimized as a teen by the director of a CYO camp, who was also my basketball coach. I did not disclose my victimization until about a decade later when I found out there were other victims. I then went to the FBI/NYPD SEOC Task Force and worked with them to investigate and prosecute the offender. In the end, it was determined that he had victimized several dozen boys in fourteen different schools and camps where he had taught and coached. When the case was concluded, the FBI agent who had worked the case recruited me into the FBI and I began my FBI career working on that same task force.

<sup>7</sup> The only time I have been to State College, Pennsylvania was in 2005 for the funeral of a friend and colleague of mine who had attended Penn State. Former FBI director Louis Freeh graciously travelled to State College to give the eulogy at his funeral. It was a heartfelt and moving gesture on the part of Director Freeh, which gave much comfort and support to the bereaved.

Fifth, I hold former FBI Director Louis Freeh in the highest regard both personally and professionally. It was an honor to have served under him in the Bureau. He has been a great leader and a kind man to my colleagues and me. Therefore, when I was asked shortly after the SIC report was issued, and before I read the report, to contact Louis Freeh on behalf of a child sex crimes prevention group, I was happy to do so and thank him on their behalf for conducting the investigation. I too was very glad that his investigation was evoking an open dialogue about child sexual victimization. However, after reading the SIC report in its entirety, I now know that the SIC investigation made a number of errors, including its failure to properly consider the behavioral dynamics of the offender, the victims, and witnesses within the context of acquaintance child sexual victimization.

Sixth, investigating this type of crime is markedly counter-intuitive and investigators and the public need to have a deep understanding of these behavioral dynamics before they can understand and properly interpret the information and behavior presented in this case. It is precisely because this information is not within the general knowledge of the average person/juror, that local, state, and federal courts admit the testimony of expert witnesses, like myself, to explain to jurors the complicated behavioral dynamics of “preferential child sex offenders,” “nice-guy” acquaintance offenders, “grooming,” and “compliant victimization.” In fact, the SIC report does not once mention “preferential child sex offenders,” “nice-guy” acquaintance offenders, or “compliant victimization,” and uses the term “grooming” only once without applying this critical behavioral reality to their analysis. By not factoring in these dynamics, the SIC report got it wrong.

Seventh, while I authored this report at the behest of the representatives of the Paterno family, it is not just about Joe Paterno. This report is about finding the truth and educating the public about acquaintance child sexual victimization in the real world. This report does not take the focus away from the victims; it restores that focus. As an expert in this field, and as a former victim, I can attest that one of the worst things professionals, the media, and the public can do in the aftermath of the discovery of nice-guy offenders, like Sandusky, is to perpetuate the myth that his victims must have been frightened, threatened, or physically forced into sexual behavior with him.<sup>8</sup> This practice, though well-meaning, hurts those children who became compliant in their victimization<sup>9</sup> because this type of offender actually takes the opposite approach and treats them well, is kind to them, pays attention to them, shows them affection, makes them feel special, and/or gives them gifts.<sup>10</sup> Another hurtful practice is talking about how horrendous, horrific, or life-changing these crimes were to the victims. The more we amplify what happened to the victims with emotional rhetoric, the more they and other victims in the general public feel damaged by what they have endured. They feel a sense of futility about ever being whole again. They feel the obstacles to leading happy and healthy lives are insurmountable. And most unfortunately, as a result of both of these practices, they and other victims are less likely to come forward.

---

<sup>8</sup> Although a percentage of child sex crimes are committed by female offenders, I use the male pronoun here for simplicity. However, child sex crimes committed by females are just as illegal as those committed by male offenders and female offenders should be prosecuted with the same vigor as male offenders.

<sup>9</sup> See Part III.D and appendix 3 for detailed information regarding compliant victimization.

<sup>10</sup> As discussed below, this type of non-violent grooming behavior was testified to by all of Sandusky’s victims.

Eighth, revealing the truth, educating the public on the real dynamics of acquaintance child sexual victimization cases, and discerning the truth about Joe Paterno's actions and inactions in the process, should help the victims understand that they are not alone in what they experienced. It should assure them that the rest of us are gaining a better understanding of how to prevent this from happening again. Most victims will acknowledge that one of the things that haunts them the most about not feeling safe enough to come forward sooner is that they might have prevented other children from being victimized. The problem is that the general public's views and expectations about victim behavior are so skewed and unrealistic that it discourages real victims from coming forward. By describing the behavior exhibited by real victims who are groomed into compliance, this analysis will hopefully encourage victims to come forward and prevent other children from being victimized.

Finally, the sad truth is that as you read this analysis, there are thousands of acquaintance offenders similar to Sandusky sexually victimizing children in communities across this country. These "nice-guy" offenders are getting away with it because they appear to be good people who genuinely care about children. These "nice-guy" offenders escape detection even by those who are vigilant because they are on the look out for evil predators, not pillars of the community. Unless everyone in the public takes on the responsibility to educate themselves about the dynamics of acquaintance child sexual victimization, "nice-guy" offenders will continue victimizing children undetected and undeterred. For that reason, paying attention to the details of this analysis, sharing its contents with everyone you know, engaging in an age-appropriate open dialogue with children, however difficult, and investigating those who exhibit red flag warning signs, will go a long way towards eliminating this type of offending behavior.



## **I. The SIC Mandate and Conclusions**

The special investigative counsel, Freeh Sporkin & Sullivan, LLP was hired to perform an independent, full, and complete investigation of: “The alleged failure of Pennsylvania State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky (‘Sandusky’); and “The circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.”<sup>11</sup>

The SIC report reached three main conclusions regarding Paterno: (1) Paterno and others “concealed Sandusky’s activities from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.” And, according to Louis Freeh, Paterno “was an integral part of this “active agreement to conceal” in 2001; (2) Paterno and others “repeatedly concealed critical facts relating to Sandusky’s child abuse from authorities . . . in order to avoid the consequences of bad publicity”; and, (3) as a result of these actions, Paterno and others “failed to protect against a child sexual predator harming children for over a decade,” “empowered Sandusky to attract potential victims to the campus,” and “exposed [a] child to additional harm.”

This report will do two things. First, it will explain in detail why each one of these conclusions is wrong due to a failure to consider the behavior, facts and circumstances within the context of acquaintance child sexual victimization, a lack of evidence, a failure to consider additional evidence, and/or direct contradiction by the evidence contained in the SIC report itself. Second, it will give the reader enough background to understand what really happened, and how we can all work toward discovering other similar situations that are occurring right now in communities across this country, and preventing still others from happening in the future.

Before going any further it is critical to note that Freeh based his report on “reasonable” conclusions. This is not a standard of proof in any legal proceeding. It is tantamount to saying that it “could” have happened that way. It is not anywhere near the standard of proof in criminal cases, which is beyond a reasonable doubt. It is not sufficient proof to meet the minimum standard necessary to win a civil lawsuit, preponderance of the evidence. It is not even based on the weakest level of proof necessary to qualify for a search or arrest warrant, probable cause, which means that it is more likely to have occurred than not. Conclusions can be “reasonable” and at the very same time they can be 100 percent wrong. This is the case in many of the most important conclusions drawn in the SIC report. In many instances, the conclusions that are drawn are not even “reasonable” in light of the evidence.

## **II. How the SIC Got It Wrong**

The SIC failed to properly factor the dynamics of acquaintance child sexual victimization into their investigation. Consequently, the SIC misinterpreted evidence and behavior and reached erroneous conclusions. Any investigation will reach the wrong result by using the wrong approach and by interpreting the facts through the wrong filter. There are a number of

---

<sup>11</sup> SIC report at 8. Although the SIC also provided recommendations regarding university governance, oversight, and administrative policies and procedures to help prevent and respond to sexual victimization of children in the future, this report will not opine on those narrow, university-specific recommendations.

complicated dynamics to this case, but ultimately it is about one core concept that the SIC missed: an insidious “nice-guy” acquaintance child sex offender who effectively groomed compliant victims and the community in and around Penn State University in order to sexually offend against boys for decades.

I and a number of my colleagues have spent our careers investigating, interviewing offenders and victims, writing reports, researching, lecturing, and testifying, all in an effort to explain how challenging these cases are and why “nice-guy” acquaintance offenders consistently get away with their criminal behavior for so long undetected. If you do not approach these cases and their facts with an understanding of the unique nature of acquaintance child sex crimes, then you will never reach the right conclusions, and you will never comprehend how the offender got away with it. And, you will never be able to stop the next “nice-guy” offender from victimizing children.

Indeed, without understanding these behavioral dynamics, we will repeatedly discover other offenders, like Sandusky, who got away with it for decades, and no amount of compliance monitoring and NCAA sanctions will make a difference. That’s what the SIC report does: it ignores decades worth of research and analysis we have done trying to understand the unique behavioral dynamics of these cases. The SIC treated this case as if it were investigating a “stranger danger” or “monster predator” offender,<sup>12</sup> instead of the very different and insidious “nice-guy” acquaintance offender. Simply put, in addition to the limitations of SIC’s mandate and the dearth of available facts, the SIC got it wrong because they investigated the case in the wrong way. It is a common mistake to think that all child sex offenders operate in the same way and present as horrible, evil people, but that is absolutely not true and it caused the SIC to draw erroneous conclusions. This report, applying my expertise developed over the past thirty years in the specialized field of acquaintance child sexual victimization is the first step toward correcting the record.

### **III. Behavioral Dynamics of Acquaintance Child Sex Offenders**

In order to understand what happened at Penn State, the public first needs a basic understanding of who “nice-guy” acquaintance child molesters are, how they operate, and how they evade detection. The following background is the product of decades of work on the part of the members of the FBI’s National Center for the Analysis of Violent Crime, the Behavioral Analysis Unit, and other law enforcement and child care professionals in the field of child sexual victimization. As difficult as these concepts are to talk about, let alone read about, they should be read and discussed in detail by all adults who have any contact with or responsibility for children.<sup>13</sup>

---

<sup>12</sup> Stranger offenders typically use a ruse or lure to gain access to children and often control their victims through threats, force, or physical violence.

<sup>13</sup> Although child sex crimes are not occurring in every school, organization, and community, every youth serving organization (YSO) is at risk for attracting child sex offenders. Therefore, every YSO has a responsibility to set up a program to educate, train, and monitor its employees and volunteers in an effort to prevent child sexual victimization.

## **A. Preferential Child Sex Offenders<sup>14</sup>**

With respect to their victims, child sex offenders typically fall into three general categories: strangers, acquaintances, and family. Their motivations for offending are evaluated on a continuum. The two ends of that spectrum are represented by situational and preferential offenders. Situational offenders are those who victimize children but who do not have a definitive sexual attraction to children. As a result, their sexual offenses against children tend to result from circumstantial access to children rather than a methodical effort to pursue sexual encounters with children. Their offenses can generally be described as opportunistic and/or impulsive in nature; however, their sexual desires and fantasies typically involve adults.

Preferential child sex offenders (PSO), on the other hand, have a definitive sexual attraction to children, usually of a particular age range, gender, body type, personality, vulnerability, other set of characteristics, or any combination of the above. Despite their specific sexual interest in these particulars, preferential offenders may at times offend outside of their preference due to availability or circumstances. Acquaintance PSOs typically gain access, authority, and/or control over their intended victims through a process known as “grooming.” Sandusky is a preferential child sex offender. Sandusky also personifies a common and insidious subcategory of the PSO: the “nice-guy” acquaintance offender.

## **B. “Nice-Guy” Acquaintance Offenders**

“Nice-guy” child sex offenders are much more prevalent, effective, and prolific than the stereotypical “stranger danger” type offender. In fact, the vast majority of children who are sexually victimized are offended against by someone they know. We call those offenders “acquaintance offenders.” The category of “acquaintance offenders” includes any non-stranger and any non-biological relative. One particularly insidious sub-category of acquaintance offenders is “nice-guy” offenders (sometimes referred to as the “pillar of the community” or “man of the year” offenders).

These are offenders who are friendly, normal, helpful, giving, loving people who no one would suspect are harboring sexual attractions to children. These cases are very difficult to investigate because a number of these offenders have high social status or are authority figures, such as: “teachers, camp counselors, coaches, clergy members, law-enforcement officers, doctors, judges . . . . Such offenders are in a better position to seduce and manipulate victims and escape responsibility.” And, equally important, “they are usually believed when they deny any allegations.”<sup>15</sup> Both their status in the community and their affable personalities make it difficult to make a case against them for sexual victimization of children. “Convicting an acquaintance child molester who is a ‘pillar of the community’ is almost impossible based only on the testimony of one confused 5-year-old girl or one delinquent adolescent boy.”<sup>16</sup>

The above passages underscore the fact that even when it comes to trained law enforcement officers, it is very difficult to determine whether a person, who everyone in the

---

<sup>14</sup> See appendix 3 for a full discussion of these topics.

<sup>15</sup> Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis* 77 (5th ed. 2010).

<sup>16</sup> *Id.* at 140.

community knows and respects, is a child sex offender. Sandusky is a textbook preferential child sex offender, as well as being a textbook example of a “nice-guy” offender. However, I would put him in the top one percent of effective groomers in this country. This is based on the fact that he was so bold in his high-profile “altruistic” public persona, he founded a youth serving organization, and he was caught in the act — though cleared at the time — of what turned out to be grooming and sexually assaulting children in the showers in 1998, yet he still did the same thing in the same place again in 2001.<sup>17</sup> Sandusky was able to deceive his way out of it. He built his reputation both professionally and interpersonally over many years of hard work and sacrifice. Drive, determination, selflessness, and altruism were his calling cards. He motivated others to give millions to needy children at The Second Mile. Sandusky was lauded and celebrated for his work. He effectively groomed most of the people who came in contact with him, including child care experts, psychologists, professionals, celebrities, athletes, coaches, friends, and family. And most notably, he was approved numerous times over thirty years as both a foster parent and an adoptive parent by child care professionals.

### **C. Grooming**

In the context of child sexual victimization, grooming is a dynamic process utilizing a constellation of seemingly innocent behaviors aimed at gaining the cooperation of the child to achieve sexual gratification for the offender. In other words, it is a pattern of activity employed by preferential child sex offenders to gain access, authority, and control over children for sexual purposes, to ensure their silence, and to keep them in a position in which they can be repeatedly victimized. This dynamic process is aimed at potential child victims, their parents or guardians, and the community that surrounds them. Those who are closest to the child victims or the offender are precisely the ones who are most affected by grooming practices.

Offenders who “groom” typically seek out needy, isolated, or disadvantaged children and provide both emotional and tangible things to fill the needs of those children. They do this by providing: attention, recognition, affection, kindness, romance, gifts, money, trips, jewelry, clothing, food, shelter, drugs, alcohol, privileges, driving, and/or smoking. They also break down the boundaries that usually exist between adults and children by lowering inhibitions, by being overly physical and playful with them, by talking about or encouraging masturbation and/or sex, by giving sexual instructions, or by supplying pornography. They are very careful to do only those things that will be viewed in a positive light in public, and typically reserve the sexual behavior for one-on-one private encounters.

### **D. Compliant Victimization**

One of the most counter-intuitive aspects of child sexual victimization investigations is embodied in the concept of compliant victimization.<sup>18</sup> Children who are groomed into sexual

---

<sup>17</sup> In my experience, because people do not want to talk about the topic of male on male child sexual victimization these types of “close calls” happen regularly with “nice-guy” offenders, but witnesses either do not believe what they see, do not know how to handle it, misinterpret what they see, or do not think anyone will believe them if they told.

<sup>18</sup> Compliant victimization is such a difficult concept for people to understand and accept that when my colleague Ken Lanning first attempted to add the concept to his monograph (*see supra* note 15), the National Center for Missing & Exploited Children (NCMEC) repeatedly asked Lanning not to use it in his publication because they

victimization typically do not call out to be rescued or disclose when questioned about possible victimization because of a complex set of social and psychological factors, including the fact that they don't want anyone to know what has been done to them or what acts they had to do with the offender. For some, this is because they have finally found someone (the offender) who treats them well or tells them they are special; someone who grants them entrée into a world they never had a hope of entering before. Typically, this creates a feeling of intense ambivalence on the part of the victims. On one hand, they love the offender for the things he has done for them. On the other hand, they hate the offender for the things he has done to them. That's why the boy in the shower in 2001 kept silent even though McQueary witnessed him being groomed and assaulted by Sandusky. That's why the nine other victims who testified, or were testified about in Sandusky's trial, never made an immediate outcry. Even when investigators first came to some of these boys and asked them direct questions, most of them remained silent or denied anything sexual occurred. They claimed that they had not been victimized, when in fact they had. Eventually, most of them made partial or incremental disclosures, and then over time gave a full account of their victimization. It's called the "conspiracy of silence" that surrounds child sexual victimization. It is the opposite of an "active agreement to conceal."

#### **E. "Conspiracy of Silence" Surrounding Child Sexual Victimization**

The "conspiracy of silence" by victims, their families, and their communities that surround them is the result of multiple factors. On one level, people are horrified by the idea of child sexual victimization and don't want to talk about it or hear about it. Therefore, they do not discuss it with their children. Though they may be trying to keep their children sheltered from such knowledge, they in effect, make their children easier targets for sex offenders because the children don't see it coming from a nice guy and don't understand what is happening to them. People also tend to demonize the offenders to an extreme, calling them "evil," "monsters," and "predators," such that they don't want to believe that anyone they know could possibly be that evil, especially a nice guy who seems to love and selflessly help so many children. Consequently, victims and witnesses are reluctant to speak out against "nice-guy" offenders.

On another level, the victims feel isolated, damaged, guilty, shameful, and helpless. For the most part, they are unprepared to emotionally process what the offender has done to them or why. They don't know who to turn to or how to tell them what they have endured. In fact, typically, the last thing they want is anyone to ever know what was done to them and/or what they were made to do with the offender. So, they too remain silent.

A perfect, yet extreme, example of this occurred in a case that I worked on with my colleagues while in the FBI's Behavioral Analysis Unit (BAU). On January 8, 2007, Ben Owenby, a 13-year-old boy, was abducted on his way home from school in Missouri. Four days later, he was rescued from the apartment of Michael Devlin, who had abducted and sexually assaulted him. But the startling thing about this case was 15-year-old Sean Hornbeck also was recovered from the same location. Sean was an 11-year-old when Devlin abducted him in 2002. Devlin eventually plead guilty to abducting and sexually assaulting Ben over four days and Sean over four years. The indignities suffered by male child victims of an adult male offender are so

---

believed it would sound like he was blaming the victims. This concept does not blame the victims; it explains their behavior.

confusing and destructive to their personalities that they become compliant in their own victimization. That is what kept Sean Hornbeck from crying out or running away from Devlin for over four years. Within months after he had been abducted and repeatedly victimized, he had become so compliant that Devlin granted Sean more and more freedom. During that time he spoke to police officers, rode his bike around in public, and had the freedom to come and go as he pleased. After he was victimized, he had trouble with the thought of facing his family and friends knowing that they would discover the horrors and indignities that he had suffered. He knew that rescue meant revelation and he did not want to face that fact.

Abductors typically use force and violence to gain compliance in their victims. Groomers do the opposite and use attention, affection, gifts, freedom, access, and love to build a debt of gratitude in their victims.<sup>19</sup> They fill a void in the lives of their victims and at the same time they ingratiate themselves into the family and/or community in which the victim lives. As mentioned above, disadvantaged youth have the greatest vulnerability to such offenders because their needs are so great and their assets are so meager. However, children of all walks of life and all familial situations are vulnerable to grooming simply because they are human beings. It is very easy for an adult offender who has the means and access to exciting adventures and activities to lure and control children by giving them things they never dreamed they would have or experience. It also is very easy for an adult offender to win a child over with the simple gift of attention. It is obvious in the trial testimony of certain boys victimized by Sandusky that they did not want the best thing that ever happened to them to stop, so they “put up with” the victimization and remained silent.

#### **F. How Offenders Use These Complicated Dynamics to Their Advantage**

The combination of nice-guy acquaintance offending, coupled with the “conspiracy of silence” by victims and “compliant victimization,” is why Paterno did not know that Sandusky was really a child molester. It is why the entire State College community did not know. One astute mother, however, saw a behavioral change in her son and recognized it as a possible sign of victimization and reported Sandusky in 1998. She might have initially bought into Sandusky’s grooming, giving him access to her child hoping the relationship would help her son have a better life. But the behavioral changes her son exhibited after spending an evening with Sandusky triggered her intuition and she fought for her son’s protection. She is a hero. Unfortunately, the system failed her, and her son. We all want to search for the culprit who caused the system to fail. In my professional opinion, the culprit is ignorance of “nice-guy” offending.

One psychologist, trained in the art of deciphering offender behavior, Alycia Chambers, evaluated the boy, saw and recognized all the red flags presented by Sandusky’s behavior, but her report apparently did not receive the attention it deserved. Centre County Children and Youth

---

<sup>19</sup> The distinction between sexually motivated child abductors and acquaintance child molesters is that the former typically do not have the skills to groom their victims and they therefore resort to abduction to gain access to children for sex. Their methodologies differ to such an extreme that an expertise in one typology does not necessarily guarantee an expertise in the other.

Services (CYS) referred the case to counselor John Seasock,<sup>20</sup> who, without reading Chamber's report, evaluated the boy for one hour and then wrote a report concluding nothing improper took place.<sup>21</sup> That is why no one at Penn State did anything to sanction Sandusky. The University Police Department, the Department of Public Welfare (DPW), and the District Attorney all closed their cases based in large part on Seasock's report.<sup>22</sup> For those who worked closely with Sandusky and knew about the 1998 incident, the closing of this investigation as unfounded was confirmation of Sandusky's outstanding reputation and their belief that he was a devoted advocate for children.

Though a trained child sex crimes investigator should have known to keep a close watch on Sandusky from that point forward, civilians generally revert back to the thousands of positive interactions they have had with him and validate the belief in their own minds that they knew Sandusky couldn't have been a "monster predator." If he had been, they tell themselves, they would have known. They would have been able to tell the difference between that kind of evil person and the affable Sandusky they knew, whom they viewed as a dedicated husband and father, who fostered and adopted dozens of children, an altruist, who founded a children's charity, and a professional, who worked for decades as assistant football coach of one of the most successful college teams in the country.

Depending on the experience of the offender, his skill at grooming, and the reaction of the victim to the sexualization of their interactions, offenders learn from their interactions with victims and those around the victims. They use their knowledge of child and adolescent psychology to manipulate children into sexual activity and rely on the fact that the child will be too embarrassed, shameful, and needy to say anything about it. Offenders also use their knowledge of adult psychology and social norms to manipulate those around their intended child victims into allowing them continued access to children. Offenders know that the worst crime anyone can accuse another of is a child sex crime. They therefore take advantage of the tremendous insult that making a false accusation against someone would be and push the limits of social interactions and norms. Even when allegations are made against them, they often react by feigning outrage or hurt at being so maligned. This reaction reduces the chances that anyone will further pursue allegations against them.

In 1998, Sandusky cleverly showed remorse and sorrow at the possibility that his actions could have harmed the boy in any way. This reaction apparently appeased the CYS and DPW, convincing them that there was no sexual intent on the part of Sandusky. In fact, Sandusky was very likely actually saddened that he had caused the boy any harm. Sandusky is what is referred

---

<sup>20</sup> Seasock is listed in the UPD police report as a psychologist. However, according to state records it appears that Seasock was not a licensed psychologist in 1998. Mike Dawson, *Man who evaluated alleged victim was not psychologist*, Centre Daily Times, Mar. 28, 2012.

<sup>21</sup> Seasock claims to have never seen Chambers' report. According to Seasock's report, "[n]o other information was provided to the interviewer prior to the initial meeting . . ." A partial and redacted version of John Seasock's May 8, 1998 report is available here, [http://msnbcmedia.msn.com/i/msnbc/sections/news/Seasock\\_Sandusky\\_Report\\_Redacted1.pdf](http://msnbcmedia.msn.com/i/msnbc/sections/news/Seasock_Sandusky_Report_Redacted1.pdf). Seasock's flawed methodology will be discussed in greater detail in Part VIII.B.2.

<sup>22</sup> According to the SIC, Seasock told Detective Schreffler that "Sandusky 'didn't fit the profile of a pedophile,' and that he couldn't find any indication of child abuse." SIC report at 45. Caseworker Jerry Lauro told the SIC that "it wasn't until Schreffler told me that there wasn't anything to the case that I closed mine." *Id.* 46-47. According to the SIC, Schreffler's file notes state that Lauro agreed that no sexual assault occurred." *Id.* at 47.

to as a “boy lover.”<sup>23</sup> He actually falls in “love” with his boy victims and sees his sexual activity with them as natural extensions of that love. This is the type of rationalization he employs in his own mind to convince himself that his offending behavior is okay, because he would never “hurt” a child. This is the reason that even after being convicted on 45 counts, and facing life in prison, Sandusky proclaimed his innocence on the radio and to the sentencing judge. Sandusky knows that he committed sex crimes against many boys,<sup>24</sup> but in his twisted mind he attempts to continue his grooming of the community by trying to validate those crimes as an expression of love. This is why Sandusky says “they can make me out to be a monster . . . I know I did not do these alleged, disgusting acts.”<sup>25</sup> In his mind, molesting is not monstrous, and what he did with the boys was not disgusting because he actually “loved” the boys.

Because of the private and one-on-one nature of the vast majority of child sex crimes, adult offenders know that in most circumstances, if the child makes an allegation against them, they have a higher likelihood of being believed than a troubled youth. And, as the inaction by McQueary and the janitor exhibit, even if adults witness this behavior, they are reticent to get involved or make a detailed report because it is just too difficult to comprehend or believe or talk about what they witnessed.

As I will develop in much greater detail below, these complicated dynamics, which so few people understand (and most find completely counter-intuitive) explain why McQueary behaved as he did. They explain why he did not rescue the boy in 2001, and instead, left the scene as quickly as possible. They explain why McQueary had such difficulty recounting what he saw to his father and Dr. Dranov, and even more difficulty speaking about it to Paterno. McQueary likely was relieved when Curley and Schultz did not ask him detailed questions about what he had witnessed. At the time, he was not certain of what he saw because it was so abjectly counter to what he knew about Sandusky and how he expected a child victim to behave. They also explain why McQueary gave Paterno such a watered down and, ultimately, unhelpful version of events.

These complicated dynamics explain why Paterno did not conclude that Sandusky was a child molester, and why Paterno did what he did and nothing more. Paterno did not witness a child being sexually assaulted. Paterno did not have the opportunity that McQueary had to rescue that child while he was being sexually assaulted. Paterno did not have the opportunity to catch Sandusky in the act and restrain him while calling the police. As I’ll discuss in more detail below, Paterno only heard the sketchiest version of what happened from a confused, embarrassed, and reticent McQueary. Paterno could not read McQueary’s mind. He did not know what McQueary actually witnessed, but sensing that McQueary was having so much trouble talking about it and wanting to minimize his distress, Paterno told McQueary that he did not have to speak the details to Paterno, that he did the right thing coming to Paterno, and that Paterno

---

<sup>23</sup> The term “boy lover” is used by groups such as the North American Man Boy Love Association (NAMBLA) to rationalize their desires to have sex with boys. This in no way condones or justifies the criminal actions of Sandusky or offenders like him. It is meant to help the public understand the nature of his sexual attraction to boys as his motivation for sexually assaulting them.

<sup>24</sup> It is clear that Sandusky knew he was committing sex crimes against children because he consistently hid his behavior over decades.

<sup>25</sup> Amy McConnell Schaarsmith, *Jerry Sandusky issues statement blasting ‘false accusations’*, Pittsburgh Post-Gazette, Oct. 8, 2012.



would find the right people for McQueary to report it.<sup>26</sup> Paterno was not an investigator. Paterno had no authority over Sandusky, who had retired two years earlier. Paterno ran into Sandusky infrequently and did not socialize with him. Paterno did his best to address the situation by informing the people at the university who were in a position to deal with Sandusky, and, in fact, who had dealt with Sandusky's retirement and continued to deal with Sandusky about administrative details.

### **G. The Case of Richard Taus**

One of the most disturbing cases of my career best illustrates many of the topics I have described above and will hopefully give the reader greater insight into how challenging it is for people to identify "nice-guy" acquaintance child sex offenders, especially for those who know and are close to the molester.

At the time, I was on the FBI/NYPD Joint Sexual Exploitation of Children Task Force and we were investigating allegations against a veteran FBI Agent named Richard Taus. Like Sandusky, Taus had a high-profile job and enjoyed a great reputation in the community. He was a highly decorated chopper pilot in Vietnam; he was lauded for adopting a son from Vietnam. He even founded a junior soccer league in Long Island, New York, that catered to hundreds of young boys, many of whom he molested over a number of years. And like Sandusky, there are friends and colleagues who to this day believe he was wrongfully convicted.

One of the many potential victims whom I interviewed during the investigation had a very interesting story to tell. First, I spoke with the boy's mother. She assured me that she had already asked her approximately 6-year-old son whether Taus had molested him. He said no, so she believed there was no reason for me to talk to her son. I told her I would just like to ask a few questions and it would not take long. She reluctantly agreed. I interviewed the boy while he sat beside his mother and asked the boy a number of questions before I inquired whether Taus played any games with him. He answered that yes, they played the tickle game. I asked how the game was played. At that point, I recall the boy turning to his mother and saying, "You remember Mom, when I was sitting on his lap last time he was here talking to you. He had his hand up my shorts tickling my privates. He tickles me and I have to try not to laugh." I looked at the mother and all the color had drained from her face. She could not believe that Taus had molested her son right in front of her very eyes and she had no idea that it had happened. She trusted Taus so much based on his profession, his reputation, and her repeated positive interactions with him that she never even questioned the fact that he liked to have her son sit on his lap.<sup>27</sup>

---

<sup>26</sup> See Parts IV.B.9 and IV.D and accompanying footnotes for a complete analysis of Paterno's response to McQueary.

<sup>27</sup> Child sexual victimization investigators are trained to elicit information in an objective, age-appropriate, and non-judgmental way so that the child feels comfortable talking about events that may have occurred, and does not misunderstand questions that are asked of him. In this case, the mother had asked her son if Mr. Taus had touched him in a bad way. Her son didn't understand the "tickle game" as a bad touch, especially since it had occurred right in front of her. Thus, Taus had made the mother an unwitting accomplice in her son's grooming. Because this activity went on right in front of her, the boy assumed that she tacitly approved.

This is a perfect example of the boldness and invisibility of offenders who are charismatically smiling in our faces while they are molesting children literally and figuratively in front of our eyes. If Taus was able to molest a 6-year-old boy right in front of the boy's mother without her having the least bit of suspicion about it, and his mother even assured me that it could not have happened, then it is reasonable to conclude that an equally sophisticated offender like Sandusky could effectively pull the wool over the eyes of Paterno and others in the Penn State community. I urge all readers of this report to avoid using the information that is now known about Sandusky to judge people like Paterno who were legitimately fooled by Sandusky at the time. If you judge Paterno based on what we now know instead of what he knew at the time, then you will miss a valuable opportunity to educate yourself about the dynamics of child sexual victimization and "nice-guy" offenders. You will continue putting children at risk by thinking it could not happen to you, to your child, or in your community. But it can. If that boy's own mother can be groomed and fooled, then anyone can be fooled by a master manipulator like Sandusky.

#### **IV. Analysis of the SIC Findings**

##### **A. Analysis of 1998 Incident**

As it relates to Paterno, there is very little to be said about the 1998 incident.<sup>28</sup> As far as Paterno knew, if he knew anything, it was fully investigated and Sandusky was fully cleared. Had Paterno or anyone else taken any action against Sandusky, as far as they knew, they would be exposing themselves and the university to a lawsuit from Sandusky. Nonetheless, I will discuss the 1998 incident in some detail for two reasons. First, if Paterno did know about the 1998 incident and the fact that Sandusky was investigated and cleared, this likely would have affected Paterno's understanding of the 2001 incident. Upon hearing the report from McQueary, Paterno could have reasonably believed that Sandusky was simply horsing around with the boy — just like he was determined to have been doing in 1998 — despite the fact that McQueary perceived it as "over the line." Second, the SIC report spends significant time discussing the 1998 incident and reaches several misleading and erroneous conclusions that demonstrate the SIC report's rush to judgment against Paterno.

Though there are references that imply Joe Paterno had been informed of some unspecified information regarding Sandusky during or after the investigation in 1998, there is no direct evidence to corroborate that he ever knew about this investigation. Paterno testified before the grand jury on January 12, 2011, that he did not remember ever hearing anything about this incident. This lack of memory, though, may have been an artifact of his advanced age, his as yet undiagnosed cancer, and/or the fact that more than a decade had elapsed between the events in 1998 and his testimony. Irrespective of this lack of direct evidence or memory, the allegations of sexual misconduct were fully investigated by the University Police and Public Safety ("University Police Department" or "UPD"), DPW, CYS, and the District Attorney's Office. The "victim" and Sandusky were repeatedly interviewed at the time and it was determined that Sandusky had no sexual intent and did not commit any crimes. The investigators had even

---

<sup>28</sup> The allegations against Sandusky in 1998 were made by the mother of an 11-year-old boy whom Sandusky had bear-hugged in the shower after working out, wrestling, and kissing him on the head and telling the boy that he loved him.

identified another boy who recounted virtually the same story as the first boy and they still did not find sexual or criminal intent.<sup>29</sup> Thus, even if the 1998 accusations had been communicated to Paterno, there would simply have been no way for Paterno to know that Sandusky was actually sexually attracted to boys and that he had been sexually victimizing a number of them in secrecy for years.

Following the closing of this investigation, UPD Detective Schreffler instructed Sandusky not to shower again with any child.<sup>30</sup> This explicit advice coming from the law enforcement body responsible for policing Penn State — and not simply the head coach — should have put Sandusky on notice that his actions were being scrutinized and dissuaded him from showering with any more boys at Penn State or anywhere else. UPD apparently did nothing else with respect to Sandusky beyond issuing this “advice.” Curiously, while admonishing Paterno, Curley, Schultz, and Spanier for not doing anything after the 1998 incident, for not limiting Sandusky’s access to Penn State facilities, and for failing to protect children from sexual victimization on campus, the SIC report makes no mention at all of the UPD never following up on whether Sandusky was adhering to Detective Schreffler’s admonition not to shower again with any child, never warning the community, never warning The Second Mile, and never doing anything to monitor or limit his access to children.

Certainly, the members of this approximately 50-man police department were better trained in the area of sex crimes and investigations than Paterno. Certainly UPD had the ultimate responsibility to police and secure all facilities on Penn State’s campus. And certainly, UPD had the ultimate responsibility to protect all persons, including children who were guests on campus. Paterno is blamed by the SIC for not instituting his own prevention program, when the very police agency that was charged with conducting, and actually conducted, the 1998 investigation, did absolutely nothing to investigate Sandusky further, to prevent him from bringing children into the showers, or to inform university staff and students about the allegations against Sandusky. That’s because Sandusky was cleared.

Paterno didn’t know about or have access to the 98-page report that the UPD had compiled on the 1998 incident. Paterno didn’t have a team of detectives who presumably were trained to recognize sex offender behavior. Paterno’s profession had nothing at all to do with children, or sex offenders, or investigations, or recognizing the red flags of child sexual victimization. It is incorrect to assert that Paterno, even as head coach and football icon, was in a better position to keep an investigative eye on Sandusky and prevent him from offending on campus than was the UPD.<sup>31</sup>

---

<sup>29</sup> This conclusion demonstrates that even these investigators and DPW caseworkers and counselors did not fully understand grooming, compliant victimization, or “nice-guy” acquaintance offending. If they had, they would likely not have made this erroneous conclusion.

<sup>30</sup> Transcript of Proceedings at 66-68, *Commonwealth v. Gerald A. Sandusky*, Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011 (Pa. Commw. Ct. June 14, 2012) (“Sandusky trial transcript”); SIC report at 46.

<sup>31</sup> The SIC report highlights the fact that Sandusky had an office just steps away from Paterno’s office. However, there are no allegations that Sandusky ever groomed or sexually victimized any children in or around that office. And, in 1999 when Sandusky retired, he moved to another office in another building.

Additionally, there is no mention in the SIC report of why DPW or CYS didn't warn The Second Mile about the 1998 allegations and investigation at the time.<sup>32</sup> Nor did either of these public agencies, whose mandates include the protection of children from sexual victimization, make any effort to limit Sandusky's access to children or to re-evaluate Sandusky's status as a foster or adoptive parent. There is no doubt that the government agencies charged with investigating and protecting children from child sexual victimization are in a better position to decide whether to implement these types of protective measures than a football coach.

Finally, the SIC report did not mention why the District Attorney's office, which declined prosecution of Sandusky, did not direct its investigators to take any of the steps that Paterno is accused of not taking to prevent Sandusky from victimizing children. The SIC report cannot have it both ways: either the UPD, DPW, CYS, and the DA's office also should be accused of "callous and shocking" "total disregard for the safety and welfare of Sandusky's child victims,"<sup>33</sup> or the accusations against Paterno related to the 1998 incident are biased and wrong.

## **B. Analysis of 2001 Incident**

### **1. A note about memory and testimony**

The entire case against Paterno regarding the 2001 Sandusky shower incident hinges on the words of Mike McQueary. Paterno was not an eyewitness. His only basis of knowledge about what Sandusky did in the shower with a boy in February 2001 was the words McQueary chose to tell Paterno at that time. Clearly, those were not the detailed and explicit words McQueary used a decade later when talking to investigators and during his testimony.<sup>34</sup> What is most critical in analyzing Paterno's subsequent behavior is what McQueary actually *communicated* to Paterno during that five to ten minute conversation on the morning of Saturday, February 10, 2001.

There are no contemporaneous recordings, notes, or confirmatory emails from this meeting, and the documentation that was made closest in time to the actual events was a statement made by McQueary to attorney general investigators, Trooper Rossman and Agent Sassano, almost a decade later on November 22, 2010. Because of the lapse of time between the actual conversation and the documentation thereof, the probability that particular details of this conversation are reliably recalled from memory is very low. In other words, as an educated and experienced law enforcement officer, I am reticent to believe that McQueary, or anyone else for that matter, could accurately recount the specific language he actually used during a particular conversation that he remembers having over nine years earlier. Therefore, though generalities from the conversation might be recalled with some degree of reliability, particular words and details should not be relied upon to any great extent.

---

<sup>32</sup> This omission means that in 2001, when Curley did in fact notify The Second Mile about the Sandusky shower incident, Curley actually took a protective step that the UPD, CYS, and DPW did not take in 1998.

<sup>33</sup> Louis Freeh, press conference, July 12, 2012 (Freeh's delivered remarks).

<sup>34</sup> McQueary repeatedly acknowledged in his testimony that he did not give Paterno "very much detail," only described what he saw "on the surface," and did not use any graphic language. Transcript of Proceedings at 24, *Commonwealth v. Timothy M. Curley & Gary Schultz*, Nos. CP-22-MD-1374-2011 & CP-22-MD-1375-2011 (Pa. Commw Ct. Dec. 16, 2011) ("Preliminary hearing"); Sandusky trial transcript, June 12, 2012, at 205.

Additionally, another factor to consider is that when a layman, like Paterno, hears ambiguous information about an incident that might involve male on male child sexual victimization and “considers” but rejects the possibility of it actually being true, it does not mean that it is an act of deliberate or willful denial or an attempt to conceal. This is especially true when the accused “offender” does not act like a heinous criminal and the alleged “victims” don’t act like he did anything wrong to them at all. What is actually going on with the untrained layman is a common and fundamental misunderstanding of offender and victim behavior and honest disbelief.

## 2. The events of February 9-10, 2001

As a behavioral analyst, I have spent most of my professional life evaluating and analyzing the criminal behavior of human beings: how people react in certain situations, what their behavior tells us about what they say and do, and how the best predictor of future behavior is a past pattern of behavior. Based on all my education, training and experience, and based on a reading of all the available testimony and evidence, the following is my expert opinion regarding how the events in February 2001 are best understood.

Based on Mike McQueary’s own testimony, we know the following: McQueary walked into the coaches’ locker room between 9:30 and 10:00 on a Friday night. After McQueary passed through the first of two privacy doors to the locker room, he heard the showers running. He then heard what he has variously described as “two or three”<sup>35</sup> “slapping noises,”<sup>36</sup> “smacking sounds,”<sup>37</sup> and “rhythmic slapping sounds”<sup>38</sup> over the course of a second or two. In McQueary’s words, he “immediately became alerted and kind of — I don’t know — embarrassed that I was walking in on something that I didn’t want to see or walk in on.”<sup>39</sup>

At that moment McQueary “thought maybe one of the other people had someone with him in the showers.”<sup>40</sup> McQueary got to his locker and glanced over his right shoulder and, using the reflection of a mirror, looked into the shower.<sup>41</sup> His first glance lasted one to two seconds. In McQueary’s words, “I immediately turned back to my locker, trying to digest what I just saw and making sure I saw what I just saw. . . . I thought maybe I wasn’t seeing what I was seeing.”<sup>42</sup>

McQueary then stepped to the side and looked directly into the shower.<sup>43</sup> According to his testimony, McQueary saw Sandusky in the shower with a young boy. The boy was standing up with his hands up against the wall at shoulder height, and Sandusky’s arms were wrapped around the boy’s midsection. In some of his testimony, McQueary had said that Sandusky’s

---

<sup>35</sup> Preliminary hearing at 95.

<sup>36</sup> Mike McQueary statement to Trooper Rossman and Agent Sassano, Nov. 22, 2010.

<sup>37</sup> Sandusky trial transcript, June 12, 2012, at 192.

<sup>38</sup> McQueary’s handwritten account on Nov. 23, 2010; Preliminary hearing at 10.

<sup>39</sup> Sandusky trial transcript, June 12, 2012, at 192.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 193.

<sup>42</sup> *Id.*

<sup>43</sup> Preliminary hearing at 12; Sandusky trial transcript, June 12, 2012, at 193.

midsection was making some subtle movement.<sup>44</sup> Taking into account all of McQueary's testimony, that's all the detail he has given about what he actually saw as opposed to what he thought was happening or what he thought he heard, or what he told Paterno.<sup>45</sup> McQueary also testified to what he did not see or hear. He did not see the front of Sandusky or the boy until the two of them were standing three to five feet apart and were facing him.<sup>46</sup> He did not see any genitalia, erection, or insertion. He did not see any fondling. He did not see any sex act. He did not hear any "protests or any verbiage."<sup>47</sup>

McQueary says he was "extremely alarmed, extremely flustered, extremely shocked, all of those things."<sup>48</sup> He went back to his locker and "tried to think . . . I accentuate the word 'try.'"<sup>49</sup> McQueary explained, "this is a Penn State football building . . . you don't register that. . . I'm used to pressure situations, and I can tell you that's — that's more than my brain could handle at that time."<sup>50</sup> McQueary was so overwhelmed that he described what he had seen as "ridiculous" as opposed to criminal.<sup>51</sup>

McQueary's testimony has varied regarding what he did next. In the handwritten account McQueary gave the attorney general investigators in 2010, he wrote, "In a hurried/hastened state, I finished at my locker. I proceeded out of the locker room. . . . I was hastened and a bit flustered." When interviewed by the investigators that same week he told them that after looking into the shower he then "turned around and started to leave because he just wanted to get out of there as fast as he could . . ."<sup>52</sup> At the preliminary hearing for Curley and Schultz and at

---

<sup>44</sup> At the preliminary hearing for Curley and Schultz, McQueary testified that there was "[v]ery little . . . I would say slow movement, certainly not hard or fast movement but a little movement." Preliminary hearing at 15. At Sandusky's trial, McQueary testified that "[t]here was not much movement on my glances, very slow, slow, subtle movement." Sandusky trial transcript, June 12, 2012, at 196.

<sup>45</sup> McQueary has been inconsistent about the following: how many times he looked into the shower, what he was doing when he looked into the shower, whether the boy and Sandusky were looking at McQueary, whether they made eye contact with McQueary, and whether McQueary stopped what was happening by slamming his locker closed.

<sup>46</sup> Preliminary hearing at 18; Sandusky trial transcript, June 12, 2012, at 194.

<sup>47</sup> At trial, McQueary said that he saw the boy and Sandusky three times. First, he saw them through a mirror. Second, he moved around the locker and saw the boy and Sandusky directly, without the aid of the mirror. Neither time did the boy or Sandusky see McQueary. Finally, after slamming his locker shut, McQueary moved around his locker again and saw the boy and Sandusky but this time they were standing apart and looking back at McQueary. According to Sandusky's attorney during cross examination, McQueary told the grand jury that the second time he looked at the boy and Sandusky, Sandusky still had his arms wrapped around the boy from behind but the boy looked back at McQueary. Sandusky trial transcript, June 12, 2012, at 273. Interestingly, McQueary's grand jury testimony has more in common with Dr. Dranov's trial testimony. Dr. Dranov remembered McQueary saying that he and the boy made eye contact before McQueary eventually saw Sandusky come out of the shower. Sandusky trial transcript, June 20, 2012, at 11.

<sup>48</sup> Sandusky trial transcript, June 12, 2012, at 194.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 198.

<sup>51</sup> *Id.* at 200.

<sup>52</sup> Mike McQueary statement to Agent Sassano and Trooper Rossman on Nov. 22, 2010.

Sandusky's trial, McQueary testified that he slammed his locker door shut.<sup>53</sup> McQueary explained that he slammed his locker "to say, 'Okay. Someone is here. Break it up. Please.'"<sup>54</sup>

Possibly hearing the noise of the locker, when McQueary looked back into the shower, Sandusky and the boy had separated and both were looking directly at McQueary. McQueary claims that he never saw any genitalia or erections. Even if you believe his later account that he slammed his locker shut, and that is what separated Sandusky and the boy, McQueary did nothing more. He ran away.

This is a remarkable admission by McQueary; and, it is one of the facts that gives us the most insight into McQueary's behavior and his subsequent actions and inactions. Consider for a moment what we know about McQueary.

In 1997, less than four years prior, Mike McQueary started as quarterback in all 12 games for Penn State. He was a team captain. In Penn State's six home games, McQueary played in front of an average crowd of 96,000 while hundreds of thousands more watched the games on national television. As a quarterback, McQueary was responsible for not only knowing his own assignments and his different options, but the assignments and options of his ten other teammates. Furthermore, during every play, McQueary had to read and anticipate the movements of all eleven defenders, many of whom were McQueary's size or larger and some were faster and stronger. Most of the time these defenders were trying to confuse McQueary and force him into mistakes or crush him. In the two to four seconds between the snap of the ball and the need for decisive action, McQueary had to assess the positions of all other players and avoid the rush of the defenders determined to take McQueary to the turf. McQueary repeated this exercise thousands of times in practice and games throughout his high school and college career.

So, what would cause a 26-year-old man, who was 6'4", over two hundred pounds, and had excelled in one of the most pressurized, scrutinized, action-oriented positions on the field to not act? Some believe that he wanted to save the name of Penn State football and so he decided to forget what he saw and walk away rather than to act to save the boy or restrain Sandusky. However, if this were true, he would not have attempted to tell five other people about what he saw and he would not have been so upset while he was trying to do so.

In my experience the reasonable conclusion is that he was so overwhelmed by what he saw that he was paralyzed with confusion and disbelief. He did not understand how a man he knew and respected could possibly be doing something like that to a boy. He could not understand why the boy was not screaming out in pain or protest, or fighting to free himself. He could not understand why, when faced with a potential rescuer (McQueary), the boy did not even ask for help. He could not understand how Sandusky could just stare at him with a blank expression only seconds after he was apparently sexually assaulting a boy. And he did not understand how any of this could have happened in his own football locker room. Quite simply, in McQueary's mind, it did not compute.

---

<sup>53</sup> Preliminary hearing at 17, 60; Sandusky trial transcript, June 12, 2012, at 194, 199.

<sup>54</sup> Sandusky trial transcript, June 12, 2012, at 198.

In a few short seconds, McQueary was forced to reconcile three things in his mind that he did not know how to reconcile: (1) when he heard the slapping sounds, he expected to see “normal” sexual activity, but what he saw was shocking, (2) he had always known Sandusky as a nice guy, professional, altruistic person, but now he was confronted with the sight of Sandusky apparently sexually assaulting a boy, and (3) the young boy was not fighting, screaming, or attempting to get away — all the things he would expect the victim of a sexual assault to do.

At the time, and in the subsequent days, McQueary could not reconcile these things. He knew nothing about preferential sex offenders, grooming, “nice-guy” acquaintance offenders, and compliant victimization. Consequently, he did not rescue the boy. He ran away. He did not go to the campus police, he went to his office and called his dad. McQueary lived on his own, but he did not go home. He went straight to his parents’ house. While McQueary’s actions are confusing to many, in my experience they are typical of someone who is completely baffled and confused by what he saw and consequently he did not have the confidence to report it in detail.

### 3. What McQueary did and did not witness

#### a) Background

In order to better understand what McQueary actually witnessed, it is necessary that the reader have some additional background regarding the behavior of child molesters in general and Jerry Sandusky in particular. Child molesters’ grooming and offending behavior can be broken down into M.O. (method of operation) and ritual. While their M.O. can develop and evolve over time and will typically be tailored and responsive to the vulnerabilities and reactions of each individual child victim, offenders also engage in repeated, almost identical, patterns of ritualistic behavior. Experience tells offenders which patterns of behavior most successfully groom and seduce targeted children and help them get away with their crimes. Their inner fantasies, needs and desires dictate their ritualistic behavior.

The trial testimony of Sandusky’s victims offers a very detailed picture of the types of M.O. and ritual Sandusky utilized to groom his victims. One of Sandusky’s primary grooming and offending techniques was showering with boys as a way to get the boys into a naked and vulnerable position. Once in the shower, Sandusky typically engaged in a pattern of activity that allowed him to have physical contact with the boys. Though Sandusky also showered with boys while other coaches and players were around in part to normalize the behavior with his victims, he was careful not to have any physical contact with boys while anyone else was around. At times he had soap fights or wrestled with the boys, or washed their bodies, and then grabbed them in a bear hug from behind and lifted them up purportedly to rinse them off under the shower. These techniques allowed Sandusky to disguise his sexual advances as games and horsing around and afforded him the ability to deny any sexual intent if the child protested or later disclosed. They also allowed him to test the waters and see how far he could go with a particular boy at a particular time.

Of the six victims that testified to taking showers with Sandusky, four of them testified that while in the shower Sandusky would bear hug them from behind. Or, Sandusky would claim that he needed to lift them up to the showerhead to rinse them off. However, out of the eight victims that testified at Sandusky’s trial, not one of them said that Sandusky sodomized them



while standing in the shower. One victim did testify that while Sandusky was laying on top of him on the shower floor, he attempted to sodomize him, but there was no penetration.<sup>55</sup>

b) What McQueary actually witnessed

Considering the highly ritualistic and predictable behavior of child molesters, the testimony of the eight victims at trial, the difference in stature between Sandusky and the boy McQueary saw with him,<sup>56</sup> and the fact that the jury did not find that Sandusky committed involuntary deviate sexual intercourse against Victim 2, McQueary did not actually witness Sandusky sodomizing the boy in the shower. What McQueary witnessed was no doubt a grooming incident and a sexual assault, however, McQueary admitted he did not actually see anal sodomy.

When McQueary passed through the outer door before he entered the locker room and heard two or three “slapping sounds,” he admittedly had already formed a visualization in his mind of what he expected to see. When he looked into the mirror only seconds later, he was expecting to see “normal” sexual activity. When he saw Sandusky standing behind the boy, he assumed that the sounds he had just heard meant Sandusky was having sex with the boy. However, based on what McQueary actually saw, and Sandusky’s known past pattern of behavior, it is much more likely that Sandusky had been rubbing his genitals against the boy’s back,<sup>57</sup> or “bear hugging” the boy at the time. Or he may have just finished wrestling around or soap fighting with the boy. Or the boy may have been making the slapping sounds some other way. But Sandusky was not sodomizing the boy.<sup>58</sup>

None of this is to say that Sandusky is not a serial child molester or that McQueary did not witness Sandusky engaging in sexual behavior with the boy. However, using the available evidence to determine what McQueary actually witnessed is important because the SIC and some in the general public believe, as McQueary believed, that he may have witnessed anal sodomy. Since McQueary’s stated belief at the time was reported in the Sandusky grand jury presentment, it was assumed that McQueary had communicated this belief, or something close to it, to Paterno. However, when McQueary finally testified, he admitted that he never actually saw anal penetration, intercourse, or any other type of sexual act. And McQueary has consistently testified that he did not tell Paterno any graphic details, so it is highly probable that McQueary did not tell

---

<sup>55</sup> Sandusky trial transcript, June 11, 2012, at 135.

<sup>56</sup> Because of the height difference — McQueary testified that the boy stood only as tall as the lower part of Sandusky’s chest — the anatomical parts necessary to commit this crime simply do not line up. Preliminary hearing at 94-95; Sandusky trial transcript, June 12, 2012, at 195.

<sup>57</sup> According to the audiotape of Matt Sandusky’s statement to the police department made during the Sandusky trial, Sandusky would rub his genitals against Matt in the shower. “Matt Sandusky told police he was molested . . . saying that his father would become sexually aroused by rubbing against him in the shower, during wrestling sessions and in bed.” Michael Isikoff, *Matt Sandusky details alleged sex abuse by his father*, NBC News, June 26, 2012.

<sup>58</sup> John McQueary’s testimony is corroborative of the fact that McQueary did not witness sodomy: John McQueary testified, “I asked him if he seen [sic] anal sex or — and I got more descriptive. I said, do you — did you see anything that you could verify, penetration, or I might have used the word sodomy. He said, no, I did not actually see that. I said, so you did not actually witness penetration or anything that you could be more descriptive. He said, no.” Sandusky trial transcript, June 13, 2012, at 12.

Paterno anything that would have led Paterno to believe that Sandusky was sexually assaulting the boy in the shower.

#### 4. McQueary's report to Paterno

The following day, McQueary went to Paterno's house. According to McQueary, he told Paterno that he "saw Jerry with a young boy in the shower and that it was way over the line,"<sup>59</sup> "[t]he rough positioning I would have described but not in very much detail,"<sup>60</sup> "I told him what I had seen, again, on the surface."<sup>61</sup> However, McQueary has been clear that he did not use the terms "anal," "intercourse," "sodomy," or "rape."<sup>62</sup> McQueary explains he did not give these details "[o]ut of respect and just not getting into detail with someone like Coach Paterno,"<sup>63</sup> "in my mind I don't go to Coach Paterno and go into great detail of sexual acts. I would have never done that with him ever."<sup>64</sup>

Though this was out of respect, McQueary could not have done Paterno more of a disservice. In fact, the reason McQueary didn't want to use sexual terms with Paterno was the very reason why he needed to. Paterno was known as a prude who was uncomfortable talking about sex.<sup>65</sup> Implying a sex act was not enough to undermine Paterno's years of interactions with Sandusky and Sandusky's image as a pillar of the community. McQueary needed to be direct, explicit, and comprehensive in his description. If McQueary had simply said to Paterno, "I saw Sandusky having sex with a boy," then at least Paterno would have known what McQueary meant. Paterno may still have had trouble believing McQueary, but he would at least have been aware of what McQueary was saying. Instead, McQueary used general terms about the rough positioning of Sandusky and the boy, using implications, which were easily misinterpreted.

McQueary, at various times testified that when communicating to Paterno he used the phrases "extremely sexual," "sexual in nature"<sup>66</sup> and "way over the line." These are examples of the kind of specific language that should not be taken as exact when recounted a decade later. Nonetheless, even if McQueary did use phrases like, "extremely sexual," "sexual in nature," and "way over the line," or some other variation on this theme, the inclusion of these phrases, while at first may appear to raise the severity of the allegation, actually detract from the probability that

---

<sup>59</sup> Preliminary hearing at 24.

<sup>60</sup> *Id.*

<sup>61</sup> Sandusky trial transcript, June 12, 2012, at 205.

<sup>62</sup> Preliminary hearing at 25; Sandusky trial transcript, June 12, 2012, at 205-06.

<sup>63</sup> Preliminary hearing at 25.

<sup>64</sup> *Id.* at 74. McQueary also did not share the details with his father. At Sandusky's trial, McQueary testified that "The first time I talked to [my dad] at the house, it was him alone in his bedroom." Sandusky trial transcript, June 12, 2012, at 201. "I . . . did not get overly, unbelievably into detail, but made sure he knew it was extremely, extremely wrong, extremely sexual." *Id.* at 202. John McQueary's testimony is corroborative: According to John McQueary, "I asked him if he seen [sic] anal sex or — and I got more descriptive. I said, do you — did you see anything that you could verify, penetration, or I might have used the word sodomy. He said, no, I did not actually see that. I said, so you did not actually witness penetration or anything that you could be more descriptive. He said, no." Sandusky trial transcript, June 13, 2012, at 12.

<sup>65</sup> Interview of Paterno family member, Jan. 4, 2013.

<sup>66</sup> In his preliminary hearing testimony, McQueary stated on cross examination that he was uncertain whether he used the words, "in nature." Preliminary hearing at 75.

McQueary had effectively communicated what he believed he saw. That is, Sandusky having sex with a boy. These phrases would be unnecessary if McQueary had said or even effectively insinuated that Sandusky was having sex with the boy. If you tell someone you witnessed sex, you do not need to add that sex is “extremely sexual” or “sexual in nature.” If you tell someone you witnessed a 57-year-old man having sex with a 12-year-old boy, there is no reason to add that it was “way over the line.” However, if you are generally conveying an incident that is equivocal in nature, then you might add those modifiers in an attempt to convey that it appeared sexual to you, or to emphasize that while what you had just said did not sound sexual, you believe it may have been.

McQueary’s repeated testimony that he did not go into detail with Paterno and only told him what he saw “on the surface,” begs the question what details McQueary would have left out. As described above, the complete detail of what McQueary now says he witnessed is brief. If that’s the most detail he saw, and he told Paterno only general positioning information and no detail, then consider how little information he actually could have given to Paterno.

Respect for Paterno likely is not the only reason McQueary did not give Paterno more details. Sexual behavior is typically very private; criminal sexual behavior is extremely private. McQueary was understandably embarrassed by what he witnessed, and he acted like someone who had never had to talk about this difficult topic before in his life. It apparently was particularly difficult for McQueary to talk to an elder and iconic figure whom he looked up to about the details of sexual activity. In my opinion, it was even more difficult to do because the sexual activity was by a male offender on a male child.

Paterno’s own recollection was that McQueary was uncertain about what he had seen, and Paterno believed that McQueary wasn’t sure if he actually saw anything in particular.<sup>67</sup> Paterno remembers that the whole thing made McQueary very uncomfortable. So, uncomfortable, in fact, that talking about it was difficult for McQueary. In response, Paterno, trying to spare McQueary from any further distress, told McQueary that he didn’t have to tell Paterno anything else, that McQueary did the right thing bringing it to Paterno, and that it was Paterno’s job to get McQueary together with the right people for McQueary to report it.<sup>68</sup>

At his press conference, Louis Freeh seized on the fact that Paterno supposedly told McQueary, “It’s my job now to figure out what we want to do.” In reality, Paterno has given three versions of what he said to McQueary. On January 11, 2011, Paterno told the grand jury the following: “I did tell Mike, Mike, you did what was right; you told me. . . . I would refer his concerns to the right people.”<sup>69</sup> In November 2011, Paterno told his biographer the following: “I told him he didn’t have to tell me anything else. I told him he did the right thing bringing it to me, and that now it was my job to get him together with the right people for him to report it.”<sup>70</sup>

---

<sup>67</sup> Joe Posnanski, Paterno 272 (2012) (“Posnanski”).

<sup>68</sup> *Id.* Although there are three different versions of what Paterno says he told McQueary that day, I quote this one because it describes what we know Paterno in fact did. By all accounts he called Curley, reported what McQueary had told him to Curley and Schultz, and put them in touch with McQueary so McQueary could report to them.

<sup>69</sup> Transcript of Proceedings at 6, Commonwealth of Pennsylvania Thirtieth Statewide Investigating Grand Jury, In re Notice No. 29 (Jan. 12, 2011) (“Grand jury transcript”).

<sup>70</sup> Posnanski at 272.

In early January 2012, Paterno told a reporter the following: “I said you did what you had to do. It’s my job now to figure out what we want to do.”<sup>71</sup> And McQueary’s testimony regarding what Paterno told him was: “He said, you’ve done the right thing. He said, I know it’s probably tough for you to come here and tell me this, but you’ve done the absolute right thing.”<sup>72</sup> The fact that the two people involved in the conversation a decade earlier could not agree on the specific language used during the conversation underscores the relative unreliability of any particular words being accurately recounted. The SIC report should not have assigned a high degree of reliability to the specific words in any one version. Instead, they should have generally taken all of the versions given by Paterno and McQueary, and garnered the general meaning behind their combined recollections. After that, they could have accurately measured that evidence against what is known about what was actually done by Paterno.

What we do know from Paterno’s recounting of events and his later shock and surprise when he finally read McQueary’s statements in the presentment the week of November 7, 2011,<sup>73</sup> was that Paterno did not have any idea that McQueary was trying to tell him that Sandusky was sodomizing the boy or even sexually assaulting the boy. When asked by an investigator if McQueary said there was a sexual act, Paterno responded, “He never said that.”<sup>74</sup> When Paterno finally read the presentment, he asked his son what the word “sodomy” meant.<sup>75</sup> After his son explained it to him, Paterno asked, “Can a man even do that to a boy?”<sup>76</sup> Nonetheless, as Paterno explained, if he had been told that Sandusky was raping a boy, or having sex with a boy in the shower, he “would have gone to the police right then and there, no questions asked.”<sup>77</sup>

Is it reasonable to believe that five responsible adult men to whom McQueary reported the 2001 Sandusky shower incident, understood what McQueary was implying, and still did not feel the need to call the police? Is it reasonable to believe that they all turned a blind eye to the sexual victimization of a child? In my opinion, based on investigating, consulting on, and studying thousands of similar cases, it is more reasonable to conclude that these five men did not understand the true nature of Sandusky’s actions because McQueary did not convey what he thought he had conveyed to them. That’s because McQueary relied on implication, and deliberately did not use explicit or graphic terms in describing what he thought he witnessed in the shower.

Of those five men, the one who was most prepared for such a situation arguably would be Dr. Dranov. As a medical doctor, he is a mandated reporter, and he acted like one. He asked all the right questions aimed at determining whether McQueary had seen any specific sexual acts.<sup>78</sup>

---

<sup>71</sup> Sally Jenkins, *Joe Paterno’s last interview*, Wash. Post, Jan. 14, 2012.

<sup>72</sup> Preliminary hearing at 27.

<sup>73</sup> Posnanski at 333-34.

<sup>74</sup> Joe Paterno statement to Randy Feathers and Agent Sassano, Oct. 24, 2011, at 1-2.

<sup>75</sup> Posnanski at 334.

<sup>76</sup> *Id.* Interview with Paterno family member, Jan. 4, 2012.

<sup>77</sup> Posnanski at 277.

<sup>78</sup> At Sandusky’s trial, Dr. Dranov testified to the following: “[W]hen he came in [to the locker room], he heard what he described as sexual sounds. . . . I asked him what he meant and said, Mike, what do you mean? He said, well, sexual sounds, you know what they are. I said, no, Mike, you know, what do you mean? And he couldn’t

McQueary repeatedly said no and got more upset when Dr. Dranov attempted to get more details out of him. Dr. Dranov then advised McQueary to tell Coach Paterno and did nothing more. Dr. Dranov did not tell McQueary to call the police, he did not call the police himself, and he did not call the Department of Public Welfare. This behavior is consistent with Dr. Dranov deducing at the time that what McQueary had actually witnessed was non-sexual in nature.

The fact that none of the people to whom McQueary reported his observations took any steps to notify the police, is a strong behavioral indicator that none of them believed at the time that such action was called for based on what McQueary had told them. All of them also knew that McQueary himself did not call the police. McQueary did not convey to John McQueary, Dr. Dranov, Paterno, Curley, or Schultz what he thought he had conveyed. Hence, the people to whom he reported the incident responded to what they gleaned from his disclosure, not to what was hidden in his mind.<sup>79</sup> The fact that the accounts of all of these men are fairly consistent with each other on the non-sexual nature of what McQueary actually reported to them, is strong corroboration for the accuracy of their accounts and that assessment.

What is clear is that McQueary, emboldened by age, maturity, and the fact of a police investigation into Sandusky's offending behavior gave a more detailed account of what he had witnessed in his testimony in 2010, 2011, and 2012, than he had been able to do initially in February 2001. The problem is there was no contemporaneous documentation of his initial reports. Also, memory is not a perfect record of events that one witnesses or words that one has spoken. Memory is an even worse keeper of accurate details after the passage of time. Thus, we do not have any record or any reliably accurate testimony as to the exact words that McQueary said. All we have is the memories of those to whom he spoke. These men recount very different versions of what McQueary told them and even McQueary has been remarkably inconsistent about what he saw and what he said and what he did. The one consistency, however, which McQueary has repeatedly testified to, is that he told everyone else, particularly Paterno, far less than what he thinks saw and what he now says he saw.

---

go on. He just seemed to get a little bit more upset. So I kind of left that. And then he said he looked toward the locker or the shower and a young boy looked around. He made eye contact with the boy. I asked him — to the best of my recollection, I asked him if the boy seemed upset or frightened. He said no. An arm reached out and pulled the boy back.” Sandusky trial transcript, June 20, 2012, at 11-12. After returning to his locker, “he turned around and faced the shower room and a man came out and it was Jerry Sandusky.” *Id.* at 12. Sandusky’s counsel asked, “Did [Mike McQueary] describe seeing any particular sex act?” Dr. Dranov responded, “No he did not. He implied it had gone on with what he talked about with sexual sounds. But did he give me any kind of graphic description? No.” *Id.* at 13. On redirect, Sandusky’s counsel said “[Y]ou asked [Mike McQueary] three times if he saw a sexual act?” Dr. Dranov responded, “In the conversation, yes. I didn’t use the term did you see a sexual act. I kept saying what did you see and each time he would come back to the sounds. I kept saying but what did you see. And it just seemed to make him more upset. So I backed off that.” *Id.* at 15-16.

<sup>79</sup> This seems to be corroborated by the fact that Curley, in the email dated February 27, 2001, tells Spanier that he, “would plan to tell him [Sandusky] that we are aware of the first situation.” This implies that the 2001 situation was the same as the one in 1998. Not an escalation, but a recurrence of what they feel “is a problem” and they “want to assist the individual [Sandusky] to get professional help.” They are discussing this as if they were referring to a boundary issue problem that Sandusky should get professional help for, not as if they saw it as a child rape. Though denial may have played a significant role in their decisions, there is nothing in this email that even suggests that Paterno ever knew or believed that Sandusky had raped a boy and attempted to cover it up. *See* SIC report at Ex. 5G.

## 5. McQueary's subsequent silence

It is clear from McQueary's behavior, reporting, and testimony that he was very embarrassed, confused, baffled, and upset by what he witnessed. McQueary's subsequent decade-long silence is understandable because for most people male sexual victimization is a noxious topic that they find disgusting and abhorrent. They don't want to think about it, they don't want to hear about it, they don't want to read about it, and they don't want to talk about it, much less discuss it in detail. Often times, they do not understand it when they do hear about it. Because of this, most people remain ignorant of, and unwittingly contribute to, the behavioral dynamics that keep sexual victimization of children hidden. These very dynamics, in conjunction with "nice-guy" acquaintance offending, effective "grooming," and "compliant victimization" allow offenders like Sandusky to hide their offending behavior for decades. This is one of the reasons that McQueary found it so difficult to recount details to Paterno in February, 2001. This is also what kept McQueary silent over the years after 2001.

During those years, McQueary had to endure face-to-face meetings with Sandusky at Penn State and The Second Mile events. For McQueary, it was years of having to deal with the potential demons of self-doubt and second-guessing. They were years of possible self-recrimination about not having acted more forcefully to subdue Sandusky and rescue the child. McQueary had many opportunities to ask Curley, Schultz, or Paterno why Sandusky was still allowed on Penn State's campus and why he was not in jail. But he remained silent. Did McQueary remain silent for all those years because he didn't care about child sex victims? Or, was he so confused by what he had seen that he had doubts about what he saw, and he didn't know how to deal with it? Also, since no child had come forward to say that they had been sexually assaulted by Sandusky, and everything seemed to go on like nothing had happened, this must have reinforced the doubts in McQueary's mind about the nature of what he had witnessed.

## 6. Sandusky's sterling reputation in 2001

It is only in retrospect, when everyone knows Sandusky is now a convicted child sex offender, that it is so easy to believe that Paterno must have known that Sandusky was a child sex offender back in 1998 and 2001.<sup>80</sup> In fact, this is not true. Back in 1998 and 2001, things were very different.

When Jerry Sandusky retired after the 1999 season, what Paterno knew about him is the exact opposite of what we now know. He was the founder of The Second Mile, an organization he named after a quote from Jesus' sermon on the mount.<sup>81</sup> The Second Mile claimed to have reached out to more than 100,000 Pennsylvania children. The "success" of The Second Mile was largely built on the special rapport Sandusky had established with its well-respected benefactors. Sandusky's many contributions and achievements had been publicly acknowledged. Sandusky had been named an Alumni Fellow in the College of Health and Human Development. Sandusky had been inducted into the Pennsylvania Sports Hall of Fame. Sandusky had been selected as the

---

<sup>80</sup> It is important to note here that the Sandusky jury found that McQueary did not in fact witness Sandusky anally sodomizing a boy in the shower in February 2001. The jury also found that Victims 5 and 6 were not the victims of indecent assault in 2001 and 1998, respectively.

<sup>81</sup> Matthew 5:41 (NRSV) ("and if anyone forces you to go one mile, go also the second mile"); Jerry Sandusky & Kip Richael, *Touched: The Jerry Sandusky Story* 184 (2000).

Pennsylvania recipient of the SGMA Heroes Award, which was presented for “contributions to the pursuit of sports excellence, sportsmanship, participation or opportunity within their local community.” Sandusky had been awarded the University’s Barash Human Services Award and the YMCA Service-To-Youth Award. Sandusky and his late father had received the annual Human Rights Award presented by the Washington, Pennsylvania, branch of the National Association for the Advancement of Colored People.

In announcing his retirement in the pages of Sports Illustrated, the article finished with this quote: “Here’s the best thing you can say about Jerry Sandusky: He’s the main reason Penn State is Linebacker U . . . and the linebackers aren’t even his enduring legacy.”<sup>82</sup>

Sandusky adopted six children and had fostered many others since the 1970s. Sandusky had been married to the same woman since 1966, giving him the imprimatur of being a loving husband. Three of his children were adopted as infants, three after having them in foster care. In other words, on six different occasions, Sandusky was evaluated by state officials and a Pennsylvania judge for fitness to adopt; six times Sandusky passed. As far as anyone knew, a number of children had come through Sandusky’s home and none of them had alleged that he had abused them.

Paterno had coached with Sandusky for 30 years and had known him even longer. Paterno watched Sandusky go from playing football at Penn State, graduating first in his class and serving as student marshal, to becoming one of the most successful assistant coaches in the country, while at the same time founding The Second Mile, which was honored by President George Bush as being a national “Point of Light” organization. Through thousands of individual acts, both large and small, Paterno watched Sandusky for almost four decades be the total opposite of what he would expect a child molester to be. Events and behaviors that look like red flags today seemed to be the exact opposite in 1998 and 2001.

#### 7. The mistaken belief that someone had to know

Most people in the general public believe that close colleagues, nice guys, altruistic people, dedicated professionals, good fathers, child advocates, people who love children, cannot at the same time be child sex offenders. But this belief is not true at all. A large percentage of child sex crimes victims are victimized by teachers, priests, boy scout leaders, mechanics, trainers, psychologists, doctors, reporters, actors, anchormen, camp counselors, coaches, police officers, and even FBI agents who are well thought of in the community. They are “good people” who work hard, pay their taxes, raise families, go to church, act normal, but they all hide very dark secrets.

There also is a common misperception in the public that someone had to have known what Sandusky was up to all of those years: The coaches and others at Penn State must have known and covered for him. After all, molesters are different from the rest of us. Because they have such evil thoughts on the inside, they must be weird, quirky, or “off” on the outside. We assume that people close to the offender probably knew something was wrong and suspected

---

<sup>82</sup> Jack McCallum, *Jerry Sandusky, the dean of Linebacker U, is leaving Penn State after 32 years to devote himself to a different kind of coaching*, Sports Illustrated, Dec. 20, 1999.

something but chose to ignore it. People must have seen the red flags but kept quiet because he was Jerry Sandusky. This could not be further from the truth.

Even after he was arrested, many people who knew Sandusky had a very hard time believing he was a child sex offender. In fact, two of Sandusky's long time colleagues, Dick Anderson and Book Brooks, testified in Sandusky's defense at trial. Anderson played football with Sandusky and then coached with him for over 20 years. Brooks coached with Sandusky for 15 years. Anderson testified that Sandusky "had a wonderful reputation in the community. He was well thought of in every regard."<sup>83</sup> Brooks was asked if he knew anything about the charges against Sandusky. Brooks responded, "I did read it online from the grand jury report. But I understand everything. I am an adult that's knowledgeable and I know everything that happens in the grand jury room is only one-sided and I'll wait for the end of the everything before I make up my mind."<sup>84</sup> In other words, after having known Sandusky for decades, having coached with him for years, having traveled with him to Bowl games, and seeing him on the sidelines with children, Brooks read the grand jury presentment with the testimony of six victims and still had not made up his mind. That is the effect Sandusky had on those closest to him.

The false belief that those who knew Sandusky understood and covered up his offending is rebutted by more than just the experiences and testimony of his friends and former colleagues. Consider the testimony of Joe Miller. At the time of Sandusky's trial, Miller worked for the Chambers Environmental Group in Bellefonte, Pennsylvania, and on the side he coached wrestling at an elementary school. But he was well aware of Sandusky's reputation in the community. Miller testified for the prosecution at Sandusky's trial to corroborate the testimony of Victim 1. According to Miller, in 2006 or 2007, Miller was driving home from school after practice. His son had left his wrestling gear at school, so Miller went back to get it. When Miller returned, he noticed that a light was on in the weight room. Here is Miller's description of what happened next:

[S]o I went in there to turn the light off. And the light switch was to my right, and I heard something when I went to turn the light off. And before I turned the light off, I turned to my left and I saw Jerry and [Victim 1] all the way in the back far corner beneath the rock-climbing wall on a small, little exercise mat, and they were laying there fact-to-face, side-to-side — or face-to-face on their sides. And by the time I turned and looked, Jerry propped himself up on one arm and looked at me and said, "Hey, Coach, [Victim 1] and I are just working on some wrestling moves."

And I didn't think really a whole lot of it because I've seen Jerry with him a number of times and I looked at Jerry as, you know, sort of a father figure to [Victim 1]. So I said, "Okay, Jerry, no problem. Just make sure you turn the light off and secure the door before you leave."<sup>85</sup>

---

<sup>83</sup> Sandusky trial transcript, June 18, 2012, at 85.

<sup>84</sup> *Id.* at 129.

<sup>85</sup> Sandusky trial transcript, June 12, 2012, at 308-09.



On the ride home, Miller started to think about it. He thought it was kind of “peculiar” that Sandusky would be working on wrestling moves late in the evening on a small mat in the back corner of the weight room when there was a whole wrestling room right next door. The wrestling move Sandusky was supposedly showing Victim 1 was unlike any wrestling move Miller was familiar with. Moreover, to Miller’s knowledge, Sandusky did not know anything about wrestling. As these thoughts passed through his mind, he reached this conclusion:

“Well, it’s Jerry, Jerry Sandusky. He’s a saint, you know. What he’s doing with these kids, it’s fantastic, you know.” I didn’t think anything of it.<sup>86</sup>

Joe Miller has a son the same age as Victim 1 and who was in the same grade at the same school. He also has a son two years younger than Victim 1. Miller is a responsible, concerned father who cares about his own sons, as well as the other young boys he coaches in wrestling. Miller witnessed Sandusky in the process of grooming, and the beginning of a sexual assault as Victim 1 later testified.<sup>87</sup> Yet, Miller, like everyone else, looked right past it. He missed it not because of the culture of football, or fear of bad press, or indifference to the safety of children, but because of ignorance regarding “nice-guy” acquaintance offenders.

#### 8. Paterno’s character

Paterno is well known for his decency and ethics, no matter the situation. Everyone who knew him attests to his honesty and integrity, so much so that he was considered by some to be too pious and sanctimonious.<sup>88</sup> After all, he would not allow his children to use the pencils he brought home from work because, he said, “that’s university property.”<sup>89</sup> However, what is less discussed, but well known by those close to Paterno, is that he was a prude; he was extremely uncomfortable with private and sexual matters. The Paternos rarely watched television except for *The Wonderful World of Disney* on Sunday nights.<sup>90</sup> According to his children, Paterno found the television series *Love Boat* to be too racy.<sup>91</sup> When Paterno served in Korea, he wrote letters reporting his revulsion with fellow GI’s engaging prostitutes.<sup>92</sup> On the eve of his son’s wedding, who was then 22-years-old, in passing Paterno asked whether his son needed to talk to him about anything (i.e., implying sex). His son said, “no, I’ll figure it out,” and Paterno replied, “okay, good.”<sup>93</sup> Paterno was so outdated or uncomfortable with the subject, or both, that he could not bring himself to use the word “sex” with his own adult son. Paterno was even put off by the word “fart.”<sup>94</sup>

---

<sup>86</sup> *Id.* at 309.

<sup>87</sup> Sandusky trial transcript, June 12, 2012, at 33.

<sup>88</sup> Interview with Paterno family member, Jan. 4, 2013.

<sup>89</sup> Posnanski at 132.

<sup>90</sup> *Id.* at 4-5.

<sup>91</sup> Interview with Paterno family member, Jan. 4, 2013.

<sup>92</sup> *Id.*

<sup>93</sup> Interview with Paterno family member, Jan. 25, 2013.

<sup>94</sup> Posnanski at 131.

## 9. Why Paterno did what he did and no more

Contrary to the SIC report's opinion, it was not fear of bad press or public scrutiny that caused Paterno to simply report to his superiors what he'd been told and step away from the investigative and/or decision-making process. When he heard the detailed allegations against Sandusky, he lamented and wished he had done more, but there was never any evidence that fear of damage to the reputation of Penn State or its football program was ever a factor. What is at fault is the basic ignorance of the general public (and apparently at least one counselor contracted by Centre County Children and Youth Services in 1998) of the behavior of "nice-guy" preferential child sex offenders, the results of effective "grooming," and the dynamics of "compliant victimization."<sup>95</sup> As I have discussed, all of these factors are critically important in gaining a complete understanding of the behavioral dynamics surrounding child sexual victimization, especially when it involves an adult male offender victimizing male children.

As an expert in the field of child sexual victimization, I firmly believe that there is another far more reasonable explanation for Joe Paterno's behavior than the one proffered by the SIC report: (1) McQueary did not convey to Paterno that he thought Sandusky was having sex with the boy, and (2) Paterno could not make the huge leap from the watered-down, sketchy description and superficial information McQueary told him to the realization that Sandusky was actually a child sex offender.

Paterno simply could not reconcile what he knew of Jerry Sandusky with the thought that Sandusky was a huge fraud and a child sex offender.<sup>96</sup> The man Paterno thought he knew through thousands of interactions over decades working with him as a brilliant defensive coach, a loving husband and father, a devoutly religious man, a mentor to disadvantaged kids, an altruist, a teetotaler who looked down on those who drank alcohol, a selfless advocate for disenfranchised youth, a long time colleague, a compassionate advocate for players, and a "goofy" prankster, could not possibly be a "monster predator." This man could not possibly have pulled the wool over Paterno's eyes for decades. He could not have fooled so many coaches, athletes, administrators, contributors, social services workers, psychologists, children, friends, and family. After all, if Sandusky had actually been victimizing children, where were all the victims that he took advantage of? Why hadn't any of them come forward? In fact, in all the years that Sandusky was molesting boys, not one of them came forward to make an allegation of sexual assault against Sandusky until Victim 1 did at the prodding of his mother and counselor in 2008. To Paterno, what McQueary was ineptly suggesting must have all seemed like a huge misunderstanding. Nonetheless, McQueary seemed very upset about what he'd seen. So, in spite of all his reasonable doubts, Paterno reported what he learned up the chain of command in hopes that those more qualified than him would know how to handle the situation and "get to the bottom of it."<sup>97</sup>

---

<sup>95</sup> When the mother of Victim 6 pushed for an investigation against Sandusky for having physical contact with her son in the shower, the boy repeatedly said he did not want Sandusky to get into trouble.

<sup>96</sup> The difficult truth is that Sandusky was actually not a complete fraud. He actually helped many disadvantaged children over the decades. What was fraudulent about Sandusky was his motivation for helping children. He did it to gain access, authority, and control over boys so he could molest them. Of course, none of the positive work he did excuses his many sex crimes against those children.

<sup>97</sup> Posnanski at 273.

Paterno then stepped out of the decision-making process and may or may not have been kept abreast of how the administration handled the situation. However, according to McQueary, in the few months after McQueary's report, Paterno checked up on McQueary a couple of times asking him if he was "okay."<sup>98</sup> In other words, Paterno presented McQueary at least two opportunities over the next few months — after time had passed and McQueary's emotions had subsided — to tell Paterno the explicit details of what he had seen or express displeasure with how the matter was being handled. Despite these opportunities, McQueary remained silent.

### **C. Paterno Not Part Of Any "Active Agreement To Conceal"**

#### **1. No evidence linking Paterno to any active agreement to conceal**

When law enforcement investigators endeavor to prove an active agreement to conceal between two or more people (i.e., a conspiracy), they search for several different types of dispositive evidence. They look for emails, text messages, letters, notes, documents, or other communications sent between the members of the conspiracy in which they discuss their agreement or actions. They search for phone records, calendar entries, logs, or other information that document conversations or meetings between the conspirators. They initiate or search for audio or video recordings of such conversations. Investigators also attempt to find witnesses who overheard conversations between the co-conspirators. And, if corroborated, the best type of evidence they could find is a co-conspirator who is willing to come forward and admit their involvement in the conspiracy and testify against the other members of the conspiracy. Investigators also look for attempts to silence witnesses, limit the flow of information, influence those looking into the matter and make attempts to hide the truth.

In this case, there are no emails or other electronic communications written by Joe Paterno to any conspirators. There are no emails or other electronic communications written by any conspirators to Joe Paterno. There are no documents that purport to lay out any instructions by Paterno in furtherance of any conspiracy. There are no audio or video recordings of Paterno engaging in any conversations about, or acts in furtherance of, any conspiracy. There are no witnesses who report that Paterno was actively involved in a conspiracy. And, there are no co-conspirators who claim that they conspired together with Paterno. In short, there is absolutely no evidence at all that Paterno actively participated in an agreement to conceal.

After reviewing 3.5 million communications and documents, the SIC located only three relevant emails and one note<sup>99</sup> that even mention Joe Paterno. However, none of these records contain any evidence of any participation in an "agreement to conceal" or "conspiracy" by Paterno. None of them even contain any verifiable information that can be attributed to Paterno.<sup>100</sup>

---

<sup>98</sup> Preliminary hearing at 39-40.

<sup>99</sup> An additional "relevant" note was written by Paterno circa 1999, but that note had to do with basic insurance liability issues and not Sandusky's grooming or offending behavior. *See* SIC report at Ex. 2G.

<sup>100</sup> The SIC never interviewed Paterno. Moreover, the SIC never interviewed Curley or Schultz about the content of these records. The SIC interview Spanier less than a week before it published its report. The emails and notes were located in March 2012 and Spanier was interviewed on July 6, 2012.

In two of those emails sent in 1998 referencing Paterno, Curley wrote, “I touched base with coach,” and “Coach is anxious to know where it stands.”<sup>101</sup> Neither of these emails were corroborated, nor did they contain any details as to what was purportedly discussed or what Paterno’s reactions were to what was purportedly discussed. These emails simply reference Paterno. He was not a party to either of them. He wasn’t even copied on them.<sup>102</sup> And there is no evidence that the conversations actually took place. There is also no evidence proffered to support the contention that these purported conversations included any active agreement to conceal. Though it is possible that others later concealed information about the 1998 and/or 2001 incidents, there is no evidence linking Paterno to such concealment, there is no evidence that he knew about such concealment, and there is no evidence that he participated in such concealment.<sup>103</sup> Without such evidence, it is simply wrong to accuse a person of such a criminal act.

## 2. The SIC misinterprets Curley’s February 27, 2001 email

What led the SIC to erroneously conclude that Paterno was involved in an active agreement to conceal is found in the remaining two documentary references to Paterno. Those references can be found in the 2/12/01 handwritten note by Schultz memorializing a discussion between Schultz and Curley, and the 2/27/01 email from Curley to Schultz and Spanier. In order to draw the conclusion that there was an agreement to conceal, the SIC ignored the former and therefore misinterpreted the latter.

The lynchpin that the SIC report uses to base its conclusion that Paterno engaged in an active agreement to conceal with Curley, Schultz, and Spanier, is the note and exchange of emails between Curley, Schultz, and Spanier dated 2/25/01 to 2/28/01. The SIC characterizes the 2/27/01 email from Curley as documenting a change in plans to not inform DPW of the 2001 incident.<sup>104</sup> In his prepared remarks upon issuing the SIC report, Freeh stated that the only intervening cause between the 2/25/01 plan to inform DPW and the 2/27/01 plan not to inform DPW, was Curley talking it over with Paterno.<sup>105</sup>

The problems with this conclusion are many. The SIC mischaracterizes the 2/27/01 email by failing to consider it in the context of all of the communications on the topic as opposed to just the note from the February 25 and the emails on February 26 through February 28. A basic

---

<sup>101</sup> SIC report at Exs. 2A & 2E.

<sup>102</sup> Although Paterno did not utilize an electronic email account, his secretary maintained an email account in Paterno’s name and in the rare event that he received an email, she would print it out and give him a hard copy. Paterno would then write a hard copy response and have that physically delivered to the other party. Interview with Paterno family member on Jan. 4, 2013.

<sup>103</sup> There are pending criminal cases against Curley, Schultz, and Spanier regarding their grand jury testimony and related actions that have not yet been litigated at the time of this analysis, and may relate to this issue. Nonetheless, Paterno, who fully cooperated with the investigation and testified in the grand jury was never charged with a crime and no evidence exists to date that inculpates Paterno in any way.

<sup>104</sup> SIC report at 63, 74-76.

<sup>105</sup> Louis Freeh, press conference, July 12, 2012 (“Based on the evidence, the only known, intervening factor between the decision made on February 25, 2001 by Messrs. Spanier, Curley, and Schultz to report the incident to the Department of Public Welfare, and then agreeing not to do so on February 27th, was Mr. Paterno’s February 26th conversation with Mr. Curley regarding what to do about Sandusky.”).

content analysis of these documents in conjunction with the note from 2/12/01, reveals the plain meaning of these documents and undermines the SIC's claim that the 2/27/01 email represents a change in plans to not inform DPW.

The SIC's conclusion ignores the fact that Schultz's note of his meeting with Curley dated 2/12/01, clearly document an intention on the part of Curley to meet with Sandusky and, "unless he 'confesses' to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned with Child Welfare." So the *original* plan to contact DPW was conditioned on Sandusky not confessing, and that plan was made two weeks *before* what the SIC purports was the "intervening cause" conversation between Curley and Paterno on 2/26/01.<sup>106</sup> The fact that Curley merely restates this same conditional plan in his email of 2/27/01 proves it is: (1) not a change in plans, (2) not the result of the call he said he made to Paterno on 2/26/01, and, therefore (3) Paterno is not the intervening cause.

In order to fully understand what led to the erroneous assertion by SIC that Paterno was the "intervening cause" in a decision by Curley to not notify DPW of the allegations against Sandusky, it is important to review the totality of documentation on that subject:

In a handwritten note dated 2/12/01, Schultz writes:

Talked w TMC  
-reviewed 1998 history.  
-agreed TMC will discuss w JVP and advise we think TMC should meet w JS on Friday.  
-unless he "confesses" to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned w Child Welfare.  
-TMC will keep me posted.<sup>107</sup>

This note states that Schultz talked with Curley but it doesn't give a date, time, place or methodology utilized for this talk. It then goes on to mention that they "reviewed 1998 history." When they "reviewed 1998 history," the similarities between what they knew about the two incidents would have been obvious, and they would have known that the incident in 1998 had been investigated and resolved with a finding of no criminal behavior. This could reasonably result in Curley's and Schultz's anticipation that the 2001 incident, which Paterno informed them about the day before, would also likely lead to the same conclusion.<sup>108</sup>

---

<sup>106</sup> As discussed infra, the 2/25/01 note and 2/26/01 email are simply summary bullet points of the types of actions they are planning on taking, not detailed specifics of any plans at the time.

<sup>107</sup> SIC report at Ex. 5C.

<sup>108</sup> Because the 1998 investigation concluded with a finding of no sexual intent, it would have reinforced in the minds of those who knew and were close to Sandusky that the allegations were wrong. As discussed supra, it is extremely common for people who know and respect a "pillar of the community" offender to disbelieve any allegations of sexual improprieties against the person, especially when they were investigated and determined to be unfounded. In this instance, it was much more reasonable for Curley, Schultz, Spanier, and Paterno to believe that Sandusky was a good man who just did not recognize the impropriety of horsing around with boys in the shower.

However, the situation in 2001 raised a bigger issue this time because it indicated to them that Sandusky did not heed the UPD warning to refrain from showering with children. (This is exactly what Spanier had noted as a potential vulnerability in his 2/27/01 email.) Curley, Schultz, and Spanier saw Sandusky's behavior as indicating that Sandusky had a problem with recognizing that horsing around with boys in the shower was not appropriate.

The 2/12/01 note also appears to delineate, with some specificity, the plans by Schultz and Curley to deal with the information provided to them by Paterno about what McQueary had told him. Five things are clear from this note: (1) Paterno was not involved in the discussion that produced these plans; (2) Curley had agreed to discuss something with Paterno before Friday, February 16, 2001; (3) Curley's and Schultz's discussion included a conditional plan to contact DPW unless Sandusky "confesses"<sup>109</sup> to having a problem; (4) there is no mention of what they plan to do if Sandusky "confesses" to having a problem; and, (5) there was no documented plan at this time to notify The Second Mile.

Two weeks after his 2/12/01 note, Schultz writes in a hand-written note dated 2/25/01:

- (3). Tell Chair\* of Board of Second Mile.
  - (2). Report to Dept of Welfare.
  - (1). Tell J.S to avoid bringing children alone into Lasch Bldg
- \*Who's the chair ??

This note appears to briefly list the plans after the reports from Paterno and McQueary to Curley and Schultz about the Sandusky shower incident. There is nothing about this note that indicates it is a comprehensive and detailed description of what they planned to do about the Sandusky incident. Instead, on its face, it is a bullet-type summary list of their plans. There is no indication that the plan to "Report to the Dept of Welfare," is not still conditioned upon whether or not Sandusky "confesses" to having a problem (just as it was documented in greater detail in the 2/12/01 Schultz note and later in the 2/27/01 Curley email). The 2/25/01 note does not go into any details about who would perform the three listed steps or when or where the steps would be taken, further indicating that it is in fact just a brief summary. To conclude that this is now a change in plans to report to DPW without condition is not supported by the evidence.

Schultz then recounts this bulleted summary of their plans, though in a different order, in his 2/26/01 email to Curley stating:

From: Gary C. Schultz <gcs2@psu.edu>  
Sent: Monday, February 26, 2001 11:57 PM  
To: TMC3@psu.edu  
Cc: Coble-Joan (JLC)  
Subject: Confidential

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the

---

<sup>109</sup> Schultz put the word "confesses" in quotes to likely distinguish it from the literal meaning of "confesses," which typically indicates an admission of wrongdoing.

University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.<sup>110</sup>

Again, though there is slightly more detail about the timing of the talk with Sandusky and about Curley being the one who would perform the listed tasks, it is still consistent with the fact that their plan to contact the "Dept of Welfare" remained conditioned on whether Sandusky "confesses" to having a problem." This is most likely the case because in Curley's email to Schultz and Spanier the next day on 2/27/01, Curley goes into great detail about the plans and he restates, in virtually the same language, the original conditional plan: they would go to DPW in the event that Sandusky is not "cooperative." The only change in the plan to contact DPW evinced in the 2/27/01 email, from the one delineated in the 2/12/01 Schultz note, is the change from "unless he 'confesses'" to "if he is cooperative." Arguably, these phrases meant exactly the same thing to these men and that is why "confesses" was in quotation marks in the original note.

On 2/27/01, Curley, Spanier, and Schultz traded the following emails regarding this subject:

At 08:10 PM 2/27/01 -  
0500, Tim Curley wrote:<br> <blockquote type=cite cite>I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday- I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and and [sic] maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities. I need some help on this one. What do you think about this approach?<sup>111</sup>

At 10:18 PM 2/27/01-  
0500, Graham Spanier wrote:<br> <blockquote type=cite cite>Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am

---

<sup>110</sup> SIC report at Ex. 5F.

<sup>111</sup> *Id.* at Ex. 5G. Although the emails are listed in reverse order in the original, (latest email on top) I have reversed them here for clarity by putting them in chronological order.

supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.<sup>112</sup>

Schultz responded the next day:

From: Gary C. Schultz <gcs2@psu.edu>  
Sent: Wednesday, February 28, 2001 2:13 PM  
To; Graham Spanier; Tim Curley  
Subject: Re: Meeting

Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization.<sup>113</sup>

The SIC mischaracterized the 2/27/01 email because their reading of the following: "After giving it more thought and talking over with Joe yesterday — I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved." The SIC took this sentence to mean that Curley wanted to inform only Sandusky and not inform DPW. The SIC's reading of these sentences is both internally inconsistent and externally inconsistent with the other three related emails and documents. Three sentences later Curley writes, "Also, we feel a responsibility at some point soon to inform his organization and and [sic] maybe the other one about the situation." One sentence after that, Curley writes, "If not, we do not have a choice and will inform the two groups." This is a clear delineation of the same conditional plan that Schultz wrote about on 2/12/01.<sup>114</sup>

When he wrote, "I am having trouble with going to everyone, but the person involved," Curley was raising the issue of his discomfort with not disclosing to Sandusky the information they had about the shower incidents as well as their plans to speak to The Second Mile and DPW.<sup>115</sup> Curley was not stating that he did not want to report to DPW. He was stating that when he spoke to Sandusky first — as they had planned — he wanted to also confront Sandusky with all the information they had and the fact that they believed he had a problem. Curley wanted to go a step further than merely telling Sandusky about the proper use of Penn State facilities. In effect, Curley did not want to go behind Sandusky's back to The Second Mile and DPW without

---

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at Ex. 5G.

<sup>114</sup> *Id.*

<sup>115</sup> It appears from the language used here by Curley that he understood Schultz's email from 2/26/01 to mean that all he was supposed to talk to Sandusky about was "the appropriate use of the University facility." But Curley apparently was uncomfortable with this and wanted to do more, not less. This willingness to do more is what Spanier apparently applauded him for in his email on 2/27/01.



first giving Sandusky an opportunity to cooperate.<sup>116</sup> This is confirmed in Spanier's 2/27 reply, in which he applauds Curley for offering to take the additional, difficult step, of confronting Sandusky with what they know and the fact that they feel he has a problem.

Curley then goes on to lay out in great detail a scripted version of what he planned to say to Sandusky when he met with him. Included in that version is a detailed discussion of under which circumstances he will notify The Second Mile and maybe notify DPW and under which circumstances he will notify both. Therefore, the notification of DPW plans devised on 2/12/01 were the same as those recounted in the 2/27/01 email. Hence, there was no change in plans instigated by Paterno. He was not an intervening cause in any change of plans because the evidence shows there was no change of plans with regard to conditionally notifying the DPW. Therefore, there was no conspiracy or any agreement to conceal.

At the time, everyone still believed that Sandusky was a respected member of the community. This is why Schultz called this plan "more humane and upfront." It wasn't because he was indifferent to child victims, it was because he had no idea that there were any child victims. It was humane because it contemplated not going behind Sandusky's back with embarrassing information, and it was upfront because it contemplated telling Sandusky the whole truth. Apparently, their earlier discussions, which were only briefly summarized by Schultz in the 2/25 note and the 2/26 email, must have contemplated only talking to Sandusky about the appropriate use of the facilities.

What is different about the plans as discussed by Curley and Schultz in the 2/12/01 notes, and the later notes and emails, is the addition of notifying the chair of The Second Mile. Therefore, it is more reasonable to conclude that if a conversation with Paterno was an intervening cause, it was to *add* The Second Mile to the list of those to be notified, not *remove* DPW. After all, The Second Mile was the very agency that was most likely responsible for the well-being of the child who McQueary saw being victimized in the shower by Sandusky. It was also an outside agency "providing children with help and hope."<sup>117</sup> And there is no question that Curley planned to and in fact did notify The Second Mile. Yet the SIC still found it reasonable to conclude that Paterno and others engaged in an active agreement to conceal Sandusky's behavior. This despite the fact that there is no evidence that they attempted to control or limit what the executive director of The Second Mile did with the information Curley provided to him. In fact, the executive director informed two trustees of the organization as well, neither of which reported any attempt to silence or limit what they did with the information.

The way that the 2/27/01 email is written lends itself to the conclusion that Curley had thought about going further with what he wanted to discuss with Sandusky and then discussed this with Paterno (i.e., "After giving it more thought and talking it over with Joe yesterday . . ."). Throughout this email, Curley carefully and deliberately used the personal pronoun "I" nine times to convey his plans and motivations, as well as, the plural pronoun "we" nine times to convey the plans and motivations of himself and unspecified others. The only aspects of these

---

<sup>116</sup> This language is also consistent with the belief that the "problem" they were referring to was that Sandusky did not understand that horsing around with boys in the shower was improper.

<sup>117</sup> The Second Mile website can be found at <http://www.thesecondmile.org>.

plans and motivations that could potentially be attributed to Paterno are the ones that follow “we.”<sup>118</sup>

In fact, none of the uses of “we” evince a change in mind or an agreement to conceal. However, at least three of these references are followed by plans to conditionally notify DPW just as is stated in the 2/12/01 Schultz note. Therefore, it is not accurate to state that this email encompasses a change in plans or a plan to not notify DPW. This fact undermines the SIC’s assertion that Paterno was the intervening cause in a decision not to inform DPW.

In my opinion, as discussed above, this purported “change of plans” as concluded in the SIC report did not in fact happen. Instead, the 2/27/01 email simply restates a plan that was devised in a meeting between Schultz and Curley on 2/12/01. Also, the fact that there were circumstances under which they did not necessarily plan to inform DPW was based on a completely reasonable belief that they didn’t know whether informing DPW was necessary. At the time, as delineated in Schultz’ 2/12/01 note, they believed that informing DPW was necessary only if Curley couldn’t get Sandusky to admit to having a problem and agree to get help. They saw DPW as an agency skilled at investigating and dealing with similar situations, which may be helpful in impressing upon Sandusky the problems with his behavior. However, if Sandusky were to admit that he had a problem and was cooperative, then there would be no need to enlist the help of DPW. Additionally, even if they didn’t notify DPW initially, they left open to option to still decide to inform DPW in the future, after Curley had confronted Sandusky, and after they had notified The Second Mile.<sup>119</sup> They never even contemplated that Sandusky might have been committing sex crimes against boys, which is why they never even discussed the issue or discussed going to the police.

Either way, informing The Second Mile is clearly not keeping the information in-house or concealing information. The Second Mile was an independent child care agency/charity founded by Sandusky but run by a board and a CEO. It is also the most likely place where Sandusky obtained access to the child in question. Accordingly, The Second Mile is precisely the organization that was in the best position to identify that child. And, because its CEO, Jack Raykovitz, was a licensed psychologist, he was a mandated reporter of any sexual victimization allegations regarding any children within his professional or institutional care.

### 3. Vulnerability for not having reported

In the his 2/27/01 email, Spanier raised the following issue, “The only downside for us is if the message isn’t heard and acted upon, and we then become vulnerable for not having reported it; But that can be assessed down the road.”<sup>120</sup> This indicates that Spanier felt some vulnerability regarding the conditions under which they were not planning on reporting to DPW, however, the nature of what that vulnerability was is not stated here. Spanier later stated that his

---

<sup>118</sup> The SIC apparently did not do a detailed content analysis of this email.

<sup>119</sup> All of the notes and emails in this series listed contacting Sandusky first. The 2/25/01 Schultz note listed contacting DPW before The Second Mile; however, the 2/26/01 Schultz email listed contacting DPW after The Second Mile. This change in the order of their plans is consistent with the theory that they had contemplated notifying DPW only as a last resort on 2/26/01 before Curley talked to Paterno.

<sup>120</sup> SIC report at Ex. 5G.

only “concern [was] about the possibility that Jerry would not accept our directive and repeat the practice.”<sup>121</sup> This indicates that their concern was with Sandusky’s “practice” of horsing around in the shower with boys as opposed to an indication that they knew or even suspected he was sexually assaulting boys.

Schultz then addresses this same issue in his 2/28/01 email by saying, “We can play it by ear to decide about the other organization.” Again, there is no definitive decision here to refrain from reporting to DPW. They are simply delaying the decision to do so, until they see whether Sandusky is cooperative and admits to having a boundary issue problem. That way, their decision could be based on the outcome of Curley’s confrontation of Sandusky. In other words, it would be an informed decision, rather than one made in the dark. The crucial issue here is that they wanted to get Sandusky to realize that he has a problem horsing around with boys in the shower and he needs to get help for it. If Sandusky were to admit to this, and agree to get help, then there would be no need to enlist DPW. On the other hand, if Sandusky were uncooperative and did not confess to having this problem, then they would have to enlist the help of DPW to investigate and convince Sandusky that he did in fact have a problem that required help.

In the end, according to Spanier, Curley reported that he had spoken with both Sandusky and The Second Mile and “those discussions had gone well and our directive accepted, and the matter was closed.”<sup>122</sup> Meaning, Sandusky was told not to bring children into the facilities at the university and The Second Mile was alerted to the “problem” that Sandusky had with horsing around with boys in the shower, so there was no need in their minds to enlist the help of DPW to enforce the directive against Sandusky. None of these communications indicate any belief on the part of the men that Sandusky was committing sex crimes against boys.

It is clear from the notes and emails beginning on 2/12/01 through 2/28/01 that Curley, Schultz, and Spanier are trying to develop and execute a plan to make their former colleague understand and accept that he has a problem, which they naively believed professional help would resolve.<sup>123</sup> There is no indication in any of these documents or in their behavior that these men had any idea of the actual nature and extent of Sandusky’s “problem” or that he had long ago progressed to being a child sex offender.

If there was any error in the logic and plans of Curley, Schultz, and Spanier in dealing with the 2001 Sandusky shower incident, it was the fact that they believed that a boundary issue problem was not sufficient to warrant a notification to the UPD. Schultz contacted the UPD on February 12, 2001 asking about whether a file existed on the 1998 incident. There is no evidence

---

<sup>121</sup> *Id.* at Ex. 2J.

<sup>122</sup> *Id.* at Ex. 2J.

<sup>123</sup> The difference between this naïveté on the part of men who had no professional contact or care of children, and did not know that Sandusky had committed any sex crimes against children, versus the purported ignorance on the part of the leaders in the Boys Scouts of America and Catholic Church, which received explicit repeated complaints of actual child sex crimes perpetrated against children, from the children themselves, is that both of those organizations are in the business of care of children that are entrusted to them and are therefore in a position to have to know about the behavior of child sex offenders and had been put on notice by victims, parents, law enforcement, child care professionals, lawyers and District Attorneys. And yet, there were deliberate acts of moving offenders to other jurisdictions, or hiding or destroying documents, or ordering victims and witnesses to be silent. While Curley, Schultz, and Spanier, were not in the childcare business and had no training in this area at all.

indicating whether Schultz notified the UPD at that time about the existence of the then current allegation against Sandusky. If he did not, it could mean that he relied on Courtney's advise to him that what had taken place was not reportable, or this could be troubling evidence that may indicate a decision on the part of Schultz to conceal information from law enforcement authorities. This is also consistent with the more recent discovery on March 20, 2012<sup>124</sup> of a "private" file that had been kept in Schultz's office and was not disclosed to investigating authorities or the SIC. We do not know whether Schultz was aware of this file at the time he received inquiries or subpoenas regarding files related to allegations against Sandusky. We do not know whether Curley and/or Spanier knew about the existence of the inquiry Schultz made to the UPD or of the private file that Schultz maintained. However, what is certain is that there is no evidence to date that indicates Paterno ever knew of the existence of the UPD inquiry or of the "private" Schultz file.

4. "A more humane approach"

On February 28, 2001, Schultz wrote, "Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed)."<sup>125</sup> Schultz was most likely referring to Curley's additional plan to tell Sandusky what they knew about his behavior and that he had a problem. Schultz referred to the approach as "upfront" because it involved going to Sandusky directly. Schultz is talking about disclosing additional information, rather than hiding information. Schultz goes on to write, "We can play it by ear to decide about the other organization."<sup>126</sup> In other words, Schultz is indicating that he, Spanier, and Curley had not ruled out going to DPW, if necessary.

5. No evidence of Paterno's participation in an active agreement to conceal

There is no evidence that Joe Paterno was part of any agreement to conceal what McQueary reported witnessing in the Lasch Building showers in 2001. All available evidence suggests that Paterno did (1) inform McQueary he would find out who in the school's administration should handle this matter, (2) inform his superiors (Curley and/or Shultz) and make sure that McQueary spoke directly to them, (3) step out of the administrative process at that point, (4) at most was updated about the administration's response to McQueary's report, and (5) went back to McQueary and made sure he was okay. There is no evidence that Paterno participated in the ultimate decision to inform or not to inform DPW.

All available evidence also suggests that Paterno did not (1) dissuade McQueary from believing what he saw Sandusky doing in the locker room, (2) persuade McQueary to forget what he saw, (3) ask McQueary who else he had told, (4) tell McQueary to keep what he saw a secret, (5) filter, shape, or edit what McQueary told the Penn State administration about what he saw, (6) attend the administration's interview of McQueary, (7) debrief McQueary about what he had recounted to the administration, (8) participate in the administration's investigation of the events that McQueary reported, (9) dissuade the administration from thoroughly investigating

---

<sup>124</sup> Louis Freeh, press conference, July 12, 2012.

<sup>125</sup> SIC report at Ex. 2F.

<sup>126</sup> *Id.*

what McQueary reported, (10) make any attempt to hide what the administration found during their investigation of what McQueary reported, (11) make any attempt to prevent the administration from acting as it deemed appropriate as a result of their investigation into what McQueary reported, or (12) limit or shape what the administration reported to The Second Mile.

In the United States we enjoy the presumption of innocence. If an investigation finds no evidence to prove a crime, you must not make leaps of faith and jump to conclusions to find participation in that “crime.” For all the above stated reasons, it is erroneous to attempt to tie Paterno, using innuendo and conjecture, into any agreement to conceal as the SIC claims.

#### **D. Paterno’s Subsequent Actions**

Every single action Paterno took subsequent to McQueary’s report in 2001 and throughout the ensuing ten years, indicates that Paterno did not understand what McQueary was trying to communicate to him. In fact, the aspect of McQueary’s testimony that has remained fairly consistent is the fact that he did not give Paterno any specific details about what he thought Sandusky was doing in the shower. While other witnesses have told versions of events that minimize their role and their knowledge, Paterno has done the opposite. He admits that he didn’t know how to handle what was reported to him and he simply passed on the version of events he heard from McQueary. At the time it was all he thought he needed to do. Later, when he found out the truth about Sandusky’s actions, he wished he had done more.

1. Paterno mischaracterized facts which put his own actions in a less favorable light

When Paterno testified before the grand jury that after he received the report from McQueary, he waited to inform others because he did not want to interfere with their weekends. That was factually incorrect and to his detriment. Based on the record, he may have called Curley the same day that McQueary came to him. If he didn’t, he unquestionably conveyed McQueary’s report to Curley and met with Curley and Schultz on Sunday, the very next day.<sup>127</sup>

When Paterno spoke about reporting the incident, he said he merely called Curley, but maybe spoke to him in person. In fact, according to Curley and Schultz, Paterno called them that weekend, and both of them went to Paterno’s house on Sunday and spoke to Paterno in person. If Paterno were trying to make it sound like he responded appropriately to a serious situation, he would not testify that he sat on the information and then informed one person over the phone. Paterno was undermining the strength of his own actions in response to the report by McQueary. Thanks in part to the testimony of others, we now know that is not what happened. Paterno, in fact, acted even more promptly than he originally remembered. If Paterno had been trying to cover up something, he would have been much more likely to oversell his actions than to undersell them.

---

<sup>127</sup> In fact, with an hour of meeting with McQueary, Paterno flew to Pittsburgh for induction into the Pittsburgh Sports Hall of Fame and remained there overnight. Interview with Paterno family member, Feb. 6, 2013. This ceremony had been planned months in advance and Paterno was the guest of honor. The next opportunity Paterno had to meet with Curley and Schultz was in fact the day he met with them, Sunday, February 11, 2001. “I had a meeting with Tim and Gary [Schultz] might have been there, and I told them what Mike had told me.” Posnanski at 273.

## 2. Paterno's first account

On Monday, January 3, 2011, Cynthia Baldwin, general counsel for Penn State, interviewed Paterno about his recollection of what McQueary told him in 2001. Baldwin took what appear to be contemporaneous notes of this interview. According to these notes, Paterno said McQueary “[s]aw Jerry horsing around w[ith] the kid a young man in shower, inappropriate behavior. Turned it over to Tim Curley. Notified Tim Curley didn’t talk to Gary. No conv. since then.”<sup>128</sup> This was Paterno’s first interview about the incident that had happened in 2001. Baldwin’s notes indicate that Paterno did not think McQueary was reporting anything sexual. This was before Paterno had heard or read any of the details of the 2011 allegations against Sandusky. This is before Paterno spoke with the grand jury. However, by the time Paterno had testified in the grand jury, he was aware that Sandusky was being investigated by the state attorney general for molesting boys.

## 3. Paterno's explanations

Paterno gave the following reasons when asked why he took no action to identify the February 9, 2001 child victim and for not reporting Sandusky directly to state authorities.

Paterno told a reporter that “I didn’t know exactly how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It didn’t work out that way.”<sup>129</sup>

This answer appears to be typical of Paterno’s frank, open, and honest style of speaking. It is very revealing that he admits he didn’t know how to handle what he was told. It also is illuminating that Paterno was afraid to break even the university rules. That is not something that would worry someone who was planning on breaking criminal laws by concealing information about child sex crimes. Paterno doesn’t try to spin his behavior in the best light. He simply explains what he did and admits that it did not work out. If McQueary had simply told Paterno that Sandusky was raping a boy, or having sex with a boy in the shower, then Paterno, like everyone else in the world, would have known what to do: “We would have gone to the police right then and there, no questions asked.”<sup>130</sup>

In what was perhaps the most comprehensive interview of Paterno on the subject, Joe Posnanski, author of the biography, *Paterno*, had the following conversation with Paterno in late November 2011.

Posnanski: Did Mike [McQueary] say that he saw anything?

Paterno: I think he said he didn’t really see anything. He said he might have seen something in a mirror.

Posnanski: A mirror?

---

<sup>128</sup> SIC report at 83. This also indicates that Paterno was again underselling his actions.

<sup>129</sup> Sally Jenkins, *Paterno's Last Interview*, Wash. Post, Jan. 14, 2012.

<sup>130</sup> Posnanski at 277.

Paterno: Yeah, like the bathroom mirror. But he told me he wasn't sure he saw anything. He just said the whole thing made him uncomfortable.

Posnanski: What did you think he saw?

Paterno: I didn't know. I thought he saw them horsing around. Maybe he thought he saw some fondling. I don't know about any of this stuff. But I could tell it made Mike very upset.

Posnanski: What did you say to him?

Paterno: I told him he didn't have to tell me anything else. I told him he did the right thing bringing it to me, and that now it was my job to get him together with the right people for him to report it.

Posnanski: Did you consider calling the police?

Paterno: To be honest with you, I didn't. This isn't my field. I didn't know what to do. I had not seen anything. Jerry didn't work for me anymore. I didn't have anything to do with him. I tried to look through the Penn State Guidelines to see what I was supposed to do. It said that I was supposed to call Tim [Curley]. So I called him.

Posnanski: That day?

Paterno: I'm pretty sure I called him that day. I know it was a weekend, so I can't be a hundred percent sure, but I do think I called him that day.

Posnanski: And what did you say?

Paterno: I said, "I think there may be a problem here. You need to get to the bottom of this."<sup>131</sup>

Here, Paterno is honest about the limits of his memory of a decade old conversation. He does not overstate details but remembers generally what was said. The most significant components of his memory were that McQueary was uncertain about what he'd seen and the general observation Paterno made at the time that McQueary was very upset by what he saw and was having trouble talking about it to Paterno. So much so, that Paterno told McQueary he didn't have to tell him any more. This, coupled with McQueary's admission that he only used generalities and not "very much detail" when recounting what he saw to Paterno, underscores the fact that McQueary did not convey to Paterno the same thing he would testify about a decade later. Namely, McQueary did not convey in 2001 that he thought he saw Sandusky having intercourse with a boy in the shower. Posnanski, unlike the prosecutor who questioned Paterno in the grand jury, went on to ask further details.

Posnanski: Were you shocked?

Paterno: I wasn't really even sure what it was. Mike didn't give me any details. I could just tell he was upset.

Posnanski: Had you heard any rumors at all about Jerry Sandusky [showering with boys]?

Paterno: Absolutely not. Maybe people talked about it, I don't know. But I didn't hear anything.

---

<sup>131</sup> *Id.* at 272-73.

Posnanski: Did you think about investigating yourself?

Paterno: I wouldn't know how to investigate something like this. I don't know anything about it. [Jerry] didn't work for me. I had a meeting with Tim and Gary [Schultz] might have been there, and I told them what Mike had told me. And they said they would get to the bottom of it. I trusted Tim would take care of it. He's a good administrator. He had negotiated the retirement deal with Jerry, and he was still in contact with Jerry. Tim's a good person. I expected him to handle it right.

Posnanski: Did you ever follow up?

Paterno: No. I trusted Tim.

Posnanski: Do you regret that?

Paterno: I did what I thought was the right thing. . . . If what they're saying about Jerry is true, I think we all wish we would have done more.<sup>132</sup>

Paterno, even up to a few months before he passed away, still used the qualifier “if” when referring to the allegations about Sandusky. He still didn't believe it himself. He had not formed an opinion as to Sandusky's guilt because he thought he knew Sandusky and he trusted and expected the system to work to determine the veracity of the allegations. He had plenty of reason to harbor extremely ill will towards Sandusky at this point. The entire university and city were up in arms by this point about Sandusky's crimes. Despite the fact that Paterno and Sandusky had reportedly disliked each other for years, Paterno tried to remain neutral. Not because he was trying to protect the name of Penn State football, but because Sandusky hadn't had his day in court yet and Paterno still could not believe that Sandusky had fooled him and everyone else for so long.

In his statement to the community just before he was fired, Paterno said, “If true, the nature and amount of charges made are very shocking to me and all Penn Staters.”<sup>133</sup> Then he went on to say, “I understand that people are upset and angry, but let's be fair and let the legal process unfold.”<sup>134</sup> From these statements it does not appear that Paterno knew or even believed that Sandusky was in fact a child sex offender. By this time, he had read the presentment against Sandusky in all of its graphic detail and he still couldn't believe that what was being alleged was true about a man he thought he knew. Paterno showed his real concern for children who were molested by Sandusky by lamenting, “I wish I had done more.” As opposed to McQueary who said, “I did right . . . I did the best I could.”<sup>135</sup>

#### 4. Conclusions

Paterno's actions, in the wake of McQueary's cryptic disclosure, were arguably the most honest and moral of anyone involved. Although later he would wish he had done more, that was

---

<sup>132</sup> *Id.* at 273-74. Paterno was almost 85-years-old when Posnanski conducted the above interview and he was undergoing both radiation and chemotherapy for terminal lung cancer.

<sup>133</sup> Paterno family press release, Nov. 6, 2011.

<sup>134</sup> *Id.*

<sup>135</sup> Mike McQueary's email to Senior Deputy Attorney General Jonelle Eshbach, Nov. 10, 2011.



only after he found out that there was a possibility that Sandusky had deceived him and everyone else at Penn State and had been sexually victimizing boys for decades.

Everything in Paterno's behavior speaks to him wanting to get to the bottom of what Sandusky may or may not have been doing in the shower with the boy. He informed two of the top people in the university and, if he was actually kept informed of what happened next, he would have known that the president of the university was also informed. These are the top administrative people at Penn State. Paterno would have no reason to believe anything other than they would properly handle the information and determine what had actually taken place. Paterno would not have had any reason to believe, and it has yet to be proven, that Curley, Schultz, or Spanier would conspire to conceal the information he passed on to them. He trusted them and their judgment.

Paterno also may have known from his discussion with Curley that Curley had planned to inform at least The Second Mile and maybe DPW. Either plan is clearly not an attempt to conceal information. If he had known about the 1998 investigation and if he had remembered any details of it in 2001, it would not have seemed unusual for the 2001 allegations also to turn out to be unfounded and easily explained as boundary issues. He was not trained in the area of child sexual victimization. He did not know that Sandusky would later be found out and convicted of numerous counts of sexually assaulting boys. He thought he knew Sandusky and was fooled by his personality, professionalism, and outward dedication to helping children.

When there exists another more reasonable interpretation of the events that actually takes into account the specific and counter-intuitive dynamics of acquaintance child sexual victimization, in my opinion it is incorrect to conclude that Paterno's intent was criminal in nature as opposed to simply being fooled like the rest of the community. Yes, everyone but Sandusky wishes that Paterno had been trained in the field of preferential child sex offender behavior, "nice-guy" acquaintance offenders, "grooming," and "compliant victimization." If he had, he might have been better able to recognize Sandusky's behavior for what it was. He might also have been able to decipher McQueary's sketchy report for what it was intended to be. But Paterno was never trained in this area and had no experience dealing with issues related to it. In light of the fact that Paterno is no longer here to answer detailed questions about the incident or his reactions thereto, it is wrong to conclude that he was involved in an agreement to conceal Sandusky's activities from law enforcement. There is no evidence that Paterno had reason to believe that Sandusky was a child sex offender in the first place, and no evidence that he was part of any agreement to conceal.

Based on my decades of experience with these exact type cases and offenders as skilled as Sandusky, it is completely understandable, and in no way blameworthy or immoral, that Paterno did not recognize Sandusky for what he truly was and do more. Years of anecdotal evidence tells us that nearly anyone in his position, even those held in the highest moral regard like Paterno, without an understanding of acquaintance child sexual victimization, would have acted in the same way. What Paterno did and didn't do in this case is very different from what has been revealed and litigated in the past in organizations like the Boy Scouts of America, and the Catholic Church, where there was a knowing and deliberate plan to conceal the explicitly documented sex crimes of multiple offenders to preserve the name of the organization.

Instead, Sandusky is a case involving effective grooming by a “nice-guy” acquaintance offender, with classic compliant victims who were extremely reluctant to come forward. The victims and witnesses who did come forward in 1998 and 2001 gave equivocal and watered down versions of what happened and as a result, the true nature of Sandusky’s behavior was not discovered at the time. Sandusky fooled an entire community for decades because he actually did help thousands of children through The Second Mile, while he molested selected boys from that group.

## V. Difficulties Investigating “Pillar of the Community” Cases

Most people don’t realize how extremely difficult it is to make a case against a male “pillar of the community” who is accused of committing sex crimes against boys. As demonstrated in this case in 2008 when allegations again surfaced against Sandusky, it took the better part of three years for the authorities to remove his access to children and arrest him. This delay occurred despite the fact that, this time, the allegations came from a victim who explicitly articulated that Sandusky had sexually assaulted him. By 2010, they had already interviewed and gotten a detailed statement from at least one victim<sup>136</sup> and an objective adult eye-witness, McQueary. At that time McQueary was actually giving detailed accounts of his belief that he had witnessed Sandusky sodomizing the boy. Why didn’t they move immediately to arrest Sandusky and protect the children that were exposed to him?

The answer is not a simple one. It is as complicated and tragic as what happened when McQueary and the janitors witnessed Sandusky sexually assaulting boys. The sad truth is that law enforcement officers and prosecutors know that going up against a “pillar of the community” “nice-guy” offender with the word of just one victim is both risky, in terms of the unlikelihood of conviction, and unfair to the victim, in terms of putting a huge burden on the victim’s shoulders. Therefore, they try to build an airtight case against the offender by finding more victims that are willing to testify against him. The biggest obstacle to doing that is most male victims of child sex crimes refuse to talk about it, ever. There is too much societal stigma, too many negative sexuality implications, and too much of a threat to their manhood to overcome.<sup>137</sup> In addition, once you have identified victims and gotten them to fully disclose, it can still take a long time to convince them to agree to testify in open court. This is something that requires a great deal of strength and courage on the part of the victims. I have investigated and consulted on hundreds of similar cases and have found that most if not all are extremely difficult to investigate and prosecute.

In my colleague Ken Lanning’s treatise on the subject, *Child Molesters: A Behavioral Analysis*, he states:

For the public the “default setting” still seems to be stranger abduction. To them child molesters are sick perverts or “predators” who physically overpower children and violently force them into sexual activity.

---

<sup>136</sup> Sandusky trial transcript, June 12, 2012, at 148.

<sup>137</sup> This is in addition to the guilt, shame, embarrassment and/or self-loathing that most victims of child sex crimes experience.

The often forgotten piece in the puzzle of the sexual victimization of children is acquaintance molestation.<sup>138</sup>

Acquaintance molesters are still, however, one of the most challenging manifestations of sexual victimization of children for society and professionals to face. People seem more willing to accept a sinister, unknown individual or “stranger” from a different location or father/stepfather from a different socioeconomic background as a child molester than a clergy member, next-door neighbor, law-enforcement officer, pediatrician, teacher, coach, or volunteer. Acquaintance molesters often gain access to children through youth-serving organizations. The acquaintance molester, by definition, is one of us. He is not simply an anonymous, external threat. He cannot be identified by physical description and, often, not even by “bad” character traits. Without specialized training or experience and an objective perspective, he cannot easily be distinguished from others.<sup>139</sup>

This last sentence is critical in understanding the behavior of Paterno in this case. He did not have any specialized training or experience. He was not in an objective position. He had known Sandusky for more than thirty years and everyone who knew Sandusky thought that he was a fundamentally good and honest person.

Acquaintance offenders with a preference for younger victims (younger than 12) are more likely to also have to spend time seducing the potential victim’s parents/guardians or caretakers to gain their trust and confidence.<sup>140</sup>

This dynamic is perfectly exemplified in this case. Sandusky was able to groom not only the parents, or legal guardians of the boys he victimized, but the entire community with his affable and goofy personality, his role as a husband and as a foster and adoptive parent, his work with the charity he founded, and his tireless efforts raising funds to care for tens of thousands of disadvantaged youth.

Society’s lack of understanding and acceptance of the reality of acquaintance molestation and exploitation of children often results in:

- Victims failing to disclose and even denying their victimization
- Incomplete, inaccurate, distorted victim disclosures when they do happen
- Degrees of shame, embarrassment, and guilt felt by victims

---

<sup>138</sup> Lanning at 7.

<sup>139</sup> *Id.* at 8.

<sup>140</sup> *Id.* at 10.

- Offenders being able to exploit numerous victims over an extended period of time.<sup>141</sup>

All of these factors are present in the Sandusky case. Jerry Sandusky was a cunning and deliberate child sex offender. He presented himself as an advocate for children, a philanthropist, and altruist and community icon in order to get access to children for sex. That is not to say that he didn't actually "love" boys. He did "love" boys and that is why he could put up with spending so much time with them. By his own words, he actually enjoyed their company. But his "love" for boys was sexual in nature and not the nurturing love that he purported it to be. He admits in his book, *Touched*, that he felt like a kid himself. This is a common trait of many "boy lover" child sex offenders. Indeed, Sandusky and similar offenders rationalize to themselves that because they love boys, having sex with those boys is a natural extension of that love. They tell themselves that this kind of loving sex with boys is educational and nurturing for the boys and not harmful. Clearly, they are wrong. Though this country has seen many "nice-guy," "pillar of the community" child sex offenders, few of them have been as bold as to create a foundation for children, making a name for themselves as a child advocate, as someone who has dedicated his life to caring for troubled children, and as foster and adoptive parent for dozens of those children, while at the same time, using that very charity, and the foster program, as a source to hunt for victims.

Joe Paterno, on the other hand, was actually an advocate who cared deeply about his athletes as students, so much so, that he consistently maintained one of the highest graduation rates for his football players in the country. He was a true philanthropist, an altruistic community leader, and a national icon. Paterno worked with Sandusky for 30 years. He thought he knew the man. However, he and everyone else in State College who thought they "knew" Sandusky were very wrong.

## **VI. Additional Biases, Limitations, and Erroneous Conclusions in the SIC Report**

### **A. Report Bias**

1) The SIC report wholly accepts and rationalizes the behavior of Mike McQueary despite inconsistencies, impossibilities, and unexplained behavior.

The five men to whom McQueary reported the Sandusky shower incident in February 2001, all had recollections that differed from what McQueary believes he conveyed. Inconsistency in eyewitness testimony undermines the credibility of that testimony, it does not bolster it. I do not suggest that McQueary didn't witness Sandusky grooming and sexually assaulting a boy in the shower in 2001, but his accounts of what he saw, how he saw it, how many times he saw it, what he said to his father and Dr. Dranov, and then later to Paterno and still later to Curley and Schultz were filled with inconsistencies and generalities. However, they were taken as credible and accurate accounts of the actions he observed and undertook, and the words that he used. Given the fact that none of the actions or words were documented at the time — in fact they were first documented almost a decade later — the accuracy and reliability of those accounts and specific words should have been taken as fairly low, particularly in light of

---

<sup>141</sup> *Id.* at 11.

the variations in those accounts. The one thing that McQueary has consistently stated is that he told Paterno far less than what he thought he saw.

2) The SIC report rationalizes McQueary's and the janitors' behavior and condemns the actions of Paterno.

The executive summary of the SIC report is written in such a way that it rationalizes the behavior of McQueary and the janitors while it condemns most of Paterno's behavior. By doing this, the SIC is engaging in argument instead of stating fact. For example, the SIC stated, "Fearing that they would be fired for disclosing what they saw, neither janitor reported the incidents to the University officials, law enforcement or child protection authorities."<sup>142</sup> This statement rationalizes the behavior of the janitors. Later, the SIC notes that "McQueary met with and reported the incident to Paterno on Saturday, February 10, 2001." This is a neutral statement of fact. Compare both of these statements to the SIC characterization of Paterno: "Paterno did not immediately report what McQueary told him, explaining that he did not want to interfere with anyone's weekend."<sup>143</sup> This statement is argumentative and misleads the reader into thinking that Paterno unnecessarily delayed reporting the incident based on an absurdly weak excuse.<sup>144</sup>

3) The SIC report did not understand the behavior and reactions of McQueary and the janitor, so the SIC blamed the confusing reactions of McQueary and the janitors on Paterno and Penn State.

What the SIC report fails to process or even consider is the fact that McQueary and the janitor witnessed such a confusingly negative event that it affected both of them profoundly. The janitor compared what he witnessed to the horrors of war he witnessed in Korea. He said that he witnessed something he will never forget, but he couldn't bring himself to report it to the authorities. And McQueary testified that what he had just witnessed was "ridiculous" and was so embarrassing that he wanted to get out of there as quickly as he could. Though McQueary pushed past his discomfort to a degree, reporting the incident to his father and Dr. Dranov, he had a great deal of trouble verbalizing the details. Then when he recounted the incident to Paterno, he apparently had an even more difficult time recounting any details because of how "prudish" Paterno was known to be. It is the profoundly disturbing nature of child sex crimes that is to blame for the message getting lost on the people to whom McQueary reported.

4) The SIC selectively quotes Paterno's testimony to cast Paterno in the worst light.

---

<sup>142</sup> SIC report at 62. Fear of losing one's job is not a justification for not acting when you are an eyewitness to a child being sexually assaulted. Although I have no reason to question whether the janitor feared for his job, this is absolutely no excuse for an adult to allow a child to be sodomized right in front of his eyes. This janitor is the only known person who actually witnessed Sandusky sodomizing a boy, and knew exactly what he was witnessing, yet he let it happen and did nothing to stop it or report it to any administrators or authorities.

<sup>143</sup> *Id.*

<sup>144</sup> Paterno did in fact interfere with their weekends and the SIC was well aware of this. As the SIC report itself states on page 62, "On Sunday, February 11, 2001, Paterno met with and reported the incident to Curley and Schultz." *Id.* at 62.

According to the SIC, “We also know that he delayed . . . Mr. Paterno . . . reporting Sandusky’s sexual conduct because Mr. Paterno did not to ‘want to interfere’ with people’s weekend.”<sup>145</sup>

The SIC is well aware that Paterno did in fact “interfere” with the weekends of Curley and Schultz because he met with them the very next day on the very same weekend — Sunday, February 11, 2001. And the SIC should be aware that Paterno may very well have called Curley on Saturday to set that meeting up. Remarkably, the SIC failed to note that Paterno was unavailable and flew to Pittsburgh that Saturday — the day McQueary reported to Paterno — to be inducted into the Pittsburgh Sports Hall of Fame. This is a fact that was well documented in new stories.<sup>146</sup>

The SIC quotes from Paterno’s grand jury testimony but ignores Paterno’s later testimony and the testimony of others. In November 2011, Paterno told his biographer, “I’m pretty sure I called him that day. I know it was a weekend, so I can’t be a hundred percent sure, but I do think I called him that day.”<sup>147</sup> In January 2012, Paterno told an interviewer that he “[w]aited till Sunday because I wanted to make sure I knew what I was doing.”<sup>148</sup> (Notably, the SIC quotes Paterno’s words that immediately precede this sentence, but ignores this sentence.) Furthermore, Curley and Schultz have testified that they did in fact meet on Sunday, February 11 to discuss this matter. So, Paterno did interfere with Curley’s and Schultz’s weekend. None of them remember exactly when Paterno called, but we do know that they met the very next day. It is possible that Paterno made the call on Saturday, February 10, the same day that McQueary told him about the incident, and they met the following day. In sum, the SIC selectively quotes the one statement that puts Paterno in the worst light even though two of Paterno’s later statements and the testimony of everyone else involved in addition to the facts themselves directly contradict the quote that the SIC chose to highlight.

5) The SIC unfairly compares the 1998 investigation into allegations against Sandusky, which resulted in a finding of no sexual intent and no criminal conduct, to banning a sports agent from campus who was found guilty of a crime.

In criticizing Penn State officials for not limiting Sandusky’s access to Penn State facilities, the SIC report compares the Sandusky investigation to a situation in which a sports agent had been banned from the campus. This type of comparison demonstrates the SIC’s lack of understanding regarding acquaintance child sexual victimization. According to the SIC report, “Spanier never declared Sandusky a ‘persona non grata’ on Penn State campuses, as he did toward a sports agent who, before the 1997 Citrus Bowl . . . .”<sup>149</sup> The SIC quotes Spanier as saying at the time that the “agent fooled around with the integrity of the university, and I won’t

---

<sup>145</sup> Louis Freeh, press conference, July 12, 2012. The SIC also repeats this misleading claim three times in its report. SIC report at 23, 62, and 68.

<sup>146</sup> See, e.g., Ed Bouchette, *Dorsett, Paterno enter Pittsburgh hall*, Pittsburgh Post-Gazette, Feb. 10, 2001, at B-1.

<sup>147</sup> Posnanski at 272-73.

<sup>148</sup> Sally Jenkins, *Joe Paterno’s last interview*, Wash. Post, Jan. 14, 2012.

<sup>149</sup> SIC report at 52.

stand for that.”<sup>150</sup> What the SIC does not mention is that the agent Spanier was referring to actually broke the law, was charged and convicted.<sup>151</sup> There was no question that it was a crime, and there was no question about what actually happened. And the result of that investigation was that the agent pleaded no contest, was found guilty, and the judge ordered him to pay a \$10,000 fine and perform 100 hours of community services as part of a year of probation for his conviction. Contrast that with the Sandusky incident in 1998. The original accusation was the Sandusky had showered with a young boy and it may have been inappropriate. After a full investigation, child welfare experts, police, and the district attorney made a finding of no criminal activity. This is not a fair comparison.

## **B. Limitations of Mandate**

However well intentioned, the SIC investigation was admittedly limited in scope, depth, and power. It was neither a criminal nor a civil litigation-based investigation with subpoena power, grand jury power, the power to conduct covert investigation or overhears, the power to compel interviews or take sworn testimony, or the power to grant limited or complete immunity. Because this investigation lacked the power and authority to utilize these basic and essential investigative tools, it should not be taken as the final and comprehensive word on the facts and circumstances surrounding the sexual victimization crimes committed by Jerry Sandusky.<sup>152</sup> It had the limited scope and purpose of investigating the child sexual victimization activities by former Penn State coach Sandusky at the university, and the administration’s response to those activities. The SIC investigation had to rely on the voluntary cooperation of individuals and organizations involved. The SIC investigation was not intended to replace a thorough and comprehensive civil or criminal investigation into all of the sexual victimization offenses committed by Jerry Sandusky, of The Second Mile, or of any other matter inside or outside Penn State University.

Of particular note is the SIC investigation does not find evidence of earlier child sex crimes by Sandusky during the nearly three decades of Sandusky’s association with Penn State prior to the allegations that surfaced in 1998. We know from Sandusky’s adoptive son, Matt, that Sandusky had been molesting him since he was 8 years old in 1987<sup>153</sup> and preferential child sex offenders typically recognize their attraction to children in their late adolescence and begin offending shortly thereafter.<sup>154</sup> In the Catholic Church child sexual victimization cases, a majority of victims took over 30 years to disclose their victimization.<sup>155</sup> Furthermore, the SIC does not explore the nearly three years of sex crimes likely committed by Sandusky during the Attorney General’s investigation that began in 2008.

---

<sup>150</sup> *Id.*

<sup>151</sup> The agent took Penn State’s running back, Curtis Enis, on a \$1,000 shopping spree. Donald Gilliland, *Graham Spanier said agent in Curtis Enis incident ‘fooled around’ with Penn State’s integrity*, The Patriot-News, July 15, 2012.

<sup>152</sup> It should be noted here that when asked, Louis Freeh stated that the SIC report was not intended to make criminal conclusions, it only made “reasonable conclusions.”

<sup>153</sup> Michael Isikoff, *Matt Sandusky details alleged sex abuse by his father*, NBC News, June 26, 2012.

<sup>154</sup> Lanning at 53.

<sup>155</sup> Karen J. Terry, et al., John Jay College Research Team, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010*, at 78 (May 18, 2011).

There have been unconfirmed news reports of allegations against Sandusky between the 1970s when he founded The Second Mile and 1987, and as an expert in the field, in my opinion, there is a very high probability that Sandusky had been grooming and victimizing boys during this time. This, in and of itself, underscores both the limitations of the SIC investigation and the effectiveness of Sandusky's "grooming" capabilities.

The SIC investigation was also limited in that it did not utilize the typologies of "nice-guy" acquaintance child sex offenders and their methodologies, of "grooming" and the results thereof, and of "compliant victimization" and the counter-intuitive way in which victims of this class of crimes behave. In sum, it is my opinion that in addition to the SIC being hampered in their task by not having criminal or civil investigative powers, they drew erroneous conclusions based on, among other things, their lack of consideration of the specific and counter-intuitive dynamics particular to acquaintance child sexual victimization cases.

Though the SIC investigation conducted over 430 interviews, and reviewed over 3.5 million pieces of data and documents, they actually uncovered only four that reference Paterno.<sup>156</sup> They did not interview any victims, nor did they interview Mike McQueary, John McQueary, Dr. Dranov, Paterno, Curley, Schultz, or Sandusky. None of the emails or notes discovered by the SIC investigation that referenced Paterno were found before Paterno's death and therefore Paterno was never given the opportunity to affirm or refute the references made to him therein. This dearth of evidence relating to Paterno creates a hole in any case against him, but it does not create a justified opportunity to fill that hole with conjecture and assumptions.

The SIC report treats the well-disguised, insidious, and hidden behavior of Sandusky as if it were an average event on campus about which Paterno would know everything. In fact, it is anything but that.

The SIC report gives all sources of information equal weight and credibility without taking into account their reliability or nature, including contemporaneous documentation of events, decade old memories of events, sworn testimony, statements made to the press, triple hearsay, rumor, and innuendo. However, the report unfortunately ignores a tremendous resource, Joe Posnanski, a biographer who was interviewing Paterno during critical periods of the breaking Sandusky scandal. As such, Posnanski was witness to events as they unfolded and since Paterno is no longer alive, the interviews Posnanski had with Paterno contain valuable information that should have been considered. While his book was not published until August 2012, it was well-known that he was writing the book and had access to Joe Paterno.

### **C. Other Errors and Erroneous Conclusions**

1.) *The SIC concludes that there was "[a] culture of reverence for the football program that is ingrained at all levels of the campus community."*<sup>157</sup>

---

<sup>156</sup> See Curley's May 5, 1998 email to Schultz, SIC report at Ex. 2A; Curley's May 13, 1998 email to Schultz, SIC report at Ex. 2B; Schultz's handwritten note on February 12, 2011, SIC report at Ex. 5C; Curley's February 27, 2001 email to Spanier and Schultz, SIC report at Ex. 5G.

<sup>157</sup> SIC report at 17.



The fact that Paterno is personally responsible for conducting “The Grand Experiment” that resulted in making Penn State football one of the most successful, academically oriented college football programs in the country should and rightly did command a culture of reverence within the university and within college football in general. Moreover, a culture of reverence can exist in any sport, in any organization, in any community, in any location; and, “nice-guy” acquaintance offenders have groomed victims and members of all those communities over the years.

It is only because the SIC report lacks an understanding of the dynamics of acquaintance child sexual victimization that it has misconstrued the behavior of the individuals involved and blamed Sandusky’s ability to hide and continue his offending on the “culture of reverence for the football program.” If the writers of the SIC report had fully understood those dynamics, they would not have been searching for reasons why Paterno and others did not recognize Sandusky’s offending behavior for what it was.

2.) *The SIC incorrectly assumes that McQueary communicated enough information to Paterno for Paterno to understand the need for immediate law enforcement intervention.*

According to Louis Freeh at his press conference, “We never had the opportunity to talk with Mr. Paterno, but he did say what he told McQueary on February 10, 2011 when McQueary reported what he saw Sandusky doing in the shower the night before. ‘You did what you had to do. It is now my job to figure out what we want to do.’ What was to figure out here?”

All the evidence and McQueary’s own testimony indicates that Paterno did not know that McQueary believed he saw Sandusky having sex with the boy. McQueary’s implications were not direct enough to convey to Paterno that the boy was being sexually victimized. And, the above quoted statement by Paterno<sup>158</sup> was further illuminated in his interview with Posnanski in which he stated, “I told [McQueary] that he did the right thing bringing it to me, and that now it was my job to get him together with the right people for him to report it.”<sup>159</sup> What Paterno had to figure out was who were the right people to report to. So, in Paterno’s own words, “I didn’t know what to do. I had not seen anything. Jerry didn’t work for me anymore. I didn’t have anything to do with him. I tried to look through the Penn State Guidelines to see what I was supposed to do. It said that I was supposed to call Tim [Curley]. So I called him.”<sup>160</sup> The record speaks for itself here.

3.) *The SIC claims that it was not making legal conclusions. At his press conference, Louis Freeh was asked “could it be construed as obstruction of justice, conspiracy, aiding or abetting, or a cover-up?” Freeh replied, “Those are all legal conclusions, which I’m not prepared to make. The evidence clearly shows in our view an active agreement to conceal, and I*

---

<sup>158</sup> See *supra* Part IV.B.4. As stated earlier, Paterno gave three different accounts of what he told McQueary and the SIC chose the quote that put Paterno’s actions in the worst light.

<sup>159</sup> Posnanski at 272.

<sup>160</sup> *Id.*

*think it would be up to a grand jury and a law enforcement officer to make decisions whether it meets the elements of criminal offenses.”*<sup>161</sup>

In fact, Freeh did make a number of unsubstantiated legal conclusions. Freeh stated “[t]he evidence clearly shows” that Paterno “repeatedly concealed critical facts relating to Sandusky’s child abuse from authorities,” Paterno was an “integral part of this active decision to conceal,” and, consequently, Paterno “empowered Sandusky” and “failed to protect against a child sexual predator harming children for over a decade.” The definition of a conspiracy is an agreement between two or more persons to commit a crime. And knowingly conspiring to conceal evidence of the sexual victimization of a child is a crime. While Freeh never used the word “conspiracy,” he nonetheless enunciated the elements of a criminal conspiracy.<sup>162</sup>

Although, Curley, Schultz, and later Spanier, were all charged with crimes, Paterno was not. However, the SIC report lumps all four of these men, and their actions and inactions, together effectively accusing Paterno of committing a crime.

4.) *The SIC notes, “Before May 1998, several staff members and football coaches regularly observed Sandusky showering with young boys in the Lasch Building (now the East Area Locker Building or “Old Lasch”). None of the individuals interviewed notified their superiors of this behavior.”*<sup>163</sup>

As stated in the SIC report, none of the staff members who observed Sandusky showering with boys informed Paterno, therefore, it is wrong for the SIC to attempt to hold Paterno responsible for the actions and inactions of others.<sup>164</sup> However, even if Paterno had known about this practice, adult coaches showering with boys after sporting or exercise activity is not wrong unless there are nefarious or sexual intentions. This happens every day across the United States and around the world in gyms, locker rooms, and YMCA’s. In fact, Paterno’s own son showered with Sandusky and other coaches on many occasions.<sup>165</sup>

5.) *According to the SIC, “On May 5, 1998, Schultz’s notes about the incident state: “Is this opening of pandora’s box? Other children?”*<sup>166</sup>

These are valid questions that were officially answered by the closing of the investigation with a finding of no sexual intent and no criminal behavior. However, there is no evidence Paterno was ever aware of these notes.

---

<sup>161</sup> Louis Freeh, press conference, July 12, 2012.

<sup>162</sup> Additionally, by alleging that all four men were responsible for the actions of each individual, Freeh was relying on the legal principles of conspiracy. Once any person involved in a conspiracy commits an overt act in furtherance of a conspiracy then all of the co-conspirators are responsible for all actions committed in furtherance of that conspiracy.

<sup>163</sup> SIC report at 39, 40.

<sup>164</sup> As head coach, Paterno had a shower in his office. However, Paterno rarely used the shower and instead showered at home. He therefore did not shower with the other coaches and athletes. Interview with Paterno family member on Jan. 4, 2013.

<sup>165</sup> Interview with Paterno family member on Jan. 4, 2013.

<sup>166</sup> SIC report at 20, 39, 48.

6.) According to the SIC, “On June 9, 1998, Schultz emails Spanier and Curley: ‘I think the matter has been appropriately investigated and I hope it is now behind us.’”<sup>167</sup> The SIC italicized that last clause for emphasis.

Of course Schultz would be relieved that the matter was investigated and resolved with a finding that there was no sexual victimization. However, by italicizing the phrase for emphasis, the SIC report attempts to superimpose nefarious intent on this communication when the evidence about 1998 proves the opposite.

7.) According to the SIC, the “Detective recalled interviewing Sandusky in the Lasch Building so as not to put him ‘on the defensive.’ The detective advised Sandusky not to shower with any child and Sandusky said he ‘wouldn’t.’”<sup>168</sup>

This is a common investigative practice, especially in child sexual victimization cases. In fact, this is how the FBI teaches CSV investigators to maximize the chances of gaining cooperation. The fact that the SIC report even mentions it in this light demonstrates a misunderstanding of child sexual victimization cases and how they are investigated. The more relaxed and non-confrontational the law enforcement officers are when interviewing suspected child sex offenders, the more they increase their chances of obtaining a confession. This is because child sex offenders expect to be vilified by law enforcement. When they are treated with dignity and respect and encouraged to relax, it undermines their expectations, builds a bond of rapport, and it creates an environment that is more prone to honest disclosures.

Additionally, as discussed above, the fact that the detective advised Sandusky not to shower with any child is an appropriate response to a finding that he had boundary issues related to showering with boys and horsing around with them. Such an admonition holds far greater weight than that of the head coach, especially since it relates to children on and off campus.

8.) According to the SIC, “Despite their knowledge of the criminal investigation of Sandusky, Spanier, Schultz, Paterno and Curley took no action to limit Sandusky’s access to Penn State facilities or took [sic] any measures to protect children on their campuses.”<sup>169</sup>

This is an absurd statement in light of the circumstances. These men are not clairvoyant. The information received from the trained childcare worker, detective, and prosecutor was that there was no sexual intent, and no crimes committed.<sup>170</sup> Instead, there were indicators of boundary issues. Taken in the context of a well-respected member of the community who was highly thought of and praised for his work with youth, this is not the factual profile the general public would expect to pose a threat to children. This suggestion by the SIC implies that all people exonerated during the course of a criminal investigation should be treated as if they had been convicted. It is wrong to accuse these men of doing nothing to protect children from a man who was just exonerated.

---

<sup>167</sup> *Id.* at 39, 50.

<sup>168</sup> *Id.* at 20, 39, 46.

<sup>169</sup> *Id.* at 39.

<sup>170</sup> *See id.* at 46-50, Ex. 2D, Ex. 2E.

They were not told, for example, that the investigation against Sandusky uncovered evidence that he was victimizing children but they did not have enough to prosecute. They were told, instead, that there was no sexual intent. And at worst, they may have been told that Sandusky may have boundary issues. Therefore, the proper action to take was to have the police admonish Sandusky not to cross those boundaries again by showering with any child in the future. That would include children on or off the Penn State campus.

9.) *According to the SIC, “At the very least, Mr. Paterno could have alerted the entire football staff in order to prevent Sandusky from bringing another child into the Lasch Building.”*<sup>171</sup>

This is a baseless suggestion. Paterno would have made himself vulnerable to a defamation lawsuit or other action if he had spread rumors about Sandusky after he was cleared of wrongdoing in this matter. Those at Penn State who knew about the 1998 investigation would have had no reason to suspect that this was not an isolated incident that would never be repeated because Sandusky had been admonished not to shower again with any child by the UPD.

10.) *The SIC notes, “Paterno told a reporter that ‘I didn’t know exactly how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It didn’t work out that way.’”*<sup>172</sup>

Paterno’s fear of breaking even University rules should be more reasonably taken as an indication of his integrity, not as an indication that he was afraid of bad publicity. In fact, no evidence recounted by the SIC Report indicates that Paterno even mentioned bad publicity or a fear of the effects thereof.

11.) *According to the SIC, Paterno’s “failure to protect the February 9, 2001 child victim or make attempts to identify him, created a dangerous situation for other unknown, unsuspecting young boys who were lured to the Penn State campus and football games by Sandusky and victimized repeatedly by him.”*<sup>173</sup>

Paterno had no way of knowing that Sandusky had any victims. Sandusky had been cleared in 1998 and he did not know McQueary was trying to tell him that he thought Sandusky was actually having sex with the boy in the shower in 2001. Paterno told his biographer, “I wouldn’t know how to investigate something like this. I don’t know anything about it. [Jerry] didn’t work for me. I had a meeting with Tim and Gary [Schultz] might have been there, and I told them what Mike had told me. And they said they would get to the bottom of it. I trusted Tim would take care of it. He’s a good administrator. He had negotiated the retirement deal with Jerry, and he was still in contact with Jerry. Tim’s a good person. I expected him to handle it right.”<sup>174</sup>

---

<sup>171</sup> Louis Freeh, press conference, July 12, 2012.

<sup>172</sup> SIC report 16, 77-78 (quoting Sally Jenkins, *Paterno’s Last Interview*, Wash. Post, Jan. 14, 2012).

<sup>173</sup> Louis Freeh, press conference, July 12, 2012.

<sup>174</sup> Posnanski at 273.

Additionally, with respect to making attempts at identifying the victim in 2001, the plans that Curley may have talked over with Paterno included notifying the chair of The Second Mile. Paterno had known and worked with Sandusky for over 30 years by this time and he was well aware that Sandusky often brought The Second Mile children to Penn State and elsewhere. Had Paterno been told any details of Curley's plans, Paterno would have had every reason to believe that by informing The Second Mile of what Sandusky was seen doing with a boy in the shower, The Second Mile would easily be able to identify that child and investigate what if anything happened to him that day. To say that he did nothing to identify that child or protect him or other boys from victimization is simply inaccurate.

12.) *According to the SIC, "The law enforcement officers did not question Sandusky at this time. Had the officers been better trained in the investigation of child sexual abuse they would have interrogated Sandusky directly after his confrontation with the boy's mother. A timely interview with Sandusky may have elicited candid responses such as the identification of other victims."*<sup>175</sup>

The officers may have been trying to protect their investigative source (the mother) and their investigative method (consensually monitoring the conversations) from Sandusky. They may very well have promised the mother that they would not let Sandusky know that she was cooperating with the investigation. We really shouldn't be "Monday morning quarterbacking" here. Even if this statement were true, none of this has anything to do with Paterno or Penn State administrators. In fact, Paterno had absolutely no child sex crimes investigative training, or even child sex crimes awareness training. If objective, trained investigators and child welfare workers misevaluated this situation, then it is even more likely that Paterno did as well, especially when he personally knew Sandusky and his only conceivable source of information about the incident, if he received any information at all, was from those very professionals.

13.) *According to the SIC, "Sometime between May 27, 1998 and June 1, 1998, the local District Attorney declined to prosecute Sandusky for his actions with the boy in the shower in the Lasch Building on May 3, 1998. A senior administrator of a local victim resource center familiar with the 1998 incident said the case against Sandusky was 'severely hampered' by Seasock's report."*<sup>176</sup>

Though Seasock's report may have been filled with misconceptions, mischaracterizations, and erroneous conclusions, nevertheless, it was the report that the DPW, UPD, and the DA based their decision on to close the 1998 investigation.

14.) *According to the SIC, "Schreffler also noted that no referral of the Sandusky incident was made to the Penn State Office of Human Resources ("OHR"). Schreffler said such referrals routinely were made in other cases. A senior OHR official recalled no report of the Sandusky incident in 1998, and the OHR files contained no such report. The official thought the Sandusky case was so 'sensitive' that it was handled by Schultz alone. The official said no*

---

<sup>175</sup> SIC report at 45-46.

<sup>176</sup> *Id.* at 46.

written policy required OHR to be notified by the campus police of incidents involving employees, but it was ‘very rare’ for OHR not to be notified.”<sup>177</sup>

When allegations of this nature are made against a “pillar of the community” and are determined to be unfounded, then it is in fact proper to contain the information and treat it as “sensitive,” because of the grave damage that it can do to the reputation and profession of an innocent person. Had the allegations been substantiated, however, then notifications and warnings would have been necessary and proper.

15.) *The SIC includes a passing footnote stating, “Penn State officials were familiar with the issues of liability that could arise from Sandusky bringing minors to the Lasch Building. For example, notes maintained by Paterno reflect that Sandusky proposed several continuing connections with Penn State when he retired in 1999. Among these connections was that he would have continuing ‘[a]ccess to training and workout facilities.’ A handwritten note on this proposal reads: ‘Is this for personal use or 2nd Mile kids. No to 2nd Mile. Liability problems.’”*<sup>178</sup>

While it is clear from this notation that Paterno appropriately considered potential “liability problems” associated with Sandusky bringing The Second Mile kids into training and workout facilities at the university, there is absolutely no evidence to indicate that this concern had anything to do with potential sexual victimization. This reference related to benign general liability regarding use of school facilities for non-school purposes. This is a basic tenant of insurance coverage law. It is a reasonable concern that the school would be outside its standard coverage for any instance in which The Second Mile children were brought on campus.

16.) *The SIC notes that “In the Fall of 2000, a University janitor observed Sandusky sexually assault a young boy in the East Area Locker Building and advised co-workers of what he saw. Also that evening, another janitor saw two pairs of feet in the same shower, and then saw Sandusky and a young boy leaving the locker room holding hands. Fearing that they would be fired for disclosing what they saw, neither janitor reported the incidents to University officials, law enforcement or child protection authorities.”*<sup>179</sup>

The SIC ignores that the janitor who witnessed this sexual assault was a part-time, temporary employee.<sup>180</sup> How is it that this person who was not even a full-time employee of the university is in a position to characterize the culture at the university? Again, the SIC report fails to point out that the janitor made a grave miscalculation. In fact, he would have not have been fired if he reported Sandusky or rescued the child he actually witnessed being sodomized. This is proven by the fact that McQueary reported what he saw and remained on staff and later was even promoted.

17.) *The SIC notes that “On Sunday, February 11, 2001, Schultz reached out to then University outside legal counsel Wendell Courtney to discuss the ‘reporting of suspected child*

---

<sup>177</sup> *Id.* at 49.

<sup>178</sup> *Id.* at 51, note m.

<sup>179</sup> *Id.* at 62.

<sup>180</sup> Sandusky trial transcript, June 13, 2012, at 201, 224.

*abuse.’ Courtney conducted legal research on this issue and had another conference with Schultz about it that day.”*<sup>181</sup>

Paterno was not a party to this conversation. Though Wendell Courtney categorized his consultation with Schultz as related to the “reporting of suspected child abuse,” he followed it up with research and apparently reported the results of that research to Schultz.<sup>182</sup> According to Spanier, though Courtney did not remember the content of this conversation in 2012, Courtney was certain that what Schultz told him about the incident did not amount to a reportable event. This is because if it had been, then Courtney would have insisted that the event be reported and he would have noted his file accordingly.<sup>183</sup> Also, there is no evidence that Paterno knew about this conversation at the time or was ever informed of it later.

18.) *The SIC draws the following conclusion about a note written by Schultz in February 2001. “The note states that Schultz and Curley ‘[a]greed [Curley] will discuss w JVP [Paterno] & advise we think [Curley] should meet w JS [Sandusky] on Friday. Unless he confesses to having a problem, [Curley] will indicate we need to have DPW [Department of Public Welfare] review the matter as an independent agency concerned w child welfare.’ Without ever speaking to McQueary, Schultz and Curley had already decided that not reporting Sandusky’s conduct to authorities may be an option.”*<sup>184</sup>

This extreme interpretation of the note ignores the content and context of the note itself. It is yet another example of the SIC taking the most negative and “conspiratorial” interpretation in order to substantiate a case that is based on conjecture and innuendo.<sup>185</sup> In fact, this note actually shows that despite Schultz being counseled by attorney Courtney that the incident did not amount to a reportable event, these men still considered reporting to DPW under certain conditions even before they talked to McQueary.

19.) *According to the SIC, “There is no information indicating that Spanier, Schultz, Paterno or Curley made any effort to identify the child victim or determine if he had been harmed.”*<sup>186</sup>

As an expert in child sexual victimization, I disagree that Paterno and others did not make any effort to identify the child victim in 2001 or determine if he had been harmed. All of the options they discussed, and the actions Curley in fact carried out, included reporting the incident to The Second Mile.<sup>187</sup> The Second Mile was the highest probability source of information on the

---

<sup>181</sup> SIC report at 62.

<sup>182</sup> *Id.* at Ex. 5A.

<sup>183</sup> Although Spanier made this statement to the SIC during its interview of him in July 2012, the SIC did not include this illuminating and exculpatory information in this section of its report. However, the SIC did use the notation in Courtney’s notes to imply that Schultz suspected that Sandusky’s behavior amounted to “suspected child abuse.”

<sup>184</sup> *Id.* at 63.

<sup>185</sup> For analysis see *supra* Part IV.C.

<sup>186</sup> SIC report at 63.

<sup>187</sup> See *supra* Part IV.C.2 for an explanation for why it is likely that informing The Second Mile may have been at the urging of Paterno.

child that Sandusky had with him in the shower that day. The then CEO of The Second Mile is a licensed psychologist who is a mandated reporter. Paterno would have no reason to believe that The Second Mile would not follow through on the report from Curley, and it would be reasonable for Paterno to believe that The Second Mile would be in the best position to determine who the child was and whether he had been harmed in any way. If the chair of The Second Mile did nothing to follow up on the same information provided to Paterno, then surely Paterno was justified in doing what he did.

20.) *According to the SIC report, “On March 5, 2001, Curley met with Sandusky and told him: we are ‘uncomfortable’ with this information about the incident, that he was going to report the incident to the Executive Director of the Second Mile; and that Sandusky was not to be in athletic facilities with any young people. According to Sandusky’s counsel, Curley never accused Sandusky of abusing children or used the words “sex” or “intercourse” during the discussion.<sup>188</sup> Furthermore, according to the SIC, “Advising Sandusky that the February 9, 2001 assault in the Lasch Building had been reported exposed the victim to additional harm because only Sandusky knew his identity.”<sup>189</sup>*

Actually, informing Sandusky that his activity with the boy in the shower had been reported to The Second Mile likely significantly reduced the chances that Sandusky would do anything else with that child. It also likely reduced the chances of Sandusky doing anything in the Lasch building with other children. This is because Sandusky was now on notice that what McQueary had seen had been reported. Remember, Sandusky was the only adult who actually knew exactly what he had done to the child in the shower. Curley would have had no basis for using the words “sex” or “intercourse” with Sandusky because McQueary never used those words when he reported the incident to him.

Moreover, in the course of the 1998 investigation, the University Police informed Sandusky that his actions had been reported and admonished him not to shower with any child again. Informing a person that an allegation has been made against them and attempting to elicit a confession from that person is a well-established and effective interrogation technique that is employed by law enforcement around the world. It has the additional benefit of putting the suspect on notice that people are watching him and are suspicious about his behavior. Also, warning Sandusky not to bring any young people into the athletic facilities should reasonably curtail his use of those facilities to molest children because it increased the probability that he’d be caught if he did.

Additionally, Sandusky was not the only person who knew the identity of the child in the shower. The Second Mile was also in a position to know or determine the child’s identity and investigate whether any sexual victimization occurred as well. Sandusky would not have been able to hide the identity of the child from The Second Mile had they investigated the matter.<sup>190</sup>

---

<sup>188</sup> SIC report at 64.

<sup>189</sup> *Id.* at 63, 76.

<sup>190</sup> It is unknown whether The Second Mile did anything to determine the identity of the child or the nature of Sandusky’s contact with him. However, what is certain is that The Second Mile had a duty of care with regard to that child and should have investigated the matter.



21.) *The SIC report accepts without proffering any evidence at all, Janitor B's word that "reporting the incident 'would have been like going against the President of the United States in my eyes.' 'I know Paterno has so much power, if he wanted to get rid of someone, I would have been gone.' He explained 'football runs this University,' and said the University would have closed ranks to protect the football program at all costs."*<sup>191</sup>

The SIC report uses this unsubstantiated statement to prove the football culture ruled at Penn State and he couldn't report what he saw because they would all be fired. The fact that this is not the case was proven when McQueary, who was only a graduate assistant at the time, reported an incident to the head football coach, the athletic director, and a vice president of the university. That report also went all the way up to the President of the school. Despite all of these people being informed of McQueary's report, not only was his job not affected negatively, he was promoted a few years later to assistant coach based on merit and unrelated to the 2001 incident.

22.) *According to the SIC, "The Second Mile executive director informed two Second Mile Trustees about the incident involving Sandusky and they concluded it was a non-incident for Second Mile and there was no need for further action."*<sup>192</sup>

Again, The Second Mile executive director is a trained psychologist, heading up a foster care organization, educated in matters of child sexual victimization, who is a mandated reporter, and he determined that Sandusky's behavior was a non-incident, not reportable, and obviously not criminal. The standard of care that this childcare professional is held to is much greater than that of Paterno in these kinds of matters. Why did the SIC not consider how this determination and inaction on the part of The Second Mile and its board would have influenced the way in which Penn State officials, and possibly Paterno, would have viewed the incident? When professionals who are trained and burdened with the responsibility to investigate and protect children from victimization do not see a problem, it is wrong for the SIC to blame people in the general public for not seeing it as well.

23.) *The SIC report claims that "Paterno [was] obligated to report the 2001 Sandusky incident to the University Policy Department for inclusion in Clery Act statistics and for determining whether a timely warning should be issued to the University Community."*<sup>193</sup>

In reaching this conclusion, the SIC report misstates the Clery Act and misapplies it to Paterno. Under the Clery Act, colleges and universities are required to disclose the number of criminal offenses on campus that are reported each year.<sup>194</sup> Recognizing that not all crimes are

---

<sup>191</sup> *Id.* at 65.

<sup>192</sup> *Id.* at 64.

<sup>193</sup> *Id.* at 110.

<sup>194</sup> The Clery Act is codified at 20 U.S.C. § 1092 and the related regulations are found primarily at 34 C.F.R. § 668.46. The main goal of the Clery Act was to ensure that when selecting an institutional of higher education ("IHE"), current and prospective students, as well as their parents, would be able to obtain accurate "official" statistics about how much crime had occurred on a campus. This in turn would pressure IHEs to take student safety more seriously because they would be at a competitive disadvantage when attracting students if they did not take such steps. Bonnie S. Fischer, et al., *Making Campuses Safer For Students: The Clery Act as a Symbolic Legal Reform*, 32 Stetson L. Rev. 61, 63-64 (2002).

reported to campus police, the Clery Act created a category of persons called campus security authorities (CSAs). The function of the CSA is to pass the report on to the official or office designated by the university to collect crime report information. The university is then responsible for including the report as a statistic in its annual security report to the U.S. Department of Education.

Even though the Clery Act creates a category of school employees called campus security authorities, the Clery Act does not place any affirmative requirements on these individuals. Nor does the Clery Act contemplate any sort of penalty for CSAs who do not make a report.<sup>195</sup> Instead, the Clery Act places an affirmative requirement on the institution to disclose the reports received from its CSAs.<sup>196</sup> It is up to the institution to designate who is a CSA and craft internal university policy for collecting crime reports from its CSAs.<sup>197</sup> The SIC report ignores this basic fact that the Clery Act created no obligation for Paterno.

In 2001, Penn State had not even implemented the Clery Act. In fact, as of November 2011, the university's Clery Act policy was still in draft form.<sup>198</sup> Moreover, prior to 2007, the Penn State official charged with Clery Act compliance was unaware that the Clery Act included the concept of CSAs.<sup>199</sup> Therefore, in 2001, Joe Paterno along with the rest of the Penn State community, had received zero guidance from his employer that the university may want to treat him as a CSA and what that would entail.

Nonetheless, to persuade the reader that Paterno qualified as CSA, the SIC cites to the Clery Act Handbook — guidance drafted by the U.S. Department of Education.<sup>200</sup> The SIC is correct that on page 75 of the current Handbook a “team coach” is listed as an example of an individual who meets the criteria for being a campus security authority.<sup>201</sup> The SIC acknowledges in a footnote that it is citing to the 2011 Handbook but explains that “the Department of Education has had similar guidance in place setting forth its interpretation of Campus Security Authorities since at least 1999.”<sup>202</sup> The most likely reason the SIC wrote “similar guidance” is because in 1999 the Department of Education had not published a

---

<sup>195</sup> See 20 U.S.C. § 1092(f)(13). Furthermore, the Clery Act also places strict limits on its enforcement and reach. According to the statute, it may not be construed to “(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or (ii) establish any standard of care.” 20 U.S.C. § 1092(f)(14).

<sup>196</sup> Penn State, as an institution, may have had an obligation under the Act to include any reports regarding Sandusky in its statistical disclosures pursuant to the Clery Act. However, Joe Paterno, as an individual, did not have such an obligation.

<sup>197</sup> According to the Department of Education, “official responsibilities and job titles vary significantly on campuses, a list of specific titles is not provided in the regulations. To determine specifically which individuals or organizations are campus security authorities for your institution, consider the function of that individual or office.” U.S. Department of Education, Office of Postsecondary Education, *The Handbook for Campus Crime Reporting*, Washington, DC, at 75 (“Clery Act Handbook”); See also 34 C.F.R. § 668.46(c)(2).

<sup>198</sup> SIC report at 116.

<sup>199</sup> *Id.* at 115.

<sup>200</sup> Clery Act Handbook at xi.

<sup>201</sup> *Id.* at 75.

<sup>202</sup> SIC report at 113, note rr.

Handbook (the first Handbook was published in 2005<sup>203</sup>) and the U.S. Code Federal Regulations did not — and still does not — indicate that a “team coach” qualified as CSA. In fact, under the Act, institutions are not obligated to designate their “team coaches” CSAs.<sup>204</sup>

After misstating the Clery Act and mischaracterizing the Clery Act guidance, or lack thereof in 2001, the SIC proceeds to find fault with Paterno. First, the SIC acknowledges that Paterno “did report the [2001] incident to Schultz who, as SVP-FB, was ultimately in charge of the University Police Department.”<sup>205</sup> However, the SIC concludes that “Schultz was not a law enforcement officer and was not the person designated to receive Clery Crime reports or collect Clery Crime statistics for the University.”<sup>206</sup> In support of this claim, the SIC included this footnote: The Clery Act regulations “require[] the University to include in its ASR [annual security report] a statement setting forth to whom individuals should report crimes. The University’s ASR for 2001 did not contain any such statement; however, it generally states that the police department investigates crimes.”<sup>207</sup> In other words, the SIC report finds fault with Paterno where no Clery Act guidance existed and where the university had not even designated him as a CSA. Despite the fact that Paterno was not required to report the incident to anyone under the Clery Act, Paterno nonetheless reported what he learned to the vice president of the university who oversaw the police department.

In sum, the SIC report is wrong about the Clery Act in two ways. First, the SIC report incorrectly states the law. Second, even if the SIC report’s statement of the law were correct, Paterno fulfilled the requirements and spirit of the Clery Act. In fact, in the face of the university’s failure to comply with the Clery Act and giving Paterno zero internal guidance, Paterno did exactly what he should have done under the Clery Act.

## VII. Conclusions

1.) This case is a textbook example of how people in the general public misinterpret the behavior of real world acquaintance child sex offenders. The sad truth is that people do not recognize the “grooming” behavior of “nice-guy” acquaintance offenders when they know or are close to that person. They also don’t talk about the topic of acquaintance child sex offenders except to show extreme outrage when such an offender is discovered among them. They then tend to demonize that offender, calling him evil and therefore imbuing him, nominally, with supernatural powers that elevate him to the level of an insurmountable adversary who displays disturbing and recognizable features. Unfortunately, this image creates a huge obstacle to

---

<sup>203</sup> On page 50 of the 2005 Clery Act Handbook it states, “For example, a dean of students who oversees student housing, a student center or student extracurricular activities has significant responsibility for student and campus activities. Similarly, a director of athletics, a team coach and a faculty advisor to a student group also have significant responsibility for these activities.”

<sup>204</sup> In addition to the fact that “team coach” is not listed in the Act or the regulations, according to the U.S. Department of Education’s Helpdesk for Campus Safety and Security for Clery Compliance, universities are not obligated to make “team coaches” into CSAs.

<sup>205</sup> SIC report at 118.

<sup>206</sup> *Id.* at 118.

<sup>207</sup> *Id.* at 118, note aaa.

identifying actual acquaintance offenders.<sup>208</sup> Other observers in the general public who read media accounts of these cases are misguided by these mischaracterizations. In the end, they do a great disservice to victims. Children hear these things and become fearful of monsters but never see the “nice-guy” offender who treats them special as he grooms them for sexual victimization.

2.) Because people are on the lookout for monsters, predators, perverts, and despicable human beings, they therefore do not recognize the actual “nice-guy” offenders who are standing right in front of them. This is why Paterno said, “If what they’re saying about [Sandusky] is true.”<sup>209</sup> Like so many who knew Sandusky, it was still hard for Paterno to believe that Sandusky had actually committed a host of sex crimes against boys. Hopefully, the Sandusky scandal and trial has started the process of teaching the world that seemingly good, affable, charismatic, hard working, loving, caring, “normal,” professional people, can actually be child sex offenders at the very same time. Thankfully, most of them are not, but some are and we each have a responsibility to be vigilant in weeding them out.

3.) Given my 30 years of education, training and experience working, evaluating and assessing child sex crimes investigations around the world, it is my expert opinion that Paterno did not know, or even believe in the possibility, that Sandusky was capable of sexually assaulting boys. At worst, he believed that Sandusky was a touchy-feely guy who had boundary issues. This fact is clear from his repeated statements before he died. He did what he believed was reasonable and necessary to address the situation based on his understanding of the facts, and his position at the time. Paterno did what most people who cared about children would have done in the same situation. More than a decade later, and in hindsight, Paterno showed his concern for the victims when he stated he, “wished [he] had done more.” He also said, “If this is true we were all fooled, along with scores of professionals trained in such things, and we grieve for the victims and their families. They are in our prayers.”<sup>210</sup>

4.) In the end, it was the perfect storm of events that created the circumstances under which Paterno reasonably failed to recognize the severity of what McQueary was trying to suggest to him and consequently did not do more to address the issue. McQueary was overwhelmed with confusion and disbelief at what he briefly witnessed in the shower in 2001 and did not effectively communicate what he saw to Paterno. McQueary knew nothing about “nice-guy” acquaintance offenders, so he was completely thrown-off by what he saw Sandusky doing to that boy. And he knew nothing of “compliant victimization,” and therefore was further confused by the counter-intuitive way in which the boy acted when they made eye contact during the incident. Consequently, McQueary didn’t know what to do at first. He then went to his father and Dr. Dranov for advice and was directed to inform Paterno. Unfortunately, McQueary failed to use graphic sexual terms with Paterno, whom he looked up to and respected. Instead,

---

<sup>208</sup> One of the best indicators of the continuing lack of understanding of the nature of “pedophilia” is that the media and society still view as a contradiction the fact that someone could be a caring, dedicated teacher (e.g., clergy member, coach, doctor, children’s volunteer) and sexually victimize a child in his care. The vast majority of dedicated schoolteachers are not pedophiles, but many pedophiles who become schoolteachers are dedicated teachers. Lanning at 37.

<sup>209</sup> Posnanski at 273-74.

<sup>210</sup> Paterno family press release, November 6, 2011.

McQueary gave a watered-down version with implied sexual behavior to Paterno who reasonably inferred borderline/non-sexual behavior from McQueary's words.

5.) Paterno, like everyone else who knew Sandusky, simply fell victim to effective "grooming." As an expert behavioral analyst and based on my review of the evidence, Paterno did not believe that the information he received from McQueary amounted to Sandusky being a predatory child sex offender.

6.) There is no evidence to support the conclusion that Paterno engaged in "an active agreement to conceal." As this report demonstrates, Paterno learned so little from McQueary there was nothing for him to conceal. Nonetheless, if we accept the erroneous conclusion that Paterno had something to conceal, the SIC misinterprets a critical email<sup>211</sup> to which Paterno was not even a party. Quite simply, the SIC misread the email, ignored its context and content, ignored an earlier critically important document,<sup>212</sup> and reached what it deemed a "reasonable" conclusion. In that process, the SIC erred in its findings and failed to reach a more reasonable conclusion grounded in fact and informed by decades of child sex crimes research and case work.

7.) It is clear from the evidence that Paterno never made any attempt to hide any information, hinder or impede any investigation, silence any witnesses, or limit the number of people to whom McQueary reported the incident. It is also clear that there is absolutely no evidence presented by the SIC that Paterno ever expressed any fear of or aversion to bad publicity or the effects thereof.

8.) The fact that Sandusky molested a number of boys over the course of several decades has nothing to do with Penn State football or Joe Paterno. It could have happened under any head coach, of any sport, in any school or university. If the public continues to convince itself of that misperception, then they are unwittingly enabling other "nice-guy" offenders who are out there right now. In doing so, they will cancel out everything learned about acquaintance child sexual victimization during the past several decades. They will not get us closer to understanding these cases and preventing or limiting them in the future. And we, as a society, are doomed to seeing this happen over and over again, at other schools and in other settings. Unfortunately, this is the mistake that the SIC report made. There is no other way to say it: on the most critical aspects of the Sandusky investigation, the SIC report is a failure. It does a tremendous disservice to Penn State, Joe Paterno, and the victims of Jerry Sandusky.

9.) Indeed, it is time we stop letting child sex offenders get away with their crimes right under our noses by blaming their ability to hide their activities on things like the culture of college football. The blame should be shared by all who refuse to speak openly about child sexual victimization and on our ignorance of the ways offenders actually disguise their offending behavior. We must have a dialogue on what "nice-guy" offenders look and act like, and the counter-intuitive ways in which real victims respond to "grooming" and sexual victimization. This is especially true for male children who are victimized by male offenders. They simply do not want to talk about it. Most of them want it to stop but do not know how to accomplish that

---

<sup>211</sup> SIC report at Ex. 5G.

<sup>212</sup> *Id.* at Ex. 5C.

without stopping the benefits they are receiving through grooming, or without hurting the offender's feelings, or they feel trapped by the circumstances and don't know how to extricate themselves from the relationship into which they have been manipulated. Blaming football and Joe Paterno has not gotten us any closer to protecting children from "nice-guy" acquaintance offenders.

## **VIII. Recommendations**

### **A. What the Freeh Group and SIC Report Should Have Done**

In my opinion, the SIC investigators should have taken into account the fact that charges were never brought against Paterno. This was for good reason: he cooperated fully with the investigation and did not commit any crimes. The SIC should have withheld final conclusions until the evidence against Curley, Schultz, and Spanier was presented and examined regarding perjury and concealment of information to determine its accuracy and credibility. The SIC should have refrained from speculation until the attorney general's office lifted the restrictions on interviewing critical witnesses and suspects in the Sandusky, Curley, Schultz, and Spanier investigations. In short, the SIC report was a rush to judgment.

They should have interviewed Sandusky's victims, his foster and adoptive children, and his wife. They should have admitted on the record that, although they have theories about concealing information and questions about why more was not done, they did not find any actual evidence of an agreement to conceal between Curley, Schultz, Spanier, and Paterno. And they should have admitted that, even if they did find that a conspiracy existed between Curley, Schultz, and/or Spanier, they did not find any evidence to tie Paterno into that agreement. They should have refrained from speculating and accusing a man who should have been presumed innocent until proven otherwise. Although the SIC states that their conclusions are "reasonable," this is not a legitimate legal standard and would therefore hold no weight in a court of law and should hold little weight in the court of public opinion. Finally, and most importantly, the SIC should have taken into consideration the unusual dynamics of acquaintance child sexual victimization crimes, grooming, and compliant victimization in order to better understand the actions and inactions of all the people involved, including Joe Paterno's reasonable response to the limited information he was given.

### **B. A Way Forward**

#### **1. Next steps**

A thorough and complete criminal investigation should be undertaken into the child sexual victimization crimes committed by Jerry Sandusky. Though the statute of limitations has most likely lapsed on any crimes he committed long ago, in order to get a complete picture of Sandusky's offenses against children, this investigation should go back as far as Sandusky's association with younger children that his parents cared for when Sandusky was a teen and young adult. Although many decades have passed since Sandusky was a teen, based on the behavioral typology of offenders like him, the potential for him to have victimized children since that time is very high. More importantly, the ramifications of such victimization could still be

affecting those victims today. They deserve to have the crimes they were subjected to investigated and resolved.

Additionally, a comprehensive and proactive investigation should be undertaken of The Second Mile and its administration. All former child participants in the program who had any private, one-on-one contact whatsoever with Sandusky should be interviewed by a forensic child interview specialist and/or evaluated by a forensic child psychologist and offered psychological counseling. All of Sandusky's former foster children should be interviewed to determine if any of them were witnesses or victims of grooming or sexual victimization by Sandusky. All of Sandusky's adopted children (male and female) should also be interviewed for the same reason. If not done already, Sandusky's computers should be searched for child pornography, child erotica, and other evidence as should his home and offices.

## 2. Lessons learned

When I first heard about the allegations against Sandusky and the six prior incidents that were reported about him (the "wrestling" in the weight room and the five shower incidents: Victim 6 and his friend, Janitor A, Janitor B, and Victim 2), I too jumped to the conclusion that Sandusky must have been protected because of his position at Penn State, or that McQueary must have been afraid to lose his job just like the janitors were. However, the facts simply do not support those conclusions.

When I actually read the SIC report, the attorney general's investigative reports, and the grand jury, preliminary hearing, and trial transcripts, it became clear to me that the people who witnessed these events largely did not communicate with each other. In fact, as is typical in such cases, people do not want to talk about such a distasteful topic at all. They steadfastly avoid these conversations and are then blindsided when news breaks about a sex offender in their midst. Had Mike McQueary, John McQueary, Dr. Dranov, Paterno, Curley, Schultz, Spanier, Janitor A, Janitor B, Joe Miller, the mother of Victim 6, Dottie Sandusky, Matt Sandusky, Detective Schreffler, caseworkers, psychologists, the head of The Second Mile, and CYS and DPW all talked to each other, a critical mass would have been reached that would have unearthed Sandusky's hidden crimes. But they largely kept the details of what they knew to themselves or to a small group of people. If it wasn't such a taboo topic, those people would have been much more likely to speak openly about what happened and Sandusky's crimes would have been uncovered earlier. We should learn from this example.

The lesson we also should learn from this case is that adults must push through the difficult barriers that prevent them from confronting and speaking about issues surrounding child sexual victimization, especially when it involves male offenders on male victims. The more we discuss the uncomfortable reality that male children are easily manipulated into compliant victimization through the use of effective grooming techniques employed by nice-guy acquaintance offenders, the less of a taboo topic it will be. And the more we will be able to prevent it. An example should be made of the mothers of Victims 1 and 6 as the heroes of the Sandusky case. These mothers recognized behavioral changes in their sons, found out what happened to them, and vehemently pursued the truth but were blocked at every turn. Yet they remained determined and vigilant and didn't give up their efforts to protect their sons. It is a shame that the system failed these mothers and their sons for so long.

It is a shame that once Victim 1 reported his victimization to the police, it took nearly three years to arrest Sandusky. It should be enough to get an offender arrested that he has victimized one child one time. But it is extremely difficult to prove such a case in our criminal justice system. So offenders like Sandusky are free to offend with relative impunity unless and until a number of credible victims come forward. Even when they do, they typically have issues. The very same issues that made them vulnerable to sexual victimization are the ones that can make them undesirable witnesses. Most prosecutors would prefer to only put victims on the stand who are “innocent angels.” However, most children who are victimized have behavioral problems, they may fall into substance abuse, they may get into trouble with the law, they may become sexually promiscuous, or they may become self-destructive in many other ways.

People should be made aware that most government child services agencies are set up to investigate and deal with child sexual abuse (intra-familial victimization) rather than acquaintance or stranger sexual victimization. These agencies are often underfunded and understaffed. They are bogged down with procedural roadblocks to effectively addressing offenders like Sandusky. If these agencies are going to more effectively prevent child sexual victimization, instead of just responding to it, then they must be given a broader mandate, bigger budgets, and greater manpower, training, and investigative powers.

For example, although the report of counselor Seasock regarding the 1998 Sandusky incident is methodical and thorough, it is filled with inaccurate, rigid, pigeonholed assumptions about the behavior of “pedophiles.” Though I understand his desire to go into a potential victim interview unbiased by the reports and conclusions of others, it is irresponsible to make any final conclusions in such a vacuum. He had a responsibility to gather information from all available sources and assess it before reaching his final conclusions in the case. He should have read the transcripts of the previous interviews of the alleged victim, the Chambers report, and other police reports to determine whether the child had been consistent in the allegations and whether additional information had been elicited during those interviews. His inept handling of the case and his erroneous conclusions about “pedophiles” in general, and Sandusky in particular, are a major reason why Sandusky was not discovered as a preferential child sex offender in 1998.

People should pay close attention to the perjury and conspiracy trial of Curley, Schultz, and Spanier. Scrutinize the information that is proven during this trial and see what the jury determines. If these men actively participated in an agreement to conceal the crimes of Sandusky, they should be punished. However, if they, like all the childcare professionals who dealt with Sandusky, and the people who worked and lived with him, were deceived by his effective grooming capabilities, then they should learn from their mistakes. Their experiences should educate the population about how easily offenders can get away with child sex crimes if we continue as a people to avoid the topic of discussion.

If you know of an adult who is friendly, kind and helpful, and who is spending an inordinate amount of time with children who are not his own, if that adult tends to be very physical and playful with children, if he describes himself as a child or childlike, if he frequently puts himself in positions where he is alone with children, taking them on trips, spending the night with them, having them change clothes, having them shower with him, spending time at night “tucking them in,” entering the bathroom while they are showering, telling them he loves them when he has just recently met them, lavishing them with attention, affection, gifts, access, and



adventures, then you know someone who is exhibiting some of the major red flags of potential child sexual victimization. Be advised, that if you look the other way, you are enabling him to potentially offend against children. If on the other hand, you confront him, question his behavior, put him on notice that you are watching him, and educate the parents and children around him, engage in a frank, age-appropriate dialogue with them, let them know that no matter what happens/happened you are there for them, notify child care professionals about your suspicions, and even notify law enforcement, then you are taking steps to stop and prevent child sexual victimization.

I have worked with an organization called Stop It Now!, which has championed adult responsibility and the need for adults to recognize early warning signs and take action immediately to protect children from sexual victimization. On its website, [www.stopitnow.org](http://www.stopitnow.org), helpful information can be found regarding warning signs and actions people can take to protect children from ongoing or potential sexual victimization.

Do you know an adult or older child who exhibits one or more of these red flag behaviors for child sexual victimization?

- Doesn't seem to understand what's acceptable when it comes to personal space.
- Makes others uncomfortable by ignoring social, emotional or physical boundaries or limits.
- Refuses to let a child set any of his or her own limits regarding boundaries or touch. Uses teasing or belittling language to keep a child from setting a limit.
- Insists on hugging, touching, kissing, tickling, wrestling with or holding a child whether or not the child wants this physical contact or attention.
- Frequently walks in on children/teens in the bathroom.
- Turns to a child for emotional or physical comfort by sharing personal or private information or activities, normally shared with adults.
- Has secret interactions with teens or children (e.g., games, sharing drugs, alcohol, or sexual material) or spends excessive time emailing, text messaging, writing to, or calling children or youth.
- Insists on or manages to frequently spend uninterrupted time alone with a child.
- Misses or ignores social cues about others' personal or sexual limits and boundaries.
- Often has a "special" child friend, maybe a different one from year to year.
- Spends most of his/her spare time with children and shows little interest in spending time with someone their own age.
- Encourages silence and secrets in children.

- Seems “too good to be true,” i.e., frequently baby sits different children for free; takes children on special outings alone; buys children gifts or gives them money for no apparent reason.
- Allows children or teens to consistently get away with inappropriate behaviors.
- Is overly interested in the sexuality of children or teens (e.g., talks repeatedly about the child’s developing body or interferes with normal teen dating).
- Frequently points out sexual images or tells dirty or suggestive jokes with children present.
- Exposes a child to adult sexual interactions or images without apparent concern.
- Links sexuality and aggression in language or behavior, e.g., sexualized threats or insults, like “whore” or “slut.”
- Makes fun of children’s body parts, describes children with sexual words like “stud” or “sexy” or talks about the sexual activities of children or teens.
- Masturbates so often that it gets in the way of important day-to-day activities.
- Has an interest in sexual fantasies involving children and seems unclear about what’s appropriate with children.
- Looks at child pornography or downloads/views internet pornography and is not willing to show whether children are involved.
- Asks adult partners to dress or act like a child or teen during sexual activity.
- Minimizes hurtful or harmful behaviors when confronted; denies harmfulness of actions or words despite a clear negative impact.

### 3. What the SIC report got right

The SIC report discovered notes, emails, and other records that had not been located by the attorney general’s investigators. These documents shed light on the response by Penn State’s administration to Sandusky shower incidents in 1998 and 2001. Without these records much of what happened would be left to conjecture.

The SIC report established a number of administrative policies and procedures that will go a long way toward correcting the problems at Penn State and hopefully become a benchmark for other universities and institutions across the country.

Also, the detailed description of events contained in the SIC report helped educate the public about how people in leadership positions too often are not equipped to deal with early warning signs, let alone allegations of possible or actually sexual victimization, and too often are

more concerned about not wrongfully accusing adults rather than taking protective action for children.

The SIC report makes clear that the bottom line is that all organizations that work with children and youth, even in a tangential or temporary way, need to put the safety of children above other concerns and must be willing to have the tough conversations, rules, training, and preventative procedures in place regarding boundaries that are needed to keep children safe.

Hopefully, the discussion started by the SIC report and my analysis will, in the end, act as a “tipping point” that results in institutional behavioral changes around understanding their responsibility to not only recognize and respond to red flag behaviors but also to educate themselves and all their employees in an effort to create an environment and culture of safety and accountability.

4. Best ways to prevent this from happening again
  - a) Education and dialogue

There should be resources dedicated to commission a panel of experts to compile a comprehensive Education & Prevention Manual to help ensure that the events that took place at The Second Mile and Penn State are never repeated again in any university, school, club, organization, team, or community center. This panel should be comprised of a multi-disciplinary team of experts from the various organizations that deal with child sexual victimization, and it should compile a manual of best practices for education and prevention of child sexual victimization.

- b) Create a national child sexual victimization umbrella organization

There should be resources dedicated to create a national umbrella organization that would coordinate the efforts of state, local, and community child sexual victimization organizations across the country. It should be a repository of information, education, model policies, model practices, prevention guidelines, best practices, education, training, and support for other organizations so that they are not reinventing the wheel each time a new offender is discovered. This national organization would benefit greatly from the world-renowned charitable fundraising efforts of the Penn State student body and generous alumni. This would allow the organization to fund grants to improve child sexual victimization education and prevention efforts across the country and around the world.

- c) Foster an environment of support and healing for victims

Helping the victims of Jerry Sandusky and their families overcome the negative effects of sexual victimization should be a priority for everyone at Penn State and the surrounding State College community. I strongly recommend the establishment of a support group for these individuals to help them through this process.

To conclude, the lesson from the Sandusky scandal is that we all can and must do more to help prevent child sexual victimization. By raising awareness of this insidious crime and bringing it out in the open, we will help prevent the abuse of countless thousands of children.

## **APPENDICES**

## APPENDIX 1

### QUALIFICATIONS

Retired FBI Supervisory Special Agent (SSA) James T. Clemente is an expert in the area of child sexual victimization formerly assigned to the FBI's Behavioral Analysis Unit (BAU) Crimes Against Children Section. The BAU is a component of the National Center for the Analysis of Violent Crime (NCAVC), which is the country's center for research and investigative knowledge regarding violent and sexual crimes. Clemente is one of only a handful of similarly qualified nationally recognized experts in the fields of child sexual victimization, child sex offender behavior, grooming, and child pornography. Clemente has testified as such in Federal, State, Military, criminal, and civil courts on these and related matters. Prior to the FBI, he earned his law degree and was a prosecutor for the City of New York.

Clemente had been a Special Agent with the FBI since 1987. He was promoted to the Behavioral Analysis Unit (BAU) in 1998 and retired out of that unit at the end of 2009. As a member of the BAU, Clemente consulted on child sexual victimization cases throughout the United States and around the world. Clemente's training has involved over 100 specialized courses in the area of child victimization. He has given over 200 presentations and lectures to local, state and federal law enforcement officers, judges, prosecutors, defense attorneys, psychologists, social workers, health care professionals, undergraduate and graduate students throughout the United States and around the world on various topics related to child sexual victimization, including, but not limited to the following topics: Behavioral Analysis of Child Sex Crimes Offenders; Interviewing Sex Offenders And Their Victims; Behavioral Dynamics of Child Sex Offences; Compliant Sexual Victimization; Grooming; and Child Sex Offender Typologies. In addition, he has lectured on these and related topics at the FBI new agent training academy, the FBI National Academy, and a number of universities across the country.

As a member of the BAU, Clemente analyzed and consulted on hundreds of child sexual victimization cases a year. His analyses are based on all available evidence, including relevant statements, behavior, and background information. The vast majority of the cases he has analyzed have involved either preferential or situational sex offenders.

Clemente's role in these cases has varied as follows: from assisting in investigations, to analyzing investigative results for the purpose of making investigative suggestions, to providing expert affidavits for search warrant applications, to providing interview strategies for subjects and victims, to assisting and consulting with local, state, and federal investigators on all aspects of investigations, to consulting with prosecutors on trial strategies, to testifying as an expert witness. In addition, Clemente has interviewed approximately 100 offenders himself, and has consulted on the interviews of approximately 1,000 additional offenders. A behavioral analysis is not a clinical diagnosis; rather, it is a law enforcement tool used to identify, understand, and sometimes predict offender behavior. It has also been used to dispel myths concerning the behavior of child sex offenders, their victims, and their interactions.

## **APPENDIX 2**

### **CURRICULUM VITAE**

#### **James T. Clemente**

Supervisory Special Agent FBI (Retired)  
Behavioral Analysis Unit  
National Center for the Analysis of Violent Crime

FBI Supervisory Special Agent (SSA) James T. Clemente retired in November 2009, from the National Center for the Analysis of Violent Crime (NCAVC), Behavioral Analysis Unit (BAU), an integral part of the Critical Incident Response Group, which provides behavioral support during all FBI crisis incidents. Its mission is to provide Criminal Investigative Analysis of violent, sexual and serial crimes as a resource available to law enforcement agencies worldwide. Prior to the FBI, he earned his law degree and was a prosecutor for the City of New York.

The FBI's Behavioral Analysis Unit is staffed by Supervisory Special Agents with an average of 18 years of law enforcement experience focused on violent and sexual criminal investigations. Many BAU members hold advanced degrees in areas including Law, Psychology, Entomology and Criminology. Each member has completed the NCAVC's comprehensive 560-hour training regimen, as well as numerous other advanced and specialized courses.

All BAU members perform case analysis, conduct research, and provide training. Annually they analyze 1,500+ cases, conduct multiple ongoing research projects, and train more than 10,000 law enforcement officers, prosecutors, judges, medical and mental health professionals worldwide. BAU members also provide on-site Crime Scene Analysis, Case Consultation, Crime Reconstruction, Investigative Strategies, Interview and Interrogation Strategies, Prosecutive Strategies, Statement Analysis, and other related services, as well as, Expert Testimony.

SA Clemente entered on duty with the FBI on November 16, 1987. His first duty assignment was to the New York Field Division's Joint FBI/NYPD Sexual Exploitation of Children Task Force. He was then assigned to the Office of the Independent Counsel in the Little Rock Division in 1994 and the Washington Field Office in 1995. In 1998, he was promoted to SSA and assigned to a Supervisory position in the NCAVC. While in the FBI he has been qualified as an Expert Witness in the areas of Child Sex Offender Behavior, Child Sexual Victimization and Child Pornography. Prior to joining the FBI, Clemente headed the Child Sex Crimes Prosecution Team for the New York City Law Department, Bronx, NY.

Since retiring from the FBI on October 30<sup>th</sup>, 2009, Clemente has been providing Expert Consulting and Testimony services for Park Dietz & Associates on Civil Matters and for the Academy Group, Inc. on Criminal Matters related to violent and sexual crimes, and abductions, and the investigations thereof. He also lectures to Law Enforcement and Academic Audiences across the U.S. and Internationally.

### Employment History:

2009 to Present: Consultant/Expert Witness

-2009 to Present: Independent Consultant - Park Dietz & Associates  
-2009 to Present: Independent Consultant - Academy Group, Inc.

1987 to 2009: Federal Bureau of Investigation

-1998 to 2009: Behavioral Analysis Unit, FBI Academy, Virginia  
-1996 to 1998: Major Case Homicide Task Force, Washington Field Office  
-1995 to 1996: Office of the Independent Counsel, Washington, DC  
-1994 to 1995: Office of the Independent Counsel, Little Rock, AR  
-1988 to 1994: SEOC, Violent Crimes, WCC, New York Division

1983 to 1987: New York City Law Department

-1985 to 1987: Prosecutor for the City of New York, Bronx, New York  
-1983 to 1985: Law Clerk for NYC Corporation Counsel, New York, New York

### Educational History:

1985: Juris Doctor Degree, Law - Fordham University School of Law  
1981: Bachelor of Science Degree, Chemistry - Fordham University

2000 – 2003: Masters level courses offered by University of Virginia and Virginia Commonwealth University at the FBI Academy.

### Professional Associations:

1986: Admitted to the New York State Bar, First Judicial District  
1992: FBI Agents Association  
1992: FBI Evidence Response Team  
1997: Virginia Homicide Investigators Association  
1998: Association for Crime Scene Reconstruction  
2000: International Homicide Investigators Association  
2001: International Criminal Investigative Analysis Fellowship  
2001: National Organization of Male Sexual Victimization  
2002: Expert Panel - "Stop It Now"  
2003: Advisory Board – NOMSV  
2003: Legal & Expert Testimony Program Manager, CIRG, BAU  
2003: Advisory Board - "Stop It Now"  
2006: Adjunct Professor, University of Virginia

### Specialized Training Received:

1985: New York City Law Department Prosecution Seminar, New York  
1986: Interviewing Child Witnesses and Victims Seminar, New York  
1986: Sex Abuse and Neglect of Children Seminar, New York

1987: Prosecuting Child Sex Crimes Seminar, New York  
1987: Special Agent Training, FBI Academy, Virginia  
1988: Advanced Violent Crimes Investigator's In-Service, FBI Academy, Virginia  
1992: Evidence Response Team Basic Training, New York  
1996: Certified Legal Instructor/Advisor In-Service, FBI Academy, Virginia  
1997: Evidence Response Team Advanced Training, Washington, D.C.  
1998: Serial, Sexual & Mass Murder Seminar, George Mason Univ., VA  
1998: Managing Death Investigations, FBI National Academy, Virginia  
1998: Innocent Images On-Line Sex Crimes Against Children Training, Maryland  
1998: On-Line Sex Crimes Against Children Regional Seminar, Illinois  
1998: Interpersonal Violence, FBI National Academy, Virginia  
1998: Dallas National Crimes Against Children Seminar, Texas  
1998: On-Line Sex Crimes Against Children Regional Seminar, California  
1998: NCAVC Coordinator's In-Service, FBI Academy, Virginia  
1998: Sexually Violent Crimes Seminar, George Mason University, Virginia  
1998: Clinical Forensic Psychology, FBI National Academy, Virginia  
1998: Violent Crime Profiling/Behavioral Analysis, George Mason University, VA  
1998: NCMEC Missing & Exploited Children Seminar, Virginia  
1998: NCAVC Research Seminar, NCAVC, Virginia  
1998: NCAVC Serial Homicide Research Seminar, NCAVC, Virginia  
1999: Research Methodologies, Virginia Commonwealth University  
1999: Forensic Anthropology, NCAVC, Virginia  
1999: Statement Analysis, NCAVC, Virginia  
1999: On-Line Sex Crimes Against Children Regional Seminar, Missouri  
1999: Psychopathy, NCAVC, Virginia  
1999: Statement Analysis, NCAVC, Virginia  
1999: Threat Assessment, NCAVC, Virginia  
1999: FBI National School Violence Seminar, Virginia  
1999: Neuro Linguistic Programing in Interviewing & Interrogation, NCMEC, VA  
1999: Dallas National Crimes Against Children Seminar, Texas  
1999: Certified Police Instructor In-Service, NCAVC, Virginia  
1999: DOJ/OJJDP Missing Children Seminar, Washington, D.C.  
1999: Serial Rape Research Interview Briefing, NCAVC, Virginia  
1999: MO, Ritual & Signature Advanced Seminar, NCAVC, Virginia  
1999: Advanced NLP in Interview & Interrogation, NCAVC, Virginia  
1999: NCAVC Coordinator's In-Service, FBI Academy, Virginia  
1999: Department of Justice Hate Crimes National Symposium, Washington, D.C.  
1999: NCAVC Criminal Investigative Analysis Training, NCAVC, Virginia  
1999: Expert Testimony, NCAVC, Virginia  
2000: Reid & Associates School of Interview & Interrogation, Virginia  
2000: Criminology, Virginia Commonwealth University  
2000: Stalking & Threat Assessment, George Mason University, Virginia  
2000: International Homicide Investigators Association Annual Conference, VA  
2000: Police Fellowship/NCAVC Coordinators In-Service, FBI Academy, Virginia  
2001: Stalking Threats: Risk Assessment and Risk Management, Reid Meloy, Ph.D., Forensic Psychologist, FBI Academy, Virginia  
2001: Back to Basics Training, FBI Academy, Quantico, Virginia  
2001: Victimology, The Peter Wilke Case Study, Baltimore, MD  
2002: Threat Assessment Training, FBI Academy, Quantico, VA  
2002: Cross Examination of Behavioral Experts, VA Legal Education  
2002: Threat Assessment Protocol Training, Dr. Stock, NCAVC, VA



2002: Sex Offender Treatment Modalities, Dr. Fred Berlin, Arlington, VA  
2002: Law Enforcement/Business Interface in Threat Assessment, Dr. Stock, NCAVC, Virginia  
2002: Development of Deviant Sexual Behavior, Major Galbraith, Charleston, SC  
2002: Interviewing Teen Sex Victims, Kim Poyer, FBI, Charleston, SC  
2003: Child Victim Dynamics, M. Finnegan, FBI, St Thomas, USVI  
2003: Prosecuting Child Sex Cases, A. Turkel, APRI, St Thomas, USVI  
2003: Case Study: Jeffery Dahmer, Det. P. Kennedy, Ret. Milwaukee PD  
2003: Medical Expert in Child Sexual Exploitation, S. Cooper, MD, UNC  
2003: Digital Image Manipulation, John Van Vliet, Migrant Film Works  
2003: The PROTECT Act, Monique Perez Roth, DOJ CEOS  
2003: DNA Technology, Norm Gahn, ADA, Milwaukee, WI  
2003: Working with Compliant Victims, Martha Finnegan, FBI  
2003: Juvenile Sex Offenders, Allison Turkel, Sr. Atty., APRI  
2003: Pretext Phone Calls, John Bradley, DA, Georgetown, TX  
2003: Ethics, Rod Leonard, DDA, Los Angeles, CA  
2003: Cross Examination of Expert Witness, D. Trufio, ADA, Syracuse, NY  
2003: Compliant Victims, Ken Lanning, CAC Consultants (Ret. FBI)  
2003: Child PROTECT Act, USAO, Tampa, FL  
2004: Paraphilias & Sex Offenders, Dr. Nathan Galbraith, USAF  
2004: Incarcerated Sex Offender Treatment, Dr. Michael Bourke, USBOP  
2007: Overview of BAU Research Projects, CIRG  
2007: Detection of Deception for Law Enforcement, Dallas, TX  
2007: Clergy Sex Abuse Research, John Jay College of Criminal Justice, NY, NY  
2007: New Zealand, Male Survivors of Child Sexual Abuse, NY, NY  
2007: The Lost Self, Survivors of Childhood Sexual Assault, Dr. Alan Downs  
2008: Cyber Personalities & Threats, CIRG  
2008: Men Of Courage, 1<sup>st</sup> Provincial Conference on Male Sexual Victimization  
2008: Why I Didn't Say Anything, Sheldon Kennedy, Toronto, Ontario, Can.  
2008: Forensic Science in Criminal Investigations, Dr. Henry Lee, Wash., DC  
2008: Sex Offender Research, Dr. Michael Bourke, USBOP  
2008: Expert Testimony – Moot Court, BAU, Quantico, VA  
2009: Women Who Molest Children, Capt. Carson, MD Heights PD  
2009: Behaviorally Based Interviewing, Wayne Sheppard, NCMEC  
2009: Cross-Examining Defense Experts, Victor Vieth, Winona State Univ.  
2009: Fantasy Defense in Internet SEOC Cases, Ken Lanning, Dallas, TX  
2009: Victim Identification, Jennifer Lee, NCMEC  
2009: Cyber-Bullying, Yeager, Rampolla and Donofrio, Dallas, TX  
2009: The Star Kids Investigation, SA Baker, SA Miller, Dallas, TX  
2009: False Allegations of Child Abduction, SSA Canning, Dallas, TX  
2009: Facebook Investigations, Max Kelly, CSO, Dallas, TX  
2012: Male Survivor Conference, John Jay College of Criminal Justice

Presentations, Lectures, Symposiums, and Training Given:

1998: Behavioral Analysis of Child Sex Crimes Offenders, Maryland  
1998: Equivocal Death Investigations, FBI National Academy, Virginia  
1998: Equivocal Death Investigations, FBI National Academy, Virginia  
1998: Equivocal Death Investigations, FBI National Academy, Virginia  
1998: On-Line Sex Crimes Against Children, National Academy Retrainer, KY

1998: On-Line Sex Crimes Against Children, Innocent Images, Maryland  
1999: Equivocal Death Investigations, FBI National Academy, Virginia  
1999: Interrogation & Miranda, Georgetown University School of Law, Wash, DC  
1999: On-Line Sex Crimes Against Children, Innocent Images, Maryland  
1999: Dallas National Crimes Against Children Seminar, Texas  
1999: On-Line Sex Crimes Against Children, Regional Police Conference, Ohio  
1999: Equivocal Death Investigations, FBI National Academy, Virginia  
1999: NCAVC Coordinators In-Service, FBI Academy, Virginia  
1999: On-Line Sex Crimes Against Children, NCMEC, Virginia  
1999: On-Line Sex Crimes Against Children, Regional Police Conference, MA  
1999: On-Line Sex Crimes Against Children, Innocent Images, Maryland  
1999: Profiling Concepts in Law Enforcement, American University, Wash., D.C.  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: On-Line Sex Crimes Against Children, Innocent Images, Maryland  
2000: On-Line Sex Crimes Against Children, NY State Regional Conference, NY  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: Profiling Concepts in Law Enforcement, American University, Wash., D.C.  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: Equivocal Death Investigations, FBI NCAVC, Virginia  
2000: On-Line Sex Crimes Against Children, Oklahoma  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: On-Line Sex Crimes Against Children, Texas  
2000: On-Line Sex Crimes Against Children, Innocent Images, Maryland  
2000: Behavioral Analysis of On-Line Child Sex Offenders, American Psychological Association, Washington, D.C.  
2000: Interrogation and Miranda, Guest lecture Georgetown University School of Law, Washington, D.C.  
2000: On-Line Sex Crimes Against Children, Texas  
2000: On-Line Sex Crimes Against Children, Texas  
2000: Behavioral Analysis of On-Line Child Sex Offenders, American Psychological Association National Symposium, Washington, D.C.  
2000: On-Line Sex Crimes Against Children, Advanced CAC Coordinators In-Service, FBI Academy, Virginia  
2000: Criminal Investigative Analysis, NCAVC, Virginia  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: On-Line Sex Crimes Against Children, Innocent Images Franchise, MD  
2000: Government Corruption in FHA, White Collar In-Service, FBI Academy, VA  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: On-Line Sex Crimes Against Children, Innocent Images Franchise, MD  
2000: On-Line Sex Crimes Against Children - Case Studies, FBI NA, VA  
2000: Dallas National Crimes Against Children Seminar, Texas  
2000: Equivocal Death Investigations Regional Conference, California  
2000: On-Line Sex Crimes Against Children, Kentucky  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: Equivocal Death Investigations, FBI National Academy, Virginia  
2000: Advanced Presentation Skills on Power Point, NCAVC, Virginia  
2000: Central America Regional CAC Seminar: El Salvador, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, and Panama.  
2000: DOJ, Office of Justice Programs second National Summit: Sexual Assault Prevention and Sex Offender Management.  
2001: Behavioral Analysis of Child Sex Offenders/Victimology, FBI Academy, VA  
2001: Child Sex Offender Interactive Panel, FBI Academy, Virginia

2001: On-Line Child Sex Crimes; Sexual Tourism & Child Prostitution;  
Child Abduction Response Plan; Expert Testimony; DOJ Manila, Philippines

2001: Sex Offender Behavior Typologies, CAC Regional, Phoenix, AZ

2001: Investigating Child Abuse and Exploitation, FBI Academy, Virginia

2001: Computer Child Sex Crimes, FBI National Academy, Virginia

2001: Sex Offender Behavior Typologies, CAC Regional, Chicago, IL

2001: Cyber Sex Crimes, US Courts Federal Probation, St. Louis, MO

2001: Behavioral Aspects of Internet Child Sex Crimes, ACIT Cross  
Training, CIRG, NCAVC, Virginia

2001: Child Sex Offender Behavioral Typologies, MJJA, Lake Ozark, MO

2001: Behavioral Analysis & CAC Research, Centennial HS Law & Justice  
Program, NCMEC, Alexandria, VA

2001: Child Sex Offender Typologies & Expert Testimony, Texas District  
Attorney's Association, Richardson, TX

2001: Equivocal Death Investigations, FBI National Academy, Virginia

2001: Cyber Sex Offenders & Expert Testimony, Utah Prosecutor's High  
Tech Crime Conference, Salt Lake City, UT

2001: Applied Behavioral Science for Law Enforcement, Quantico, VA

2001: Internet Exploitation Case Studies, FBI National Academy, Virginia

2001: Vince Foster Death Investigation, FBI Dallas, TX

2001: Child Pornography Collectors, British CAC Investigators, NCAVC

2001: Equivocal Death Investigations, FBI National Academy, Virginia

2001: ON-Line Child Sex Crimes, FBI National Academy, Virginia

2001: Computer Child Sex Crimes, Violence in America Seminar, FBI-NA, VA

2001: Foster Death Investigation, FBI National Academy, Quantico, VA

2001: Indian Country Child Abuse, Offender Typologies, Seattle, Washington

2001: Foster Death Investigation, Harvard Associates International  
Homicide Seminar, Annapolis, Maryland

2001: CAC Regional Conference, Chicago, IL

2001: Child Sex Offender Typology, US Probation National Conf, Lake Tahoe, CA

2001: Sex Offender Typologies, NOMSV, John Jay College, NYC, NY

2001: Federal Agent/Survivor, NOMSV, John Jay College, NYC, NY

2001: Sex Offender Typologies, Mid States National Academy, Ozark, MO

2001: Sex Offender Treatment Group, National Institute for the Prevention  
and Treatment of Sexual Trauma, Baltimore, MD

2001: Sex Offender Typologies, 8th Circuit US Probation Conference, Nebraska

2001: National CAC Enhancement Training, FBI Academy, Quantico, VA

2002: Child Sex Offender Typologies and Victimology, Arlington, VA

2002: Sex Offender Panel, Dr. Galbraith, Arlington, VA

2002: Equivocal Death Investigations, FBI Academy, Quantico, VA

2002: Sex Crimes Against Children, FBI Academy, Quantico, VA

2002: Sexual Tourism & Child Sex Offenders, San Jose, Costa Rica

2002: Child Abduction Homicides, San Jose, Costa Rica

2002: Expert Testimony in Child Sex Cases, San Jose, Costa Rica

2002: Ashcroft v. Free Speech: Legal & Repercussions, Charleston, SC

2003: Behavioral Investigations of Internet CAC Cases, Calverton, MD

2003: Behavioral Dynamics of Child Sex Offences, St Thomas, USVI

2003: Child Sex Offences a Multi-disciplinary approach, St Thomas, USVI

2003: Behavioral Investigations of Internet CAC Cases, Calverton, MD

2003: Sex Offender Typologies, Fox Valley Tech. College, Fox Valley, WI

2003: Sex Offender Typologies, South West Regional, El Paso, TX

2003: Child Sex Crimes Overview, McAllen, TX

2003: Behavioral Dynamics of Child Sex Offenders, Phoenix, AZ  
2003: Understanding & Interviewing Child Sex Offenders, US Secret Service Polygraph School, Orlando, FL  
2003: Internet Child Sex Crimes Offender Behavior, Managua, Nicaragua  
2003: Child Abductions & Sex Crimes, Managua, Nicaragua  
2003: Internet Child Sex Crimes Offender Behavior, El Paso, TX  
2003: Sex Offender, Survivor, Treatment Panel, Male Survivor Conference, MN  
2003: Sex Offender/Survivor/Treatment Panel, St. Paul, MN  
2003: Child Sex Offender Typologies/Child Pornography, McAllen, TX  
2003: Behavioral Insights of Sex Offender Management, Crystal City, VA  
2003: Expert Search Warrants in CAC Investigations, NAC, Columbia, SC  
2003: Compliant Sexual Victimization: An Additional Perspective, USAO/FDLE Interagency Training, Tampa, FL  
2003: Child Sex Offender Typologies, APRI Equal Justice, Baltimore, MD  
2003: Internet Child Sex Crimes, Midland, TX  
2003: Child Sex Crimes Offender Behavior, Appleton, WI  
2003: Child Sex Crimes A Behavioral Perspective, Columbus, OH  
2003: Internet Child Sex Crimes Offender Behavior, Toronto, Canada  
2003: Internet Child Sex Crimes Offender Behavior, NCAC, Quantico, VA  
2004: Behavioral Investigations of Internet CAC Cases, Calverton, MD  
2004: Internet CAC Training Course, Richmond, KY  
2004: Behavioral Investigations of Internet CAC Cases, Calverton, MD  
2004: Behavioral Investigation of Sex Crimes Against Children, Roanoke, VA  
2004: CAC In-Service: CSO Typologies & The CARP, Arlington, VA  
2004: CAC In-Service: CSO Typologies & The CARP, Quantico, VA  
2004: Stopping Internet Sex Crimes Against Children, Richmond, VA  
2004: Child Sexual Victimization Continuum, Baltimore, MD  
2004: NCAVC Coordinator Basic Training, Fredericksburg, VA  
2004: Search Warrants Affidavits in CAC Cases, Fox Valley Tech. College, WI  
2004: Behavioral Investigations of Internet CAC Cases, Calverton, MD  
2004: Under Cover Investigations of Internet CAC Cases, Calverton, MD  
2004: BAU Training: Sexual Victimization of Children, Quantico, VA  
2004: Undercover Sex Crimes Investigations, London, United Kingdom  
2004: Behavioral Aspects of Child Pornography & Molestation, CIA  
2004: Host: International Online Child Sexual Victimization Symposium at VA  
2005: Interview & Active Listening, Cohorts Training, FBI Academy  
2005: Interview & Active Listening, FBI Police Training, FBI Academy  
2005: Advanced Interview of Sex Crime Victims, FBI National Academy/UVA  
2005: Interview & Interrogation, FBI New Agent Training, FBI Academy  
2005: Seminar In Investigative Interviewing, FBI National Academy/UVA  
2005: Online Child Sex Crime Offender Behavior, Burlington County, NJ  
2006: Seminar In Investigative Interviewing, FBI National Academy/UVA  
2007: Child Abduction Rapid Deployment Team training, FBIHQ  
2007: Psychopathy Checklist Training, Dr. Hare & Dr. Forth, CIRG  
2007: Interviewing Sex Offenders, FBI National Academy/UVA  
2007: Behavioral Analysis Applied to Criminal Investigations, FBI Academy  
2007: Interviewing Child Victims, FBI Academy New Agents  
2007: Online Undercover Agent In-Service, Calverton, MD  
2007: Behavioral Analysis of Child Sex Crimes, Phase I Training, CIRG  
2007: Sex Offender Behavior, Advanced Undercover School, Calverton, MD  
2007: Interviewing Sex Offenders, FBI National Academy/UVA  
2007: Sex Offenders & Child Sexual Victimization Continuum, Dallas CAC

2007: Virtual Global Task Force, Washington, DC  
2007: Sex Offenders & CSVC, Project Safe Child, New Hampshire  
2007: Behavioral Analysis Applied to Criminal Investigations, FBI Academy/UVA  
2007: Online Undercover Agent In-Service, Calverton, MD  
2007: Advanced Investigative Interviewing, Las Vegas, NV  
2007: Investigations Seminar, Georgetown Law School, Washington, DC  
2007: Interviewing Sex Offenders, Univ. Of Texas, Austin, TX  
2007: Federal Agent/Survivor, MS, John Jay College, NYC, NY  
2007: Sex Offender Typologies & Male Victimization, John Jay College, NYC  
2007: Overview of BAU Child Sex Crimes, London, UK  
2007: Behavioral Analysis Applied to Criminal Investigations, FBI NA  
2007: Risk Assessment Protocol, Dr. Harley Stock, Arlington, VA  
2007: Interviewing Sex Offenders, FBI National Academy/UVA  
2008: Expert Behavioral Analysis Testimony, Dr. Kris Mohandie  
2008: Interviewing Sex Offenders, FBI National Academy/UVA  
2008: Federal Agent/Survivor, MS, Toronto, Ontario, Canada  
2008: Sex Offender Typologies & Male Victimization, Toronto, Ontario, Can.  
2008: Interviewing Sex Offenders, FBI National Academy  
2008: Advanced Investigative Interviewing, Atlanta, GA  
2008: Art & Science of Criminal Profiling, Duquesne Law, Pittsburgh, PA  
2008: Interviewing Sex Offenders, FBI National Academy/UVA  
2008: Focused Investigations/Interviews, Fed. Energy Reg. Comm., Wash, DC  
2008: Child Sex Offenders and Their Male Victims, 1<sup>st</sup> Provincial Conference on Male Sexual Victimization, Ottawa, Ontario, Canada  
2008: SVOC/Rape Panel, Sexual Assault Centre-Quinte, Bellevue, Ontario, Can.  
2008: Survivor to Thrive, Sexual Assault Centre-Quinte, Bellevue, Ontario, Can.  
2008: Training Video: SVOC, Catholic Charities of Baltimore, MD  
2008: Keeping Children Safe from SVOC, Bellevue, Ontario, Canada  
2008: CSI Effect, National Symposium on Media & Forensic Science, Duquesne University School of Law, Pittsburgh, PA  
2008: Criminal Behavioral Analysis, Duquesne Law, Pittsburgh, PA  
2008: Advanced Interview/Interrogation Seminar, Nat. Black P.O. Assoc. Atl, GA  
2008: Interviewing Sex Offenders, FBI National Academy, Quantico, VA  
2008: Forensic Science and Fiction, Columbia University, NYC, NY  
2008: Internet Social Networking, Children's Justice Cntr., Salt Lake City, UT  
2008: Interviewing Sex Offenders, FBI National Academy, Quantico, VA  
2008: CSOT, Child Sexual Victimization Continuum, Conroe, TX  
2008: Art & Science of Criminal Profiling, Towson, Univ., Baltimore, MD  
2008: FBI-BAU Methodology & Research, Serious & Organized Crime Agency, Child Exploitation & Online Protection, London, UK  
2008: FBI-BAU Methodology, Research & Cases, National Police Improvement Agency, Bramms Hill, UK  
2008: FBI-Behavioral Analysis Overview, American Univ., Wash., DC  
2008: SVOC/CSVC, Santa Monica Rape Treatment Center/LAPD, LA, CA  
2008: Detection of Deception, Marymount Univ. Grad. School, Arlington, VA  
2008: Behavioral Aspects of Interview/Interrogation, FBI NA, Quantico, VA  
2008: Investigations: Cong./IC/Criminal, Georgetown Law, Wash., DC  
2008: SVOC/Child Abduction, Nat. Assoc. - Public School Administrators, MB, SC  
2008: Detection of Deception, Marymount Univ. Grad Sch., Arlington, VA  
2009: FBI & Law Enforcement Careers, JS Burke & Washingtonville HS, Goshen, NY  
2009: Interviewing Child Sex Offenders, Child Advocacy Center, Bristol, VA

2009: Detection of Deception, Marymount Univ. Grad. School, Arlington, VA  
 2009: BAU Overview, FBI National Academy, Quantico, VA  
 2009: Interviewing Sex Offenders, FBI-NA, Quantico, VA  
 2009: Child Sex Offenders, FBI-NA, Quantico, VA  
 2009: CSI Effect on Investigations & Prosecutions, Boston, College, Boston, MA  
 2009: Interviewing Sex Offenders, FBI-NA, Quantico, VA  
 2009: Child Sex Offenders, FBI-NA, Quantico, VA  
 2009: SVOC & Grooming, Fox Valley Technical College, Appleton, WI  
 2009: CAC/Child Abductions, Nat. Latino Police Officers Assoc, LA, CA  
 2009: False Allegation of Child Abduction Case Study, BAU, Quantico, VA  
 2009: SVOC/Grooming, UCLA Regional Seminar, LA, CA  
 2009: Behavioral Analysis of Child Sex Offenders, Dallas CAC, Dallas, TX  
 2009: Interviewing Sex Offenders, FBI-NA, Quantico, VA  
 2009: Rigorous Obedience to the Constitution, FBI Core Values Video, FBI Office of Integrity Compliance, FBIHQ, Wash., DC  
 2009: Detection of Deception, Univ. or Conn Grad School, New Haven, CN  
 2009: Detection of Deception, Marymount Univ, Arlington, VA

2010: Sex Offender Investigations, University of PA, Forensic Mental Health Dept.  
 2010: Sex Offenders and Child Abductors, Fairbanks Alaska PD  
 2010: Interviewing & Detection of Deception, Henry C. Lee Institute of Forensic Science, University of New Haven, New Haven, CN

2010: Sex Offence Investigations, US Dept of the Navy  
 2010: Non-Traditional Fraud/Corruption Investigations, USDOJ, Public Integrity Section

2010: Sex Offences, Rape & Abductions, National Assoc. of Forensic Nursing. Las Vegas, NV

2010: Profiler Profiled: Male Sexual Victimization, John Jay College of Criminal Justice

2011: Interviewing Sex Offenders & Their Victims and Child Abductions, Arizona Homicide Investigators Assoc., Las Vegas, Nevada

2011: Profiling, The Media, and Investigations, Toronto, Canada

2011: Use of Cooperating Witnesses in Major Crimes Investigations, USDOJ Greenwich, CN

2011: Detection of Deception in Interviewing, Henry C. Lee Institute of Forensic Science, University of New Haven, New Haven, CN

2012: Detection of Deception, National Black Police Officers Org.

Criminal Investigative Analysis Consultations:

- SSA Clemente has analyzed hundreds of cases for and has provided investigative, prosecutive, and sentencing guidance to FBI Agents, Federal, State, and Local Law Enforcement Agencies, Prosecutors', Psychologists, Social Workers, and other professional organizations across the United States and overseas in cases involving Sexual Exploitation of Children, Child Pornography, Child Sex Abuse, Child Prostitution, Child Abduction, Serial Rape, Incest, Sexual Assault, Sexual Homicide, Serial Homicide, Kidnapping and Equivocal Death.

### Expert Testimony and Affidavits:

- SSA Clemente has given sworn expert testimony in the areas of Child Sex Offender Behavioral Characteristics, Child Sexual Victimology, and Child Pornography in the following cases:

2001: US v. Daniels, US Army Base Camp Ederly, Vicenza, Italy [Case-in-chief]  
2001: US v. Daniels, US Army Base Camp Ederly, Vicenza, Italy [Sentencing]  
2001: US v. Smith, US District Court, District of Colorado [Sentencing]  
2001: US v. Vogt, US District Court, Southern District of Florida [Case-in-chief]  
2001: US v. Vogt, US District Court, Southern District of Florida [Sentencing]  
2002: Texas v. Doyle, Montgomery County Court, Conroe, Texas [Case-in-chief]  
2002: Texas v. Doyle, Montgomery County Court, Conroe, Texas [Sentencing]  
2003: US v. Thomas, US District Court for the Northern District of Maryland [Detention]  
2007: US v. Sanders, US District Court for the Central District of California [Case-in-Chief]  
2007: US v. Sanders, US District Court for the Central District of California [Case-in-Chief]  
2008: US v. McGill, US District Court for the District of Wyoming [Case-in-Chief]  
2008: US v. Farris, US District Court Western District of Pennsylvania [Detention]  
2009: US v. Pepe, US District Court for the Central District of California [Case-in-Chief]  
2009: US v. Weisberg, US District Court, Central District of California [Case-in-Chief]

- SSA Clemente has given expert testimony in the form of affidavits in Support of Government's motions for detention a number of cases including:

2001: US v. White, United States District Court for the Eastern District of California  
2001: US v. Holverstott, United States District Court for the Eastern District of California  
2002: US v. Pertle, United States District Court for the Northern District of California  
2002: US v. Froman, United States District Court for the Southern District of Texas  
2002: US v. Johnston, United States District Court for the Southern District of Texas  
2002: US v. Ezeta, United States District Court for the Southern District of Texas  
2002: US v. Anderson, United States District Court for the Southern District of Texas  
2002: US v. White, United States District Court for the Southern District of Texas  
2002: US v. Tinney, United States District Court for the Southern District of Texas  
2002: US v. Seamens, United States District Court for the Southern District of Virginia  
2003: US v. Thomas, United States District Court for the Northern District of Maryland  
2003: US v. Adkins, United States District Court for the Eastern District of Kentucky [Affirmed by Court of Appeals]

- 2002: -SSA Clemente has provided expert opinions on Child Sex Offender Behavior, Child Sexual Victimization and Child Pornography for the FBI's Testimony before the U.S. Congressional Subcommittee on Crime, Terrorism and Homeland Security.
- 2002: -SSA Clemente has provided expert testimony in the form of a Declaration regarding Child Sex Offender Behavior and an analysis of Defendant's recidivism risk and danger to the community: People v. Gove; Manitowoc County, Wisconsin
- 2009: -SSA Clemente has provided expert testimony in the form of a Declaration regarding Grooming Behavior: US v. DeWitt, US District Court, Central District of California
- SSA Clemente has provided expert affidavits regarding Sexual Victimization of Children, Child Pornography, and On-line Sex Crimes Against Children in several hundred search warrants.

### Awards, Letters & Commendations:

1997: Exceptional Performance Award, DOJ  
1997: Certificate of Appreciation, NDIC Homicide Task Force, MPD, Wash., DC  
1998: Certificate of Recognition, State of Wyoming  
1998: Exceptional Performance Award, DOJ  
1998: Superior Service Award, FBI  
1999: Exceptional Performance Award, DOJ  
2000: Exceptional Performance Award, DOJ  
2001: Director's Certificate of Commendation  
2001: Superior Service Award, FBI  
2002: Superior Service Award, FBI  
2003: Superior Service Award, FBI  
2004: Superior Service Award, FBI  
2004: Commendation Award, DOJ  
2007: Superior Service Award, FBI  
2008: Superior Service Award, FBI  
2008: Distinguished Award, DOJ  
2009: Superior Service Award, FBI

- SSA Clemente has received numerous letters of commendation from Federal, state, and local Law Enforcement Agencies, Prosecutors' Offices, as well as, other professional organizations across the United States.

### Research Projects:

1999 to 2009: -Serial Rape Research Project, Joint Research by NCAVC, University of Virginia, and Radford University  
1999 to 2009: -NCAVC/Innocent Images On-line Sex Crimes Against Children Project  
2001 to 2004: -Incarcerated Sex Offender Re-Offending Study, Joint Research by NCAVC, Federal Bureau of Prisons.  
2004 to 2009: -Committee Chair/Editor: Behavioral Analysis Manual, FBI BAU

### Publications:

- 2001: Contributor to Interpol's Investigative Manual Chapter 3: "Sexual Offences Against Children & Child Pornography"
- 2002: Co-author of the FBI's Testimony before the U.S. Congressional Subcommittee on Crime, Terrorism and Homeland Security on the topics of Child Sex Offender Behavior, Child Sexual Victimization and Child Pornography.
- 2007: "Equivocal Death Investigations." Journal of Forensic Nursing
- 2008: (Pending)"Behavioral Analysis Manual," (Committee Chair)



## APPENDIX 3

### ADDITIONAL BACKGROUND ON CHILD SEXUAL VICTIMIZATION

Based on my education, training, and experience, and the institutional knowledge of the FBI's Behavioral Analysis Unit, the following traits and characteristics are generally found to exist and be true in cases involving individuals who sexually victimize children.

With respect to their victims, child sex offenders typically fall into three general categories: strangers, acquaintances, and family. Their motivations for offending are evaluated on a continuum. The two ends of that spectrum are represented by situational and preferential offenders. Situational offenders are those who victimize children but who do not have a definitive sexual attraction to children. As a result, their sexual offenses against children tend to result from circumstantial access to children rather than a methodical effort to pursue sexual encounters with children. Their offenses can generally be described as opportunistic and/or impulsive in nature; however, their sexual desires and fantasies typically involve adults.

#### 1. Preferential Child Sex Offenders

Preferential child sex offenders (PSO), on the other hand, have a definitive sexual attraction to children, usually of a particular age range, gender, body type, personality, vulnerability, other set of characteristics, or any combination of the above. Despite their specific sexual interest in these particulars, preferential offenders may at times offend outside of their preference due to availability or circumstances. Acquaintance PSOs typically gain access, authority, and/or control over their intended victims through a process known as "grooming." The grooming process is typically aimed at the intended child victims and those who are responsible for their wellbeing as well as the community that they operate in. Grooming is a constellation of otherwise innocent appearing behavior that is intended to give them ongoing access to children for sexual purposes, as well as, preventing discovery by others.

Though it is often misused by those in the public and law enforcement alike, the term "pedophile" is actually a paraphillic mental disorder that must be clinically diagnosed. This diagnosis results from a full clinical evaluation by a psychologist or psychiatrist who finds that the person being evaluated has recurrent and intense, sexually arousing fantasies, urges, or behaviors aimed at prepubescent children, typically under the age of 13. Absent such a finding, law enforcement professionals use the term preferential child sex offender to designate those who are sexually attracted to children and who commit sexual crimes against them. This criminal typology has been extensively researched and written about by my colleague, retired Supervisory Special Agent Ken Lanning and it has been utilized world-wide in the law enforcement community.

Unlike "normal" adult/adult sexual relationships, preferential offenders cannot develop lifelong sexual relationships with the object of their sexual desires. This is because the children they are sexually interested in always grow up and "age-out" of their desired age range. This drives these offenders to periodically search for and groom new children. Their sexual behavior with children therefore, is typically repetitive and predatory in nature. This phenomenon is typically referred to as "the grooming pipeline." That is, they are simultaneously involved in

various stages of grooming multiple victims at the same time in order to enable concurrent or sequential victimization.

Grooming behaviors can be used by an offender against children across a spectrum of relationships. That is, they may target children within their family, acquaintances, e-quaintances (those they met on-line), neighbors, and/or complete strangers. Since the purpose of grooming is to gain access, authority and control over their intended victims, the more parental the relationship is between the offender and the victim, the easier it is for an offender to use “normal” parenting as a grooming tool.

A preferential offender’s sexual attraction to children may be either exclusive or non-exclusive. That is, their sexual attraction may be focused solely on children, or it may be more diverse, including a variety of sexual interests in addition to children. It is not uncommon for these offenders to engage in multiple paraphilic behaviors. A paraphilia is the recurrent and intense sexual arousal to inanimate objects or non-consenting parties (pedophilia is one example of a paraphilia). Individuals who engage in one paraphilia are likely to engage in more than one. Also, some preferential offenders can be sexually attracted to adults and children at the same time and can engage in sexual activity with adults as well as children concurrently.

Although it is impossible to accurately predict human behavior with absolute certainty, the best predictor of human behavior is a past pattern of behavior. Preferential offenders tend to engage in highly repetitive and predictable patterns of behavior. In order to satisfy their sexual desires, these offenders devote substantial amounts of time, effort, energy and/or money to the pursuit of sexual and/or non-sexual contact with children, child pornography and child erotica. They also typically discover their sexual attraction to younger children in their own late adolescence and may begin to act on this attraction soon thereafter.

The four hallmarks of preferential child sex offenders are: 1) long term persistent patterns of behavior; 2) specific sexual interests; 3) well-developed techniques; and 4) fantasy and desire driven behavior. These characteristics may be identified by some or all of the following behaviors: long-term persistent patterns of behavior demonstrated by a willingness to commit significant time, money, and energy in furtherance of their sexual interest in children, often resulting in multiple offenses; an interest in children as sexual objects and the development of a rationale to justify that interest (e.g., “I would never hurt a child, I love children,” and/or “I never did anything the child didn’t want me to do”); well-developed techniques for gaining access to victims and/or sexualized child-related material, characterized by the ability to skillfully manipulate the situation, the victims, and/or other individuals necessary for gaining access to children for sexual purposes; and a significant fantasy component featuring children as sex objects and often supported by the collection and organization of child-related material, writings, and/or child pornography. Although no single factor delineated above is determinative in and of itself, the most telling factor in determining whether an individual is a preferential child sex offender is the collection of child pornography.

Individuals with a sexual preference for children may derive sexual gratification from actual physical contact with children as well as from fantasies involving the use of sexual depictions of children or literature describing sexual contact with children. Preferential child sex offenders gravitate to employment, activities and/or relationships which provide access or

proximity to children; and frequently persist in the criminal conduct even when they have reason to believe the conduct has come to the attention of law enforcement. These are desire driven behaviors to which the offender is willing to devote considerable time, money, and energy in spite of the risks and contrary to self-interest.

## 2. Nice-Guy Acquaintance Offenders<sup>1</sup>

“Nice-guy” child sex offenders are much more prevalent, effective, and prolific than the stereotypical “stranger danger” type offender. In fact, the vast majority of children who are sexually victimized are offended against by someone they know. We call those offenders “acquaintance offenders.” The category of “acquaintance offenders” includes any non-stranger and any non-biological relative. One particularly insidious sub-category of acquaintance offenders is “nice-guy” offenders (sometimes referred to as the “pillar of the community” or “man of the year” offenders).

These are offenders who are friendly, normal, helpful, giving, loving people who no one would suspect are harboring sexual attractions to children. These cases are very difficult to investigate because a number of these offenders have high social status or are authority figures, such as: “teachers, camp counselors, coaches, clergy members, law-enforcement officers, doctors, judges . . . . Such offenders are in a better position to seduce and manipulate victims and escape responsibility.” And, equally important, “[t]hey are usually believed when they deny any allegations.”<sup>2</sup> Both their status in the community and their affable personalities make it difficult to make a case against them for sexual victimization of children. “Convicting an acquaintance child molester who is a ‘pillar of the community’ is almost impossible based only on the testimony of one confused 5-year-old girl or one delinquent adolescent boy.”<sup>3</sup>

The above passages underscore the fact that even when it comes to trained law enforcement officers, it is very difficult to determine whether a person, who everyone in the community knows and respects, is a child sex offender. Sandusky is a textbook preferential child sex offender, as well as being a textbook example of a “nice-guy” offender. However, I would put him in the top one percent of effective groomers in this country. This is based on the fact that he was so bold in his high-profile “altruistic” public persona, founded a youth serving organization, and he was caught in the act of grooming and sexually assaulting children in the showers before, yet he still did the same thing in the same place again in 2001.<sup>4</sup> Both times Sandusky was able to deceive his way out of it. He built his reputation both professionally and interpersonally over many years of hard work and sacrifice. Drive, determination, selflessness and altruism were his calling cards. He motivated others to give millions to needy children at The Second Mile. Sandusky was lauded and celebrated for his work. He effectively groomed most of the people who came in contact with him, including child care experts, psychologists,

---

<sup>1</sup> Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis* 23-34 (5th ed. 2010).

<sup>2</sup> *Id.* at 77.

<sup>3</sup> *Id.* at 140.

<sup>4</sup> In my experience, because people do not want to talk about the topic of male on male child sexual victimization these types of “close calls” happen regularly with “nice-guy” offenders, but witnesses either do not believe what they see, do not know how to handle it, misinterpret what they see, or do not think anyone will believe them if they told.

professionals, celebrities, athletes, coaches, friends and family. And most notably, he was approved numerous times over thirty years as both a foster parent and an adoptive parent by child care professionals.

Sandusky loved children, and it showed. But he effectively hid from everyone in the community that his love for boys extended into criminal sexual activity with those boys. One reason why he was so effective at hiding this is because people find it very difficult to believe that someone as nice, as giving, as personable, as charismatic, as altruistic, as friendly, as caring, as fatherly, and as successful as Jerry Sandusky could possibly be the kind of hideous monster that is a child sex offender. Now, of course, everyone who knew Sandusky knows they were wrong. They all know that he fooled them for decades. With the degree and duration of his access, authority and control over vulnerable and needy boys and his “pillar of the community” social status, I can state there is a high degree of probability that the majority of Sandusky’s victim’s have not yet come forward. Many of them never will. It is simply too risky, too stigmatizing, too embarrassing, too misunderstood, for them to make the huge leap of faith required to tell the world that they were sexually victimized, and worse yet, by a man.

If, as a society, we are going to help these boys and men overcome their victimization, we have to have an ongoing open and non-judgmental public discussion about male sexual victimization. This is a problem that I faced for many years even within the FBI. Some of my colleagues did not want me to speak publically about being victimized as a teen. They said it would embarrass the Bureau. That it was unprofessional. Eventually, I stopped listening to them and I spoke out at conferences across the country and around the world. Almost every time I spoke out, one or more men and women quietly approached me and disclosed that they too were victimized as a child and had not disclosed to anyone before. One of the detrimental things that child advocates, investigators and lawyers do that is meant to help child sex crime victims but ultimately hurts them is overstating the resultant effects of child sexual victimization when they speak publicly about it.

Many, including the writers of the SIC report use terms like, horrendous, heinous, devastating, ruined, and other extreme words to describe what happened to the child victims. I’m sure the speakers mean well, however, those very same victims, and future victims, are hearing and reading those words and it fills them with a sense of hopelessness. It robs them of their future. They feel that they are doomed, damaged, and worthless. As responsible adults, we should make sure we temper our rhetoric and give victims the hope for a better day.

I trained hundreds of FBI agents and law enforcement officers who worked child sex crimes undercover investigations on the internet under the banner of the FBI’s Innocent Images major case undercover operation. I participated in, consulted on, and testified as an expert witness on these cases for more than a decade. And I found that male agents and officers, almost to a person, preferred to create undercover personas as girls instead of boys. This, despite the fact that the statistics are very clear that offenders who target adolescent boys are, by far, much more prolific than those who target girls. It is not unusual to discover a male sex offender who has gotten away with molesting boys for thirty or more years and has amassed a victim pool in the hundreds.

However, the majority of offenders who are caught in these undercover operations are those who prey on girls, mainly because male investigators would rather pose as a young girl rather than engaging in undercover conversations posing as boys talking with adult male offenders about sexual activity that the undercover officers consider to be homosexual activity. I have lectured many thousands of law enforcement officers across the country and around the world and have pleaded with them to overcome their inhibitions and insecurities so they can address the cases with these statistics in mind. I hope that perhaps with the infamy attached to the Sandusky case and the more open dialogue that has begun as a result of it, that law enforcement officers will take the lead and investigate the offenders who prey on boys with at least the same fervor as those who prey on girls.

The rationalizations and justifications in the SIC report about the janitors who witnessed and/or were told by co-workers of acts of sodomy against a boy by Sandusky were unfortunately part of the problem. They, as well as any other adult who witnessed a child being victimized, should have acted immediately to extricate the child from the situation, bring him/her to a hospital for forensic evaluation and do what ever is within their power to identify and report the offender to the police. If in fact those janitors were frightened of the ramifications to their careers, imagine how frightened those boys were of the ramifications to their lives. Children already grow up in a “land of giants.” From the perspective of children they find themselves living in a world populated by people who are bigger than Shaquille O’Neal is to the smallest adult. Children are surrounded by adults who dwarf them in size, have freedom to do what they want, have the ability to order them around with impunity, and have ultimate authority and control over them. They find themselves helpless against the whims and wishes of those who control them. Adults who come in contact with children in any way or forum should be acutely aware of their responsibility towards those children. This means that they have a responsibility to learn proper boundaries, red flag warning signs, and resources available to help children who are or may be victimized.

### 3. Grooming<sup>5</sup>

In the context of child sexual victimization, grooming is a dynamic process utilizing a constellation of seemingly innocent behaviors aimed at gaining the cooperation of the child to achieve sexual gratification for the offender. In other words, it is a pattern of activity employed by preferential child sex offenders to gain access, authority, and control over children for sexual purposes, to ensure their silence, and to keep them in a position in which they can be repeatedly victimized. This dynamic process is aimed at potential child victims, their parents or guardians, and the community that surrounds them. Those who are closest to the child victims or the offender are precisely the ones who are most affected by grooming practices.

Offenders who “groom” typically seek out needy, isolated, or disadvantaged children and provide both emotional and tangible things to fill the needs of those children. They do this by providing: attention, recognition, affection, kindness, romance, gifts, money, trips, jewelry, clothing, staples, food, shelter, drugs, alcohol, privileges, driving, and/or smoking. They also break down the boundaries that usually exist between adults and children by lowering inhibitions, by being overly physical and playful with them, by talking about or encouraging

---

<sup>5</sup> Lanning at 26-28.

masturbation and/or sex, by giving sexual instructions, or by supplying pornography. They are very careful to do only those things that will be viewed in a positive light in public, and typically reserve the sexual behavior for one-on-one private encounters.

Offenders will many times touch, hug, embrace, pat, and tussle the hair of targeted children in front of their parents, guardians, or other adults to desensitize the child to touch and to surreptitiously imply that the parent or other adult tacitly approves of such behavior. That way, when the offender is alone with the child, it is much easier to take the physical interactions to the next level. Sandusky used these behaviors very commonly, as well as using invitations to attend games or work out, followed by trips to the locker room to change clothes (desensitizing the child to being undressed in front of him and vice versa) and to shower with him (desensitizing the child to being naked with him and vice versa) and horsing around in the shower (desensitizing the child to touch while naked) all of which were grooming tactics aimed at sexually victimizing the child.

On the other side, the offender rationalizes his abusive behavior by telling himself that the child's need for nurturing is really an invitation to get close and become sexual with that child. This is one of the fundamental ways in which offenders who actually "love" children, justify in their own minds that they are not hurting a child, or not doing anything the child didn't want them to do. In fact, it is typically a shock and surprise to the child when the offender who has been so nice to them suddenly turns their interactions into something sexual.

The results of effective grooming are both far-reaching and long-term. They include: continued access to the child, initial cooperation of the child, isolation of the child, feelings of love, loyalty, and a debt of gratitude on the part of the child towards the offender. Then, when the sexual activity occurs, the child can experience intense feelings of shame, embarrassment, guilt, and confusion. They typically have strongly ambivalent feeling for the offender at this point, wanting to believe that he truly loves them and not wanting the positive things that he is providing to stop, while at the same time they do not want the sexual activity to continue.

This results in behavior by the child that we call "compliant victimization." Some victims are so grateful for the positive things the offender is doing for them that they actively participate in or enjoy the sexual activity. Others feel so shamed and guilt-ridden, or compromised and trapped, that they simply put up with it. Either way, the situation is such that it enables the revictimization of multiple kids over a long period of time. And typically, none of them want anyone to find out what they have been subjected to. This is especially the case when the offender is male and the child victims are male.

Most people in the general public believe offenders are "monster predators," evil people who are so despicable, so offensive, so heinous, that they must be horrible people, who are strangers, who look weird, act unusually, and most importantly, deliberately hurt children. However, the vast majority of offenders who sexually assault child victims are known to the victim, may be related to them, are seen as harmless, helpful, kind people who are considered "nice-guys."<sup>6</sup>

---

<sup>6</sup> Although there are a percentage of offenders who are female, I will use the masculine pronoun in my analysis to generalize about offenders.

One of the nefarious consequences of effective grooming is that the offenders' motives are seen as altruistic, loving, and kind. He is seen to be sacrificing his time for the benefit of the children he helps. He is seen to be a person who would "never hurt a child." In fact, in most cases of "nice-guy" offenders, the perpetrator actually loves children, enjoys their company, and has convinced himself that the sexual interactions he has with the children he feels close to are merely expression of love and not harmful to the child. This is an example of rationalization and minimization that help a child sex offender grant himself permission to commit the offenses. The "nice-guy" persona is so diametrically opposed to that of the "monster predator" most people believe embodies any person who would sexually assault a child, that those who personally know the offender cannot reconcile the thought that they could possibly be one in the same. Simply put, people who know a "nice-guy" cannot believe that he could possibly be a reviled offender.

Faced with thousands of examples of kind, altruistic, friendly, fatherly, loving, interactions with a person who you know and trust, it is actually very difficult to undo all that experience based on a couple of incidents that you hear about second or third hand, and now believe something completely different. This is likely why McQueary has stated that he had to look again and again into the shower to make sure that what he thought he saw was actually what he saw.

#### 4. Compliant Victimization<sup>7</sup>

One of the most counter-intuitive aspects of child sexual victimization investigations is embodied in the concept of compliant victimization.<sup>8</sup> Children who are groomed into sexual victimization typically do not call out to be rescued or disclose when questioned about possible victimization because of a complex set of physical and psychological factors, including the fact that they don't want anyone to know what has been done to them or what acts they had to do with the offender. For some, this is because they have finally found someone (the offender) who treats them well or tells them they are special; someone who grants them entrée into a world they never had a hope of entering before the offender. Typically, this creates a feeling of intense ambivalence on the part of the victims. On one hand, they love the offender for the things he has done for them. On the other hand, they hate the offender for the things he has done to them. That's why the boy in the shower in 2001 kept silent even though McQueary witnessed him being groomed and assaulted by Sandusky. That's why the nine victims who testified, or were testified about in Sandusky's trial, never made an immediate outcry. Even when investigators first came to some of these boys and asked them direct questions, most of them remained silent or denied anything sexual occurred. They claimed that they had not been victimized, when in fact they had. Eventually, most of them made partial or incremental disclosures, and then over time gave a fuller, more detailed account of their victimization. It's called the "conspiracy of

---

<sup>7</sup> See Lanning at 24-26.

<sup>8</sup> Compliant victimization is such a difficult concept for people to understand and accept that when my colleague Ken Lanning first attempted to add the concept to his monograph (*see supra* note 1), the National Center for Missing & Exploited Children (NCMEC) repeatedly asked Lanning not to use it in his publication because they believed it would sound like he was blaming the victims. This concept does not blame the victims; it explains their behavior.

silence” that surrounds child sexual victimization. It is the opposite of an “active agreement to conceal.”

## 5. High Risk Situations

There are certain high-risk situations that arise in investigating acquaintance exploitation cases. Unfortunately certain youth organizations inadvertently provide the child molester with almost everything necessary to operate a child sex ring. A scouting organization, for example, fulfills the offender’s needs for access to children of a specific age or gender, a bonding mechanism to ensure the cooperation and secrecy of victims, and opportunities to spend the night with a victim or have a victim change clothing. The bonding mechanism of the scouts is especially useful to the offender. Loyalty to the leader and group, competition among boys, a system of rewards and recognition, and indoctrination through oaths and rituals can all be used to control, manipulate, and motivate victims. Leaders in such organizations should be carefully screened and closely monitored. Another high-risk situation involves high-status authority figures. As stated above, child molesters sometimes use their adult authority to give them an edge in the seduction process. Adults with an added authority (e.g., teachers, camp counselors, coaches, clergy members, law-enforcement officers, doctors, judges) present even greater problems in the investigation of these cases. Such offenders are in a better position to seduce and manipulate victims and escape responsibility. They are usually believed when they deny any allegations. In such cases the law-enforcement investigator must always incorporate understanding of the seduction process into interviews, take the “big-picture” approach, and try to find multiple victims or recover child pornography or erotica in order to get a conviction.<sup>9</sup>

---

<sup>9</sup> See Lanning at 137-67 (“Investigating Acquaintance Sexual Exploitation”).



## APPENDIX 4

### REFERENCES AND RESOURCES

***Child Molesters: A Behavioral Analysis*** by Ken Lanning Supervisory Special Agent (retired) of the FBI's Behavioral Analysis Unit is the most comprehensive and enduring reference regarding Child Sex Offender Behavior. Lanning's monograph can be downloaded here: [http://www.ncmec.org/missingkids/servlet/ResourceServlet?LanguageCountry=en\\_US&PageId=469](http://www.ncmec.org/missingkids/servlet/ResourceServlet?LanguageCountry=en_US&PageId=469)

***National Center for Missing and Exploited Children (NCMEC)*** is a national and international resource for individuals and law enforcement agencies that are interested in learning about, reporting, detecting, investigating, and protecting children from sexual victimization, child pornography, and abduction. Its website is an extremely valuable resource: [http://www.ncmec.org/missingkids/servlet/PublicHomeServlet?LanguageCountry=en\\_US&](http://www.ncmec.org/missingkids/servlet/PublicHomeServlet?LanguageCountry=en_US&)

***Male Survivor*** is an international organization that I am a long-time member of that is dedicated to preventing, healing, and eliminating all forms of sexual victimization of boys and men through support, treatment, research, education, advocacy, and activism. Its website is a great resource for individuals, groups and organizations to learn about the issues particular to, and resources available for, survivors of male sexual victimization, as well as, detection and prevention tips: <http://www.malesurvivor.org/>

***Stop it Now!*** is an organization that I have worked with over the years and which has become a leading voice in the fight against child sexual victimization. Its website is a comprehensive and helpful resource for any person or organization that is interested in finding out more about recognizing and preventing child sexual victimization: <http://www.stopitnow.org/>

***Protect*** is a very successful political action organization, that I am a lifetime member of, which has championed many helpful and effective child advocacy laws. Its website is a valuable resource for information: <http://www.protect.org/home>

***Safe4Athletes*** is an organizational advocate that I am working with for athlete welfare where every athlete is provided a safe and positive environment free of sexual victimization, bullying and harassment. Its website is a tremendous resource for individuals, groups, schools, clubs, and teams that need information and guidance on how to create safe environments for child athletes. They have model policies, agreements, complaint forms, and the like that can be used free of charge by any organization: <http://safe4athletes.org/>