

PENN STATE'S EVIL GAME OF TELEPHONE: JOE PATERNO IS CRUCIAL WITNESS AGAINST PSU

Let me avoid any confusion by stating that what follows is not meant to excuse Joe Paterno of any moral or legal duty. He could have stopped an alleged child predator and did not do so and he bears great moral responsibility for his inaction.

With that said, though, I wanted to lay out what the presentment says about the evil game of telephone that occurred after Mike McQueary reported seeing a boy being anally raped in Penn State's showers. This morning bmaz tweeted this article, which in turn relies on this article; and while both provide useful legal analysis, I believe both muddle what the presentment shows. A close examination may explain why (on top of a possible inclination to protect Paterno) the grand jury didn't indict Paterno but did indict Athletic Director Tim Curley and Senior Vice President for Finance and Business Gary Schultz for perjury for the actions they failed to take after learning of the alleged 2002 anal rape of young boy.

As the chronology below suggests, Paterno serves as the state's second witness to Curley's perjury, which in turn provides the foundation for the argument that Penn State did not fulfill its duty to report this incident to the state's child welfare authorities (whereas the University had reported the earlier, potentially less egregious 1998 incident to both).

Rightly or wrongly, the presentment places the responsibility for informing child welfare with Schultz and Curley.

I The University, by its senior staff,

Gary Schultz, Vice President for Finance and Business and Tim Curley, Athletic Director, was notified by two different Penn State employees of the alleged sexual exploitation of that youth.

Schultz ultimately didn't deny he was told Sandusky's actions were sexual; as the presentment explains, the grand jury found his perjury to lie in his claim the 2002 incident was not serious or illegal (which is all the more troubling since Schultz admitted to knowing of the 1998 incident in which Sandusky allegedly "hugged" a naked, lathered boy from behind).

But Curley outright denied he had been told of sexual contact. Yet, according to the testimony in the presentment, Curley was told on two occasions that what Sandusky did to Victim 2 was sexual. According to Paterno's sworn testimony, he told Curley on March 3, 2002 that "something of a sexual nature" had occurred. According to McQueary's sworn testimony, he told Curley (and Schultz) around March 14, 2002 that anal rape had occurred.

But without Paterno's testimony—without him as a second witness that Curley knew Sandusky had done something of a sexual nature to the victim—you've got McQueary's word against Curley and Schultz. In effect, with Paterno's testimony, you've got a clear chain of information showing Penn State failed to act. Without it, you don't have proof of the University's legal liability.

One more note (and again, this is not meant to excuse Paterno's actions). Much has been made of the fact that Paterno's advisers have initiated discussions—though has not yet retained—J. Sedgwick Sollers.

J. Sedgwick Sollers, who once represented President George H.W. Bush in the Iran-Contra affair, was contacted by Paterno's advisers on Thursday. But Sollers has not yet met with Paterno,

and a formal retainer agreement has not been signed.

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A spokesman for Paterno said in an email that "no lawyer has been retained."

For all that suggests about Paterno's concern about criminal and civil liability going forward, it also seems to suggest that Paterno may not have retained a lawyer before he testified to the grand jury (which presumably happened between McQueary's December 2010 appearance and Curley and Schultz' separate January 12, 2011 appearances, though we don't yet know how the grand jury learned of this incident). That means that Paterno may have provided testimony that implicated Penn State's failure to fulfill notice laws without consulting a lawyer first.

Here's the chronology:

Friday, March 1, 2002, 9:30 PM: McQueary sees the anal rape. He leaves, calls his father, and tells his father what he saw.

Saturday, March 2, 2002, morning: McQueary first calls, then goes to Paterno's house and tells him what he saw. The presentment doesn't describe what McQueary testified he said to Paterno, nor does it describe what Paterno testified McQueary had told him. It does describe that Paterno testified that McQueary was "very upset."

Sunday, March 3, 2002: Curley comes to Paterno's home. Paterno tells him (the implication is this comes from Paterno's testimony):

the graduate student had seen Jerry Sandusky in the Lasch Building showers fondling or doing something of a sexual nature to a young boy.

Unknown date, March 2002: Paterno, Curley, and Schultz meet. Schultz testified that Paterno,

reported “disturbing” and “inappropriate” conduct in the shower by Sandusky upon a young boy.

The presentment does not say whether Paterno was asked—and if so, what he testified to—about this meeting.

Around March 14, 2002: Curley and Schultz call McQueary to a meeting (Paterno is not present). McQueary tells them (the implication is this comes from McQueary’s testimony):

he had witnessed what he believed to be Sandusky having anal sex with a boy in the Lasch Building showers. Curley and Schultz assured the graduate assistant they would look into it and determine what further action they would take.

Curley testified that McQueary told them,

that “inappropriate conduct” or activity that made him “uncomfortable” occurred in the Lasch Building shower.

Curley was asked, two times, whether McQueary had reported “sexual conduct” “of any kind.” Both times he responded “no.” He was asked if McQueary had reported “anal sex between Jerry Sandusky and this child,” to which Curley responded, “absolutely not.”

Schultz testified he was unsure what McQueary had told them.

he had the impression that Sandusky might have inappropriately grabbed the young boy’s genitals while wrestling and agreed that such was inappropriate sexual conduct between a man and a boy.

[snip]

conceded that the report the graduate

student made was of inappropriate sexual conduct by Sandusky.

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testified that the allegations were “not that serious” and that “he and Curley had no indication that a crime had occurred.”

[snip]

denied having such conduct reported to him by either Paterno or the graduate assistant.

Unknown date, March 2002: Curley informs the Executive Director of the Second Mile of the conduct reported to him and also meets with Sandusky to tell him he was prohibited from bringing youth onto PSU campus anymore.

[Update] Here’s what Second Mile’s head testified Curley told him.

he was informed in 2002 by Pennsylvania State University Athletic Director Tim Curley that an individual had reported to Mr. Curley that he was uncomfortable about seeing Jerry Sandusky in the locker room shower with a youth. Mr. Curley also shared that the information had been internally reviewed and that there was no finding of wrongdoing.

Around March 28, 2002: McQueary hears back from Curley, According to McQueary, Curley tells him

Sandusky’s keys to the locker room had been taken away and the incident had been reported to The Second Mile.

According to Curley, he told McQueary,

Sandusky had been directed not to use the Penn State athletic facilities with young people and “the information” had been given to the director of The Second

█ Mile.

Unknown date: Curley tells PSU President Graham Spanier “of the information he had received from the graduate student and the steps he had taken as a result.”