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Legal responsibility is unclear in Penn State scandal

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In the grand jury report on the burgeoning sex scandal at Pennsylvania State University, there perhaps is no clearer evidence of wrongdoing and perversion than what Mike McQueary said he saw in a locker-room shower March 1, 2002.

Then a young graduate assistant in the university athletic program, McQueary told the grand jury in graphic detail that he saw former assistant football coach Jerry Sandusky sexually abusing a young boy.

The next day, the report says, McQueary told head coach Joe Paterno, who subsequently notified athletic director Tim Curley and the university vice president for finance and business, Gary Schultz.

But McQueary, a tall and strong former quarterback for the Nittany Lions, did nothing to stop the alleged attack. No one outside the university was told of Sandusky's abuse of the boy, most notably the police.

Now, the role of McQueary, currently an assistant football coach but placed on administrative leave by the university Friday, has come under increasing scrutiny. He has been vilified for failing to stop the assault. Speculation is rife that he might be indicted for failing to go straight to the top of the university with his information, notably to president Graham Spanier, who was dismissed Wednesday.

Still more speculation Friday focused on the possibility that McQueary might fall under the protection of the state's whistleblower law, which is broad in protecting a person who reports wrongdoing, as long as that person is part of a governmental or quasi-governmental institution, such as Penn State.

Yet to some legal analysts and experts on institutional behavior, the extent of McQueary's responsibility and duty to report, or his ability to do that, is not altogether clear.

That is particularly so in light of what appears to have been a lax system at Penn State for handling evidence of wrongdoing by its own staff, they said.

Joshua Perry, an assistant professor of business law and ethics at the Kelley School of Business at Indiana University in Bloomington, said behavioral research makes clear that people often will succumb to doing something they know is wrong simply because an authority figure is telling them to do it.

"If someone wearing a white lab coat in a position of authority tells someone to do something, they are quite likely to do it," Perry said. "You have a graduate assistant who is a former quarterback on the team, his family is friends with [the perpetrator]. Who knows if they make eye contact? Who knows if Sandusky puts his finger to his



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Mike McQueary said he saw Jerry Sandusky raping a boy. He told Joe Paterno. Was that enough?

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lips? There is a clear power dynamic at work here."

That the university had a duty to report the incident to police seems little in doubt. Most legal analysts say that under the state's duty-to-report law, under which teachers, school administrators and others have an obligation to report evidence of sexual abuse, information about the alleged attack should have gone "like a rocket" to Spanier's office and from there to the police.

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"McQueary should be indicted under the duty-to-report law," said Philadelphia lawyer Ken Rothweiler, former head of the Philadelphia trial lawyers association. "They all should be indicted. People think that once you tell a supervisor, it is OK. That is not what the law says. It has to be reported to the head of the institution."

On Friday, Gov. Corbett, who attended the Penn State trustees meeting, addressed the whistleblower aspect, saying, "There are certain provisions out there for whistleblowers. [It] doesn't matter if it's frustrating or not."

"Assuming, and the grand jury doesn't say it, but assuming that certain people are witnesses . . . they are witnesses, so you have to take that into consideration," Corbett said.

Center City lawyer Marc Raspanti, an expert on whistleblower cases, said it was unclear whether McQueary had such protection, but added that the whistleblower laws in Pennsylvania are "weak and do not offer much real teeth or protection."

A well-designed compliance program, with strict lines of incident reporting and regular staff training, can go a long way toward preventing wrongdoing or making sure it is quickly disclosed when it does happen, said Joseph Murphy, a Haddonfield lawyer who is a nationally recognized consultant to corporations and other institutions on guarding against corruption and wrongdoing.

"Let's say in this circumstance someone comes to you and says, 'I saw one of your people doing something,' " Murphy said. "Reporting it up the line is clearly what you should do. But what more should you do? Should you follow it up? That is not such a bad thing to do."

The picture painted by the grand jury report, however, suggests that McQueary, Paterno, Schultz, Curley and Spanier were playing it by ear, and that a team mentality may have come into play.

There seems to have been very little in the way of formal protocol. Rather than intervening to stop the sexual assault, McQueary apparently waited until the next day to tell Paterno, who passed the information on to Curley that "something of a sexual nature" had taken place between Sandusky and the boy, who according to McQueary appeared to be about 10 years old.

More than a week passed before McQueary was called to a meeting with Curley and Schultz. McQueary, according to the grand jury, told the two university officials that he had seen Sandusky sodomizing the boy. Their response? We'll look into it.

Several weeks later, the university took action. But, if the grand jury report is to be believed, it appears to have been more directed at limiting its own exposure than protecting children from abuse by Sandusky, who despite no longer being on the coaching staff had access to school facilities.

They told McQueary they had taken away Sandusky's keys to the locker room. They also informed Second Mile, a foundation for disadvantaged children founded by Sandusky.

No one called the police.

It is unclear from the grand jury report whether McQueary did anything further.

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