

WEDNESDAY, NOVEMBER 16, 2011

PERSPECTIVE

Penn State should do something for the victims

By **Thomas A. Cifarelli**

The victims of the Penn State University child sexual abuse scandal deserve full justice and they deserve it now. While the Pennsylvania attorney general will prosecute the defendants, criminal penalties will do little to address the causes of this tragedy or ease the pain and suffering of its victims. Indeed, the alleged perpetrator was given a relatively modest bail and remains free, raising questions about how the criminal case might unfold. So how will the victims get justice?

One obvious answer is by filing civil lawsuits. Generally speaking, lawsuits filed by the victims of sexual abuse can serve critical purposes. They empower victims with the ability to uncover serious misconduct, bringing about appropriate remedies and preventing similar incidents in the future. Lawsuits can also set a strong example to others, improving the safety of an entire industry in the process. But lawsuits can be potentially traumatic to those who file them, especially when they are victims of child molestation. They can be invasive and protracted affairs, often taking years to resolve.

Lawsuits can function as critically important engines for the discovery of truth and the redress of harm. Children who are sexually abused by trusted adults endure very serious emotional damage including depression and post-traumatic stress disorder. In addition to the trauma of their assaults, they often experience crippling guilt and shame from the abuse and have feelings of powerlessness and vulnerability. Their injuries can last a lifetime. Lawsuits help. They empower victims to retake control of their lives and their futures.

But lawsuits can take a toll on child abuse victims, subjecting them to intrusive and occasionally abusive legal tactics. A person who files a lawsuit must necessarily sacrifice his or her own privacy in order to pursue

their rights in court. Defendants are allowed to question victims, as well as their families and sometimes even their friends or employers. They are also permitted to access a plaintiff's medical and psychological records and delve into a victim's background and even their sexual history in a way far more invasive than most people realize.

Penn State should not simply go into damage control mode, bracing for the lawsuits that are sure to come.

In effect, lawsuits can give the defendant a chance to re-victimize the plaintiff — a particularly troubling prospect when child abuse victims are involved. Yet many defendants choose precisely this tactic, engaging in a war of attrition. By making the process especially oppressive and cumbersome, defendants hope their accusers lose heart and compromise their claim in order to put an end to a difficult process. As strange as it may seem, many defendants facing a child sexual abuse lawsuit employ particularly aggressive tactics. The result is a combative ordeal that can drag on for years, with defendants hiring investigators and mental health experts whose job it is to ascribe the harm to other causes.

The parties allegedly responsible for this sex abuse scandal, including Penn State and the Second Mile charity, have the rare opportunity to respond to this problem with genuine contrition. In so doing, they can encourage recovery by putting the safety of children above all. Penn State should not simply go into damage control mode, bracing for the lawsuits that are sure to come.

I am not speaking about organizing a day where everyone on campus is encouraged to wear blue or light candles. I am talking about Penn State taking a tangible approach to bring about real solutions to this



Associated Press

Penn State President Graham Spanier, left, and head football coach Joe Paterno chat on Oct. 8.

egregious problem.

Penn State should reach out to the governor's office, or the Federal Department of Education, asking for the appointment of two special commissions. The first panel would be charged with investigating what went wrong by examining the evidence and questioning witnesses. Lawsuits involve using the same investigative devices in an adversarial setting. The process here, however, need not be adversarial. Its purpose would be to determine exactly how the alleged incidents were allowed to happen under the nose of numerous university administrators and employees. The goal of the committee would be to come up with a series of safety and supervision rules and regulations that could be adopted by Penn State and Second Mile. Hopefully, other universities and charities would follow suit, implementing the same type of rules to protect other children.

The second of the two commissions would focus on helping the victims. It would meet with each alleged victim for the purpose of determining an appropriate damage award, to be paid by the university, the charity and any other responsible parties.

Such a process could be relatively speedy and efficient. It would avoid subjecting the victims to an invasive and protracted legal battle.

Penn State has long enjoyed a reputation of excellence on the football field. Unfortunately, the allegations against one of its former coaches for sexually abusing children have eclipsed that reputation, putting the university and its football program in the spotlight for all the wrong reasons. Now Penn State has a decision to make. They can either react to the inevitable lawsuits with a business as usual approach, or they can step forward, assume responsibility for their part in this tragedy and make a terrible situation better for the children involved and kids everywhere. The right choice is obvious.



Thomas A. Cifarelli is a California lawyer who represents victims of sexual abuse in civil lawsuits throughout the country. He has handled cases against the Catholic Church, Little League, the Boy Scouts, and many private and public schools and universities, among others.