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## About the Authors



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## Why the Penn State Scandal Happened -- and How to Keep Other Scandals From Happening

One of the most shocking aspects of the Jerry Sandusky Penn State scandal is how the Nittany Lion went silent.

All too often in response to high-profile scandals, observers say "It couldn't happen here." But the scandals keep coming, leaving organizations in crisis and reputations in ruin. The crises cross all types of institutions, from Wall Street to Main Street, from heavily endowed universities to major sports teams, from politicians to respected federal agencies, the military, the media and even religious and philanthropic enterprises. They involve a wide range of criminal and ethical misconduct, including fraud, bribery, football bounties, wiretapping, hazing, product safety failures, oil rig explosions, and sexual misconduct.

All these crises share a common theme: significant breakdowns in leadership that create an environment where (1) ethical lapses and misconduct can occur, (2) red flags are ignored, and (3) problems, once they come to light, are mismanaged. Why do leaders go silent in these situations? History shows that fear of negative publicity, of loss of donations or business, of losing talented people, and of overall damage to reputation and destruction of the brand cause failures of leadership that often are more serious than the original sins.

Not surprisingly, in the aftermath of the crisis, and no matter who the original villain, the spotlight inevitably shines on the enterprise leaders, in efforts to understand the extent to which governance failures contributed to the problems. For the board of trustees of Penn State University and the institution itself, one of the most damning portions

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**Greg Jaeger** concentrates his practice in the areas of trial and appellate litigation, government contracts counseling and litigation, and export control compliance. Over the course of his career, Mr. Jaeger has first-chaired a wide range of trials and appellate arguments, including breach of government contract claims, complex commercial fraud cases (including False Claims Act ("FCA") litigation), construction claims, insurance clause disputes, matters involving misappropriation of trade secrets, and damages cases. He can be reached at [gregory.jaeger@kayescholer.com](mailto:gregory.jaeger@kayescholer.com)

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of the newly released investigative report focused on the same failures that have plagued other corporate enterprises:

- Failure by the board of trustees to exercise oversight functions to ensure the disclosure of major risks to the university.
- Failure by the board to make reasonable inquiry and to demand details regarding criminal conduct and significant legal and reputational risks to the institution.
- A president who discouraged discussion and dissent.
- Failure by leadership to understand applicable laws and protections for whistleblowers.
- A culture of reverence that inhibited full review of the facts and management of a crippling scandal.

Although Sandusky's criminal conduct was extraordinary, the investigative report found that the governance lapses allowed his heinous crimes to continue. Unfortunately, those lapses will now define how the board and Penn State's leaders are remembered.

### Leadership Lessons for Directors, Trustees, and Senior Management

In the wake of the Penn State scandal, everyone who serves in a position of leadership should take a step back and evaluate what lessons can be learned from the governance and cultural failures

that we now know plagued the university. That means:

- **Debunk the myth that it could never happen here.** There is no room for complacency in the boardroom or the C-suite. No one thinks it will happen to them until it does. Plan ahead for a crisis. Have a well-constructed crisis management plan. Be vigilant about red flags, and challenge fellow leaders to do the same. Prepare yourselves in advance to ask the tough questions and to make the right decisions when serious lapses come to light.

- **Conduct risk assessments and monitor for compliance.** Understand what risks could threaten your organization and the applicable laws. Require active compliance monitoring and regular reporting of conduct that presents legal and reputational risk to the organization. Knowing the facts—the good, the bad, and the ugly—will allow you to deal more effectively with a crisis and the individuals responsible.
- **Set high ethical standards, and demand accountability at all levels.** A strong culture of compliance starts with the tone at the top and clear written standards, with training and accountability at all levels. Lead by example and make leadership everyone’s business. Hold everyone to the same standard, including corporate leaders and profit centers. Reverence has no place in effective corporate governance.
- **Encourage dialogue and even dissent.** Be vigilant about red flags, and challenge others to do the same. Encourage good-faith reporting or whistleblowing of potential problems, and make sure there is a process to fairly evaluate and address complaints. As a leader, make yourself accessible, and never lose an opportunity for a teachable moment. You just might learn something.
- **Expect and plan for a crisis.** Develop written protocols for communication, fact finding, and reporting. Know your internal and external resources. Consider a separate crisis management committee of the board of directors, as well as contingencies if one or more of those members must be recused.
- **The fork in the road:** Have the courage to stand up and do the right thing. Don’t be afraid to rock the boat, and don’t wait for someone else to be brave. Good leaders ask tough questions, seek the truth, take a stand, and challenge others to do the same.
- **Seek legal advice early.** Trusted and experienced advisers are invaluable when navigating crises, and your early steps in response to problems will forever set the tone. Always remember that avoiding the truth, ignoring red flags, or wishing a problem away will only make you part of the problem and vulnerable to the spotlight.

The Penn State scandal could have been prevented had the university’s leaders had the courage to challenge its revered football program. The same criticism could be made in other corporate scandals where leaders were afraid to confront prized business units and powerful executives. Hopefully, current and future leaders, watching from the sidelines in all corporate enterprises, will learn the lesson of the Nittany Lion that, sadly, did not roar.