

Nailed to the Crossbar: From the NCAA–Penn State Consent Decree to the Joe Paterno Family Lawsuit

Edited by Ronald A. Smith. Published 2018 by Mt. Nittany Press. 263 pp. ISBN: 978-1-63233-409-1

Reviewed by Lauren McCoy, Western Kentucky University, USA

In *Nailed to the Crossbar: From the NCAA–Pennsylvania State University (Penn State) Consent Decree to the Joe Paterno Family Lawsuit*, sport historian Ronald A. Smith highlights an insider look into the aftermath of the Jerry Sandusky child-abuse scandal using the history of the Pennsylvania State University (Penn State). The specific nature of this book does not make it an ideal fit as a primary reading in a sport management or sport communication course. It works best for casual reading but could also be used as secondary reading in courses discussing intercollegiate athletic administration, ethics, or sport history. While the history presented in the book highlights the culture that led to the university's mistakes both during and after the scandal, the main focus is to call out the National Collegiate Athletic Association (NCAA). This book provides details about how the NCAA capitalized on the negative publicity to force a consent decree on Penn State that was ultimately reversed when challenged. The evidence provided throughout the book makes it clear how much this decree did not follow proper NCAA enforcement procedure, but more detail could have helped explain these failures.

For example, Smith highlights a lack of due process in his argument that the NCAA's consent decree was flawed from its inception. He accomplishes this first through a brief history of NCAA enforcement, including discussion of *NCAA v. Tarkanian*. In *Tarkanian*, the NCAA was accused of conspiring to remove Jerry Tarkanian from his position as the head men's basketball coach at the University of Nevada–Las Vegas by failing to provide for due process in its enforcement procedures. The U.S. Supreme Court found that the NCAA was not a state actor, meaning that concepts like due process under the U.S. Constitution do not apply to the NCAA. Smith notes that the NCAA won its U.S. Supreme Court case in 1988 but lost later due to a \$2.5 million settlement with Tarkanian. This settlement also came with improved due-process considerations in the enforcement process that were not followed in the investigation of Penn State.

More discussion of the impact of due process would have been beneficial to the book since the lack of due process is a central argument for the failure of the consent decree. Due process was not defined in connection to *NCAA v. Tarkanian* but was covered instead in a later section highlighting Penn State's lack of due process when the university made the decision to fire Joe Paterno. Smith cites a 2012 article in *The New York Times* by Pete Thamel and Mark Viera as evidence that the Board of Trustees blindsided Paterno. This same section of the book defines due process as “the right to be treated fairly by people in position of

authority” (p. 35). However, the board’s decision here would not qualify as a lack of due process. Thamel and Viera in the same article cited by Smith reported that the board honored the terms of Paterno’s contract and treated him as if he had retired after the 2011 season. A due-process claim must also include evidence that the individual is deprived of a life, liberty, or property interest. A property interest, losing money for example, is necessary to argue a lack of due process for Paterno, and it does not appear that he was financially harmed by this decision in a way that goes beyond a contractual issue.

The book presents a compelling case that the NCAA failed to do what is right along with Penn State’s being motivated to act without sound advice but does so in a manner that may be perceived as biased or one-sided. In the book’s introduction, Smith notes his position as a Penn State professor and his attempt to be measured in his discussion of the issue. This measured perspective is hard to determine in parts because almost every reference to the NCAA paints the organization as the aggressor. He repeatedly refers to the NCAA and its president Mark Emmert as bullies. This may cause those who are not associated with Penn State or who do not have negative opinions about the NCAA to dismiss the message of this book.

While Smith often uses strong language that accuses the NCAA of bullying Penn State, he does provide a balanced account of what happened. Smith exposes the flaws inherent in a system that could be used to inadvertently protect horrific behavior. He also explains the greater impact of the consent decree beyond the Sandusky scandal through the firing of women’s fencing coach Emmanuil Kaidanov. After an assistant reported a student-athlete for potential drug use to the hotline created by the Athletics Integrity Agreement in connection with the consent decree, Kaidanov told the assistant that she needed to tell him about these issues, not someone else. Administrators considered this statement to be harassment and fired Kaidanov. The initial report was false and based on a misunderstanding, but Kaidanov was fired anyway. This rush to judgment or action motivated by the consent decree is precisely why the university was forced to settle a due-process and breach-of-contract lawsuit in 2013. Although Smith is quick to point out the pressures that may have motivated bad decisions at Penn State, the NCAA is not given the same latitude.

What *Nailed to the Crossbar* does best is point out the cult-like nature behind college football while denying that such a culture exists at Penn State. Smith takes exception to the statement in the Freeh Report about the culture of football being ingrained at all levels of the university. “Freeh’s obvious exaggeration for effect made his report suspect as a propaganda invective. To believe that Penn State’s outstanding Department of Meteorology was dominated by football, as in being there principally to predict the weather (which it did) for Penn State football games, was pure insult” (p. 49). The Department of Meteorology along with the other examples Smith provides may not exist solely for the benefit of the football team, but the impact of football and Joe Paterno at the university is undeniable.

The power given to the university president to make independent decisions related to athletics without consulting the Board of Trustees can explain why President Graham Spanier did not keep the board informed about the Sandusky Grand Jury, an issue that contributed to the scandal according to Smith. Furthermore, Smith notes that Paterno was responsible for establishing an independent athletic department after being previously associated with an academic unit on