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# Investigating Academic Integrity Issues: What Every University Counsel Needs to Know

**Ken Wainstein**  
**Johnny Sutton**  
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## Duke Lacrosse



### Rush to Judgment

*Former Duke lacrosse coach discusses his forced resignation during the 2006 Duke rape scandal and his hard road back to coaching*

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# UVA Rape Allegations

- In November 2014, Rolling Stone published an article on the University of Virginia’s mishandling of rape and sexual assault cases on campus.
- O’Melveny & Meyers was appointed to conduct an independent review of its sexual assault policies and procedures.
- In April 2015, Rolling Stone retracted its story after the Columbia Journalism School released a report repudiating the Rolling Stone article’s narrative.
- In May 2015, UVA Associate Dean of Students Nicole Eramo filed a defamation lawsuit against Rolling Stone.



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# UNC Controversy

- Between 1993 and 2011, individuals in the Department of African and African American Studies offered a curriculum of “paper classes” to over 3,100 students.
- These paper classes required no class attendance or any faculty involvement.
- The paper classes’ sole assignment, a research paper, was graded by a non-faculty administrator.
- Student-athletes accounted for 47.6 % of enrollments in the paper classes.



“Mr. Wainstein has found that the wrongdoing at Carolina lasted much longer and affected more students than previously known. The bad actions of a few and the inaction of others failed the University’s students, faculty and alumni, and undermined the institution as a whole,” said UNC-Chapel Hill Chancellor Carol Folt.

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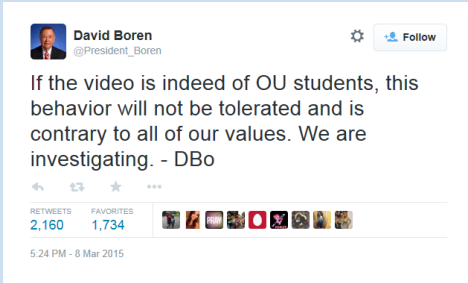
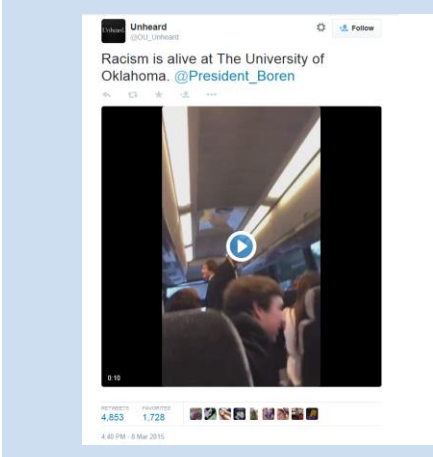
# Ohio State Marching Band



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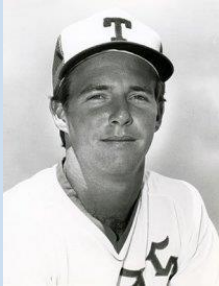
# University of Oklahoma Fraternity



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# Johnny Sutton Steroid Scandal



Before:  
- Playing Weight: 165  
- Body Fat: 6%



After:  
- Playing Weight: 240  
- Body Fat: 0.001%

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# Types of Recent Higher Education Cases

- **Athletic & Academic Fraud**
- **Sexual Assault & Title IX Compliance**
- **Unethical & Inappropriate Conduct**
  - **Hazing**
  - **Racism**
  - **Undue Influence in Admissions**

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## Athletic and Academic Fraud

### Recent cases:

- **University of North Carolina at Chapel Hill**
- **Syracuse University**
- **Auburn University**



*In March 2015, the NCAA announced a number of sanctions against Syracuse University, including vacating more than 100 men's basketball wins and suspending head men's basketball coach Jim Boeheim.*

## Athletic and Academic Fraud

**The NCAA is reportedly investigating academic fraud at 20 schools, including 18 Division I institutions:**

- *The NCAA attributed an increase in academic violations to, among other things, "stricter NCAA academic standards and a rise in cheating among college students in general."*
- *Katherine Sulentic, chairperson of the NCAA's enforcement division's academic-integrity group, said, "The timing is right to dedicate more resources to this. Everyone's antenna is up about academic fraud on a college campus in general."*



# Handling of Sexual Assault Cases & Title IX Compliance

## Recent cases:

- University of Virginia
- Columbia University
- University of Montana



In late 2014 hundreds of Columbia University students carried mattresses around campus and laid them at President Lee Bollinger's door in an effort to raise attention to sexual assault victims' struggles on campuses.

# Handling of Sexual Assault Cases & Title IX Compliance

## A surge of Department of Education ("DOE") investigations:

- As of January 2015, DOE's Office of Civil Rights reported that there were 94 institutions under investigation for compliance with Title IX.
- The list from DOE parallels the Obama administration's push to shine a spotlight on sex assault on college campuses.

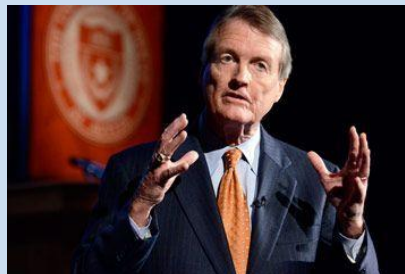


President Barack Obama, with Vice President Joe Biden, delivers remarks at an event to launch the "It's On Us" campaign, a new public awareness and action campaign designed to prevent sexual assault at colleges and universities, in the East Room of the White House, Sept. 19, 2014.

## Unethical, Abusive or Inappropriate Conduct

### Recent cases:

- Hazing at Ohio State University
- Racism at University of Oklahoma
- Undue influence in admissions at the University of Texas at Austin



According to an independent investigation report released in February 2015, University of Texas at Austin President Bill Powers overruled his staff to admit well-connected students.

## Traditional Responses to Crises at Higher Education Institutions

Historically, traditional responses to crises at higher education institutions have included:

- Internal investigations by university counsel
- Internal adjudication proceedings (*i.e.* honor courts)
- Personnel actions
- Referral to NCAA Enforcement
- Referral to criminal or regulatory authorities

## Objectives in Responding to Misconduct Allegations

A school's response to allegations of misconduct should be guided by the following overriding objectives:

1. Ascertain if there was misconduct or negligence.
2. Assign accountability for misconduct or negligence and take any appropriate personnel actions.
3. Diagnose any failings in policy or procedures and take steps to remedy those failings.
4. Demonstrate good faith effort to find the truth and dispel any suggestion of cover-up or wagon-circling.
5. Demonstrate commitment to transparency.
6. Demonstrate school's commitment to its students and academic mission.
7. Position the school to move beyond the controversy.

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## Increasing Use of Independent Investigations

- Over the past few years, schools have increasingly decided that those objectives are best achieved by commissioning an independent investigation. There are a number of reasons for that trend:
  - Increasing public and media attention to higher education controversies.
  - Greater expectation of transparency at colleges and universities.
  - Focus on school's reputation and its effect on rankings among peer schools.
  - The high financial stakes in some controversies.
  - The increasing use of independent investigations in the corporate world.

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## Reasons for Conducting an Independent Investigation

- **Independent investigations are often the most effective means of achieving the school's objectives. A well-run independent investigation can:**
  - **Perform the fact-finding that allows the school to ascertain whether there was misconduct, assign accountability therefor and diagnose and address any policy or procedural failings that led to the misconduct.**
  - **Demonstrate the school's commitment to the truth and transparency through its decision to authorize a credible outside party to conduct the investigation.**
  - **Demonstrate the administration's commitment to the students and academic mission by prioritizing its interest in finding and addressing any potential misconduct over the protection of any other interests.**
  - **Expedite the school's ability to move beyond the controversy by commissioning a thorough independent investigation that will produce a report that is the final word on the allegations.**

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## Process of Conducting an Independent Investigation

**The investigation processes are similar to those in corporate settings but must be adapted to reflect the campus environment and higher education context.**

**Higher education investigations may include:**

- Email reviews
- Interviews of staff and students
- Analysis of historic university policies and processes
- Analysis of student records, personnel files & academic records
- Cooperation with third parties such as local law enforcement

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## Process of Conducting an Independent Investigation

**The independent investigator in a university setting must engage with a varied set of constituents:**

- University boards
- Presidents, Chancellors, and senior university officers
- Faculty and staff members
- Alumni
- Students
- State government officials (matters involving public institutions)
- Others: media, boosters, “whistle-blowers”

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## Challenges in Independent Investigations at Universities

- **Balancing academic freedom and a thorough, probing investigation.**
- **Understanding and working with the shared-governance management model found at many schools.**
- **Safeguarding FERPA-protected information.**
- **Complying with public records laws for public institutions.**

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## Challenges in Independent Investigations at Universities

- **Responding to potential media interest in in both the underlying controversy and the investigation.**
- **Handling the public nature of investigations:**
  - The scope of the investigation should be defined at the outset and described publicly.
  - Report and findings are often released to the public.
  - Investigators and schools often receive scrutiny of the findings from a variety of constituents and the public.

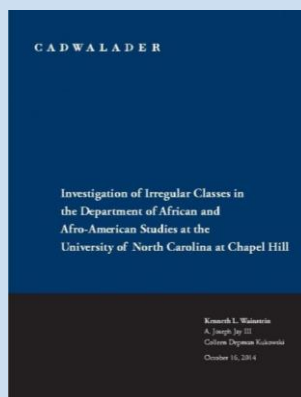
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## Importance of a Well-Balanced Public Report

### Primary Purposes of a Final Report:

- **Demonstrate thoroughness and completeness of investigation.**
- **Provide official record of factual findings.**
- **Assess level of cooperation or non-cooperation received from school and third parties.**
- **Assess involvement and/or knowledge by higher level of administration.**
- **Assess degree to which institution did or did not deviate from its mission to care for and educate its students.**



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# Moving Past the Scandal



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# Considerations for University Counsel

When facing a crisis that may warrant an independent investigation, university counsel should consider doing the following:

1. Assess whether the school's objectives can best be achieved with an internal investigation.
2. Consult with key university stakeholders, including university executives and board leadership.
3. If an independent investigation is warranted, select an investigator with credibility and a reputation for objective fact-finding.
4. Make it clear that independent investigator has a mandate to conduct a thorough investigation.
5. Make it clear to the university staff that they will provide complete cooperation.
6. Establish protocols to protect the independence of the investigation.
7. Publicly explain the parameters of the investigation.
8. During the investigation, continue to support the independent investigator's mandate and independence.
9. During the investigation, assist in the myriad privacy and FERPA issues that can arise.

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# Questions?

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