Investigations Infrastructure and Corrective Actions

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Goal
Provide investigation assessment tools that will facilitate the growth and maturity of your investigation program

Agenda
• Explore how to centrally track wide-ranging and complex allegations of legal and policy violations
• Practice using materiality ratings and clear protocols for effective stakeholder coordination and efficient leadership reporting
• Discuss how to formalize corrective actions in a compliance program
# Two Types of Investigations

<table>
<thead>
<tr>
<th>External Investigations</th>
<th>Internal Investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conducted by regulator or external law enforcement.</td>
<td>Conducted by organization employees or outside counsel.</td>
</tr>
<tr>
<td>Examples investigators include:</td>
<td>Examples of investigators include:</td>
</tr>
<tr>
<td>- Office for Civil Rights,</td>
<td>- Human Resources,</td>
</tr>
<tr>
<td>- State Ethics Commission,</td>
<td>- Internal Audit,</td>
</tr>
<tr>
<td>- State and Federal Inspector General’s Office, and</td>
<td>- Compliance,</td>
</tr>
<tr>
<td>- Federal Bureau of Investigation</td>
<td>- Outside law firms, and</td>
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<td></td>
<td>- Specialized consultants.</td>
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</tbody>
</table>

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## How do we ensure we are effectively conducting wide-ranging, complex investigations?

- **Duke Pays Whistleblower Millions In Research Fraud Case**
  - Duke University is paying the U.S. $112.5 million to resolve allegations that it violated the False Claims Act by submitting falsified research data. [Source](https://www.npr.org), Mar 25, 2019

- **Ohio State Marching Band Investigation Reveals Sexual Harassment**
  - Business Insider

- **UC Investigates University Involvement In College Admissions Scandal**
  - Los Angeles Times
  - President Janet Napolitano has ordered an internal investigation into any UC involvement in the nationwide college admissions scandal. Mar 12, 2019

- **MSU: Nassar Internal Probe Report Doesn’t Exist**
  - The Detroit News
  - Lansing — Michigan State University cannot release an "Investigative report" on an internal probe into the handling of criminal activity by former... Dec 8, 2017

- **Harvard University professor lied about work for the Chinese government**
  - USA TODAY
  - Lieber, who specializes in nanoscience and is principal investigator of Harvard’s Lieber Research Group, has received more than $15 million in... Jan 28, 2020
Effective Organizational Investigations

Promote a culture of integrity and appropriately engage leadership

Stop misconduct and identify systemic issues and process breakdowns

Mitigate risk and demonstrate internal control to external regulators

U.S. Sentencing Guidelines §8B2.1

Implementing written policies, procedures, and standards of conduct

Leadership Engagement and Appropriate Delegation

Diligence in Hiring

Communication and Training

Testing and Monitoring

Alignment of Incentives

Responding promptly to detected offenses and undertaking corrective action
### DOJ Evaluation of Corporate Compliance Programs

<table>
<thead>
<tr>
<th>Confidential Reporting Structure, Investigation Process, and Continuous Improvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effectiveness of the Reporting Mechanism</td>
</tr>
<tr>
<td>Properly Scoped Investigations by Qualified Personnel</td>
</tr>
<tr>
<td>Investigation Response</td>
</tr>
<tr>
<td>Resources and Tracking of Results</td>
</tr>
<tr>
<td>Response to Investigations</td>
</tr>
<tr>
<td>Analysis and Remediation of any Underlying Misconduct</td>
</tr>
</tbody>
</table>

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**Squirrel!**
## Organization of Investigative Infrastructure at Ohio State

<table>
<thead>
<tr>
<th>Human Resources Employee &amp; Labor Relations</th>
<th>Medical Center HR Employee &amp; Labor Relations</th>
<th>Athletics Compliance</th>
<th>Medical Center Compliance</th>
<th>Office of Academic Affairs</th>
<th>Office of Institutional Equity</th>
<th>Office of Legal Affairs</th>
<th>Police Department</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Investigates:</strong> Human Resources policy issues</td>
<td><strong>Investigates:</strong> Human Resources policy issues</td>
<td><strong>Investigates:</strong> NCAA/Big 10 violations; Athletics policy issues</td>
<td><strong>Investigates:</strong> Healthcare regulatory and policy issues; ethics issues</td>
<td><strong>Investigates:</strong> Rule 3335.5-04 faculty misconduct</td>
<td><strong>Investigates:</strong> Harassment, discrimination, and sexual misconduct</td>
<td><strong>Investigates:</strong> Ad hoc issues</td>
<td><strong>Investigates:</strong> Criminal Incidents</td>
</tr>
<tr>
<td><strong>Oversight:</strong> Office of Human Resources</td>
<td><strong>Oversight:</strong> Office of Human Resources/Med Center HR</td>
<td><strong>Oversight:</strong> Department of Athletics; OUCI</td>
<td><strong>Oversight:</strong> Office of Legal Affairs; OUCI</td>
<td><strong>Oversight:</strong> Provost</td>
<td><strong>Oversight:</strong> Office of Institutional Equity; Provost</td>
<td><strong>Oversight:</strong> General Counsel</td>
<td><strong>Oversight:</strong> Department of Public Safety</td>
</tr>
</tbody>
</table>
Poll Question #1

Who oversees investigations at your institution?

A. Internal Audit  
B. Compliance  
C. Office of Legal Affairs/General Counsel  
D. Office of Academic Affairs/Provost  
E. Other/Multiple Offices

2013 Investigation Assessment
### Materiality Ratings

<table>
<thead>
<tr>
<th>Rating</th>
<th>Public Interest</th>
<th>Subject Position</th>
<th>Regulatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Major reputational topic; of immediate interest to the general public</td>
<td>Concerns unit or senior leader</td>
<td>Regulatory debarment or shutdown</td>
</tr>
<tr>
<td>4</td>
<td>Potential for significant publicity; of interest to the general public</td>
<td>Concerns management of some seniority</td>
<td>Regulatory probation/ongoing supervision</td>
</tr>
<tr>
<td>3</td>
<td>Potential for publicity; could be of interest to the general public</td>
<td>Concerns staff or faculty</td>
<td>Regulatory warning letter or equivalent</td>
</tr>
<tr>
<td>2</td>
<td>Small potential for publicity; no known interest to the general public</td>
<td>Concerns staff or faculty</td>
<td>Advisory letter or other indication of ongoing interest</td>
</tr>
<tr>
<td>1</td>
<td>No potential for publicity; no known interest to the general public</td>
<td>Concerns staff or faculty</td>
<td>No regulatory enforcement interest</td>
</tr>
</tbody>
</table>

### Action Steps Summary

1. **Management advised:** ODJ and Unit collaborate on investigation.
   - *Investigations Team Member:* Consult ODJ, investigator TBD
   - *ODJ Responsibility:* Notify SDJ, perform investigation themselves
   - *Additional Responsibility:* None

2. **Unit oversees investigation:**
   - *Investigations Team Member:* Consult SDJ, perform investigation themselves
   - *ODJ Responsibility:* None
   - *Additional Responsibility:* None

3. **Conduct investigation:**
   - *Investigations Team Member:* Consult SDJ, perform investigation themselves
   - *ODJ Responsibility:* None
   - *Additional Responsibility:* None

### Anonymous Complaint

**Poll Question #2**

**Anonymous Complaint**

Received: 4/26/2020  
Organization/Unit: Athletics (Men's Basketball)  

Please provide a detailed description of this matter: My teammate, Michael Jordan, gave me the name of a tutor that will write papers for me. I texted the tutor to see if she could write my English paper for me and she said that it would cost $200 per paper. She offered to write it for free if I gave her tickets to the Michigan game. She said it was okay because she's done this for lots of other players, including football players. I've already promised all of my Michigan tickets to my family and friends and I'm mad that I can't get the tutoring services for free like the other guys. I sent an email about this to the Athletic Director and she hasn't responded.

The day after I reported this issue to the Athletic Director, my Coach told me that I'm not starting anymore. I think this is retaliation for reporting an issue.

How would you rate this issue?  
A. 1  
B. 2  
C. 3  
D. 4  
E. 5
Investigation Program Development

Effective Investigation Program: Framework

<table>
<thead>
<tr>
<th>Leadership Engagement</th>
<th>Reporting Mechanism</th>
<th>Planning/Scope</th>
<th>Qualified Personnel</th>
<th>Response</th>
<th>Tracking</th>
<th>Communication</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Leadership notified and updated</td>
<td>• Anonymous reporting mechanism publicized</td>
<td>• Complaints assessed consistently</td>
<td>• Regular investigative training</td>
<td>• Timing metrics implemented</td>
<td>• Information gathered used/analyzed effectively</td>
<td>• Outcomes are communicated internally and externally if necessary</td>
</tr>
<tr>
<td>• Decisions framed effectively for leadership</td>
<td>• Compliance function has full access</td>
<td>• Protocol to determine investigator</td>
<td>• Evidence analyzed consistently</td>
<td>• Corrective actions implemented consistently</td>
<td>• Corrective actions are tracked/audited</td>
<td>• Value of concern reporting communicated/demonstrated</td>
</tr>
</tbody>
</table>

Effective Compliance Program: Maturity Assessment

<table>
<thead>
<tr>
<th>RATING</th>
<th>OVERSIGHT/GOVERNANCE</th>
<th>CONTROL DESCRIPTION</th>
<th>REPEATABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optimized</td>
<td>Leadership oversight is pro-active</td>
<td>Controls in place; regular risk-based testing</td>
<td>Strategies to make processes more efficient</td>
</tr>
<tr>
<td>Managed</td>
<td>Leadership oversight is active</td>
<td>Controls in place; ad hoc testing</td>
<td>Periodization and updating of methods</td>
</tr>
<tr>
<td>Defined</td>
<td>Leadership oversight is continuous</td>
<td>Controls in place to solve requirements, no testing</td>
<td>Uniform processes and repeatable</td>
</tr>
<tr>
<td>Repeatable</td>
<td>Leadership oversight is sporadic</td>
<td>Some but not all controls in place; some controls outdated</td>
<td>Highly dependent on actions and knowledge of people close to the issue</td>
</tr>
<tr>
<td>Initial</td>
<td>No leadership oversight</td>
<td>No institutional controls</td>
<td>Ad hoc</td>
</tr>
</tbody>
</table>

Investigation Program Development Assessment

<table>
<thead>
<tr>
<th>Optimized</th>
<th>Managed</th>
<th>Defined</th>
<th>Repeatable</th>
<th>Initial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leadership Engagement</td>
<td>Reporting Mechanism</td>
<td>Planning/Scope</td>
<td>Qualified Personnel</td>
<td>Response</td>
</tr>
</tbody>
</table>

Current

List current status for each process

Next Steps

List next steps for each process

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Investigations Oversight and Governance

**Conducting**
- Plan and lead investigations for complaints in defined subject areas
- Document findings
- Recommend corrective actions
- Plan and lead investigations when other teams need or when requested by senior leadership
- Provide consultation and/or direct oversight on material investigations as needed
- Administer EthicsPoint hotline and assign issues to appropriate teams

**Tracking**
- Track investigations in defined subject area, and regularly report new investigations and progress on existing investigations to University Compliance and Integrity
- Monitor implementation of corrective actions
- Assign materiality ratings to matters, and coordinate with investigative teams to follow protocols
- Receive regular reports from investigative teams
- Maintain central tracker of investigations across the university

**Reporting**
- Provide information as necessary to unit leadership and OUCI
- When appropriate, leader of unit overseeing investigative team reports to the Board
- Report material matters to the General Counsel and the Board of Trustees’ Audit and Compliance Committee
- When appropriate, facilitate reporting to senior leaders

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**Poll Question #3**

Who should conduct root cause analyses following investigations at an institution?

A. Internal Audit  
B. Compliance  
C. Office of Legal Affairs/General Counsel  
D. Department/Unit under Investigation  
E. Other/Multiple Offices
Corrective Actions and Root Cause Analysis

**Resolution Information**
- Track actions taken to ensure follow through and consistency
- Identify ownership of corrective action

**Root Cause Analysis**
- When should you conduct a root cause analysis?
- Factors contributing to issue/concern
- Identify ownership of root cause analysis

**Communicating Outcomes**
- Public investigation reports?
- Public investigation data?
- Communicate corrective action to stakeholders

Questions?

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