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**Connecticut Conference of  
Independent Colleges**

**Effective Internal Investigations in  
Higher Education**

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# Agenda

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- Why and When to Investigate
- Investigation Triggers
- Key Investigation Principles
- Key Investigation Steps
- Other Considerations
  - Publicity
  - Confidentiality
  - Disclosure Obligations
  - Attorney Client Privilege
  - Documentation
- Questions

# UVA Frats Suspended Amid Rape Allegations



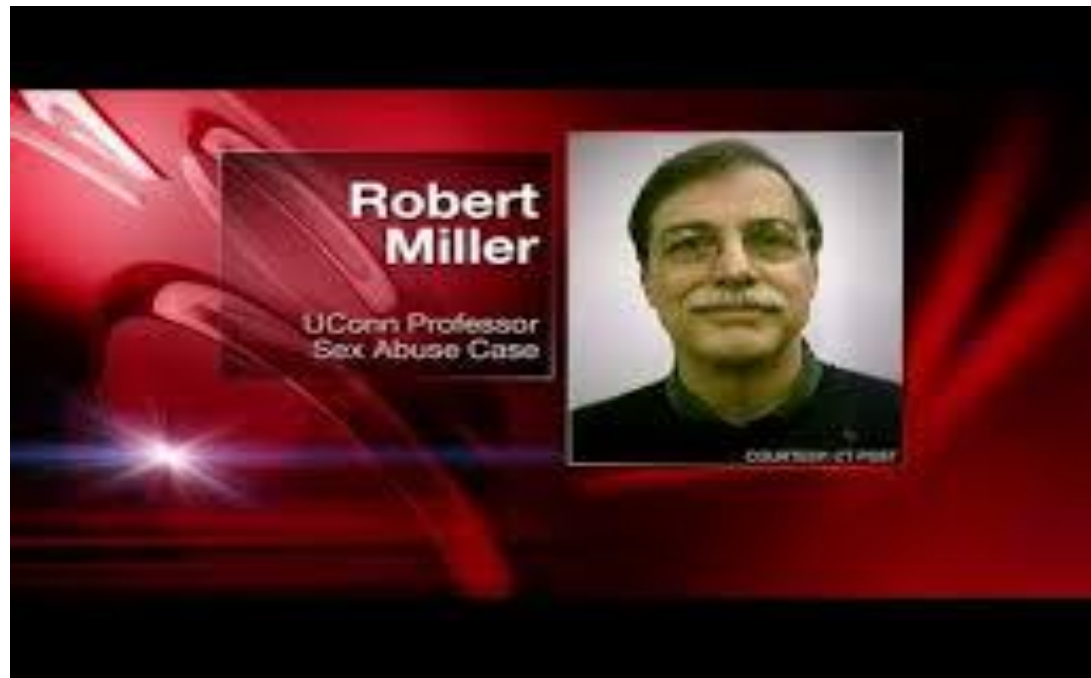
# UConn Failure to Investigate



## UConn Failed to Investigate Sexual Assault Reports and Protect Victims, Complaint Claims



# Robert Miller, UConn Professor, Faces Sexual Misconduct Probe Involving Children



# Doc Hurley Scholarship Foundation

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## State Says Muriel Hurley Used Scholarship Cash for Personal Gain



# NFL Ray Rice Investigation

- Former FBI Head Mueller Issues Report
- Reviewed More than 1 Million Documents
- Results Controversial
  - NFL Didn't See Tape, but Knew and Should Have Taken Action



# Investigation Triggers

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- Assault
- Discrimination
- Theft
- Financial Improprieties
- Fraud
- Violence
- Drug Abuse
- Sexual Harassment
- Inappropriate Faculty/Student Contact
- Stalking
- Bullying
- Pornography



# Why Investigate

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- Gather the Facts
- Assess if Violation of Policy or Law
- Provide Basis for Sound and Legal Business Decisions
- Manage Publicity and Communications - Externally and Internally
- Determine if Urgent Interim Action is Necessary

# Key Investigation Principles

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- Timely
- Fair
- Thorough
- Opportunity to Communicate
- Avoid Liability
- Confidentiality
- Accurate and Detailed Documentation
- Appropriate Action and Follow-Up

# Key Investigation Steps

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- Determine the Validity of the Claim
- Evaluate Basis for Investigation
- Determine Whether Interim Action is Necessary
- Determine Who Conducts Investigation
- Obtain and Review All Relevant Documents
- Review Potential Legal Issues
- Consider Details of the Investigation
- Conduct of Interviews
- Documentation
- Appropriate Action

# Necessary To Investigate?

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- By Policy
- By Law
- Politically
- Practically

# Basis For Investigation

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- Complaint
- Audit
- Publicity
- Legal Challenge

# Interim Relief

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- Separate Involved Parties
- Suspend Pending Investigation
- Administrative Leave of Absence
- Other Action

# Who Should Conduct The Investigation

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- Respected Management Level Employee
- More Than One Manager
- Human Resources
- Consider Using Attorney
- Respected Outsider

# Obtain Documents

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- E-mails, Texts, Social Media
- Relevant Policies and Contracts
- Relevant Laws
- Information on Past Situations



# Legal Issues

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- Discrimination
- HIPAA
- Privacy
- Education Statutes
  - Mandated Reporting
- Criminal Charges

# Details Of Investigation

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- Have More Than One Investigator
- Interview Employees in Private Area
- Begin Investigation with Complainant
- Identify Others to Interview
- Show Concern and Sensitivity About Confidentiality
- Pay Attention to Body Language
- Ask Open-ended Questions

# Documentation

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- Take Detailed Notes
- Document Everything Immediately
- Document the Behavior of the Witness
- Be Careful
  - Likely to be a Litigation Exhibit
- Prepare Investigation Report
  - Summarizing Key Findings
  - Recommended Course of Action
- Do Not Include Attorney-Client Communications

# Investigation Report

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- Summarize Key Findings
- Recommended Course of Action
- Do Not Include Attorney-Client Communications

# Attorney-Client Privilege

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- Advantages/Disadvantages of Attorney Conducting Investigation
- Difference between Facts and Legal Advice
- Protection of Confidentiality
- Evaluate Each Situation

# Confidentiality

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- National Labor Relations Board
  - Boeing Decision
- Cannot Require Employees to Keep Interviews Confidential
  - Violates the NLRA

# Publicity

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- Obligation to Report to College Community
- Obligation to Report to Public
- How to do it
- Link to Crisis Communications Plan

# Criminal Issues

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- Coordinate with Police and Prosecutors
- Campus Security Involvement



# Due Process Concerns

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- Public Entities
- Perception of Fairness
- Compliance with Collective Bargaining Agreements

# Investigation Policy

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- EEO and Anti-Harassment Policy
- General Investigation Policy
- Other Policies
  - Whistleblower
  - Violence
  - Faculty/Student Fraternization
  - Financial Irregularities
  - Crisis/Emergency Plans

# Questions

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