



JUNE 2, 2014

SEXUAL ASSAULT ON COLLEGE CAMPUS: LEGAL, COMPLIANCE AND PUBLIC RELATIONS CONSIDERATIONS



WHAT WE'LL COVER

01 INTRODUCTION

02 OUR TWO FIRMS

03 CURRENT LANDSCAPE

- Legal/Compliance
- Communications

04 SUGGESTED BEST PRACTICES

- Legal/Compliance
- Communications

05 HYPOTHETICAL CASE STUDIES

06 Q&A

A photograph of an office environment. In the foreground, a dark, out-of-focus vertical element, possibly a glass partition, runs down the right side. Behind it, two women are seated at desks in an open-plan office. They are looking at computer monitors. The office has large windows in the background, and there are some framed pictures on the wall. The lighting is bright and natural, suggesting daytime. The overall tone is professional and collaborative.

01

WHO WE ARE

- + Montgomery McCracken is a multidisciplinary law firm with more than 120 attorneys in offices in Pennsylvania, New York, New Jersey and Delaware. Our attorneys provide service to clients in a wide range of industries throughout the United States and internationally.
- + The firm's Higher Education group is comprised of attorneys from across a variety of practice areas with experience handling a wide range of legal matters for both large and small public and private universities, colleges and institutions affiliated with higher learning.
- + In addition to the wide range of services we offer to our clients in the higher education industry, we provide substantial time and cost-saving measures to our clients by reducing the risk of litigation through effective day-to-day counseling and regular training of employees regarding applicable laws and internal policies.

- + A top-5 independent public relations firm with 10 offices across the United States and in London
- + Broad experience in issues management and crisis communications
- + Experience in providing litigation support in high-profile sexual assault cases, most recently in coordination with MMWR
- + Trusted communications advisors to Fortune 100s, colleges & universities, and other non-profits





02

THE SITUATION TODAY

In Sex-Harassment Cases, No
One Is Happy With Colleges'
Response
Chronicle 5.12

**55 Colleges Named in Federal
Inquiry Into Handling of
Sexual Assault Cases**
nyt 5.1

**... Risks Losing Federal
Aid in Sex Discrimination
Case**
4.28

College Rape Victim Pretty Thrilled
She Gets To Recount Assault To
Faculty Committee
The Onion 5.27.14

A Star Player Accused, and a
Flawed Rape Investigation
nyt 4.16

**... College under
investigation for sex
discrimination complaint**
4.30

THE SITUATION TODAY

- + Heightened scrutiny around issues related to sexual assault – in the military, on college campuses, in the workplace
- + Universal risk – not just those universities under DOE investigation
- + Ever more difficult balance of legal/privacy needs, and protection of reputation

NEW YORK TIMES, 6/2/14

MWW⁺

Women and Girls Around the World

According to a 2013 global review of available data,

35%

of women worldwide have experienced **intimate-partner violence or non-partner sexual violence**.

However, some national violence studies show that up to

70%

of women have experienced **violence** in their lifetime from an intimate partner.

In Australia, Canada, Israel, South Africa and the United States, **intimate-partner violence** accounts for

**between
40 and
70%**

of murdered women.

Approximately

140 million

girls and women in the world have suffered **female genital mutilation/cutting**.

In the United States,

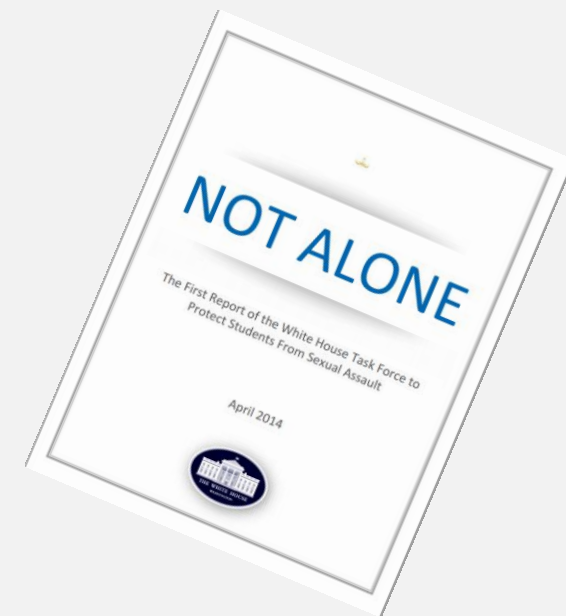
83%

of girls ages 12 to 16 have experienced some form of **sexual harassment** in public schools.

Source: United Nations Entity for Gender Equality and the Empowerment of Women

THE FIRST REPORT OF THE WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT

- + *“In recent years, some schools have directed nearly all their employees [including those providing ‘confidential services’] to report all the details of an incident to school officials ... That practice, however well-intentioned, leaves survivors with fewer places to turn. This is – by far – the problem we heard most about...”*



VIOLENCE AGAINST WOMEN ACT (VAWA)

- + VAWA requires that any Clery Act “timely report” **exclude** the victim’s name
 - See sec. 304

Violence
Against
Women
Act

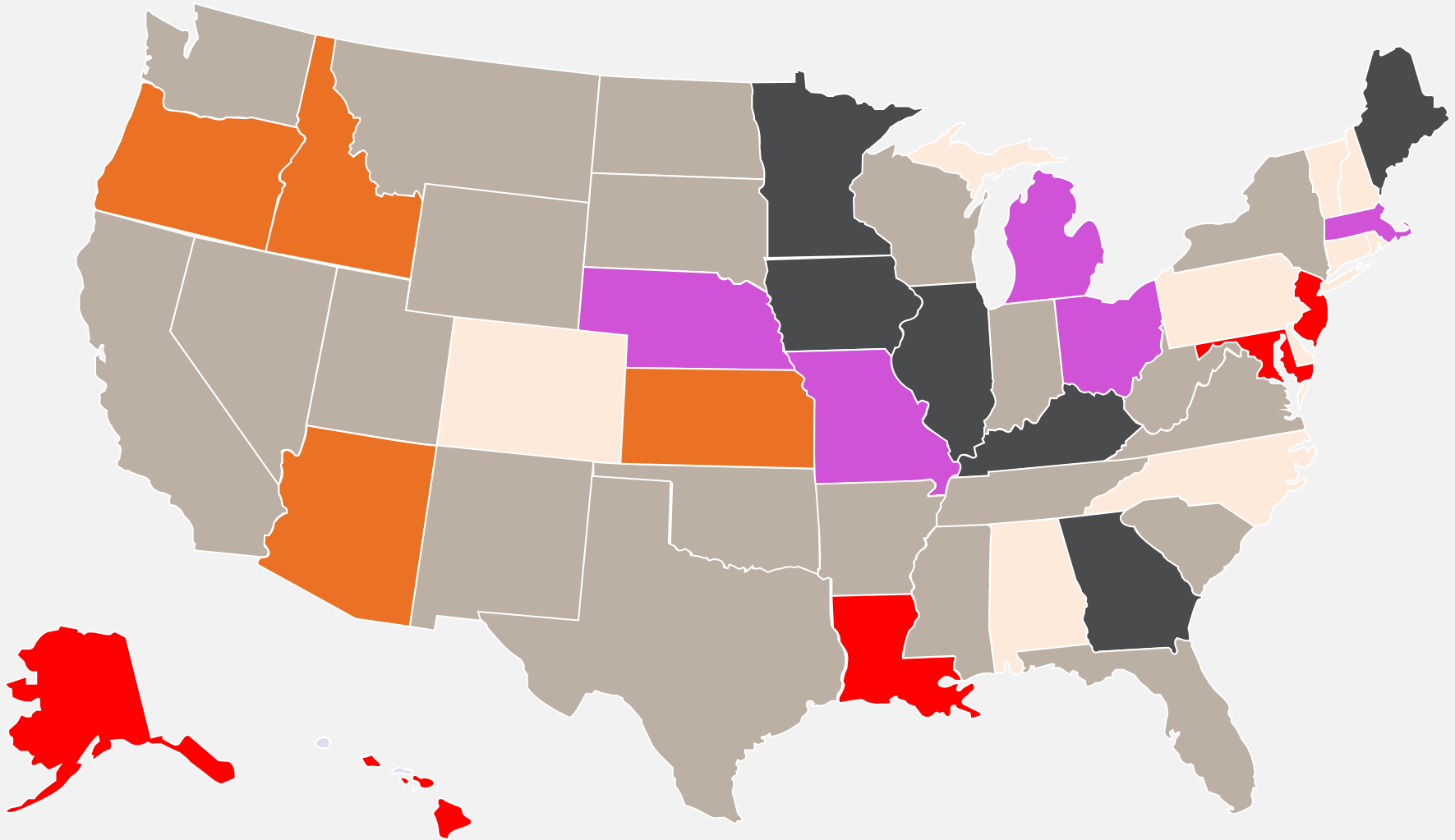


FERPA *PROHIBITS* RELEASE OF A STUDENTS' "EDUCATIONAL RECORD"

- “[no]policy or practice of permitting the release of education records... without the written consent ... [exceptions]”
 - (see 20 U.S.C. 1232g (b)(1) et seq. And see 34 CFR § § 99.30 and 99.31)



LOCAL LAWS WILL VARY



03

THE MEDIA LANDSCAPE





50% of Americans receive breaking news from social media, rather than from traditional sources

23% of U.S. adults get most of their news from friends and family via Facebook and the vast majority of them (77%) follow links to full news stories.

79% of all adults are online, for an average of 5 hours per day, surpassing TV

SOCIAL IS THE NEW NORMAL

THE NEW CRISIS MANAGEMENT CHALLENGE



CONTENT ABOUT A COMPANY OR ORGANIZATION CAN ORIGINATE FROM ANY SOURCE—NO MATTER ITS ACCURACY OR LACK OF CONTEXT



WITH INCREASED TRANSPARENCY COMES INCREASED EXPECTATIONS OF YOUR UNIVERSITY



DIGITAL COMMUNICATIONS PRESENTS BOTH RISKS AND OPPORTUNITIES IN A CRISIS SITUATION



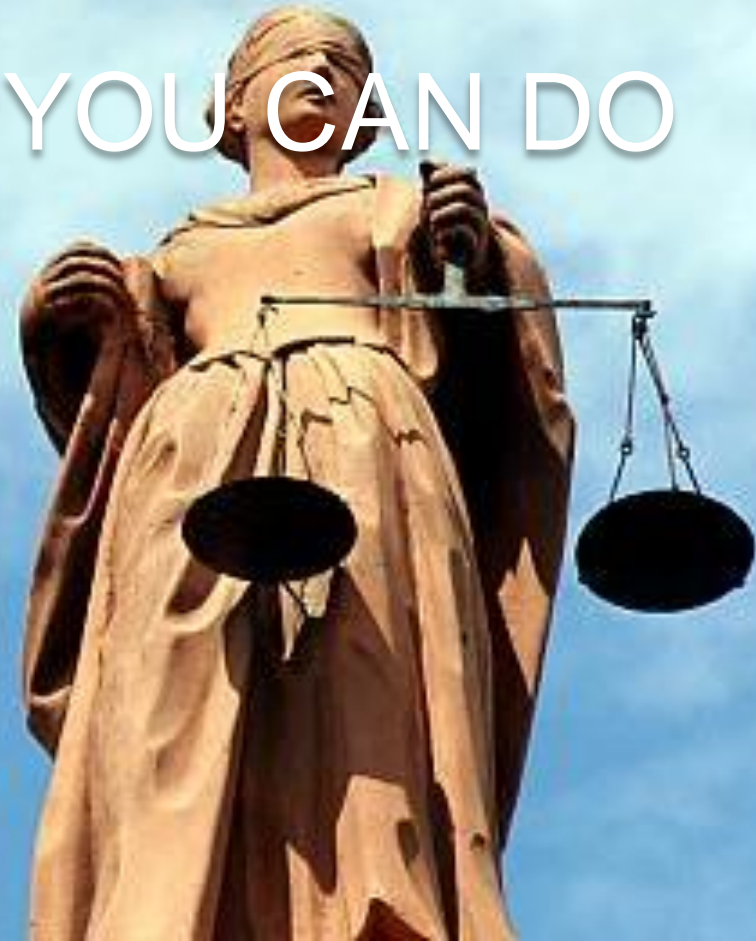
MAINSTREAM MEDIA TURNS TO FAST-MOVING SOCIAL CONVERSATION TO SOURCE STORIES



THE WAY STAKEHOLDERS RECEIVE AND SHARE NEWS AND INFORMATION HAS CHANGED

04

WHAT YOU CAN DO



BE SURE YOUR POLICIES CAN WITHSTAND THE SPOTLIGHT...

- + Audit
 - Guidance, and federal and state law

- + Be Consistent
 - Assure policies actually followed

- + Follow the Spirit
 - Check the “spirit” of the current guidance

(No two schools will be the same...)

...AND IF THEY CAN, BE TRANSPARENT

- + about your school's processes, but not the specifics of a claim
- + Obfuscation only causes damage
- + This is impossible unless you have a plan...

HAVE A CRISIS PLAN – AND PRACTICE IT

- + Write and routinely review a crisis communications plan
- + A plan is worthless if it hasn't been rehearsed and socialized
- + Plans must integrate social media



IT SOUNDS EASY, BUT...

...What if you received the following questions on a Thursday afternoon at 4:10 PM...and were asked to provide answers by 4:15 PM?:

- + Who is the campus spokesperson, who should brief that spokesperson?
- + How do we initiate media monitoring and analysis?
- + Who is responsible for briefing and updating key stakeholders?
- + Who will control the college's social media properties during the response?
- + What information will be available publicly?
- + What information are you permitted to disclose?
- + Can you provide instant data on past incidences of assault and the college's handling of those complaints?
- + Who are the key campus leaders most likely to speak out in a negative way?

KNOW YOUR STAKEHOLDERS

- + Elected officials, students, alumni, media, athletic coaches, other staff, trustees, major contributors, parents/guardians, state and local government, national advocacy groups – identify your stakeholders in advance
- + Understanding potential critics, the issues they care about, and how they talk about your university can provide hints as to how they'll act and what they'll say in a time of crisis



IMPLEMENT MEDIA MONITORING

- + Implement thorough and regular media monitoring to identify potential issues before they escalate
- + Know how your students communicate: closely track social media conversations related to your university

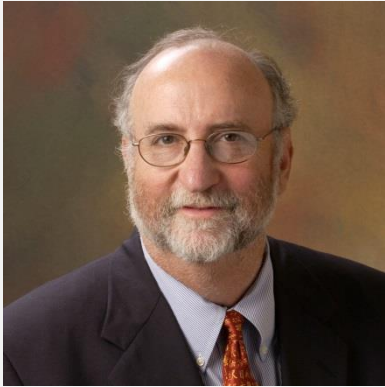


HYPOTHETICAL

- + **Student email blast to feds, alums, press and others:** “Our university doesn't care about us. It only cares about its reputation and alumni giving. Anything and anyone that gets in the way is dirt. Come to our ‘survivor speakout’.” [150 students do.]
- + **University responds:** "...anyone who knows us, knows we care... with all we do for our students that is demonstrably true... no one could reasonably think otherwise... obviously there are motivations here that are beyond the truth... of course anyone can say anything, and, because of privacy laws, we have an obligation of silence."

Questions to University Communications from media re: sexual assaults:

- + Who investigates the student complaints?
- + What is the person or panel who hears cases?
- + How is it made up?
- + How many cases did it hear this year and in the past 5?
- + How many expulsions were there?
- + Is there an appeal? Does the President weigh in?
- + Have you changed any of this in response to the recent heightened federal and media scrutiny?



John M. Myers is the chair of Montgomery McCracken's Higher Education practice group. His work with a nationally ranked university includes tenured faculty intellectual property disputes and conduct effecting tenure, general liability counsel, ethics, university and student policies, Title IX and Clery Act compliance and general employment litigation matters. He has been a front-line participant in large institutional crisis management, both in government and the private sector.



Karen M. Ibach is a partner and member of Montgomery McCracken's Higher Education practice group. Her practice concentrates on government investigations and white collar criminal defense, compliance, related civil litigation, and complex commercial litigation. She handles a broad range of compliance matters for a variety of institutions and organizations, including higher education and has experience with Title IX and Clery Act compliance.



Josh Zeitz has served in policy, speechwriting and communications roles both in and out of government and has extensive background managing external and internal positioning for C-suite leaders, officeholders and corporate clients. He currently serves as the Deputy Director of the Corporate Reputation Practice at MWW, where he provides strategic communications counsel to Fortune 100 companies, small startups, global brands and public issues campaigns and initiatives.



Dave Arnold is a Vice President at MWW Group, one of the top ten global independent public relations firms. Prior to joining MWW, Arnold served as communications director for former Rep. Anthony Weiner (D-NY), overseeing the congressman's media outreach, strategic messaging and issues management. Arnold works in the firm's corporate communications and public affairs practices and specializes in crisis communications and media strategy/relations.

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REFERENCES

+ The President's Website

- <https://www.notalone.gov>
- <https://www.notalone.gov/assets/checklist-for-campus-sexual-misconduct-policies.pdf>
- <https://www.notalone.gov/assets/reporting-confidentiality-policy.pdf>

+ DOE Q/A on Title IX and Sexual Violence

- <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

+ FERPA

- <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

+ Clery and related material

- <http://www2.ed.gov/admins/lead/safety/handbook.pdf>

+ VAWA

- <http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf>