

LEARNING POINTS FROM WHISTLEBLOWER CLAIMS AGAINST INSTITUTIONS OF HIGHER EDUCATION

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Abstract

The types of whistleblowing claims made against institutions of higher education are not well understood nor are the various mechanisms used to solicit, investigate, and learn from such claims at the institutional and state levels. This research obtained and analyzed whistleblower claims made against institutions of higher education and explores and facilitates a discussion around the value of learning opportunities that come from whistleblowing claims. Aggregate claims data and detail workpapers for claims made against the 45 publicly funded colleges and universities in the state of Ohio, in the midwestern United States was analyzed to identify patterns and areas of focus which could improve institutional processes and internal controls. Four areas resulted from the analysis: hiring and pay practices, prevention of the theft of institutional assets, prevention of the theft of student funds, and an institutional accreditation issue. All claims that were reported reflected real concerns on topics of strategic importance to institutions and their management practices, although not all were substantiated or corroborated. One quarter of the claims resulted in proven cases for recovery and prosecution. At the state level, completeness of investigation and administrative learning were sometimes not pursued due to the code enforcement nature of the governing bodies whose mandate was limited to the identification and prosecution of crimes, although improvement opportunities clearly existed. The case of Ohio demonstrates that open government and public information request processes can provide sufficient information to allow insight into the nature of the claims and to identify improvement opportunities for both the institution and state level administration.

Key words: *internal controls, internal audit, higher education, whistleblowing, fraud, ethics, Ohio, college and university administration, governance.*

Introduction

Whistleblower claims involve accusations of fraud, theft, or misconduct of institution employees or leaders. Each of these accusations, whether valid or not, present a learning opportunity for the several levels of administration of public institutions. Higher education in the US and Europe have been faced with numerous challenges in the last decades. Now almost two decades since the end of the cold war in 1989, higher education in Central and Eastern Europe has gone through waves of transformation with changes in enrollment, focus, funding, consolidations and competition (Valisache, Temesi, Dima, 2012; Mitter, 2003). In the United States, the great recession of 2008 drove tremendous enrollment growth, which in turn caused revenue to soar and pushed organizations to grow in a spontaneous and reactive manner. Subsequently, as the US economy recovered, employment opportunities rebounded, and post-recession period enrollments and revenue collapsed back to pre-recession levels, cost-saving measures were sought to contract the organizations back to sustainable sizes. These periods of boom and bust are often a central concern not only for institutional administration but also

for its auditors when rapid change, restructuring, and growth test an organization's ability to adhere to controls and, where controls are weak, create an additional opportunity for fraud or theft. This research looks at the state level administration of higher education with regards to fraud management where the supra-institutional governance role must be fulfilled. By utilizing actual claims information collected by the state regulators, this research seeks to describe the various mechanisms of soliciting, processing, and validating whistleblower claims, and provide insight into the organizational learning that results in improved operation of the colleges and universities.

The increased focus on internal audit in higher education (Kezar, 2005; Christopher, 2012; Proviti, 2008) has also been accompanied by a renewed emphasis on a code of ethics and the implementation of whistleblower protections since the passing of the Sarbanes-Oxley Act of 2002. This follows a trend found in other industries, such as the recent expansion of the internal audit function in the mutual fund industry (National Whistleblowers Center, 2014). According to Teo and Caspersz (2011), the term "whistleblowing" has its origins in a 1972 conference paper by the famous American activist Ralph Nader (Nader, Petkas & Blackwell, 1972). Whistleblower protections are now included into the framework of Corporate Social Responsibility (Vandekerckhove, 2006). Support for whistleblowers often starts with the requirement of establishing a means for concerned citizens, employees, or visitors to make anonymous reports of their concerns to internal audit or other authorities. The whistleblowing or fraud reporting mechanism is faced with handling a large volume of claims, many of them groundless or trivial in nature. The Ohio data is consistent with statistics that only a very small portion of all reported concerns results in actual findings of fraud, theft or ethics violations result in investigations. However, these few investigations initiated by whistleblowers are often the largest investigations handled by internal auditors.

Problem of Research

While a number of studies exist that analyze the treatment of fraud in public corporations and government agencies, the topic of governance and mechanisms for preventing theft and fraud at institutions of colleges and universities has not been explored in detail, and is of growing importance as funding transitions from state to the student, as enrollments and funding is under pressure to be more efficient, and as the economic challenges of the 21st century place pressure on individuals to adapt to slower growth or even deflation. Specifically the deterioration of traditional controls such as a vibrant mass media, newspapers, and investigative journalism increases the risk that fraud, theft or misconduct may go undetected (Aucion, 2005; Houston, 2010; Weissman, 2014). Additionally, the reality of the society is that harmful or adverse headlines and negative press follow an institution around for decades longer than ever before, through the medium of online media archives.

Concurrent with the decline of investigative journalism, the birth and explosive growth of the use of Internet Communication Technologies (ICT) to establish and enhance public facing transparency has become an essential component to the proper function of internal controls and specifically whistleblowing processes, based on open government and transparency initiatives. Prior to the internet, public notice and public information access was limited to on-site visitation or written request with paper response. For the last 15 years, institutions have had the ability to place information in easily retrievable format on their internet websites, which has increased transparency and improved the governance of these institutions (Bushman et. al, 2004; Ciborra, 2005; Schmidt, 2005; Hermalin - Weisbach, 2007; Bertot et.al, 2010). In a forthcoming paper, Schmidt & Kiraly (2015) comparing the utilization of ICT internationally with regards to the prevention of the moral hazards of administration in higher education. Joe Christopher in Australia, has looked at the effectiveness and benefit of the broader function of

Internal Controls in higher education at the institutional level in Australia and concludes that although there is a variation in breadth of capabilities, internal controls and the audit function benefit the institutions (Christopher, 2012; Christopher, 2014).

When evaluating and discussing the internal processing of whistleblower claims, there are key components of the organizational learning. One component being the fulfillment of the compliance and enforcement responsibilities, and the second the evaluation and improvement of the administration of the institution. The latter has been an area of growth in industry and public service to expand internal control functions into internal advisory and consulting roles. (Coupland, 1993). These traditional topics have been expanded upon in industry, where dedicated institutional internal audit resources exist, and as the demands on organizations to do more with fewer resources has caused auditors to develop a new set of skills. In 2010, one survey of 134 of Forbes 1000 top companies, addressed to the head of the internal audit function, found that 40% of internal audit resources were dedicated to internal consulting projects (Abbott, Parker, & Peters, 2010).

Research Focus

This research seeks to analyze and facilitate a discussion around the value and learning opportunities that come from whistleblowing claims in universities and colleges. The types of whistleblowing claims made against institutions of higher education is not well understood nor are the various mechanisms used to solicit, investigate, and learn from such claims at the institutional and state levels. By cataloguing and describing both the actual claims filed by whistleblower, and studying the state processes used to solicit, validate, and process these claims of fraud or theft, this paper will show in the case of the state of Ohio, that there is a wide spectrum of issues that are raised through the whistleblowing process and that these claims are focused on important management processes regardless of the actual validity of the claims themselves, and present opportunities for institutional self-assessment and learning.

Methodology of Research

General Background of Research

This research was conducted using an exploratory case study approach to obtain and evaluate actual claims of fraud, theft, or misconduct. The approach taken was to analyze at a high level the frequency and quantity of claims made against universities and colleges, and then to research in more depth each of the claims, by studying the details of investigations of such claims to understand the nature of the issue, which functions are affected inside of the institution, and which institutional process deficiencies may have allowed these issues to occur. This research analyzed whistleblower complaints against the 45 public colleges and universities, 22 universities and branch campuses and 23 two-year colleges that are funded by and administered by the state of Ohio in the United States of America.

Sample of Research

The dataset that was used for the initial part of this research was comprised of fraud ethics claims logged by the Ohio Auditor of State, and the dataset spans 28 months, starting in May 2012 and ending September 2014. This data was provided by the Ohio Auditor of State's open government unit, and the data is available online at <https://ohioauditor.gov/fraud/>.

Table 1 provides an overview of the type and status of the 1,386 claims made to the Ohio Auditor of State during the period under study, as categorized by the Auditor's Office. Twelve

claims, or approximately 1% of all fraud claims made during the period, were filed against public institutions of higher education. Complaints are always assumed to be unsubstantiated until evidence is found to support the claim. The Ohio Auditor of State’s work papers and findings document their efforts to investigate these claims and record their findings via summary track sheets that this paper analyzed to interpret the nature of the claims and to determine which actions, if any, were taken by the state or institution.

Table 1. Fraud complaints received by the Ohio Auditor of State.

Fraud Complaints Received by the Ohio Auditor of State between May 2012 and Sept 2014		
Status	All Claims made All State Bodies	% of all Claims
Closed	305	22.0%
Closed – Unfounded	6	0.4%
Corruption	1	0.1%
Ethics	3	0.2%
In Progress	55	4.0%
Internal Controls	26	1.9%
Referrend	815	58.8%
Theft	12	0.9%
No Status Reported	163	11.9%
Grand Total	1386	100.0%

This dataset includes claims for all public institutions funded by the state of Ohio including in addition to universities and colleges, prisons, the elementary educational school system, and all other state governmental bodies. The data was filtered by description of the institution and only claims specific to universities and colleges were extracted and used for the purpose of this study. The resulting selected dataset for this study represents only twelve claims and less than 1% of all claims received by the state of Ohio in the time frame under consideration.

In order to further research the details of each of the twelve claims identified above, additional public records requests were made to the auditor of state, requesting copies of all workpapers and any generated work products such as findings summaries or reports. These workpapers and reports were provided by the Auditor of State for all of claims under review. The actual workpapers provided the researcher consisted of varying levels of detail and complexity based on the nature of each case and the severity and validity of each claim.

Results of Research

Twelve claims were found to have been made against institutions of higher education and each made in areas of importance, areas where real concerns exist regarding the potential for an ethical breach, only three of the claims revealed instances of genuine fraud or theft that merited action by the State and the institution involved.

Table 2 shows a categorization of the twelve claims, grouped by the processes and functions that exist inside the institution. Mapping the claims to the process or function allows for internal improvement through a review of the specific process and the controls that exist at each institution to prevent a potential or actual claim. Mapping to specific responsibility areas

facilitates the internal review that should be conducted to determine if strengthening of controls was required.

Table 2. Complaints by area of organizational responsibility.

Internal Process	Responsibility Area	Number of Complaints	Percent of all Higher Ed complaints
Human Resources – Hiring and Compensation	HR	4	33%
Theft or Misappropriation of Institutional Assets	Fiscal	4	33%
Theft or Misappropriation of Student Funds	Student Affairs	3	25%
Unethical or Fraudulent Institution	Board, President	1	9%
Total All Calims		12	100%

To extend the analysis, these claims have been sorted according to whether work papers and summary findings suggest to a qualified auditor that an extended investigation could potentially uncover a valid complaint. Table 3 summarizes these “actionable complaints” by which internal process they fall within. Further, if the Auditor of State did indeed investigate a claim and found action warranted, these claims are recorded as “action taken” in Table 3.

Table 3. Summary of claims and outcomes.

Internal Process	All Claims	Of which Actionable	Action Taken	Action Not Taken
Human Resources – Hiring and Compensation	4	2	1	1
Theft or Misappropriation of Institutional Assets	4	2	2	0
Theft or Misappropriation of Student Funds	3	0	0	0
Unethical or Fraudulent Institution	1	0	0	0
Total All Calims	12	4	3	1

The difference between “actionable” and “action taken” lies in whether or not the institution overlooked the researcher’s evaluation that the claims presented an opportunity to improve internal processes. Often this is due to internal resource limitations or policies. In the cases analyzed here, the Auditor of State was focusing solely on the traditional topics of the classical scope of vouching and validating the accuracy of financial statements, and of identifying fraud and theft. This is evidence that the role of the internal audit function has expanded beyond traditional roles, and into new, value-added activities evaluating the effectiveness of administration.

Discussion

A discussion of the nature of each of the fraud activities is presented below in order to compare and contrast the possible outcomes for these claims, remembering that complaints are always assumed to be unsubstantiated until evidence is found to support the claim.

Complaints Related to Human Resources Issues: Hiring and Pay Practices

Four of the 12 claims figured complaints that were related to human resource practices. Allegations of preferences and discrimination in hiring characterized two of the complaints. Employment and hiring practices—selecting talent—are perhaps the most important processes in an organization (Vaishnavi, 2013). If non-competitive selection is made whereby friends, family, or criteria other than performance and ability are chosen, the organization may suffer, as Sciascia & Mazzola (2008) have found in the case of family owned businesses and generational family leadership and Gould & Amaro-Reyes (1983) found in a global World Bank study. This was also observed in the comparative international study of human resource management conducted by Karoliny, Farkas, & Poór (2008).

In the complaint against the University of Toledo, the complainant states that two employees cooperated in selecting new hires using non-competitive means. Similarly, the complaint against The Ohio State University states that a senior administrative executive unduly influenced the selection of an individual for an open position as a student intern. The Auditor’s case summary states, “Complainant reports favoritism of employment to non OSU student for college internship. The . . . department has been forced to take on a college intern.”

It is possible that these complaints were made by individuals who were upset about not winning a competitive selection process, and who *perceived* that some other criteria had been applied in the selection process. In this case, the Auditor of State correctly decided that these complaints were claims against management ethics; they made no claim of fraud or theft and therefore, were *management issues*. Here is an example of a claim that creates an opportunity, and perhaps even an obligation, for the institution’s leadership to review its internal processes for improvement opportunities. In such hiring situations, the question has to be answered if management and the institution have consistently employed tools and methods that are available to help the organization substantiate their decision-making process, such as rubrics, checklists, or scoring tables, during the actual interview process.

In the complaints made against Stark State College, employees of the college suspected that their colleague had obtained both master’s and doctoral-level degrees from an unaccredited institution, and provided examples of news articles where other instructors or professors who had received degrees from the same institution had publicly rescinded their positions and titles. Additionally, the employees provided some evidence supporting their claim, as well as evidence that the individual was aware of the issue and had enrolled in an accredited institution to complete a legitimate master’s degree. This claim, if valid, would be a case of presenting fraudulent credentials to obtain employment from the state. In this case the matter was forwarded to the Ohio Board of Regents, the agency responsible for monitoring and funding higher education in the state. An additional important control that exists for the effectiveness of the administration of higher education institutions is the existence of and the role that external accrediting bodies serve. At the center of the review process for each faculty or program are regular reviews of the manner with which institutions both hire faculty and validate that their qualifications are real and valid.

The last claim relating to human resource issues originated from the University of Akron, where charges were made against a specific employee for having received large payments for overtime, or work that was performed after the hours of the base employment contract. The anonymous complaint did not assert that the overtime constituted fraud or theft, but simply complained about the fact that the individual received what were perceived to be large sums of excess payments. The Auditor of State closed the case on the basis that no claim of impropriety was made in the complaint, and that no means was available to the Auditor to contact the complainant to learn more about the concern. This example specifically highlights the opportunity and/or obligation for institutional management to review and research the level

of overtime that this individual, or the department or institution, was paying to employees for excess work, if that excess work was properly approved in all cases, and if it may have been avoided through better planning, scheduling, or management. Technology such as management dashboards exist to help management monitor and control metrics such as payroll variations, and can be an integral tool for strengthening both controls and management effectiveness, as outlined in Schmidt (2005).

Complaints Related to Theft or Misappropriation of Institutional Assets

Four of the 12 claims contained accusations of theft or misappropriation of institutional assets. Each of these claims is reviewed below in detail, and insight into the validity of the claim and the extent of action taken is summarized.

In the case of Central State University, an institution with a history of financial problems and mismanagement (Fisher, 2007), employees claimed that their pension contributions had been improperly handled by a new chief fiscal officer, who had had a history of employing controversial methods in previous institutions. The Auditor of State performed a review of the accusations and found no wrongdoing, but also did not provide any explanation of the misinterpretation by the employees. A review of the audited financial statements for 2013 showed no discrepancies found by the institution's external auditor. This claim reflects a common issue that occurs frequently in the US when employers of all sizes, both public and private, encounter a cash crisis and believe that one of their options to manage cash outflows is to withhold or delay tax payments for employee benefits, workers compensation, and retirement benefits. This is a matter of sufficient concern that institutional leadership should conduct a review and ensure compliance with all benefit payments.

In the case of Wright State University, an accusation was made that employees had purchased and then misappropriated incentive "gift cards" that were to be awarded to potential future students as part of university events, including medical studies and research. Further charges maintained that the director of information technology at the medical school was selling used university equipment, a child care program coordinator misused procurement cards, and \$49,780 in gift cards purchased to give to students was misappropriated. Finally, \$260 in misappropriated petty cash could not be traced to a single responsible individual, and the auditor held the institution's management jointly and severally liable to recover these funds. The claims were investigated by both the university's external auditors and the university's internal resources, and were disclosed in the university's 2011 audit report, published in August 2012 (Wright State University, 2012), as a serious matter that resulted in charges for recovery against employees, employee separations, and adverse press coverage for the institution. This incident, which was disclosed in detail in the first 11 pages of the university's audit report, resulted in the departure of the chief fiscal officer and significantly affected the public's perception of the institution's ability to manage its funds. Further, given that more than five individuals at all levels of the organization were involved, it called into question the ethical culture of the institution. This claim illustrates how seemingly small monetary amounts of \$20, \$50, or \$100 can tempt individuals into unethical behaviors, and can accumulate into a significant risk for an institution. This incident should motivate this institution, and others, to take a look at the culture of ethics, the "tone-from-the-top," and also ensure that employees and customers have avenues of addressing concerns early on. In fact, were there indications internally, before the external auditor and Auditor of State became involved, that could have indicated that ethical breaches were occurring?

In the case of Ohio University, individuals had concerns about the significant amount of construction occurring on campus, how it was being funded, and whether the work was being performed unnecessarily to the benefit of the construction service firms that may have had

connections to members of the university's Board of Trustees. In this case, The Auditor of State was able to forward the allegations to the university's audit firm, which conducted a review of the accusations during the course of their annual audit of the institution's financial statements. The firm's external auditor performed a review and found no improprieties. However, the concern about the propriety of frequent and substantial construction activity is something that the university's administration could engage an outside engineering firm to review and communicate the findings to the stakeholders.

At Youngstown State University, a similar complaint was made about the high level of spending by the athletic programs in a time when other university budgets had been reduced. Specific evidence was presented regarding travel expenses to "exotic foreign destinations" such as France to recruit future students, and for family members travelling with employees or student athletes, as well as for the use of college procurement cards by student athletes to purchase such travel. This is a prominent topic in the United States because of the size and scale of the financial activity that many student athletics programs generate. For big universities, the athletic coaches often earn more than the president of the university, and student athletes essentially work without pay and are lobbying on a national level for the right to collectively bargain for compensation, as in the 2014 case of the College Athletes Players Association against Northwestern University. Finally, there have been significant scandals related to illegal payments to players and coaches from fans and alumni, which have resulted in the resignations of coaches and Presidents (*New York Post*, 2011).

In the case of the Youngstown complaint, the university administration reviewed the expenses and found no wrongdoing, and that all travel and travel related expenses were allowable by both the university and the National Collegiate Athletic Association. This is a good example of the process by which fraud complaints arise in response to topics that garner significant national attention, essentially by causing the public and an institution's employees to scrutinize activities more closely and with more suspicion.

Complaints Related to Accreditation and the Closure of an Institution

One of the 12 complaints was related to accreditation and resulted in the closure of the institution. On October 20, 2013, an aggressively marketed and quickly growing two-year college that was operated by a private college in Ohio closed its doors and ceased to exist (Blomenstyk, 2013). Several thousand students' educational plans were interrupted when this private institution was told that its adaptive, online learning program would not receive accreditation. Although this was a privately operated institution, it was operated inside of the State of Ohio and had received licenses from the state to operate as an institution of higher education. Because the university that ran the program was a private institution, no state funds had been used in the creation of the two-year program, and therefore if financial theft or fraud had occurred at the institutional level, the responsibility for investigation lies within the institution, unless someone files a criminal charge against the institution directly. Secondly, the State of Ohio Board of Regents is responsible for licensing institutions of higher education and may have some influence over the private college or university. The Auditor of State may have decided that this was a case of yet another hopeful new business model failed, and referred the issue to the Ohio Board of Regents for their consideration.

Complaints Related to Institutional Theft of Student Funds: Student Aid Practices

Three of 12 complaints concerned institutional theft of student's funds. At Marion Technical College a complaint was registered against the institution for charging students tuition when students would have to repeat courses where passing grades were not achieved.

In this case there may have been some misunderstanding as to the reasoning that a student would repeat a course and then be charged for the second enrollment. The auditor of state dismissed the claim because students either enrolled at will, or had the opportunity to seek a correction to any mistaken billing through the college. Retention of tuition for first-generation college students is a topic of some controversy, as these students are often socio-economically disadvantaged and unsuccessful with first-time enrollments; when they are forced to repeat courses, they may spend a majority of their available state support funds on remedial courses and ultimately running out of funds to complete their education (Mitchell, 2014). This is an example of a topic that is well known and receives coverage in the mass media, reinforcing people's awareness of the issue, and their sensitivity of possible fraudulent situations.

At the University of Akron and Cleveland State University, one student athlete had attended both institutions, transferring from Akron to Cleveland. Three complaints were made to the Auditor of State by the mother of the student, alleging that both institutions had fraudulently showed her daughter to be enrolled in classes and had applied for financial aid on her behalf, but that her daughter had never received the aid nor attended classes. This is a common problem in higher education, where students will apply to the institution, apply for financial aid, and then never attend. In fact, due to the relatively large amounts of state support available to students with low-income backgrounds, this financial aid fraud has become common across the United States, as students would enroll, receive their state support, and never attend classes (FBI, 2014). Additionally another type of student aid fraud has also become increasingly common. In this instance, university or college employees participate in what is known as a "fraud ring," to embezzle or steal student's financial aid (Marquet, 2011). In the case involving University of Akron and Cleveland State University, the Auditor of State did not pursue further investigation because the student's mother did not claim fraud, and ruled that "Description of events does not indicate fraud or theft as claimed."

Conclusions

The types of whistleblowing claims made against institutions of higher education are documented and analyzed for the case of Ohio's 45 public universities and colleges from the time periods of 2012 to 2014. The mechanisms used to solicit, investigate, and learn from such claims at the institutional and state levels are described and learning opportunities at both the state and institutional level are identified, supporting the conclusions of Christopher in Australia, which conclude that internal controls and the audit function benefit the institutions. The ability to review and study in detail claims made by whistleblowers via internet communication technologies revealed sufficient detail to identify areas of improvement in the administration of public universities and colleges as suggested by Bertot. The processes used by the state of Ohio to solicit and log complaints and make that log available to the public in an electronic manner provides a functional degree of transparency. Open records legislation and processes allowed this researcher to evaluate the details of each case and explore questions such as if administrative processes could have prevented these issues, or which institutional processes would need remediation to avoid the occurrence of similar issues. We were able to explore the institutions internal responses to the issues to a degree, with the administrative processes impacted found to be hiring and pay practices (33% of claims), theft of institutional assets (33%), theft of student funds (25%), and institutional and personal credentials and accreditation (9%). In addition to improvements in the the four institutional processes, at the state level, investigation and administrative learning were sometimes not pursued due to completion to the code enforcement nature of the governing bodies, who were more focused on the identification and prosecution of crimes, although administrative improvement opportunities clearly existed. Each case presented institutional administration the opportunity to review their internal

procedures related to these matters. The prevention of administrative failure and the ability to be better prepared to such incidences can be significant, in the mitigation of damage to institutional reputation, and consumption of management resources, making the whistleblower claims analysis and institutional learning a high-value activity for administrators at all levels of administration.

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