

Investigation of David Johnson

Preliminary Findings of Fact & Preliminary Conclusions

On May 13, 2016, a 1982 graduate (“G”) of Nicolet High School sent an email to Nicolet Superintendent, Dr. Robert Kobylski, in which G alleged that he was “sexually molested” by David Johnson—a math teacher who taught at Nicolet from 1958 to 1991—while G was a student at Nicolet. In response to this email, Nicolet retained the law firm of von Briesen and Roper, s.c.—of which I am a shareholder with experience in sensitive internal investigations—to conduct an investigation of Mr. Johnson. The following paragraphs detail my factual findings, to date, and my preliminary conclusions.

I. Preliminary Findings

I first reached out to G by email on June 2, 2016, to inform him that I had been retained by Nicolet to investigate the allegations he had made about Mr. Johnson. Subsequent emails were exchanged between us in which G inquired about the scope of the investigation. G’s last email communication to me informed me that he had decided to retain counsel with regard to the investigation. Since that communication, I have not initiated contact with G outside the presence of G’s retained counsel.

I obtained the contact information for Mr. Johnson, who presently lives in Waupaca, Wisconsin. I called the Glendale Police Department, which had been informed of G’s allegations soon after they were made, to confirm that the police had no objections to my intention to contact Mr. Johnson. On July 20, 2016, I contacted Mr. Johnson by telephone and informed him that an allegation had been made against him by a Nicolet graduate—whom I did not identify by name, sex or class year—that he had been sexually abused by Mr. Johnson. Mr. Johnson denied that he had any inappropriate sexual contact with any Nicolet student during his tenure at Nicolet. He did not inquire as to the name of the Nicolet student who made the allegations; nor did he inquire about the type of allegations being made against him. I informed Mr. Johnson that I would be in touch with him again once I had the opportunity to interview G about the allegations.

On February 10, 2017, I interviewed G at my law firm, in person. G’s counsel attended by video conference. Over the course of the interview, G described inappropriate sexual contact initiated by Mr. Johnson that occurred over the course of G’s junior year, on multiple weekends. G described how Mr. Johnson would pick up G from his home on Saturday mornings and drive G to Nicolet’s campus. There, they would go to one of the empty classrooms in the “Home Ec” area, where Mr. Johnson would close the curtains and ask G to change into gym clothes. Mr. Johnson would then use safety pins to pin up G’s shorts and instruct him to do exercises that would result in physical contact between G’s exposed legs and Mr. Johnson’s clothed genital area. Although sexually inexperienced at the time, G came to understand that this type of contact was “masturbating” Mr. Johnson, by which Mr. Johnson would have an erection and ejaculate. G estimated that this same “experiment” occurred every four to six weeks during his junior year (in the same manner described above), with a total of such “experiments” numbering between five and ten. I found G’s testimony—though unsworn—credible.

An independent search conducted on the Wisconsin Court System (<https://wcca.wicourts.gov/index.xsl>) ("CCAP") revealed that a criminal complaint had been filed in 2003 against Mr. Johnson in Waupaca County Circuit Court for two counts of 4th degree sexual assault (pursuant to Wisconsin Statute § 940.225(3m)). *State of Wisconsin v. David R. Johnson*, Waupaca County Cir. Ct., Case No. 2003CM000218. I obtained the case file from the courthouse. The criminal complaint described the facts of Mr. Johnson's alleged criminal conduct, in pertinent part, as follows:

In September, 2002, a report was filed by an individual identified as D.S.P. (d.o.b. 12/05/65), who reported to Chief Deputy Allen Kraeger of the Waupaca County Sheriff's Department that he had been sexually assaulted at a residence by an individual identified as the defendant, David R. Johnson (d.o.b. 11/07/36) . . .

Further, D.S.P. was invited to defendant's residence . . . to do some yard work; that when D.S.P. arrived, the defendant said D.S.P. could make more money by participating in some type of mathematical or physiological study in performing certain exercise tasks for the defendant, in which the defendant would measure such things as D.S.P.'s muscle tone and pulse as well as other physical signs; that at one point when D.S.P. was attempting to complete one of the tasks, D.S.P. said the defendant grabbed D.S.P.'s leg and rubbed it against the defendant's erect penis; that at that time D.S.P. got up and left the residence; that since the incident in September of 2002, the defendant continued to contact D.S.P. in an attempt to get D.S.P. to return for the same purpose . . .

Further, on March 14, 2003, [an] undercover officer, A.E.W. (d.o.b. 07/04/77), made contact with the defendant; that A.E.W. did go to the residence of the defendant . . .

Further, on March 21, 2003, A.E.W. again returned to the defendant's home . . . the defendant request[ed] A.E.W. to go into a bedroom at the defendant's residence and change from A.E.W.'s clothing that A.E.W. was wearing upon his arrival at the defendant's residence and into some gym shorts, which A.E.W. had brought along upon a previous request by the defendant . . . that A.E.W. was requested to perform a variety of exercises at the request of the defendant . . . that at one point during an exercise the defendant instructed A.E.W. to perform, the defendant held onto A.E.W.'s leg and rubbed it on defendant's erect penis; and that the defendant did this for some time, and A.E.W. believed the defendant ejaculated in his pants.

Further . . . Det. Sgt. Artz and Det. Sgt. Helgeson informed the defendant he was being placed under arrest for fourth degree sexual assault . . . that the defendant stated his intention for having D.S.P. perform the physical tasks was for the defendant's sexual arousal and sexual gratification.

Further . . . that the defendant also did state at one point on the date of his arrest, March 21, 2003, when he was having A.E.W. perform physical agility tests, that the defendant did again become sexually aroused; . . . that the defendant did state

that he was aware that neither D.S.P. nor A.E.W. were consenting in any manner to have any sexual contact with him, and the defendant was aware that what he was doing was wrong . . .

Mr. Johnson subsequently submitted a plea of no contest to the two counts of 4th degree sexual assault, by which he stipulated to the correctness of the factual background contained in the criminal complaint, quoted above in part. The court entered a judgment of conviction against Mr. Johnson on May 23, 2003.

On April 25, 2017, I interviewed Mr. Johnson at his Waupaca residence, where he lives alone. At the start of the interview, Mr. Johnson correctly assumed the identity of G even though I never identified G's name, sex or class year. Over the course of the interview, Mr. Johnson corroborated many of the factual details provided to me by G regarding the physical exercises Mr. Johnson asked G to perform on multiple occasions on Nicolet's campus, outside of school hours. However, Mr. Johnson denied that any contact he had with G with regard to these exercises—or with any other Nicolet student—was sexual in nature. In response to questions regarding the scientific purpose, rationale or results of his purported research, Mr. Johnson provided no credible answers.

I also questioned Mr. Johnson about his conviction for 4th degree sexual assault in 2003. Mr. Johnson argued that he was innocent of the alleged charges and pled no contest on advice of counsel. Mr. Johnson did not have any persuasive explanation as why the allegations made by G were very similar to the type of allegations made in the criminal complaint (to which Mr. Johnson stipulated were accurate). I did not find Mr. Johnson's answers regarding his conviction, or the purpose underlying his similar "research" with G, to be credible.

Since our April 25, 2017, interview, Mr. Johnson has called me on several occasions to inquire about the status of the investigation. In particular, he wanted me to be aware that he had asked G to ask his parents' permission to help him in his research outside of normal school hours. In addition, he wanted me to be aware that this was his own "independent research" and that it did not involve other Nicolet faculty, administrators or staff in any manner. He misled me to believe that no one else at Nicolet was aware of his interaction with any Nicolet students involving physical exercises, a fact that was proven untrue upon discovery of minutes of an executive session of the Nicolet school board, dated July 13, 1983 (see additional detail regarding these minutes below).

On May 17, 2017, I attended a closed school board meeting, at which G directly informed the school board of his experiences with Mr. Johnson. The information G provided to the school board was consistent with the information G first provided to me on February 10, 2017.

On June 12, 2017, I contacted a former Nicolet teacher after that teacher came forward to report alleged misconduct by Mr. Johnson. The teacher reported that while teaching a summer school typing class at Nicolet in the 1983-1984 timeframe, a student approached her and informed her that Mr. Johnson had initiated sexually inappropriate contact with him at Mr. Johnson's residence. In particular, the student reported that Mr. Johnson instructed him to perform physical exercises, during which he placed his hand on the student's groin area, purportedly to monitor the student's pulse. The teacher thereafter called the Glendale police

department to report the incident. She did not hear back from the Glendale police, who had told her they would look into it. Approximately a week later, Dr. James O. Reiels (District Administrator) called the teacher into his office and instructed her not to discuss the incident further. Shortly thereafter, a school-board member invited the teacher to her home for lunch, at which time the board member said the school board was aware of the situation with Mr. Johnson and that it was being addressed.

On June 15, 2017, I contacted a former Nicolet Assistant Principal, who informed me that, in the early 1980s, Dr. Reiels confided in her that Mr. Johnson was inviting certain Nicolet students to his home, where he would have them do inappropriate physical exercises. Dr. Reiels told her that Mr. Johnson had been instructed to stop such conduct.

On June 21, 2017, I contacted another former Nicolet Assistant Principal, who informed me that, in the early 1980s, Dr. Reiels told him that Mr. Johnson was acting inappropriately regarding certain Nicolet students, such as inviting them to his house to perform physical exercises. Dr. Reiels instructed the Assistant Principal to keep a strict eye on Mr. Johnson in any extracurricular program with students in which Mr. Johnson was involved. The Assistant Principal followed this instruction for the rest of Mr. Johnson's tenure at Nicolet and is not aware of any inappropriate conduct by Mr. Johnson after Dr. Reiels gave him the assignment.

On June 21, 2017, I was provided minutes from an executive session of the Nicolet school board, dated July 13, 1983. The minutes indicate that Mr. Johnson and Dr. Reiels were present at the executive session. The minutes stated as follows: "The board met in closed session with Mr. David Johnson to discuss a personal matter. After careful deliberation the board agreed to his continuance of employment under the conditions stated in a letter addressed to Mr. Johnson from Dr. Reiels dated July 19, 1983." The letter referenced in the minutes has not been located.

On July 7, 2017, I spoke with one of the board members present at the July 13, 1983, executive session. He denied having any memory of the session, Mr. Johnson or any discussion of a teacher having inappropriate sexual contact with students that would prompt such a session or letter.

On August 15, 2017, I spoke with another board member present at the July 13, 1983, executive session. The board member informed me that he was the chair of the Nicolet school board at the time of the executive session. He clearly remembered the session was about Mr. Johnson's inappropriate interaction with students involving physical exercises, and that this interaction was sexual in nature. He recalls that Mr. Johnson was warned not to engage in such conduct again or that his employment would be terminated. He also recalls Mr. Johnson agreeing to stop any inappropriate conduct. The board member never heard about inappropriate sexual conduct by Mr. Johnson again.

On August 31, 2017, I spoke with counsel for another board member present at the July 13, 1983, executive session. That board member's counsel said he would speak with his client and convey any information she was willing to disclose. On September 6, I spoke again with the board member's counsel, who conveyed that the board member recalled that the executive session addressed Mr. Johnson's inappropriate invitations to students to perform physical

exercises at his home. She did not recall that these physical exercises involved a sexual component.

On September 14, 2017, I spoke with another one of the board members present at the July 13, 1983, executive session. He denied having any memory of the session, Dave Johnson or any discussion of a teacher having inappropriate sexual contact with students that would prompt such a session or letter. As of this date, I had spoken with all surviving board members who were present at the July 13, 1983, executive session.

On September 21, 2017, I spoke again with the former teacher at Nicolet who I had spoken with on June 12, 2017 (see above). The teacher, again, described how a student approached her and informed her that Mr. Johnson had initiated sexually inappropriate contact with him at his residence involving physical exercises. The teacher recalled that she first attempted to inform Dr. Reiels and the summer school principal about this matter, immediately after she talked to the student, but she could not locate them in the school. When she returned home in the early afternoon, she discussed the incident with her husband, who encouraged her to call the police. She did so and, although she does not remember the student's name today, believes that she would have informed the police of the student's name at the time she called. She confirmed that she did not hear back from the Glendale police, who had told her they would look into it. She also confirmed, about one week later, that Dr. Reiels called her office and instructed her not to discuss the incident further. She further confirmed that a school-board member invited the teacher to her home for lunch, at which time the board member said the school board was aware of the situation and was addressing it. As I did the when I first spoke with the former teacher on June 12, 2017, I found the information provided reliable.

The teacher consented to my request that I could disclose her name to the counsel of that former school-board member. On September 25, 2017, I disclosed the former teacher's name to the counsel for the former school board member. On September 26, 2017, counsel for the former school-board member told me that, notwithstanding the disclosure of the teacher's name, the former school-board member does not recall having a lunch with the teacher at her home during which they discussed Mr. Johnson.

II. Preliminary Conclusion

I find G's allegations against Mr. Johnson to be credible and, if they had been reported to the Glendale Police Department within the applicable statute of limitations, I believe they could have provided valid grounds for a 4th degree sexual assault criminal investigation and complaint against Mr. Johnson, similar to the type filed against Mr. Johnson in 2003. I do not find Mr. Johnson's purported reasons for having G perform the alleged "experiments" to be credible, nor his claims of innocence regarding his plea and 2003 conviction for 4th degree sexual assault.

Mr. Johnson's inappropriate interaction with Nicolet students regarding similar physical exercises is corroborated by reliable information disclosed to me by the following individuals: the former teacher who called the Glendale Police Department after another student reported Mr. Johnson's inappropriate sexual contact; two former Assistant Principals with whom Dr. Reiels confided regarding Mr. Johnson's inappropriate conduct; and the Chair of the School Board who presided over the July 13, 1983, executive session at which Mr. Johnson was present.

I believe that disclosing Mr. Johnson's name to the school community would elicit potentially relevant information that would further the investigation. However, with regard to naming former faculty members who engaged in, or allegedly engaged in, sexual misconduct, I feel it necessary to point out that other schools have developed various criteria to consider in making the decision to disclose the name of the faculty member to the school community in furtherance of an investigation, including the following:

- the nature and severity of the sexual misconduct involved, including whether the faculty member or staff engaged in acts such as rape, sexual intercourse or sexual assault, as those terms are defined under state law
- the degree of harm and lasting impact to the victim(s) resulting from the sexual misconduct
- whether the faculty member engaged in repeated sexual misconduct with one student or a pattern of misconduct with multiple students
- whether the alleged misconduct, if committed today, would violate the school's written policies concerning faculty conduct and expectations
- the availability and reliability of oral or written victim accounts, corroborating witness accounts, admissions by faculty or students, or other documentary evidence to substantiate sexual misconduct
- whether the individual's conduct involved either physical or emotional coercion
- whether the school received an earlier report of potential sexual misconduct by the individual, either at the time of the incident or at a later point, and whether the school believed that the school's handling of that earlier report is particularly relevant
- whether there exists a potential risk to public safety today
- maintaining a victim's request for privacy, where disclosure of the alleged perpetrator's name would compromise that privacy
- whether failure to name the individual would result in unjustified speculation and harmful gossip about current and former teachers
- whether failure to name the individual could result in a lack of reporting by victims

Respectfully submitted by,



Joseph M. Russell