

1 2. I am an independent journalist of 48 years' experience who has authored three books, hundreds
2 of magazine and newspaper articles, and a line of ebooks. In 2016, during my federal Freedom of
3 Information Act case against the Department of Homeland Security, which would eventually settle
4 in 2017 at the Ninth Circuit Court of Appeals, Judge Charles R. Breyer referred to me as "an
5 accomplished journalist" in an order denying defendant's motion for summary judgment. On the
6 acknowledgments page of his 2012 autobiography *Over Time*, Frank Deford, a legendary author,
7 writer for *Sports Illustrated*, correspondent for HBO's *Real Sports*, and commentator for National
8 Public Radio, thanked me for "dogged reporting on Vince McMahon," chair of WWE, whose wife
9 Linda McMahon is now administrator of the Small Business Administration. On the front cover of
10 my most recent book, *Concussion Inc.: The End of Football As We Know It*, Mr. Deford supplied to
my publisher the promotional blurb: "Magnificent investigative reporting."

11 3. I have been covering the important issue of deaths in college football since 2001, when I
12 developed a book proposal on the death of Rashidi Wheeler at Northwestern University. The
13 circumstances of the Wheeler death had striking similarities to that of Ted Agu at the University of
14 California at Berkeley in 2014: both occurred during offseason conditioning drills in the presence
15 only of assistant coaches, not head coaches, and as such the sessions did not count against National
16 Collegiate Athletic Association rules limiting team practices. The Wheeler and Agu deaths also
17 both included controversial narratives with respect to the emergency response and the causes of
18 death, and both resulted in multimillion-dollar lawsuit settlements between the respective
19 universities and the families of the decedents. An example of the extensive media coverage of the
20 Rashidi Wheeler case is "Judge Orders Approval of Wheeler Settlement," *Los Angeles Times*,
21 August 16, 2005, <http://articles.latimes.com/2005/aug/16/sports/sp-wheeler16>. Another important
22 similarity between the Wheeler case and what I would learn about the Agu case was alleged
23 malfeasance on the part of the university football team physician. See "Doctor destroyed records
24 from Wheeler's physical," ESPN, July 18,
2003, <http://a.espn.com/ncf/news/2003/0718/1582449.html>.

25 4. The public interest justification for my investigative reporting and the public records requests in
26 dispute in this case is explained explicitly and in detail to this Court in the Petition and its
27 accompanying exhibits.
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1 5. The Agu death occurs in the context of a national policy discussion of football player deaths,
2 sexual abuse cover-ups and other scandals in college sports, some of which involve malfeasance or
3 even criminal conduct on the part of top university officials. The examples from recent history are
4 many and dramatic, including:

5 * The sexual abuses of Pennsylvania State University assistant football coach Jerry Sandusky and
6 the cover-up that culminated in the convictions and imprisonment of the university's president and
7 two other top administrators, as well as the removal of a statue honoring the late head coach Joe
8 Paterno. In the wake of this scandal, the university commissioned a highly critical investigation
9 authored by Louis Freeh, former director of the Federal Bureau of Investigation. Director Freeh's
10 report can be read in full at [http://www.chicagotribune.com/sports/chi-freeh-report-sandusky-penn-
11 state-20120712-pdf-htmlstory.html](http://www.chicagotribune.com/sports/chi-freeh-report-sandusky-penn-state-20120712-pdf-htmlstory.html).

12 * The sexual abuses of USA Gymnastics and Michigan State University doctor Larry Nassar. See
13 "What MSU Knew: 14 Were Warned of Nassar Abuse," *Detroit*
14 *News*, [https://www.detroitnews.com/story/tech/2018/01/18/msu-president-told-nassar-complaint-
15 2014/1042071001/](https://www.detroitnews.com/story/tech/2018/01/18/msu-president-told-nassar-complaint-2014/1042071001/).

16 * Campus rapes by football players at Baylor University, which led to the resignation of the
17 university president, Kenneth Starr, a formerly prominent Washington, D.C. lawyer. See "Baylor
18 faces accusations of ignoring sex assault victims," ESPN, July 13,
19 2017, [http://www.espn.com/espn/otl/story/
20 /id/14675790/baylor-officials-accused-failing-
investigate-sexual-assaults-fully-adequately-providing-support-alleged-victims](http://www.espn.com/espn/otl/story/_/id/14675790/baylor-officials-accused-failing-investigate-sexual-assaults-fully-adequately-providing-support-alleged-victims).

21 * Death of University of Central Florida football player Ereck Plancher in 2008. See "Jury finds
22 UCF negligent in Ereck Plancher's death," Associated Press, July 1, 2011,
23 <http://www.espn.com/college-football/news/story?id=6726571>. The significance of this case
24 includes the connections to Agu's. Like Agu, Plancher died during an offseason conditioning drill
25 in what ultimately, but not at first, was attributed to what is called in the medical literature
26 Exertional Collapse Associated with Sick Cell Trait (ECAST). Further, an assistant athletic
27 trainer at the scene of the Plancher death, Robert Jackson, was the Cal football head athletic trainer
28 at the scene of the Agu death.

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2 6. Any suggestion by Respondent that my journalistic investigation of the Agu death is driven by
3 an agenda of trading on or invading the privacy of individual student-athletes is false and
4 misguided. The naming of three student-athletes in my California Public Records Act requests to
5 the campus compliance officer was strictly for the purpose of presenting my requests with
6 appropriate specificity. With respect to the late Ted Agu, it should be noted that an interim ebook I
7 have published with my findings, *The Ted Agu Papers: A Black Life That Mattered -- And the*
8 *Secret History of a Covered-Up Death in University of California Football*, available on Amazon
9 Kindle at [https://www.amazon.com/Ted-Agu-Papers-Covered-Up-University-](https://www.amazon.com/Ted-Agu-Papers-Covered-Up-University-ebook/dp/B01JSTBSOU)
10 [ebook/dp/B01JSTBSOU](https://www.amazon.com/Ted-Agu-Papers-Covered-Up-University-ebook/dp/B01JSTBSOU), sets aside one hundred percent of the royalties for donation to sickle cell
11 trait research and education. With respect to the other two student-athletes named in the records
12 requests, it should be noted that the altercation between the two student-athletes, which occurred a
13 mere three months prior to the Agu death, was the subject of contemporaneous news media
14 coverage, including my own, and only later, during discovery and depositions in the Agu family
15 lawsuit, was it clear that the altercation was a possible precursor to the overall narrative of abuses
16 of the Cal football strength and conditioning program and assistant coach Damon Harrington.

16 7. Respondent criticizes my not "reasonably meeting and conferring with The Regents in
17 connection with this initial [records] request." This is nonsense. No provision for such a meeting or
18 request for a meeting is anywhere in the published guidelines and procedures for requests. No such
19 meeting was ever proposed by anyone at the university. There is simply no basis for asserting or
20 suggesting that the administrative processing of such requests involves anything other than
21 corresponding by email with the compliance office coordinator or other administrators.

22 8. Respondent states that the email accounts of "seven individuals" were searched as an output of
23 meet and confer discussions. For the Court's reference, these seven are: Nicholas B. Dirks (former
24 chancellor), John Wilton (former vice chancellor), Sandy Barbour (former athletics director), Mike
25 Williams (former athletics director), Solly Fulp (former deputy athletics director), Ryan Cobb
26 (associate athletics director), and Dr. Casey Batten (former football team head physician).

27 9. Respondent states that "there is minimal, if any, public interest ... relating to the participation of
28 two students in an altercation at their college." As noted in paragraph 6 above, the record clearly

1 shows that this incident is central to allegations of systemic defects in the football strength and
2 conditioning program that helped create the conditions for the Agu death. The documented
3 evidence exists that shows that another student-athlete gave an anguished interview with the
4 campus police in which he described a direct connection between the November 2013 player
5 physical altercation and the February 2014 Agu death. According to a deposition transcript that I
6 read, the same student-athlete expounded on this theme in a deposition in the Agu family lawsuit.
7 To contend that there is no public interest in the circumstances of the altercation is a tawdry attempt
8 to bury and denigrate the very nexus and results of my investigative reporting.

9 Executed in Berkeley, California on April 8, 2018

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11 Irvin Muchnick
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