

## **Statement by University of Rochester EEOC Complainants about the Special Committee and Investigation**

**September 20, 2017**

Three weeks ago, we filed a Complaint against the University of Rochester with the EEOC that described sexual harassment of multiple UR students by Professor Florian Jaeger, and objected to the hostile work environment and retaliation we endured from the University after we drew attention to his conduct. Yesterday the University announced that a Special Committee of the Board will now oversee a new investigation into these matters, to be conducted by former SEC Chair Mary Jo White.

Two weeks ago President Seligman dismissed our Complaint as hearsay and factually unfounded. While that remains the University's official position,<sup>1</sup> the decision to create the Special Committee and hire outside counsel clearly validates that the issues we raised about sexual harassment, hostile work and educational environment, and retaliation at the University are serious. While our Complaint is now destined for adjudication in federal court and thus for reasons more fully explained below cannot properly be subject to the Committee's scrutiny, the publicity given to the Complaint has also generated many new accounts of sexual harassment, sexual assault and mishandling of additional complaints by University authorities which we hope the Special Committee will investigate.

However, the manner in which the administration has set up this Special Committee, and its planned method of operation, raise flags for us about conflict of interest, and whether the investigation can be effective in re-establishing the community's trust in the University.

### **Is it really independent and objective?**

- Investigations of this sort are often mechanisms for taking the steam out of an immediate public relations problem, while leaving all the effective power in the hands of those who hired the investigator. Here, UR leadership is still at the helm. Ms. White's firm works for the University and has a legal duty to protect its interests and confidences. The Special Committee is entirely composed (as far as the statement suggests) of UR trustees whose duty of loyalty is to UR. So far at least, there are no students, faculty, or other outside members to provide alternative sources of information and viewpoints. There have already been two failed investigations by the University which it deemed independent, and were not. This one operates at a high level, but includes insiders only, and is not fairly described as "independent."
- If the Special Committee validates anything in our Complaint, it will undercut the University's legal position in the EEOC and in federal court. We thus question how objective the investigation can possibly be.

---

<sup>1</sup> <http://www.rochester.edu/president/memos/2017/eoc-filing.html> President Seligman has recently removed from this statement his original comparison between our Complaint and the withdrawn *Rolling Stone* article that was based on a single anonymous source, but his statement is still overwhelmingly critical of our Complaint.

- President Seligman, a historian of the SEC, has been friendly with and publicly praised Ms. White, the former chair of the SEC.<sup>2</sup> He served on the board of governors of FINRA, which is overseen by the SEC. It is clear that Ms. White will write the legacy of President Seligman's administration in Rochester, knowing that he, as the leading historian of the SEC, may have much to say about her own legacy in government. There is nothing wrong with their being friendly, but it calls into question how she was picked and how truly independent the investigation can be.
- There is no transparency. What precisely is the Special Committee looking into? What are the terms of engagement, what are its instructions? Will participants in the inquiry get to see these?

### **Imposed, not collaborative**

- The outside investigation has been imposed by the Board, with no input from university stakeholders. It appears to be another iteration of the administration's "top down" approach that tries to hold control as tightly as possible.<sup>3</sup>
- As one small example of this, we note that the University has held us at bay since we filed our Complaint, though we clearly have amassed considerable knowledge about sexual harassment and retaliation at UR and have decades of collective experience and devotion to the University. After no one in the administration or counsel's office reached out to us, we approached President Seligman last week with an offer to talk, and were (politely) rebuffed. Ms. White's Wall Street law firm is one of the most expensive in the country.<sup>4</sup> Its investigation could easily cost the University millions of dollars, which we believe could be better spent on practical steps to combat sexual harassment and compensating victims for the harm they have suffered.<sup>5</sup> It seems strange for the University to have ignored us and taken instead this gold-plated route.

### **An outside investigation has already been conducted**

- The thrust of the Special Committee's announcement is that an outside investigation is needed to clear the air at UR. But there already has been an outside investigation -- one conducted by our lawyers through many months of effort. Ms. White is a financial industry lawyer. Our own lawyers are leaders in the sexual harassment field and arguably better poised to get to the bottom of things than those from a corporate firm. Dr. Ann Olivarius was a plaintiff in the first case to uphold that sexual harassment at universities could constitute illegal sex discrimination and is an architect of sexual harassment law.<sup>6</sup> The ACLU included her on its

---

<sup>2</sup> President Seligman said in 2013 in the *Financial Times* that Ms. White has a "consistent record of success as an effective leader, making quick decisions and learning on the job." <https://www.ft.com/content/be709c72-6663-11e2-919b-00144feab49a>

<sup>3</sup> We note that at yesterday's Faculty Meeting, President Seligman said he still retained the right to authorize investigations of faculty members' emails, not subject to any checks and balances.

<sup>4</sup> Average partner compensation at Debevoise & Plimpton, where Ms. White is a senior partner, was \$1055 per hour as of 2015. See Memorandum in support of motions for attorneys fees in *Zyburo v NCSplus Inc.*

<sup>5</sup> A four-month investigation Ms. White ran into the Diocese of Albany in 2004 cost \$2.2 million. [http://www.bishop-accountability.org/news2004\\_07\\_12/2004\\_08\\_06\\_AP\\_InvestigationClearing.htm](http://www.bishop-accountability.org/news2004_07_12/2004_08_06_AP_InvestigationClearing.htm).

<sup>6</sup> *Alexander v. Yale*, 459 F. Supp. 1 (D. Conn. 1977), *aff'd* 631 F.2d 178 (2d Cir. 1980).

list of the nine most important contributors to Title IX in its 40-year history.<sup>7</sup> Nelson Mandela praised her as “a lawyer who has advised me well and who has courageously advanced the cause of justice, and improved life opportunities, for hundreds of millions of women, blacks and disadvantaged, worldwide.” Our complaint is a painstaking piece of work, and it should be something for the Special Committee to build upon, not ignore or try to defeat.

### **Is protecting victims really the goal?**

- We have other concerns about how the investigation will work. With respect to Professor Jaeger, for example, will it look only at the records of the University’s previous investigations into his conduct to ratify that procedures were correctly followed, or will it start from scratch and seek new witnesses? The witnesses who spoke to our lawyers have contrasted that experience, where they were asked open-ended questions and became comfortable enough to give accounts they often found difficult and upsetting, with the interviews conducted by the University’s lawyers after our internal complaint last year, which many thought were structured to reach predetermined answers and cut off lines of inquiry unhelpful to the University. UR has done nothing to reassure witnesses. Indeed it has contended that some or all do not exist. Two have since outed themselves publicly in response. Now, by declaring a new investigation (after two failed internal investigations) and implicitly dismissing ours, the University is asking all of our witnesses to suffer again through their experiences, with new investigators who do not clearly have victims’ interests at heart. Victims do not like talking about their traumatic experiences. It is not clear to us why they would now find it reassuring to speak to Wall Street lawyers paid by the University, with no long-term commitment to the victims of retaliation by Professor Jaeger or the University, whose loyalties will have to include protecting the University in its litigation with us.

### **Will the Committee’s standards be expansive or legalistic?**

- Consistently, throughout our interactions with the UR administration, we have asked them to go beyond an interpretation of our policies based on legal technicalities and instead recognize the ethical and moral principles those policies are intended to uphold. As an example, one of our former graduate students reported that Dr. Jaeger sent her unwanted pictures of his genitals, which the student did not report due to awkwardness and fear. Moreover, one of the Title IX coordinators maintained to us that for behavior to reach the level of creating a hostile environment, a graduate student would have to leave UR because of it, which this student did not. Will an attorney like White discount these instances because, as the University found in its two previous failed investigations, no specific personnel policy at the time was violated? Or will the broader hostile environment, a violation of federal law, finally be investigated?

### **Conflict between Special Committee and EEOC process**

- The decision to conduct the inquiry without seeking input from us or others is at odds with the ongoing EEOC litigation process. Now that one of us has a “right to sue” letter from the EEOC, we must file a federal suit by the beginning of December to preserve our legal rights. In the midst of litigation against UR, it would be unheard of for us to be interviewed by UR’s lawyers except in depositions, with the protections provided by the courts. Therefore we cannot possibly participate in Ms. White’s investigations. But without our evidence and the evidence of our witnesses, we do not see how there can be a fair investigation. Furthermore,

---

<sup>7</sup> ACLU, *A look at nine people who have shaped Title IX and educational equality over the past 40 years* available at <https://www.aclu.org/title-ix-nine>

the Special Committee cannot achieve finality with its report due December 31 if the university intends to litigate the same issues with us through 2018. The only way out of this impasse we can see is for the University to resolve its dispute with us promptly. We renew our request to sit down with University representatives and our respective lawyers to work together to resolve our dispute, and to put in place best practices at the University.

Since the Complaint became public, we have been frankly overwhelmed by the support we have received from all sectors of the UR community and beyond, for which we are grateful. We have also been given new evidence of sexual harassment and poor University response. While we have concerns about the Special Committee's plan of work, as discussed above, we believe our Complaint has sparked an important and overdue conversation about sexual harassment at UR and in the academy generally. Now we would like to contribute all we can to resolving the problems we have brought into the public arena, and hope the University will work constructively with us to make that happen.

Sincerely,

Dr. Richard Aslin  
Dr. Steven Piantadosi  
Dr. Elissa Newport

Dr. Jessica Cantlon  
Dr. Brad Mahon

Dr. Celeste Kidd  
Dr. Ben Hayden  
Dr. Keturah Bixby

Cc: Board of Trustees