

*Law Offices*  
**ALLRED, MAROKO & GOLDBERG**  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

6300 WILSHIRE BOULEVARD  
SUITE 1500  
LOS ANGELES, CALIFORNIA 90048  
(323) 653-6530  
FAX (323) 653-1660  
www.amglaw.com

E-MAIL:  
rmochkatel@amglaw.com

NATHAN GOLDBERG\*  
MICHAEL MAROKO\*  
GLORIA R. ALLRED\*  
JOHN S. WEST  
DOLORES Y. LEAL  
R. TOMÁS OLMOS  
RENEE MOCHKATEL  
MARGERY N. SOMERS  
MARÍA G. DÍAZ  
RAMIT MIZRAHI  
\*A PROFESSIONAL CORPORATION

July 20, 2012  
**VIA HAND DELIVERY**

The Honorable Eric T. Schneiderman  
Attorney General of the State of New York  
Office of the Attorney General  
120 Broadway  
New York, New York 10271-0332

Dear Attorney General Schneiderman:

This firm, together with Mariann Meier Wang of Cuti Hecker Wang LLP in New York, represents Bobby Davis and Michael Lang, two men who have bravely come forward to report that they were sexually abused as children by Bernie Fine, a longtime member of the coaching staff of the Syracuse University men's basketball team. We write to request that your office immediately commence an investigation into Syracuse University's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act"), 20 U.S.C. § 1092(f). We believe that any such investigation would reveal that after learning of Mr. Davis's allegations, the University repeatedly failed to meet its obligations under this important law.

Compliance with the Clery Act is extremely important because as former N.Y. Attorney General Andrew Cuomo stated in 2009 "When a college under reports crime statistics they put their students at risk. Students and their families deserve an honest assessment of any potential dangers on campus, in order to protect themselves and make informed decisions regarding their own safety."

This month the University released a report that purported to describe a nearly eight-month investigation by a "Special Committee" of the Trustees and the law firm Paul Weiss into Syracuse University's (SU) 2005 response to Bobby Davis after he reported in 2005 to SU Chancellor, Nancy Cantor, that he had been sexually abused by SU Assistant Coach Bernie Fine. The 2012 report quietly buries SU's potential Clery Act violations by passively noting that Bobby Davis's report in 2005 perhaps should have been treated as a crime and noting in passing

at a late page that perhaps there could be Clery Act implications.<sup>1</sup> Unlike Penn State, which commissioned a completely independent report by a former head of the Federal Bureau of Investigation into the scandal involving football coach Jerry Sandusky, Syracuse hired a private law firm, which – much like the firm before it – published a report that is a complete whitewash, is self serving, suffers from a lack of transparency, and raises far more questions than it answers.

Bobby Davis has repeatedly reported that for many years, beginning when he was an adolescent, that he suffered at times near-daily molestation by Fine. As he has tried to describe to the local police and to Syracuse University itself: this abuse took place in many places, including Fine's Syracuse University office, and when Fine and Bobby traveled with the basketball team to away games. Starting in 2002 – when Bobby at last had enough courage and strength to come forward – Bobby tried to bring attention to his claims of abuse, but the Syracuse Police Department (which itself has had former Syracuse basketball players among its leaders) was dismissive, stating that it was too late for any prosecution, and the University itself brushed him aside. After a purported investigation in 2005 by a law firm deeply invested in the University – and which itself has been paid over \$20 million in fees in the last ten years by the University – the University considered the case closed. Mike Lang likewise has reported that he was subjected to months of abuse by Fine when Mike was a child, but until very recently Mike was too ashamed and afraid to speak out.

Bobby believes that an investigation by the New York Attorney General will show that the University and its agents, including head basketball coach Jim Boeheim and Chancellor Nancy Cantor, consistently and repeatedly have failed to meet their obligations under the Clery Act.<sup>2</sup> First, as Syracuse University's own attorneys indicate in their so-called report of a 2005 "investigation," an SU attorney concluded that Boeheim knew of Bobby's allegations against Fine as early as 2002. Further, despite the fact that coaches are required reporters under the Clery Act,<sup>3</sup> it appears that Boeheim never reported the allegations to the University or to the police; nor, does it appear that he sought to have the allegations included in the University's

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<sup>1</sup> The report is available on Syracuse University's website: [http://www.syr.edu/news/statements/Final\\_Report.pdf](http://www.syr.edu/news/statements/Final_Report.pdf). The school's press release concerning the report is available here: [http://www.syr.edu/news/statements/Final\\_Report.pdf](http://www.syr.edu/news/statements/Final_Report.pdf).

<sup>2</sup> The Clery Act plainly requires universities to report the sort of forcible fondling Bobby alleges he suffered for so many years.

<sup>3</sup> See generally U.S. Dep't of Educ., *The Handbook for Campus Security & Safety Reporting* (Feb. 2011), available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>, last accessed July 18, 2012.

annual Clery Act report in 2002 or any year thereafter. It is no excuse that Boenheim did not believe that his longtime friend and colleague, Bernie Fine, could have committed the acts of which he was accused; the Clery Act required him to report the allegations so long as there was even a remote possibility that they were not fabricated.<sup>4</sup> Boenheim is not the only University employee who failed to meet his obligations under the Clery Act. At least one other member of the basketball team's coaching staff, Mike Hopkins, knew of the allegations and did not report them.

In addition, Chancellor Nancy Cantor, who was directly emailed by Bobby Davis and knew of his allegations in 2005, appears to have made no efforts to ensure Clery Act reporting, even as she touts her University's compliance with that Act in the University's 2011 Clery Act compliance report, "Your Safety and Security at Syracuse University" report on campus safety. See <http://publicsafety.syr.edu/PublicSafety/ckfinder/userfiles/files/2011%20Clery.pdf>. She instead turned this matter over to the University's "human resources" department.

Not only is the University responsible for these top officials' failures to satisfy the school's obligations under the Clery Act, but it also apparently independently violated the Act by failing affirmatively to request information from the Syracuse Police Department about crimes which might have involved the University but which were not reported to University staff. In the several months since Bobby's allegations became public in November 2011, the University consistently has asserted that it is not responsible for the failure to investigate or otherwise respond to Bobby's allegations after he reported them to the Syracuse Police Department in 2002, because the Syracuse police department did not report Bobby's call to them. However, the Clery Act requires the University to contact local law enforcement each year to ask for information on any crimes involving the University.<sup>5</sup> If one credits the University's public statements that it did not know of Bobby's allegations until 2005, it necessarily must follow that the University failed to meet its duty to seek out information from the local police. Syracuse University cannot under the Clery Act hide behind the excuse that local law enforcement did not contact University leadership.

That the abuse of which Bobby complained took place over the course of many years, and finally terminated at least one year before Bobby first spoke out about his claims to the Syracuse Police Department does not absolve the University. The Clery Act requires reporting of

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<sup>4</sup> *Id.*

<sup>5</sup> *See, e.g., id.* at 83-87, 247-48 (sample letter to law enforcement).

complaints; nothing in the Act or its implementing regulations suggests that the complaints need concern acts alleged to have occurred within a particular timeframe.<sup>6</sup> Indeed, such a limitation would undercut the very purpose of the Clery Act – i.e., to ensure that parents and students have the safety information they need to ensure that they choose an education institution where the student will be safe.

The above is only a brief overview of Bobby Davis's allegations and the University's deficient response to them. The New York Attorney General is empowered under the Clery Act to conduct investigations into Clery Act compliance by New York colleges and universities, and has exercised this power in recent years. Indeed, on June 12, 2009, when Governor Cuomo was the Attorney General, he sent a letter to every state college and university in New York State that is subject to the Clery Act, emphasizing the schools' obligations under the Act and informing the schools that failure to accurately report on-campus crime statistics violates federal law and "can constitute fraud under New York State law." He also stated "My Office is committed to insuring that colleges state wide takes steps to ensure that their crime statistics are accurate." Syracuse's inadequate response to Bobby's complaints cries out for further examination.

We ask that you initiate a full investigation into Syracuse University's pervasive and utter failure to meet its obligations under the Clery Act, principally as those defects relate to Mr. Davis's complaints. In particular, we believe that all Syracuse employees who are required reporters under the Clery Act should be required to attend detailed training programs this year and in every successive year to ensure that they are aware of and in full compliance with the Act and their obligations under it. We ask that Syracuse be required to discipline covered employees who either do not attend trainings or are found to have fallen short of their reporting duties. These requests are merely illustrative. We ask that, after a full investigation, you craft whatever remedies necessary to ensure that Syracuse's Clery Act compliance improves going forward, and that the University is penalized for its past failures.

We also respectfully request that you and or your civil rights bureau meet with our client, Bobby Davis, and with me and our New York co-counsel a.s.a.p. to discuss the evidence in support of our Clery Act claims. We thank you for considering this request, and for any action you take to help shine a light on Syracuse's University's disregard for the safety of those children

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<sup>6</sup> *Cf., e.g., id.* at 8 (requiring reporting of disclosures *and* incidents within the past 3 years.

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and young adults under the supervision, guidance, and care of its employees.

Very truly yours,

ALLRED, MAROKO & GOLDBERG

GLORIA ALLRED