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Criticisms of the Report of the Special Committee of the Board of Trustees of Syracuse University

Last week a “Special Committee of the Board of Trustees of Syracuse University” (S.U.) issued its long awaited report. It had been charged with investigating the 2005 S.U. response to allegations of Bobby Davis that he had been sexually molested by a University employee, Bernie Fine, when Bobby Davis was a “ballboy” for the S. U. Men’s Basketball Team and Bernie Fine was an Assistant Coach of that team. After careful review of this 2012 “investigation” it is clear to us that the Special Committee report is a complete whitewash, is self serving, suffers from a lack of transparency and raises more questions than it answers.

1. The Report points out that the University determined that Davis was not and had never been a student and therefore it viewed Davis' complaint as raising primarily HR and employment issues as to Bernie Fine. What difference did it make whether or not Mr. Davis was a University student in terms of how the University went about conducting its investigation?

Are they suggesting that a "ballboy" for the Syracuse University Mens’ Basketball Team is entitled to less protection against childhood sexual abuse than a student?

Does the fact that Bobby Davis was not a student make his alleged molestation any less serious?

2. The Report states that the University was employing a procedure it had used in "other such matters" when it referred the matter to its outside counsel. What other "such matters"?

Were there other occasions where allegations of sexual molestations were made against a coach where the University used the same or similar procedures? The "other matters" are not identified in the report. If the "other matters" involved allegations of child sexual abuse by a University employee, were these "other matters" referred to law enforcement and the Board of Trustees or kept from them as were the allegations of Bobby Davis against assistant coach Bernie Fine?

3. The University asked its "regular outside counsel, the law firm of Bond, Schoeneck & King ("BSK") to work with the University's office of Human Resources to investigate Davis' allegations." ¹ How could the University's own lawyers conduct an unbiased, impartial and independent investigation?

Any findings that implicated Bernie Fine in wrongdoing would potentially create liability against the University as well as reputational damage. This was an inherent conflict of interest.

Further, the law firm of Paul, Weiss, which conducted the investigation of the University's 2005 response to Bobby Davis, goes out of its way to point out that it was hired to do this investigation by the Board of Trustees because it had no pre-existing ties to the University- but then does not criticize the fact that the University chose a law firm

¹ "BSK" for decades has acted as outside counsel to the University representing Syracuse in the majority of legal matters." (Page 22 of the Report.)

(BSK) which was entwined with the University and financially benefitted from it to conduct the investigation in 2005.

Why is that important and obvious point regarding an inherent conflict of interest missing from the current report on the 2005 response? The choice of its own lawyers rather than independent counsel to investigate Bobby Davis' allegations against Bernie Fine in 2005 injected a virus into the investigation which infected the outcome and assured that it could not be impartial since the University was BSK's client before, during and after its "investigation" of Bobby Davis' allegations. The fox was left alone to investigate the chicken coop.

4. The Conclusion that the BSK law firm reached was that the allegations were "unsubstantiated". The issue should not have been whether or not the molestations were substantiated but rather whether or not they occurred.

Few cases of childhood sexual abuse can be "substantiated" because by their very nature these events occur in private under circumstances where there cannot be substantiation, often because the victims are afraid or ashamed to speak out until years after the fact.

What about the issue of credibility? Did the lawyers consider Mr. Davis' demeanor- his ability to recall the facts of his molestation with specificity- whether he was able to provide details of the molestations? Did the BSK attorneys attempt to find out if there were records that would verify whether Mr. Davis traveled with Mr. Fine and stayed with him in hotel rooms? If not, why not?

5. The Report acknowledges that law enforcement should have been notified and that the Board of Trustees should have been notified, about Bobby Davis' allegations but concludes that there was no effort to sweep this under the rug.

This conclusion does not pass “the laugh test” and appears to us to be preposterous on its face.

6. The Allegations about Laurie Fine Having Sex with athletes was covered up and buried by the University.

The report states that Mr. Davis alleged in his interview that Laurie Fine had sex with unnamed players on the basketball team and that Laurie Fine also had sex with him and with his brother, Mike.

Mr. Davis' written statement (prepared by BSK) does not contain the details of the allegations against Laurie Fine. Why does this glaring omission exist?

When Mr. Hopkins was interviewed he said that he had heard rumors that Laurie Fine had engaged in sexual activity with at least one member of the basketball team. This information was not reflected in the witness statement prepared for Hopkins. In our opinion there can be no benign justification for this omission.

Laurie Fine was not even asked about these allegations when she was interviewed. Why is this failure to inquire not viewed with suspicion by the Special Committee of the Board of Trustees?

The University's Counsel, BSK, did not tell the Chancellor in 2005 that allegations emerged that student athletes may have had sex with Laurie Fine while playing for Syracuse University.

The report states that the allegations created reputational risk and therefore should have been reported to the Chancellor. Is the reputation of the University or those accused of wrongdoing all that matters? What about the risks to the student athletes involved? Is the University saying that it would condone a Coach's wife having sex with players?

7. Attorney Evans of BSK did not recommend follow up on the Laurie Fine's allegations because in part even if true the allegations would not implicate the University's Code of Conduct.

That Code of Conduct states that the foundations of ethical behavior at Syracuse University are a commitment to respecting the rights and dignity of all persons and a commitment to discharging our obligations to others in a fair and honest manner. Each person in the Syracuse University family plays an important role in keeping these commitments by demonstrating integrity and respect in his or her daily activities and in the performance of their responsibilities. (Code of Ethical Conduct). Does the Board of Trustees agree that if the allegation by Bobby Davis about Laurie Fine is true that the University's code of conduct is not implicated? Is Laurie Fine part the of Syracuse University family or not?

8. Attorney Jones of BSK did not believe that the allegations were relevant to Laurie Fine's credibility.

Are they serious that if Laurie Fine had been sleeping with Bobby Davis and Michael Lang and many members of the S.U. mens' basketball team that her conduct would not bear upon her credibility?

9. Why does the 2012 report not condemn the failure of all University employees who were aware of Bobby Davis' allegations but failed to report them "up" the chain to the Chancellor and Board of Trustees?

University employees were aware of the allegations of abuse in 2002/2003 and chose to ignore them at that time.

Assistant Coach Michael Hopkins knew about the allegations and failed to report them.

Corey Parker, former University Strength Coach, knew and failed to report up the chain.

The report states that they Hopkins and Parker should have reported the allegations and their failure to do so was an error.

What about Bernie Fine? He knew in 2002/2003 that he was being accused of molesting Bobby Davis. Bernie Fine should have reported it to the University at that time. There is no mention in the Report of Bernie Fine's failure to report the molestations at that time and no criticism of him for failing to report to the Board of Trustees.

Regarding S.U. mens' basketball Coach Boeheim, the general counsel concluded in the BSK report that Boeheim was aware in 2002/2003 of the allegations against Bernie Fine, his assistant coach. Boeheim denies this. Why wouldn't we assume that the general counsel was right? Why is there not a recommendation in the 2012 report that Coach Boeheim be investigated for failing to report Bobby Davis' allegation up the chain to the Chancellor. Also, what investigation has taken place in the last year by the University into Coach Boeheim for having publicly accused Bobby Davis of being a liar?

10. Interviews conducted by BSK do not appear to us to have been carefully designed to get to the truth but instead appear to have been an effort to shield the University from scandal and liability.

Bobby Davis was interviewed only once. He should have been interviewed at length to obtain further details particularly after the interview with Coach Fine so that he would have an opportunity to respond to what was said. He was interviewed on September 16th, 2005 for two hours. He said that he had been abused since the 6th grade, hundreds of times, and that he traveled with the team and stayed in Fine's Hotel Room on multiple occasions.

The report attempts to blame Bobby Davis for not mentioning the tape recording of Laurie Fine. It states that if Davis had told them about the tape recording the outcome might have been dramatically different. If the BSK lawyers had done a proper examination of Mr. Davis they would have learned this fact and more.

11. Bernie Fine's change in his witness statement should have been viewed with suspicion.

Mr. Fine was interviewed six days later with his lawyer present. He denied molesting Bobby Davis. However, he admitted that Bobby traveled with the team and the draft of his statement and the handwritten notes of the interview reflect that Fine admitted that Davis may have stayed alone with him in his hotel room on occasion. Why was this important statement removed from Bernie Fine's final witness statement and why was there no serious discussion in the 2005 report about this change?

12. The report by the so called Special Committee of the Board of Trustees suffers from the same deficiencies that corrupted the University's 2005 so called investigation of Bobby Davis' allegations: a complete lack of transparency or fully critical analysis.

Despite spending nearly 8 months purporting to merely “investigate” the underlying 2005 putative investigation (which itself lasted less than 3 months) the University has failed to produce the underlying notes and files that were examined or described with any specifics describing how long and what was discussed in its interviews which were done with litigation counsel present.

13. The 2012 report by the Special Committee fails to answer many important questions:

Why was every single interview of every witness conducted in the presence of the University's litigation counsel at DeBevoise & Plimpton that is defending the action against Jim Boeheim and the University? Was there no awareness that this could have been viewed as intimidating to some witnesses and not a neutral investigation by others?

Since even this 2012 report concludes that allegations that Laurie Fine had sex with players and other young men were not investigated what is being done to investigate that now?

The BSK law firm has reportedly earned \$21 million dollars in fees over the years from Syracuse University. Why has Paul, Weiss not revealed what they were paid to do this 2012 report?

As we have seen from the recent discussions about sexual misconduct - from Penn State to Horace Mann - the greatest difficulty in addressing the sexual abuse of children is overcoming the secrecy that surrounds the issue. Bobby Davis has demonstrated enormous courage in coming forth - again, again and again - to get this problem addressed and to try to protect children. Syracuse University should be fully transparent and address these issues honestly even though it may be embarrassed to do so, rather than attempting to create a new paper trail in hopes of protecting itself against future lawsuits and public criticism by the Syracuse community.

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