



October 8, 2020

Conrado M. Gempesaw  
President, St. John's University  
8000 Utopia Parkway  
Queens, New York 11439

*Sent via Electronic Mail (pres@stjohns.edu)*

**URGENT**

Dear President Gempesaw:

FIRE<sup>1</sup> is gravely concerned for the state of academic freedom and freedom of expression at St. John's University after adjunct professor and postgraduate student Richard Taylor was removed from the classroom, investigated, and found responsible for violating the college's anti-harassment policy based on reports from students that he had asked them to discuss the positive aspects of the transatlantic slave trade during the 15th and 16th centuries.

Even if these reports were accurate—which, as we will explain below, they are not—such thought exercises within a history class would be protected by the promises of free speech and academic inquiry that St. John's repeatedly makes to its students and faculty. Disturbingly, St. John's has instead found Taylor responsible of violating some unenumerated part of its anti-harassment code. Taylor is scheduled to have a telephone meeting with Interim Dean Gina M. Florio this Friday, October 9, 2020.

Given the baseless and deeply flawed investigation described below, we call on St. John's to drop any further action predicated on these allegations and restore Taylor to teaching immediately.

---

<sup>1</sup> As you may recall from prior correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

## **I. St. John's Suspends Taylor After Student Group Complains on Instagram**

A brief summary of the facts follows. We appreciate that you may have additional information in this case and invite you to share it with us. Please find enclosed an executed waiver authorizing you to share information with FIRE.

Taylor is an adjunct professor at St. John's, and this semester he was assigned to teach "History 1000: Emergence of a Global Society." One of the topics covered in the class is the "Columbian Exchange," understood as "the largest part of a more general process of biological globalization that followed the transoceanic voyaging of the 15th and 16th centuries."<sup>2</sup> Taylor has taught this lesson, and the associated two and a half class sessions, at St. John's since 2015.

### ***A. The September 7 lesson and the prompt on globalization.***

On Monday, September 7, 2020, Taylor taught part of this lesson on the Columbian Exchange using a PowerPoint focusing on early global commodities, attached to this letter for your review.<sup>3</sup>

The focus of the lesson is trade and biodiversity. Of the 46 slides in the presentation, seven reference slavery and five reference abuse of indigenous populations. (For comparison, seven slides reference the international silver trade, four discuss the spread of disease, and three mention potatoes.) In short, the lesson discussed slavery but was not "about" slavery.

The penultimate slide is titled "Negatives to Globalization," and the enslavement of millions is listed as one of those negatives. The next, and final, slide is the discussion prompt: "Do the positives justify the negatives?" According to Taylor, a lively discussion ensued, which is normal and, as suggested by including a discussion prompt, an intended component of the class. One student said slavery could never be justified; according to Taylor, he clarified that no one is justifying slavery and asked students to consider global trade as a whole, including lives lost to disease and lives saved from famine.

Taylor taught the same lesson to a second section of the class on the same day without incident.

### ***B. The September 10 Instagram posts and form letter.***

On Thursday, September 10, the Instagram account "sjuradicals" posted two items accusing Taylor of wrongdoing. In short, these posts took a dramatically different view of Taylor's class. (In conversations with Taylor, he has categorically disputed their characterization of events.)

---

<sup>2</sup> J.R. McNeill, Columbian Exchange, BRITANNICA.COM, <https://www.britannica.com/event/Columbian-exchange>.

<sup>3</sup> As you know, but future readers may not, St. John's eliminated days off in order to hold as many classes as it could before Thanksgiving due to the pandemic. As a result, classes were held on Labor Day, September 7, 2020.

The first Instagram post begins with “EMERGENCY THREAD: RACIST PREDATOR ON CAMPUS: PROFESSOR RICHARD TAYLOR.”<sup>4</sup> It then claims that Taylor “forced students to formulate a pros and cons list concerning the topic of slavery.”<sup>5</sup> It mentions Taylor’s NYPD and Marine Corps service.<sup>6</sup> It states that that Taylor “poses a dangerous threat to the education of our student body, and more importantly the safety of our BIPOC population on campus.”<sup>7</sup> The post directs students to a form letter they can submit to multiple college officials by entering their email address, in order “to bring meaningful justice to this heinous crime committed by Professor Taylor.”<sup>8</sup>

The second post, also titled “EMERGENCY THREAD,” highlights that, during a decade of service to the NYPD (from 1997 to 2007), there were eight complaints against one or more officers named Richard Taylor and renewed calls to viewers to complain to St. John’s.<sup>9</sup>

On the evening of September 10, Taylor called Department Chair Rustomji, who informed Taylor that he was being removed from teaching. In the following week, sjuradicals would post at least five more times about Taylor, including to coordinate protests against St. John’s for employing him.

### *C. The meeting on September 15.*

On September 14, Taylor emailed Interim Dean Gina M. Florio to inquire as to his status, as both an adjunct and a Ph.D. student; she replied that he was removed from teaching classes and all else was pending.

On September 15, Taylor met with Director of Equal Opportunity and Compliance Keaton Wong and a union representative. At this meeting, Wong informed Taylor that there were over 300 complaints of misconduct against him. Taylor found this surprising, as there were 30 students in the class where the misconduct was alleged to have taken place. Wong then clarified that exactly one student had complained after the morning class on Sept. 7; the remaining complaints were form letters submitted via the sjuradicals-promoted link.<sup>10</sup>

Wong instructed Taylor that St. John’s intended to treat each of the identical form submissions as a stand-alone complaint. Taylor asked for specific details as to the accusations, but Wong declined to provide any details and further informed Taylor that St. John’s could

---

<sup>4</sup> @sjuradicals (Instagram), Sept. 10, <https://www.instagram.com/p/CE9udVzpYkC>.

<sup>5</sup> *Id.* at slide 2.

<sup>6</sup> *Id.* at slide 5.

<sup>7</sup> *Id.* at slide 7. The letter largely repeats the mischaracterization of the September 7 class as being about slavery with a number of conclusions erroneously drawn from that mischaracterization.

<sup>8</sup> *Id.* at slides 9 and 10.

<sup>9</sup> @sjuradicals (Instagram), Sept. 10, <https://www.instagram.com/p/CE-RzrvJNep>. Whether these specific complaints refer to Taylor or someone else, they are irrelevant to the pedagogical question at issue.

<sup>10</sup> The link is no longer active, as, for reasons discussed *infra*, the sjuradicals have moved on to a letter-writing campaign targeting a different St. John’s employee. See generally <https://linktr.ee/SJURadicals>.

find him in violation of campus policy without identifying specifically which portion of policy he violated, or what specific conduct violated the policy.

*D. The sjuradicals accuse Wong of wrongdoing on October 1.*

Given that the only evidence against Taylor of which he is aware are the form letter complaints, St. John’s interaction with sjuradicals—much of which occurs well after Taylor’s hearing but before the investigation is concluded—offers additional context into St. John’s reliance on those complaints.

On October 1, the sjuradicals account switched targets, moving from Taylor to a group of former and current St. John’s employees.<sup>11</sup> Specifically, the account now accuses former Associate Dean for Student Engagement Mary H. Pelkowski of a decade (2009 to 2019) of “sexual, verbal, emotional, physical, and financial abuses.”<sup>12</sup> It further accuses Senior Associate Dean of Student Services Jackie Lochrie and Keaton Wong—the employee then investigating Taylor based on allegations from the same group—of being “fully aware of Pelkowski’s crimes for years, and unlawfully [] not report[ing] Pelkowski to proper law enforcement channels. . . .”<sup>13</sup>

As with the campaign against Taylor, sjuradicals provided a form letter for supporters to automatically submit complaints.<sup>14</sup> The post invites supporters to submit the form email and “join . . . efforts to bring meaningful justice to this heinous crime.”<sup>15</sup> The sjuradicals took an additional step they had not done in response to Taylor’s lesson: Preparing a dossier that included anonymized student statements related to the allegations.<sup>16</sup>

*E. The general counsel’s October 2 cease and desist letter to sjuradicals.*

On October 2, the sjuradicals posted to their Instagram account what purports to be a letter they received that day from St. John’s Associate General Counsel Joshua S. Hurwit.<sup>17</sup>

The letter demands that sjuradicals “immediately remove two posts . . . that recklessly malign” Lochrie and Wong.

It continues:

---

<sup>11</sup> @sjuradicals (Instagram), Oct. 1, <https://www.instagram.com/p/CFzv14DFBLN>.

<sup>12</sup> *Id.* at slide 2.

<sup>13</sup> *Id.* at slide 5.

<sup>14</sup> *Id.* at slide 9.

<sup>15</sup> *Id.*

<sup>16</sup> @sjuradicals (Instagram), Oct. 1, <https://www.instagram.com/p/CFz2jTOl7x5/>.

<sup>17</sup> @sjuradicals (Instagram), Oct. 2, <https://www.instagram.com/p/CF2hJeWIVK5/>.

*First*, your posts are defamatory *per se* under New York law. . . . Here, your posts about Ms. Lochrie and Ms. Wong are defamatory *per se* because they conclude, without evidence, that they committed serious crimes. . . .as discussed below, the statements made in these posts are demonstrably false. . . . [Y]ou present no evidence that a court of competent jurisdiction or regulatory authority has ever made such a finding. . . .

*Finally*, an internal investigation into your Instagram posts is underway. Students who are found to have violated the law (including Title IX of the Education Amendments Act of 1972) and SJU rules, regulations and/or policies in connection with these Instagram posts will be held accountable and may be subject to discipline.

To be clear: Ms. Lochrie and Ms. Wong are professional, hard-working employees with the highest ethical standards, and they have SJU’s full support and complete confidence. SJU will not tolerate baseless attacks on their character and reputation.<sup>18</sup>

At the time this letter was sent, Wong was presiding over an investigation into allegations, presented without evidence, that Taylor was guilty of “heinous crimes.”<sup>19</sup> The allegations that were the basis of that investigation originated from sjuradicals, the group that St. John’s was simultaneously accusing of defamation for making allegations against Wong, presented without evidence, of “heinous crimes.”<sup>20</sup>

***F. The October 5 outcome letter.***

On October 5, Wong sent Taylor a letter via e-mail informing him of the investigation’s outcome, which states in part:

Thank you for speaking with me on September 15, 2020 to discuss allegations that during the 9:05 a.m. History 1000C class on September 7, you asked students to justify slavery and discuss the positives and negatives of slavery; positively attributed slavery to diversity in America; singled out Black students; and stated that Black students would not be present without slavery.

A thorough investigation has been conducted, which included speaking with several students who were present during the 9:05

---

<sup>18</sup> *Id.* (emphasis in original.)

<sup>19</sup> *See supra* notes 4 and 8 and accompanying text.

<sup>20</sup> *See supra* notes 11 and 15 and accompanying text.

a.m. History 1000C class on September 7. The investigation process was, and shall remain, confidential. Without compromising the confidential nature of the investigation, we can share with you that the investigation yielded sufficient evidence to substantiate the allegations and conclude that the University's Policy against Bias, Discrimination, and Harassment (No. 704) was violated. [...]

Please note that the investigation's finding is final and non-appealable.<sup>21</sup>

Wong's letter does not identify which part of the over 2,300-word long Policy No. 704 Taylor is alleged to have violated.<sup>22</sup> It does not identify what "evidence" exists or any of Taylor's accusers. Based on the representations at the September 15 meeting, it is possible that the vast majority of evidence considered against him was submitted by individuals with no knowledge whatsoever of the incident.

### *G. Policy 704.*

Because St. John's refuses to identify the portion of its anti-harassment policy that Taylor is alleged to have violated, let alone provide any factual or evidentiary basis for its conclusion, it is impossible to analyze the application of the policy. Instead, some other elements of Policy 704 merit analysis for the discussion of their implications under state and federal law, including its specification that information "relating to the case should be limited to individuals who have a legitimate need to know or who have information" and its provision reserving to St. John's right to "amend or rescind any of the provisions of this policy and the complaint procedure from time to time in its sole discretion."

## **II. St. John's Promises to Protect Faculty Speech and Academic Freedom**

While St. John's is a private institution and is not required by virtue of the First Amendment to protect freedom of expression, it repeatedly promises to protect free expression. To punish community members who exercise the rights St. John's has contractually granted undermines those guarantees.

Beyond the moral imperative, several additional outside sources of authority compel St. John's to respect the promises it has made in this area, including without limitation the Department of Education's Title IV loan program, its accreditation, and contract law.

---

<sup>21</sup> Letter from Keaton Wong, Director of Equal Opportunity Compliance, and Title IX, St. John's University, to Richard Taylor, Adjunct Professor, St. John's University (Oct. 5, 2020) (1 of 2), on file with author.

<sup>22</sup> See generally Policy 704 – Policy Against Hate, Bias, Discrimination and Harassment. ST. JOHN'S UNIV. <https://www.stjohns.edu/about/administrative-offices/human-resources/policy-704-policy-against-bias-discrimination-and-harassment> (last revised Dec. 3, 2019).

Additionally, New York's CPLR Article 78 prohibits private universities from taking actions that arbitrarily deviate from representations it has made.<sup>23</sup>

***A. St. John's repeatedly promises to protect freedom of expression and inquiry in its employee handbook.***

St. John's repeatedly makes explicit promises of freedom of expression and inquiry to its faculty. In the institution's Mission Statement:

As a university, we commit ourselves to academic excellence and the pursuit of wisdom which flows from free inquiry, religious values, and human experience. We strive to preserve and enhance an atmosphere in which scholarly research, imaginative methodology, global awareness, and an enthusiastic quest for truth serve as the basis of a vital teaching-learning process and the development of lifelong learning.<sup>24</sup>

Under "Your Right to Free Speech and Expression":

All members of the St. John's University community enjoy the right to freedom of speech and expression that is consistent with the University Mission and its Catholic character and Vincentian tradition. [...] Expression that is indecent, obscene or grossly offensive on matters such as race, ethnicity, religion or gender violates the expectations of professional conduct at the University.<sup>25</sup>

In its policy on "Academic Freedom and the Catholic University":

St. John's University is committed to academic freedom of inquiry. Since 1968 we have endorsed the "1940 Statement of Principles on Academic Freedom and Tenure." This commitment is specifically incorporated into the University Statutes and the Collective Bargaining Agreement (CBA) between the University and the AAUP-FA (CBA, Section 2.02).

---

<sup>23</sup> See, e.g., *Awad v. Fordham Univ.*, 2019 NY Slip Op 51418(U) (Sup. Ct. 2019) (private university's refusal to recognize a chapter of Students for Justice in Palestine was contrary to the university's mission statement guaranteeing freedom of inquiry).

<sup>24</sup> Mission Statement, Employee Handbook, ST. JOHN'S UNIV., <https://www.stjohns.edu/about/leadership-and-administration/administrative-offices/human-resources/employee-handbook#mission>.

<sup>25</sup> Your Right to Free Speech and Expression, Employee Handbook, ST. JOHN'S UNIV., <https://www.stjohns.edu/about/leadership-and-administration/administrative-offices/human-resources/employee-handbook#free-speech>.

St. John's University believes that there is no compromise whatsoever between Catholic identity and freedom of inquiry. Similarly, these values insist upon academic integrity in all scholarly endeavors. The heritage of all Catholic universities coincides with the historical origin of the European University, which developed from the medieval cathedral schools. This heritage reflects a search for truth which is both a religious quest and a secular aim. These aims are the root of the disciplines of the liberal arts and sciences.<sup>26</sup>

In addition to these commitments, St. John's incorporates the AAUP Statement of Principles, which defend academic freedom and freedom of expression, into its faculty Collective Bargaining Agreement.

The 1940 Statement of Principles on Academic Freedom and Tenure, incorporated by reference into every St. John's faculty contract, elaborates further on the scope of academic freedom that is contractually guaranteed to your employees and adjuncts.<sup>27</sup> Paragraph two of the subsection on Academic Freedom states, in relevant part, "Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject."<sup>28</sup>

A comment interpreting that sentence, added in 1970, offers further context for its interpretation:<sup>29</sup>

The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.

Even if Taylor had asked students to consider whether slavery had positive aspects—which he denies, and which is not supported by the teaching materials used—such a question would be an example of the controversy that is "at the heart of [] free academic inquiry." St. John's has

---

<sup>26</sup> Academic Freedom and the Catholic University, Policies, ST. JOHN'S U., <https://www.stjohns.edu/about/leadership-and-administration/administrative-offices/office-provost/policies-procedures-and-reports>.

<sup>27</sup> AMERICAN ASS'N OF UNIV. PROFESSORS, STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE (1940), available at <https://www.aup.org/report/1940-statement-principles-academic-freedom-and-tenure> ("Statement of Principles").

<sup>28</sup> Statement of Principles, Academic Freedom, ¶ 2.

<sup>29</sup> Statement of Principles at n.4 (Second 1970 Comment).



not, and could not seriously, take the position that a discussion of slavery has no pedagogical value to the study of the history of transatlantic international trade.

Further, St. John’s adoption of the 1940 Statement represents not only a moral obligation to refrain from interfering with its faculty members’ academic freedom, but a legal duty. In *McAdams v. Marquette University*, Marquette, a private Catholic university, had adopted the same 1940 Statement adopted by St. John’s.<sup>30</sup> A member of the university’s faculty, aggrieved by a graduate student instructor’s exchange with a student about whether LGBTQ rights were an “appropriate” topic of class discussion, criticized the instructor on his personal blog, providing a link to the instructor’s contact information and assailing her attitude as “totalitarian.”<sup>31</sup> Marquette punished the professor, citing the post as falling short of the university’s “standards of personal and professional excellence... .”<sup>32</sup> However, Wisconsin’s Supreme Court overturned Marquette’s imposition of discipline, holding that the private university’s commitment to academic freedom rendered the blog post “a contractually-disqualified basis for discipline.”<sup>33</sup>

***B. The U.S. Department of Education treats limits on academic freedom as unlawful misrepresentations.***

St. John’s suspension of Taylor exposes the university to liability under federal regulations — even as a private institution.

In August, the U.S. Department of Education opened an investigation<sup>34</sup> into Fordham University’s investigation and punishment of a student who posted a pro-democracy Instagram post commemorating the Tiananmen Square massacre. The Department alleged Fordham, which makes similarly strong promises of free speech and academic freedom to those made by St. John’s, violated its promises when it punished the student. Under federal law, Fordham could lose access to its federal grant funding for such a violation and be deemed liable for \$58,328 per violation.

The government has undertaken similar investigations at public institutions bound by the First Amendment, including at the University of California, Los Angeles (UCLA), arising from a lecturer’s reading of Martin Luther King, Jr.’s “Letter from a Birmingham Jail,” in which King recounted the slurs that had been directed toward him and his family.<sup>35</sup> After the

---

<sup>30</sup> *Id.* at 730.

<sup>31</sup> *Id.* at 713–14.

<sup>32</sup> *Id.* at 714.

<sup>33</sup> *Id.* at 737.

<sup>34</sup> Adam Goldstein, *Analysis: Department of Education investigates Fordham over broken speech promises in Austin Tong case*, FIRE, Aug. 25, 2020, <https://www.thefire.org/analysis-department-of-education-investigates-fordham-over-broken-speech-promises-in-austin-tong-case/>.

<sup>35</sup> Peter Bonilla, *FIRE again calls on UCLA to defend academic freedom — this time for professor under fire from reading from MLK*, FIRE, July 7, 2020, <https://www.thefire.org/fire-again-calls-on-ucla-to-defend-academic-freedom-this-time-for-professor-under-fire-for-reading-from-mlk>.

lecturer did not censor himself in reading from the letter, despite students' request that he do so, and exhibited a documentary containing graphic discussions of lynching, the university reportedly initiated an investigation.<sup>36</sup>

By initiating the investigation—even without issuing any findings or discipline—UCLA violated the lecturer's academic freedom, leading to a formal investigation by the Department of Education.<sup>37</sup> The Department has stated that in investigating the lecturer, UCLA's public commitments to academic freedom have been rendered substantial misrepresentations about the nature of its academic program, violating 20 U.S.C. § 1094(c)(3) and 34 CFR 668.71(c).<sup>38</sup> The Department has requested that UCLA—which faces civil penalties and the loss of its eligibility for federal funding<sup>39</sup>—produce documents and make its senior leadership available for transcribed interviews.<sup>40</sup>

St. John's conduct is nearly identical to UCLA's, save that in UCLA's case, the professor actually engaged in the conduct it intended to investigate. Here, St. John's has suspended a professor and initiated an investigation based on a social media misrepresentation of a lesson plan. Accordingly, St. John's should anticipate being subject to the same scrutiny.

### *C. New York's CPLR Article 78 prohibits arbitrary decision-making.*

Under New York's Article 78, a court may review and reverse a private college's disciplinary decision when it acts arbitrarily, "fails to abide by its own rules... or imposes a penalty so excessive that it shocks one's sense of fairness."<sup>41</sup> A decision is arbitrary within the meaning of Article 78 when it is made "without regard to the facts."<sup>42</sup>

St. John's has voluntarily created rules to protect academic freedom and faculty speech. By suspending Taylor and investigating his classroom speech, it has arbitrarily deviated from those rules. This undermines the fundamental fairness that state law requires St. John's to provide and that state courts will uphold.<sup>43</sup>

---

<sup>36</sup> *Id.*

<sup>37</sup> Letter from Robert L. King, Asst. Sec., Office of Postsecondary Ed. U.S. Dep't. of Educ., to Gene Block, Chancellor, Univ. of Cal., Los Angeles (June 23, 2020), available at <https://thefire.org/doi-letter-to-ucla-june-23-2020>.

<sup>38</sup> U.S. Dep't of Educ., Notice of Proposed Rulemaking, 85 Fed. Reg. 3190, 3213 n.137 (Jan. 17, 2020) (noting that "public and private institutions also may be held accountable . . . for any substantial misrepresentation under the Department's borrower defense to repayment regulations").

<sup>39</sup> 20 U.S.C. § 1094(c)(3).

<sup>40</sup> Letter from King, *supra* note 37.

<sup>41</sup> *Matter of Powers v. St. John's Univ. Sch. of Law*, 25 N.Y.3d 210, 216 (2015); see generally N.Y. C.P.L.R. § 7801 (2014) ("Article 78").

<sup>42</sup> *Pell v. Board of Educ.*, 34 N.Y.2d 222, 231 (1974).

<sup>43</sup> See *Tedeschi v. Wagner Coll.*, 49 N.Y.2d 652, 660 (1980) (noting that Article 78's rules are "a matter of essential fairness in the somewhat one-sided relationship between the institution and the individual").

**III. St. John's treatment of Taylor violates every standard it purports to uphold and shocks the conscience in its absence of fundamental fairness**

Taken together, St. John's actions fail to meet minimum standards of due process, fundamental fairness, and the contractual obligations to which it has bound itself.

**A. *The investigation violated ab initio the promises of academic freedom made by St. John's and required by its accreditation.***

To be clear, given that the identities of the complainants have been kept secret, there is no reason to credit any allegation that Taylor asked students to consider positive aspects of slavery.<sup>44</sup> But *even if that allegation were true*, it is precisely the kind of thought exercise that academic freedom was crafted to protect.

A grant of a right of "freedom" presupposes the freedom to do the uncomfortable; even a totalitarian state grants you the "freedom" to be complacent and meek. This is especially true in the study of history as a discipline, which must be particularly concerned with complicating facile narratives and uncovering uncomfortable truths. Humans and their institutions are twisted and complicated, and we must complicate our understanding of both.

Again, *Taylor did not ask this question*. He asked students to consider whether the positives of ***global trade*** outweigh the negatives. But when faced with the allegation that a professor *entertained a forbidden inquiry*, St. John's should have lived up to its mission statement, its accreditation obligations, and its reputation as a place of higher learning and rejected the invitation to perpetuate a hunt for heretics.

**B. *The investigation was ethically indefensible.***

Perhaps the simplest lens through which to analyze these shortcomings is the outrageous conflict of interest inherent in permitting Wong to continue to preside over the investigation of Taylor when she was facing:

- (1) allegations of wrongdoing made by the same accuser;
- (2) specifically rooted in the allegation that Wong did not punish people quickly or harshly enough;
- (3) while her employer specifically identified the same accusers as making baseless accusations against other employees; and
- (4) while her employer was threatening to punish her accusers by subjecting them to the same substance-free mystery-box hearing that was being wielded against Taylor.

---

<sup>44</sup> There is also no evidence to indicate that Taylor "singled out" any students in class. Nor, given that Wong decided to entertain 300 form letter complaints from internet submitters who were not in the classroom, does it seem the investigation was especially well calculated to probe that question. Furthermore, as Taylor was never permitted to know which students he supposedly singled out, he could provide no details of his interactions.

These are not merely extrinsic factors—the basis for the investigation into Taylor was over 300 complaints, funneled through a group that St. John’s (and its agent Wong) is actively accusing of *defamation* for allegedly *making meritless complaints*. Notably, this posture means Wong—who acted as factfinder whose decisions were final, non-appealable, and based on secret evidence—was investigating allegations against Taylor while a student group was calling for her firing based on their perception that she had not done enough to punish employees in the past. This would create an irreconcilable conflict of interest even if the process employed by St. John’s were marked by a commitment to fundamental procedural fairness. However, in a process stripped of the basic tools of ascertaining the truth of accusations—such as access to the accusations, evidence, or the identity of the complainants—that conflict renders the process deployed against Taylor an ethical farce.

The subsequent handling of the substantially similar complaints made against Wong is telling. When a student group made histrionic accusations against an adjunct, Wong investigated *him*. When the same group made allegations against her, St. John’s threatened to investigate *the students*. What, other than a botched attempt to appease critics, merits this disparate impact?

***C. The investigation was procedurally indefensible.***

Despite writing a policy that permits it to do more or less whatever it felt like, whenever it felt like it, St. John’s does have external obligations—to its accreditors, to the Department of Education, to the State of New York, and yes, to its faculty.

The state, for example, requires fundamental fairness through Article 78.<sup>45</sup> In the present situation, Taylor was not permitted to see the evidence against him; was not informed in what way the conduct violated policy; and was presented with a record of a three-week investigation that consists of three paragraphs, one devoted to telling him he can’t appeal the outcome. That would constitute a fundamentally unfair investigation, even if that investigation were not, as it was, ethically compromised.

Article 78 also prohibits arbitrary decision-making. A decision is “arbitrary” when it is made “without regard to the facts.”<sup>46</sup> Here, two employees—one an adjunct, one an administrator—faced very similar accusations from the same group with the same absence of factual basis. St. John’s divergent reaction to those parallel claims could very well end up in future textbooks as the ultimate illustration of “arbitrary” in the Article 78 context.

**IV. Conclusion**

Under any basic conception of academic freedom, the choice of whether and how to confront controversial material in a pedagogically-relevant context is left to faculty members, not administrators. St. John’s promises this right to its faculty and must not violate those

---

<sup>45</sup> *Id.*

<sup>46</sup> See *supra* note 42 and accompanying text.

promises. Doing so casts an unacceptable chill over faculty rights and exposes the university to considerable legal liability.

Accordingly, St. John's must immediately rescind the investigation and punishment of Taylor. Given the urgent nature of this situation, we request receipt of a response to this letter no later than the close of business on Friday, October 9.

Sincerely,



Adam Goldstein  
Senior Research Counsel

Cc: Gina M. Florio, Interim Dean  
Joshua S. Hurwit, Associate General Counsel  
Keaton Wong, Director of Equal Opportunity & Compliance and Title IX Coordinator  
Nerina Rustomji, Chair, History Department