

## **Support for Disallowing Dr. Roter's Report**

If Dr. Petra Roter is not provided for in person cross examination at the November hearing, we respectfully request that the panel not consider the unsigned report that bears her name ("the Report"). There are questions about the genesis, authenticity, and findings of the report.

### **Concerns about the Report**

The Chancellor commissioned the Report, relied upon it, and offered it as part of the Administration's evidence in this case. It is vital evidence. Therefore, its author should be subject to questioning about the Report. This panel should want to know the truth about the Report. If it is flawed, the Chancellor acted on a flawed basis for recommending dismissal. This bears on the due process afforded Dr. Burton.

**The Report is not signed:** It was delivered by Chancellor Shields, who had motive to edit the report as he is named in a federal lawsuit by Dr. Burton. In our society, significant documents are signed to attest to their authenticity and to affirm content. This document lacks foundation to even be accepted as Dr. Roter's report. Absent some proof of its authenticity and reasonable explanation for it being unsigned, it has no probative. As a cornerstone of the Administration case, it must fail. If it fails, so, too, does any basis for terminating Dr. Burton.

**The Report requires clarification:** Here are examples of Report items needing clarification. Space constraints prohibit including all of them.

The report describes those interviewed in the Criminal Justice program noting that the department environment was "chilling" and "dysfunctional," with reports of feeling threatened. (Page 4, Paragraph 3). The Report doesn't identify who threatened whom. Nor does it identify the threats or what caused the dysfunction. The Chancellor admitted at that last hearing that all dysfunction in the Department was not due to Dr. Burton. The panel deserves to hear from Dr. Roter what she attributes to Dr. Burton.

There are allegations at page 4, paragraph 4 of the Report that unnamed colleagues accused Dr. Burton of threats. Dr. Burton denies these allegations and should be permitted to question Dr. Roter on the basis for any such serious allegations.

The Report includes assertions that the author thought sufficiently-significant to include, but needing clarification. For example, at page 4, paragraph 3, there is reference to Mr. Burton using a personal email account for communication. That requires brief inquiry to prove its irrelevance.

The Report alleges that the grad student recorded his conversation with Dr. Dalecki without consent (page 6, paragraph 2). This is incorrect; the student could legally exercise one-party consent. §968.13(2)(c). Dr. Burton is entitled to inquire about this egregious misstatement of fact and law. Similarly, the Report accuses Dr. Burton of recording conversations without consent. (Page 6, paragraph 4) Again, one-party consent applies.

The Report asserts that Dr. Burton asked Jannell Crowley, Human Resources, to take the Letter of Direction out of her personnel file, thinking it was no longer in effect. (Page 5, paragraph 2). Dr. Burton vehemently denies that she ever told anyone that she thought the LOD was not in effect. We must be permitted to question Dr. Roter on this important point.

**The Report lacks objectivity:** The investigator's charge was fact finder (Page 6, paragraph 4). But the Report contains clear expressions of bias against Dr. Burton. We must be permitted to question on these.

During a discussion of the Throop LOD, Dr. Burton said that one email was "kinda direct," "pretty short," "kinda short" and "brief." The Report misquoted Dr. Burton, saying she "noted that she has a tendency to be direct and short, which could be perceived as threatening." (Page 5, Paragraph 1). Dr. Burton never said this. Chancellor Shields' statement of charges adopts and expands the Report error: "You admitted to investigator Roter that you are direct and short with colleagues, and that you could be perceived as threatening." This is factually wrong. Dr. Burton deserves the right to question Dr. Roter on it.

The issue of the graduate student with Dr. Dalecki has the Report opining that the meeting was mentoring, not threatening. (Page 6, Paragraph 3). The Report failed to mention that the grad student was fired from his position soon after the meeting. Dr. Burton deserves the opportunity to display this shortcoming to the Panel.

**Factual issues were not resolved:** Irrelevant facts were included and relevant facts were excluded from the Report. Excluded relevant facts support Dr. Burton. The Report did not assess credibility of disputed facts. There were no Findings of Fact in the Report. There is no clear explanation of which facts are disputed.

Dr. Burton spent forty minutes telling Dr. Roter about concerns with Dr. Throop's (LOD) denying Dr. Burton a right to a grievance hearing, in violation of due process. The Report is silent on this very serious matter.

The Report has a vague allusion to "threatening and harassing emails and interactions." (Page 4, Paragraph 3) This does not identify who sent the alleged emails or to whom they were sent. Absent this, a rational decision on culpability is impossible. Report exhibits do not support these assertions and are not specifically identified in the Report.

Dr. Burton told Dr. Roter that communication training had been mandated for the Department due to the dysfunction of the Department but that the administration had failed to conduct the training. The Report ignores the Administration's failure to conduct training.

Dr. Burton discussed with Dr. Roter documents available on the Internet. None of this was included in the Report, except pages provided by the Administration.

The Report failed to explain why the Throop/Gormley complaint against Dr. Burton included material Dr. Burton was alleged to have improperly disclosed (Pages 8-19). The Report contains the same unredacted materials as Chancellor Shields' statement of charges. No one else faces termination for this. These issues must be addressed with Dr. Roter. There is no other way to address them effectively with the Panel.

**Credibility of witnesses was not addressed:** Dr. Burton previously filed official complaints about all interviewees. They, therefore, all had motive to lie. The Report does not include testimony from Dr. Gormley, or others against whom Dr. Burton has not filed complaints. We must be permitted to develop this issue of bias with Dr. Roter.

**The Report is incomplete:** The Report notes Dr. Burton's allegation that colleagues called Dr. Burton mentally ill, asserted that her father was a Nazi, questioned her credentials; and appeared to be limiting her expression and professional development. (Pages 5, Paragraph 1). The Report fails to address these serious allegations. Surely, the Panel must deem it important if some of Dr. Burton's communication to colleagues was colored by colleagues' allegations that Dr. Burton's father was a Nazi. Such reaction would be human and not grounds for termination, although it might be ground for termination of the faculty member alleging Nazi membership.

**The investigation and resultant Report were unfair:**

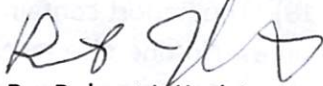
**The investigation was not thorough:** The investigation included only people adverse to Dr. Burton. Dr. Gormley, co-author of the complaint, was not interviewed and she was unavailable to testify at either hearing. The investigation excluded students, the only people who could verify Dr. Burton's claim that she didn't talk about her dispute in class. Dr. Burton suggested that Dr. Roter should talk to students about this. The Report says that Dr. Roter, "did not have a chance to interview students." (Page 5, Paragraph 5) But the investigation was conducted at a time when students were easily available.

For all the reasons set forth in this submission, Dr. Burton must be afforded the right to question Dr. Roter. In the alternative, the Roter Report must be disregarded as a basis for any discipline of Dr. Burton. Given its status as the investigation upon which the Chancellor relied, the Panel must, therefore, recommend that the Chancellor not terminate Dr. Burton.

Respectfully submitted,

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