

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID B. TRACEY, *et al.*,

Plaintiffs,

v.

No. 16-cv-11620-NMG

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY, *et al.*,

Defendants.

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE SUPPLEMENTAL
EVIDENCE IN SUPPORT OF PLAINTIFFS’ OPPOSITION
TO DEFENDANTS’ MOTION *IN LIMINE* 2 [DOC. 249]**

As detailed in Plaintiffs’ Memorandum in Opposition to Defendants’ Motion *in Limine* 2 (Doc. 265), the Court should deny Defendants’ Motion *in Limine* 2 seeking to prevent the testimony of MIT President Rafael Reif and former chairman John Reed. Plaintiffs request leave to file new evidence of Reif’s unique knowledge related to this case that came to light after Plaintiffs filed their opposition. On September 7, 2019, in response to articles in the *New Yorker* and other periodicals, Reif issued a “Letter to the MIT Community.”¹ In response to revelations that improper donations were received by MIT, Reif addressed what MIT’s policy for improper donations would be in the future and “asked MIT’s General Counsel to engage a prominent law

¹ Attached as Exhibit 1, R. Reif, “Letters to the MIT Community: Fact Finding and action on the Media Lab”, Sept. 7, 2019, *available at* <https://president.mit.edu/speeches-writing/fact-finding-and-action-media-lab>; *see also* Rowan Farrow, *How an Élite University Research Center Concealed Its Relationship with Jeffrey Epstein*, The New Yorker, Sept. 6, 2019, *available at* <https://www.newyorker.com/news/news-desk/how-an-elite-university-research-center-concealed-its-relationship-with-jeffrey-epstein>; Deirdre Fernandes, *MIT Media Lab chief resigns after new revelations about ties to Jeffrey Epstein*, The Boston Globe, Sept. 7, 2019, *available at* <https://www.bostonglobe.com/metro/2019/09/07/head-mit-media-lab-resigns-after-revelations-about-center-hiding-contributions-from-jeffrey-epstein/8wif3HX2fQN10eKbdkuAUP/story.html>; Joseph De Avila, *MIT Media Lab Director Resigns Over Epstein Donations*, the Wall St. J., Sept. 7, 2019, *available at*, <https://www.wsj.com/articles/mit-media-lab-director-resigns-over-epstein-donations-11567898820?mod=searchresults&page=1&pos=1>; Tiffany Hsu, *et al.*, *Jeffrey Epstein’s Donations Create a Schism at M.I.T.’s Revered Media Lab*, N.Y. Times, Sept. 7, 2019, *available at*, <https://www.nytimes.com/2019/09/05/business/media/mit-media-lab-jeffrey-epstein-joichi-ito.html?searchResultPosition=1>

firm to design and conduct [a thorough and independent investigation]. I [Reif] expect the firm to conduct this review as swiftly as possible, and to report back to *me* and to the Executive Committee of the MIT Corporation, MIT's governing board."² In an earlier letter to the MIT Community, Reif noted "decisions about gifts are always subject to longstanding Institute processes and principles" and "despite following the processes that have served MIT well for many years, . . . we made a mistake of judgment."³ This new declaration reveals that Reif is uniquely responsible for the oversight of MIT employees and the investigation, compliance, and enforcement of conflict of interest policies related to donations. Plaintiffs are seeking to inquire about whether the policy changes Reif instructed the committee to investigate include donations to MIT from MIT Supplemental 401k Plan (the "Plan") vendors paid by employees' retirement assets. His failure to initiate the same type of investigation related to Fidelity's gifts and donations to MIT, both today and in the past, is something to which only Reif can testify. His subordinates, Theresa Stone and Israel Ruiz, received gifts from Fidelity,⁴ instructed their subordinates to stop all actions related to the Plan's payment of fees to Fidelity,⁵ and Ruiz did not disagree with an email stating that MIT expected large donations after retaining Fidelity as the Plan's service provider.⁶ These and other disturbing engagements with the Plan's primary service provider, Fidelity, went uninvestigated and unchecked.

² Ex. 1.

³ R. Reif, "Letters To The MIT Community: Jeffrey Epstein and MIT", Aug. 23, 2019, *available at*, <https://president.mit.edu/speeches-writing/jeffrey-epstein-and-mit>.

⁴ *See, e.g.*, Doc. 225-85 (Fidelity hosted Stone and her husband at Celtics game during NBA finals and noting that the game outing was a gesture of appreciation from Fidelity and Abigail Johnson for Fidelity's partnership with MIT *related to the Plan.*).

⁵ *See, e.g.*, Doc. 252-4 (noting that decisions by the Committee about Fidelity were going to be raised with John Reed and Rafael Reif after Ruiz had a chance to talk to Abigail Johnson when she was on campus for a *Sloan Visiting Committee meeting*); Doc 225-98 (noting Ruiz's direction to "hold off on the Mercer fee/benchmark study" related to Fidelity's fees paid by the Plan).

⁶ *See, e.g.*, Doc. 225-77 (email from the Dean of the Sloan School to Ruiz noting that "if we are not switching to Vanguard or TIAA-CREF, I am going to expect something big and good coming to MIT from the Johnson family.").

There is good cause for the filing of this supplemental evidence because Reif has very recently taken a unique, public role overseeing MIT's donations policies and developing new policies regarding preventing improper donations. Plaintiffs intend to seek injunctive relief preventing MIT from hiring vendors for the Plan that are donors (or foundations controlled by common ownership with the vendor) or accepting donations from existing vendors to the Plan.

September 9, 2019

/s/ Jerome J. Schlichter
SCHLICHTER BOGARD & DENTON LLP
Jerome J. Schlichter (admitted *pro hac vice*)
Heather Lea (admitted *pro hac vice*)
Joel D. Rohlf (admitted *pro hac vice*)
Scott T. Apking (admitted *pro hac vice*)
100 South Fourth Street, Suite 1200
St. Louis, MO, 63102
(314) 621-6115
(314) 621-5934 (fax)
jschlichter@uselaws.com
hlea@uselaws.com
jrohlf@uselaws.com
sapking@uselaws.com
Lead Counsel for Plaintiffs

Michael M. Mulder (admitted *pro hac vice*)
Elena N. Liveris (admitted *pro hac vice*)
LAW OFFICES OF MICHAEL M. MULDER
1603 Orrington Avenue, Suite 600
Evanston, Illinois 60201
(312) 263-0272
(847) 563-2301 (fax)
mmmulder@mmulderlaw.com
eliveris@mmulderlaw.com
Counsel for Plaintiffs

Stephen Churchill, BBO#564158
FAIR WORK, P.C.
192 South Street, Suite 450
Boston, MA 02111
(617) 607-3260
(617) 488-2261 (fax)
steve@fairworklaw.com
Local Counsel for Plaintiffs

LOCAL RULE 7.1 CERTIFICATION

Plaintiffs' counsel has conferred with Defendants' counsel in an effort to resolve or narrow the issues raised in this motion. Defendants stated they oppose this motion.

/s/ Jerome J. Schlichter

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 9, 2019.

/s/ Jerome J. Schlichter