

April 5, 2008

To: Psychology Faculty

From: Ken

Subject: Synopsis of Letter from Thomas J. Finch, Attorney at Law, regarding "CSULB's Campaign to Stigmatize, Defame and Constructively Terminate Professor Kevin MacDonald."

This coming Wednesday, April 9, the Department is holding a forum 3:30-4:45 in room 155. We will be considering a statement concerning the controversial conclusions reached by Dr. Kevin MacDonald in his scholarship on the possible evolutionary mechanisms that help maintain group identity as they apply to Jews

The considerations in this forum need to take into account certain legal issues, some of which are raised in a letter from Denver attorney Thomas J. Finch. This letter was dated March 7, 2008 and addressed to me c/o Christine Helwick, Esq. and G. Andrew Jones, Esq., Office of General Counsel, CSU. I presented the first two pages of the letter to the Advisory Committee, enough to indicate the intent of the attorney to pursue establishment of violations of First Amendment rights and to note the relevance of the Fourteenth Amendment in case of any conflict of state and federal laws.

I have been communicating with Rene Castro in Academic Personnel, who relayed the letter to me from the CSU attorneys, and have asked if I could make the letter public. The CSU attorneys apparently have been as uncommunicative to him as they have to me, so they have offered no applicable advice. Because the letter refers to offices outside our Department and to people in addition to me (I am the only one referenced in Psychology), I have interpreted his advice as indicating that writing a synopsis of material that is directed at us would be the best action. So, here goes.

Mr. Finch says he, of several attorneys, was selected to write, representing Kevin's "strenuous objections to both the University administration's and your Department's abusive treatment of him over the last year and a half, to caution you against taking further steps in this direction, and to describe how you have damaged Professor MacDonald to date." The letter states that Kevin's good faith efforts at resolving scholarly or intellectual objections to his academic work have come to nothing, but rather have been met with vilification and vituperation, harassment and intimidation, violation of his contractual and otherwise legal rights, and trampling on his feelings, "all with a mind to "chilling" the exercise of his free speech rights and effectuating a "constructive" termination of his employment."

Mr. Finch says the letter has three purposes: 1) to establish that university officials from the Department on up have violated Kevin's contractual commitments and also his civil

rights and liberties, exposing CSULB to tort liability; 2) to explain why the laws protecting his rights exist and to set the stage for legal action if violations continue; and 3) “to serve notice that, barring a satisfactory resolution of the current dispute, we shall file an action in the U. S. District Court for both declarative and injunctive relief...”

Mr. Finch’s letter traces the background of the issue by introducing the fact that evolutionary perspectives are currently being applied to the study of a variety of human behaviors and institutions. His letter then says, “Over the past year and a half, ideological organizations like the Southern Poverty law Center (“the SPLC”), together with certain ethnic activists, have agitated for the suppression of certain viewpoints that they regard as inimical to their own ideologies. To that end, these groups have pressured officials at CSULB to “investigate” Professor MacDonald in ways that are intended to inhibit the free expression of his views and impair his academic freedom through various denunciations, veiled threats and other undue forms of coercion.” In the letter, “investigation” is interpreted as criminal, not scientific. The university has responded to these groups by “increasing the pressure on Professor MacDonald in hopes that he will either abandon his views or resign his position and lose his living, and then before he accrues his full pension benefits (sic). Furthermore, we believe that the University, through various officials, means to damage Professor MacDonald’s reputation so that he is unable to find academic work elsewhere. In short, certain officials at CSULB quite simply mean to destroy Professor MacDonald in pursuit of their own careerist objectives.”

An incident with a university official is described: in a letter responding to complaints from a citizen about Kevin’s work, the official stated “...I find these views and representations professionally irresponsible and morally untenable.” The official copied the letter Kevin, an act seen by the attorney as “...a none-too-subtle conveyance of a threat ... to see him terminated.” Case law is then cited (Levin vs Harleston) where insistence on politically correct speech by a university official was met with injunctive relief.

The attorney cites evidence that we in the Department are falling into line with the university official:

- our insistence has led to Kevin removing race differences in intelligence from his lectures on development;
- we “have actually demanded that Kevin say certain things and deny saying others;”
- “your department, or, at any rate, certain of its members, have over the last year sought to constrain not only Kevin’s free speech rights, but even his freedom of association outside the University.....There have also been those who have insisted that he not write for certain publications or speak to certain groups off-campus;”
- “your Department currently has plans to adopt “resolutions” of some sort that evidently have, as their singular purpose, the business of deprecating the work and reputation of Professor MacDonald by drawing invidious contrasts between yourselves as a group and Professor MacDonald.”

Mr. Finch's letter states that these acts violate the First Amendment and academic freedom, and are illegal. "Since both the Department and the University have not only failed to rein in this sort of behavior by their agents, who have "acted under color of state authority," but have actively fostered and encouraged it, they, too, are liable for these violations of Professor MacDonald's civil rights.

The letter then devotes four pages to academic freedom and tenure and an additional two pages to free speech rights, with the penultimate paragraph terminating in citation of the Golden Rule, which is presented in a context that expresses Mr. Finch's doubt that academics understand it. The final paragraph of this section reads:

"Be that as it may, know this: Kevin MacDonald will endure no further abuse. He understands that you and others in your Department now mean to "discipline" him and defame his work further by "officially" making pejorative remarks about the scholarly integrity of his work. We know, too, that you will endeavor to do this under the guise of "expressing" your "concerns" that some of what he says will make others "uncomfortable." You will say that you are merely "distancing" yourselves from what he says. But then, why are you doing that? These euphemisms fool no one. They are weasel words. You mean to deprecate Professor MacDonald's work and threaten the exercise of his rights, and then in summary fashion without giving him the benefit of due process or otherwise complying with University procedures (sic)."

The next section describes due process rights. Justice Frankfurter is quoted that procedure is to law what scientific method is to science. Procedures applicable to any effort to abridge Kevin's rights require at least a notice and a hearing. CSU's Handbook of Free Speech Issues (www.calstate.edu/gc/Docs/Free_Speech_Handbook.doc) describes this on page 1 and elaborates thoroughly, citing the First and Fourteenth Amendments (the Fourteenth Amendments subordinates state laws to federal laws, relevant if "acting under the color of state authority" is in conflict with federal law)). Also cited is AAUP's 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings (<http://www.aaup.org/AAUP/pubsres/policydocs/contents/statementon+proceduralstandardsinfaculty+dismissal+proceedings.htm>) and then reference is made to CSULB's own procedural rules.

The next four pages of Mr. Finch's letter recount the exchanges in our Departmental forum with Kevin in December and on the CLA Forum in the ensuing months; the thrust is that malicious behavior has been directed towards Kevin by people who are not experts in evolution, and who thus are not equipped to understand his arguments.

The final two pages review points made earlier and include these lines at separate points.
--"If you and your colleagues continue to move against Professor MacDonald, our hands will be tied, and we will all see what a federal lawsuit comes to."
--"Most importantly, Professor MacDonald reserves the right to seek injunctive relief, in which case you can expect to receive no further notice save that required by the Federal Rules of Civil Procedure."

-- "Know this: should your Department move against Kevin MacDonald in some "official" capacity, we will move against you. It will start with an injunction from a federal judge."

Eleven pages of appendix follow.

I have asked Rene Castro to attend our forum on Wednesday to provide advice and guidance.