

Date: 13 October 2009
To: The Faculty of Butler University
From: Bobby Fong
Re: The "John Doe" complaint

I learned that Professor William Watts' email to Faculty Senators regarding the "John Doe" complaint was sent to all faculty. Below please find the text of my remarks made this morning at the Faculty Senate meeting in response to his concerns.

REMARKS ON THE "John Doe" COMPLAINT

To the Butler University Faculty Senate
By Bobby Fong, President
Tuesday, 13 October 2009

I want to address a matter introduced to the Senate this past Saturday by Professor William Watts in an email to its members. In the email, he attached a public document, a complaint filed in Marion County Superior Court: Butler University v. John Doe aka "Soodo Nym." Professor Watts raises three issues:

- 1) He suggests "that this lawsuit depends on definitions of 'libel,' 'defamation' and 'damages' that are . . . debatable in terms of law or and legal precedent." He asks, "whether such an action, pursued under such questionable terms, is consistent with the mission of the University, and, in particular, with the need to protect the free exchange of ideas so important to academic life."
- 2) He opines that this complaint is a "curious expenditure of University resources" and wonders why "the University would invest its prestige in such a lawsuit."
- 3) He worries "about the practice of suing our own students for their utterances."

He goes on to note that he "asked the responsible upper administrators to close this lawsuit and to normalize the disciplinary process involving the student in question, but have received no response to my request."

I was one of those administrators to whom Professor Watts wrote in an email dated last Wednesday, 7 October. In it, he noted that he was to talk to University attorney Michael Blickman about the case, a phone conversation that occurred Friday, 9 October. I was aware that the conversation with Mr. Blickman was scheduled and wanted to reply after it occurred. Professor Watts sent his email to the Senate the day after his conversation with Mr. Blickman, before I could respond.

Because Professor Watts has brought this matter to this body, and because the document being discussed is public, I take this opportunity to respond to his concerns.

The free exchange of ideas is fundamental to academic life. A Butler education must be characterized by opportunities for and experiences of respectful disagreement. But central

to “civil discourse” is debating the merits of an issue and eschewing ad hominem arguments. In this community, we can be vociferous on the issues, but we must also respect those with opposing views. Academic freedom does not provide protection for defamation and harassment. Indeed, the free exchange of ideas demands that faculty, students, and staff be protected from defamation and harassments because these are the means by which bullies intimidate others into silence.

The complaint alleges that “John Doe aka Soodo Nym” engaged in defamation and harassment. There was no evidence as to who “John Doe aka Soodo Nym” was. In February and in April, attorneys representing Butler University petitioned a judge for orders issuing subpoenas to discover the identity of “John Doe.” In both cases, the Judge considered Butler’s requests, granted those motions, and issued the subpoenas. In June, information garnered in the subpoena process led to the identity of “John Doe.”

Through the summer, the University engaged in discussions with the attorney for “John Doe” with regard to going through internal disciplinary processes in the University. “John Doe” has declined to acknowledge that any sanctions are warranted. Those discussions continued through the end of September. As a direct consequence of “John Doe” failing to acknowledge his responsibility for the Soodo Nym comments, despite clear evidence of his direct involvement, and given “John Doe’s” position that no sanctions are warranted, the University is keeping all of its options open.

But let us put a human face to this. Although others were disparaged by statements on Soodo Nym’s public blog, I use as an example and with her permission, Provost Jamie Comstock, who was one of the administrators represented in the petition. She bore disparagements of her professionalism and integrity in blog postings from October to December. Then on 25 December, she received an email message titled “Merry Christmas” from Soodo Nym. This was sent to her individual email account and again disparaged her professionalism and integrity. This was not a general blog; this was a personal message to her meant to harass and intimidate.

On 2 January, Dr. Comstock received a second anonymous email telling her and another administrator that they should beware because “we can create much more trouble for you than we have so far.” Again, this was not a general blog; it was again a personal message meant to harass and intimidate.

And these messages succeeded. Dr. Comstock met with me after receiving each email. After months of trying to manage the personal and professional impact of the blog on herself and others, culminating in these personal harassing messages to her, Dr. Comstock was afraid, for her own safety, for her husband, for her house and property. Her being an administrator does not exclude her from the protections of this academic community. Butler does not tolerate racial and sexual epithets in the name of free exchange of ideas. Over the years, Butler has issued non-stalking orders, asked for no trespass orders from the courts, provided police protection for individuals fearful for their safety. Defamation, harassment, and threats are not protected activities at Butler University.

To answer Professor Watts' concerns:

- 1) The complaint was legally appropriate, having had to pass a judge's review to gain court-ordered subpoenas. Further, the complaint is consistent with the educational mission of Butler University to maintain and protect the free exchange of ideas, a freedom that is compromised by defamation and harassment.
- 2) The costs of pursuing the complaint were necessary and appropriate, particularly in lifting the veil of anonymity behind which "John Doe" felt emboldened to engage in defamation and harassment.
- 3) The complaint was filed, in part, to obtain evidence as to the identity of "John Doe." Whether "John Doe" had turned out to be an outsider to the University, or a student, staff, or member of the faculty at Butler, the perpetrator would be held responsible. The perpetrator here is not the victim. The perpetrator is being required to acknowledge actions that are unacceptable at Butler University.