

October 10, 2013

Subject: Re: Prof. Klein's unlawful webpage

Dear CSU Interim General Counsel Jones,

Thank you for your email reiterating your legal opinion that Prof. Klein "has not violated Education Code 89005.5 because he has not used nor invoked the CSU name in support of his viewpoint."

Once again we feel compelled to point out that your interpretation of 89005.5(a)(2)(C) does not accord with the letter of the law, which does NOT require that an individual use or invoke the CSU name "in support of his viewpoint" to be in violation of the statute, but only that he or she use the CSU name, without the permission of the CSU Trustees, "to display...this name publicly at, or in connection with any...propaganda, advertising, or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement...of...boycott." The subdivision is quite clear and nowhere suggests that the individual who is using the CSU name must have the intention of using that name "in support of his viewpoint."

Nevertheless, while it is clear that Klein is in violation of a prima facie reading of 89005.5(a)(2)(C), we also think that Klein is in violation of 89005.5 *even according to what we believe to be your mistaken legal interpretation*, and that he has indeed used and invoked the CSU name "in support of his viewpoint." Consider the following:

- Like the vast majority of university faculty across the country, Prof. Klein could have used a private email address and a private website to send or post messages that are unambiguously political in nature and obviously intended to encourage political activism. It may have been that when Klein originally posted his "Boycott Israel Resource Page" on the CSUN server more than three years ago, he did so to save money or out of convenience, and not in order to use the CSU name to promote his personal political activity. However, after Klein was made aware of the concerns of the Jewish community regarding the antisemitic nature of his webpage as well as the potential legal concerns that were raised by many individuals -- both of which Klein documented on his "Boycott Israel Resource Page" as they were happening -- there is no doubt that for the last two years he has consciously chosen to use his CSUN email account (david.klein@[csun.edu](mailto:david.klein@csun.edu)) and the CSUN server (<http://www.csun.edu/~vcmth00m/boycott.html>), rather than a low cost or free private email address and private server, to promote the boycott of Israel. Moreover, in [an article](#) that appeared on 6/5/12 in the Electronic Intifada, an online publication that promotes calls for the boycott of Israel, Klein urged other faculty to use their university's name and resources "to do similar things, to go ahead and take a public stand against apartheid in Israel and ethnic cleansing, and all the injustices there." We believe that a reasonable person who was aware of these facts would suppose that Klein was using the CSUN name to provide academic and institutional legitimacy "in support of his viewpoint," for the purpose of advancing his political ends.

- You may remember that about 10 years ago the CSU Trustees appealed the decision of a Superior Court Judge who did not find the owner of Bello's Sporting Goods to be in violation of California Education Code 89005.5 for selling articles of clothing and other items with the name "Cal Poly" on them. The Appellate Court judges reversed that decision and found the store owner in violation of 89005.5(a)(2)(B), which prohibits using the CSU name or any variation of that name for commercial purposes, without the permission of the CSU Trustees. Interestingly, the [Appellate Court ruling](#) contains language which elucidates the meaning and intent of 89005.5: "the words 'Cal Poly' have acquired value as a result of organization and the expenditure of labor, skill and money by CSU. Bello's has no constitutional right to exploit the value of the university's hard-won reputation." We believe that the same understanding of the law can and should be used to demonstrate that Klein's use of the CSUN name is a violation of 89005.5(a)(2)(C), which prohibits the unauthorized use of the CSU name for the "support, endorsement, advancement...of... boycott". In other words, the name "CSUN" has "acquired value as a result of organization and the expenditure of labor, skill and money by CSU," and Klein "has no constitutional right to exploit the value of the university's hard-won reputation" for the purpose of supporting, endorsing and advancing the boycott of Israel.

In light of these considerations, we ask you to reconsider your position on this matter.

Thank you,

Tammi Rossman-Benjamin
Co-founder, AMCHA Initiative

Leila Beckwith
Co-founder, AMCHA Initiative

CC: CSU Board of Trustees
CSU Chancellor Timothy P. White
CSUN President Dianne Harrison
Attorney General Kamala Harris
Deputy Attorney General Stepan Haytayun
Senior Assistant Attorney General Douglas Wood
California Speaker of the Assembly John A. Perez
California Superintendent of Public Instruction Tom Torlakson
California State Senator Alex Padilla (Northridge)
California Assembly Member Joan Buchanan, Chair of the Assembly Education Committee
U.S. Congressman District 30 Brad Sherman
California Jewish community leaders
Abraham Foxman, National Director of the Anti-Defamation Leagues

BCC: Wide circulation in the Jewish community

On Oct 8, 2013, at 2:58 PM, Jones, Andrew wrote:

Dear Ms. Rossman-Benjamin,

To follow up on our conversation last Friday October 4th, which occurred after receiving and reviewing your most recent letter addressed to President Harrison, let me reiterate that although Klein's link is on his faculty web page, he nonetheless has not violated Education Code 89005.5 because he has not used nor invoked the CSU name in support of his viewpoint. Klein's work is his work alone, and does not carry the agreement, support or endorsement of CSUN, its president, nor the Chancellor and Board of Trustees.

As we have corresponded on this matter several times, it is now time to move forward in the absence of any new developments.

Sincerely,

Andrew Jones

G. ANDREW JONES | CALIFORNIA STATE UNIVERSITY

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