

August 15, 2007

Martha Peugh-Wade
Assistant Vice President for Human Resources
University of San Francisco, LM 339
2130 Fulton Street
San Francisco, CA 94117-1080

Dear Vice President Peugh-Wade,

On May 15, 2006, I filed a Formal Complaint as provided for by the USF Prevention of Sexual and Other Unlawful Harassment Policy (PSOUHP), effective February 7, 2006; this, in sequel to an Informal Complaint which I filed on January 26, 2006, with Elsie Tamayo, Manager, Professional Development/Affirmative Action, Human Resources. The Formal Complaint took the form of

*Report of Race-based Discrimination and Harassment
Submitted to the Associate Vice President for Human Resources,
University of San Francisco*

which I will refer to as *Report of Discrimination*. The submission comprised 483 pages: cover letter to the Associate Vice President for Human Resources, Terry Stoner (now retired), 2 pages; body of the report, 112 pages; supporting documents, 369 pages. Since then, the USF Administration and I have been engaged in a process of negotiation prior to investigation of the Formal Complaint. The Administration has been represented by:

- Terry Stoner, Associate Vice President, Human Resources;
- Donna Davis, General Counsel, Office of the General Counsel;
- Jennifer Turpin, Dean, College of Arts and Sciences.

I am represented by

- Christopher W. Katzenbach, Attorney at Law, Katzenbach and Khitikian.

The negotiation process was initiated by the Administration and is not provided for in PSOUHP. I am writing now to submit a supplementary manuscript which I will refer to as *Addendum*. It consists of 165 pages: cover letter (copy of this correspondence), 6 pages; body of the addendum, 41 pages; supporting documents, 118 pages. I request that *Addendum* be reviewed in conjunction with *Report of Discrimination*. If necessary, it can be treated as a second Formal Complaint.

Report of Discrimination concerns two faculty members in the Mathematics Department, Tristan Needham and Stanley Nel, for the time

Fall 1991 - Spring 2006.

Profs. Needham and Nel have held senior executive positions during this period:

Stanley Nel	Dean of College of Arts and Sciences 1990 - Spring 2003
	Vice President of International Relations Fall 2003 - present
Tristan Needham	Associate Dean of Sciences Spring 1999 - Spring 2004.

In the capacity of Associate Dean, Tristan Needham was my direct superior, for which reason the threat of retaliation was too great to pursue action as specified by PSOUHP. Extensive research into their conduct began in August 2005, and was in response to Tristan Needham's return to the Mathematics Department the same month (he was on sabbatical leave academic year 2004-05). My inquiry led to discovery of several matters addressed in the Formal Complaint, although they took place some time prior. Further discrimination and harassment occurred after August 2005. For your reference, I will summarize some of the major aspects of *Report of Discrimination*.

- Deans Needham and Nel created a category of faculty appointment (Full Professorship requiring only one semester per year of teaching duty). The terms of this position explicitly violate the USF Faculty Association *Collective Bargaining Agreement* (contracts effective 1998 - 2012) which states that faculty must be available for service at the University for the entire academic year. Thereafter, Dean Needham hired a close personal acquaintance (John Stillwell) into this position (2001, first semester teaching as a tenured Full Professor–Fall 2002). As the position came *with tenure*, this appointment was *permanent* and was not subject to peer review. In violation of USF affirmative action/equal opportunity policy (as reported to the USF Board of Trustees and also the Western Association of Schools and Colleges), no search was conducted. Moreover, no faculty consultation *of any kind* took place prior to the announcement that the Deans were going to appoint John Stillwell. His curriculum vitae were not provided to mathematics faculty. His qualifications were not discussed. No vote on the matter of was taken by the Mathematics Department. These facts are evinced by the minutes of the Mathematics Department meetings in 2000 and 2001. Prof. Stillwell's appointment involved a substantial financial commitment on the part of USF. His position at USF automatically advances to the highest salary scale attainable to faculty (Full Professor Step 8, corresponding to an annual salary of \$121,571.45, plus benefits). He is employed concurrently at USF and

Monash University in Australia. The appointment of Prof. Stillwell was an overt act of nepotism. It violated USF affirmative action policies and due process for faculty hiring.

- Dean Needham engaged in both harassment and discrimination against me, which included defamation of character and libel. This occurred in an official letter of reprimand (printed on USF letterhead) sent to administrators at another institution of higher education (John Loomis, Chair of Architecture, and David Meckel, Dean of Design and Architecture; both at the prestigious art institute, California College of the Arts) as well as to faculty and administrators at USF. Supporting documents attached to his letter *were fabricated by Dean Needham*. A USFFA Grievance was settled in my favor on December 7, 2000.
- As a result of a temporary medical disability with which I was afflicted (allergic reaction to a medication), Dean Needham applied undue and discriminatory pressure on me, which in the context of his prior actions (defamation of character and libel), forced me to take a one semester leave of absence without pay (Spring 2002). His conduct violated the Americans with Disabilities Act and/or the Family and Medical Leave Act.
- In contravention of standard administrative procedure, documents have been selectively deleted from my personnel file maintained in the Deans Office of Arts and Sciences. No consistent policy of retention/deletion can explain the destruction of documents favorable to my academic reputation as compared to other documents preserved in this file. This matter was discovered January 2005.

The above summarizes a part, but not all, of *Report of Discrimination*.

The prompt for *Addendum* is the Administration's attempt to impel me to sign a contract titled, "Release and Arbitration Agreement" (communicated by Ms. Davis to Mr. Katzenbach). Through this agreement, I would be deprived of civil liberties and rights that are guaranteed by U.S. law (and thus these rights are enjoyed by every other employee at USF). The contract would apply not only in relation to matters occurring before my Formal Complaint, but would cover *any dispute between myself and the University, in perpetuity*. I was asked to relinquish *future rights* to any and all, damages, claims, charges, causes of action, grievances, complaints, indemnities and obligations directly or indirectly arising out of, or in any way connected to my relationship with the University of any kind, University employment, including but not limited to:

- age discrimination under the Age Discrimination in Employment Act (29 U.S.C.A. §§ 621-634);

- racial discrimination under the federal Civil Rights Act of 1964;
- disability discrimination under federal Americans with Disabilities Act (“ADA”);
- federal and state occupational and safety laws;
- collective bargaining agreements;
- Family and Medical Leave Act (“FMLA”);
- California Fair Employment and Housing Act (California “FEHA”);
- all other state, local or federal laws, contract, tort, retaliation, constitutional, and/or any employment-related claims, and/or other claims.

Also, the contract would have deprived me of

- due process in a court of law in disputes between myself and the University. It would strictly limit me to conflict resolution with USF through final and binding arbitration, *on any matter, in perpetuity*.

Arbitration differs from litigation in significant ways. For example, in binding arbitration

- decisions cannot be appealed,
- proceedings and awards are typically confidential,
- protocols do not provide for discovery.

This arbitration clause would deprive me of the right to a jury trial which is guaranteed by U.S. law in matters of civil disputes. Moreover, the contract would oblige me to

- confidentiality with respect to the *entire content of Report of Discrimination*.

This would substantially restrict my freedom of speech, as *Report of Discrimination* describes events that are matters of public record—facts therein are supported by USF documents to which no confidentiality applies. In addition to being protected by U.S. law, freedom of speech is sacrosanct in academia. The tenure system is designed to protect faculty from reprisals for their public positions on sensitive issues.

While a request to release the University from liability for events that have occurred prior to the Formal Complaint is reasonable, the attempt to impel me to relinquish *future rights* is *unequivocally* an act of discrimination and harassment:

How can USF claim to be an equal opportunity employer when it asks an ethnic minority professor (tenured and Associate) with a perfect employment record to sign a document which relinquishes virtually all of his legally protected employment rights?

The preservation of civil liberties and rights is an established principle of social justice. How can USF claim to be promoting civil rights if the Administration asks an ethnic minority employee to relinquish, for example, his future protection from racial discrimination under the federal Civil Rights Act of 1964?

The Administration's conduct calls into question the authenticity of the Formal Complaint process. It casts doubt upon the University's commitment to protecting complainants from retaliation in the event of an investigation. Furthermore, the negotiation was conducted in an intimidating and disingenuous fashion. PSOUHP states:

Individuals who know of harassment, or believe that they have been harassed, in violation of this policy have access to the complaint procedures described below and are encouraged to utilize these complaint procedures.

Yet the effect of "Release and Arbitration Agreement" is punitive. This contract would deprive me of employment rights that many courageous individuals throughout U.S. history fought for. These rights are, to put it simply, priceless. Of particular importance to me is the right to a jury trial in the event of retaliation for my complaint—I consider this a fundamental legal safeguard.

To ensure that no miscommunication on this matter occurred, Mr. Katzenbach emailed, corresponded, and spoke by telephone, with Ms. Davis on multiple occasions. The last communiqué, a telephone discussion, took place spring 2007.

The ongoing negotiation phase of the Formal Complaint was initiated by the Administration. Its purpose, as stated by Ms. Davis, is to settle the Formal Complaint informally. That is, its purpose is to preempt an investigation. The actions of the Administration during this process serve as a litmus test for discrimination and harassment. It reveals discrimination at USF of an institutional nature.

The manuscript I now submit to the Office of Human Resources consists of the following elements, which have been assembled in the order below:

- Cover Letter for *Addendum* (that is, this letter),
- *Addendum* (body) ,
- Source Document for Addendum Appendix,
- Cover Letter for *Report of Discrimination*,
- *Report of Discrimination* (body),
- Source Document Appendix (for *Report of Discrimination*).

This manuscript will be transmitted to the Office of Human Resources and Office of the

General Counsel in both electronic and hardcopy form.

In preparing *Report of Discrimination* and *Addendum*, I reviewed the USF Mission Statement which includes: "The University will distinguish itself as a diverse, socially responsible learning community of high quality scholarship and academic rigor sustained by a faith that does justice." I conclude that my social responsibility as an academician, and a dedicated employee of USF with sixteen years of service, obliges me to submit these manuscripts to the Office of Human Resources. I do so in the belief they will be of value to the University: contributing to the strength and integrity of our institution.

Thank you for your attention. As noted above, I am represented by

Christopher W. Katzenbach
Attorney at Law
Katzenbach and Khtikian
1714 Stockton Street, Suite 300
San Francisco, CA 94133-2930
Tel. (415) 834-1778

Also, please feel free to contact me if you have any questions or concerns (USF Mathematics Department, office HR 219, telephone ext. 6760, email kao@usfca.edu).

Sincerely,

John Kao
Associate Professor
Mathematics Department

cc: Donna Davis, General Counsel, Office of the General Counsel
Elsie Tamayo, Manager, Professional Development/Affirmative Action, Human Resources
Christopher W. Katzenbach, Katzenbach and Khtikian