



Foundation for Individual Rights in Education

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March 28, 2008

Chancellor Charles R. Bantz
Indiana University–Purdue University Indianapolis
355 North Lansing Street
Indianapolis, IN 46202

Sent via U.S. Mail and Facsimile (317-274-4615)

Dear Chancellor Bantz:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, free speech, legal equality, due process, the right of conscience, and academic freedom on America's college campuses. Our website, www.thefire.org, will give you a fuller sense of our identity and activities.

FIRE is gravely concerned about the threat to liberty presented by Indiana University–Purdue University Indianapolis's (IUPUI's) racial harassment finding against student-employee Keith John Sampson for reading a history book examining a 1924 street fight between students from the University of Notre Dame and members of the Ku Klux Klan. IUPUI's subsequent "clarification" regarding the "permissibility" of Sampson's conduct does nothing whatsoever to reverse the guilty finding or acknowledge the obvious error therein, and thus it is unacceptable. By first finding Sampson guilty of racial harassment simply for reading a book in the break room, then refusing to admit the gross impropriety of such a finding, IUPUI makes a mockery of its legal and moral obligations as a public institution of higher learning.

This is our understanding of the facts. Please inform us if you believe we are in error. Keith John Sampson is both an IUPUI employee and student, working as a janitor and nearing completion of a degree in communication studies. Around late October of 2007, Sampson, who often reads in the break room when not working, brought to work a book entitled *Notre Dame vs. the Klan: How the Fighting Irish Defeated the Ku Klux Klan*. Authored by Todd Tucker and published by Loyola Press, the book is a historical examination of the violent reaction of Notre Dame students to an anti-Catholic Ku Klux Klan march in May of 1924. The book has earned praise from *The Indiana Magazine of History* and *Notre Dame Magazine*, and it has been characterized by Tucker as "enthusiastically anti-Klan."

Two of Sampson's coworkers, however, were offended by his choice of reading material. A shop steward informed Sampson that reading a book about the Klan was akin to reading pornography at work. Another coworker, sitting across the table in the break room where Sampson was reading, told Sampson that she found the Klan offensive. In each instance, Sampson attempted to explain that the book was in no way glorifying or celebrating the Ku Klux Klan. On each occasion, Sampson's coworker refused to listen.

Several weeks later, Sampson was notified by Marguerite Watkins of the IUPUI Affirmative Action Office (AAO) that one of his coworkers had filed a racial harassment complaint against him, alleging that by reading the book in the break room, Sampson had engaged in racial harassment. Again, Sampson attempted to explain the book's content, this time to Watkins. She, too, dismissed his attempt at explanation. Despite the complaint's obvious absurdity—an absurdity which should have been instantly apparent to an IUPUI employee empowered to oversee the university's harassment protocol—and despite the fact that he had been afforded no opportunity for a hearing at which to defend himself or face his accusers, Sampson was notified in a November 25, 2007, letter from Affirmative Action Officer Lillian Charleston that the AAO had determined that Sampson was guilty of racial harassment. The letter read in relevant part:

Upon review of this matter, we conclude that your conduct constitutes racial harassment in that you demonstrated disdain and insensitivity to your co-workers who repeatedly requested that you refrain from reading the book which has such an inflammatory and offensive topic in their presence. You contend that you weren't aware of the offensive nature of the topic and were reading the book about the KKK to better understand discrimination. However you used extremely poor judgment by insisting on openly reading the book related to a historically and racially abhorrent subject in the presence of your Black co-workers. Furthermore, employing the legal "reasonable person standard," a majority of adults are aware of and understand how repugnant the KKK is to African Americans, their reactions to the Klan, and the reasonableness of the request that you not read the book in their presence.

During your meeting with Marguerite Watkins, Assistant Affirmative Action Officer you were instructed to stop reading the book in the immediate presence of your co-workers and when reading the book to sit apart from the immediate proximity of these co-workers. Please be advised, any future substantiated conduct of a similar nature could result in serious disciplinary action.

Shocked by Charleston's letter and the guilty finding, and concerned about his reputation and job security, Sampson contacted the American Civil Liberties Union of Indiana (ACLU-IN). In a letter dated December 20, 2007, ACLU-IN attorney Kenneth J. Falk contacted IUPUI Associate General Counsel Joseph M. Scodro to request immediate action by IUPUI to rectify the situation. Specifically, Falk requested the deletion of Charleston's letter from Sampson's file, as well as a formal letter of apology. After a month without any response, Falk wrote Scodro again on January 31, 2008, demanding immediate action.

On February 7, Charleston again wrote to Sampson. Noting that “[t]his letter will replace my prior letter to you dated November 25, 2007,” Charleston’s letter neither explicitly reversed the guilty finding nor apologized for the subsequent damage to Sampson’s reputation. Instead, Charleston sought merely to “clarify” her previous letter, informing Sampson that “[t]here is no University policy that prohibits reading such materials on break time” and that her previous letter was intended “only to address conduct on your part that raised concern on the part of your co-workers.” Charleston concluded by stating that “if the conduct was intended to cause disruption to the work environment, such behavior would be subject to action by the University,” but “because I cannot draw any final conclusion in this instance, no such adverse disciplinary action has been or will be taken in connection with the circumstances at hand.”

Put simply, Charleston’s letter utterly fails to rectify the substantial wrongs committed against Sampson by IUPUI. It neither clearly expunges the finding of racial harassment against Sampson, nor apologizes to him for the substantial distress caused by such a finding.

Compounding the problem, Charleston’s letter also neglects to correct the shocking misunderstanding of harassment law evidenced by her previous correspondence. The legal problems with IUPUI’s handling of the situation thus far are extensive and deeply troubling.

Of most critical importance is the fact that Sampson’s “conduct”—reading a book during his break—cannot possibly be said to have met the standard for racial harassment in the workplace. Charleston’s reference and application to the “the legal ‘reasonable person standard’” is incoherent and gravely misinformed. To be clear: as a public institution bound both legally and morally by the United States Constitution, IUPUI cannot punish Keith John Sampson simply for reading a book during his break from work. The Supreme Court has long held that in order to constitute actionable workplace harassment, the conduct in question must be “sufficiently severe or pervasive to alter the conditions of [the victim’s] employment and create an abusive working environment.” *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). It strains all credulity to posit, as IUPUI does here, that quietly reading a book critical of the Klan during a break from work could possibly meet this exacting legal standard. At no time did Sampson direct any discriminatory conduct whatsoever toward his coworkers; indeed, *he was found guilty for passively reading a book that was utterly (if not also willfully) misunderstood by both his coworkers and the AAO.*

That Sampson will face no future threat of punishment for reading a book during his break is somewhat heartening. But the fact that Charleston’s second letter fails to correct the AAO’s obvious confusion about the legal standards governing racial harassment in the workplace inspires little confidence in the future protection of Sampson’s rights. There can be no mistake: the mere act of reading a book cannot possibly rise to the level of actionable racial harassment, no matter how “inflammatory and offensive” the topic.

Furthermore, IUPUI failed to safeguard Sampson’s basic due process rights in its handling of this case. Sampson apparently was afforded no reasonable opportunity to defend himself, face his accusers, or hear the evidence presented against him. Instead, he was simply informed that he had been found guilty of racial harassment, which violated his fundamental right to some form of objective hearing.

IUPUI must unequivocally expunge Sampson's record of the guilty finding, apologize for its handling of the incident, and clarify and confirm its understanding of harassment law. We have included a signed waiver from Sampson with regard to his Family Educational Rights and Privacy Act and employee privacy rights. This waiver authorizes you to discuss his case with FIRE.

We urge IUPUI to show the courage necessary to admit these errors and take the necessary steps to correct them. While we hope this situation can be resolved amicably and swiftly, we are committed to using all of our resources to see this situation through to a just and moral conclusion.

Because IUPUI owes Sampson a timely resolution to this regrettable incident, FIRE asks for your response by April 11, 2008. We look forward to hearing from you.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Keith John Sampson
Karen Whitney, Vice Chancellor for Student Life and Dean of Students, IUPUI
Amy Conrad Warner, Vice Chancellor for External Affairs, IUPUI
Ellen Poffenberger, Assistant Vice Chancellor, Human Resources Administration, IUPUI
Joseph M. Scodro, Associate General Counsel, Office of University Counsel, IUPUI
Lillian Charleston, Affirmative Action Officer, IUPUI
Marguerite Watkins, Assistant Affirmative Action Officer, IUPUI
Kenneth J. Falk, Legal Director, American Civil Liberties Union of Indiana

Encl.