

May 22, 2006

To the Honorable Chief Justice and the
Honorable Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: Washington v. Trustees of the California State University
DCA 4, Div. One, No. D046471

To the Court,

Pursuant to Rule 28, California Rules of Court, Feminists Against Academic Discrimination (FAAD) submits this amicus curiae letter to support the Petition for Review of Pat Washington in this case. FAAD is a nonprofit corporation concerned with, among other issues, fairness in legal cases in which plaintiffs complain they have been discriminated against on the basis of race.

After reviewing the decision in this case, FAAD urges you to grant the Petition for Review and to reverse your decision affirming the judgment of the Superior Court of San Diego County granting Summary Judgment in the case for the reasons outlined below.

Basic facts which appear central to the Court's determination in this case are in dispute. When facts central to the Court's determination are in dispute, Summary Judgment should not be granted. There is clearly factual dispute over Dr. Washington's research productivity. The Court appears to conclude that at the time of her tenure review, Dr. Washington had published two research-based, peer reviewed articles (Decision at p. 8). This analysis which appears central to the Court's analysis is factually incorrect, inasmuch as at the time of her tenure review, Dr. Washington had eight scholarly, peer-reviewed articles published in journals considered scholarly by the National Women's Studies Association. On Summary Judgment, the Court is obligated to accept Dr. Washington's account of her research accomplishments, accomplishments which were confirmed by the testimony of Dr. Helen Bannan (App. 414-415), despite the claim on the part of the Trustees of the California State University and Colleges (CSU) that the number of scholarly articles Dr. Washington published were fewer. The factual dispute warrants that Summary Judgment not be granted.

Inferences that can be drawn from the facts are also in dispute. Because the inferences that can be drawn from the facts are in dispute, Summary Judgment should not be granted. The Court indicated that for Dr. Washington to make a prima facie claim for retaliation on the part of the CSU in the matter of her tenure denial, the Plaintiff is required to demonstrate that the adverse action against her was caused by her making complaints of racial bias (Decision at p. 26). Dr. Washington maintains that when the evidence is considered collectively, in a light favorable to her as Plaintiff, it does indeed demonstrate that she began to be labeled as uncollegial by her colleagues only when she

began to challenge racist practices in her department and that her tenure was ultimately denied because of her advocacy against racism. The Court has drawn a different inference from the evidence, that Dr. Washington's colleagues' animosity against her was not "proven" to be based on race. However, because it is also reasonable to infer from the evidence that Dr. Washington's tenure *could* have been denied because of her advocacy against racism, the Court should not become the "trier" of fact, and the Summary Judgment should not be granted. Instead, the facts and the inferences that should be drawn from those facts should be resolved at trial.

One telling example can illustrate this point. The evidence that Dr. Washington complained about racial discrimination in her department and was then met with a barrage of threats and vulgarity is credited by the Court (Decision at p. 4). At a May 15, 2000 meeting where Dr. Washington complained about racism in her department, one colleague threatened to retire if she were told to sit on Dr. Washington's Retention, Promotion and Tenure Committee, and another demanded that the Dean "do something" about Dr. Washington because she was not "going to put up with this shit." Instead of recusing themselves because of their admitted bias against her, these same colleagues just a few months later were allowed to sit on Dr. Washington's Retention, Promotion and Tenure Committee and evaluated her negatively. It is plausible that those faculty members were motivated to sit on the review committee for improper retaliatory reasons. These issues, and many others like them, should be resolved at trial.

FAAD is particularly troubled by the acceptance by the Court of the Defendants' pretext of "uncollegiality" as an excuse for denial of tenure. The validity of that charge concerning the Plaintiff's behavior (which she denies) is an issue of fact to be determined at trial and not to be pre-judged by the Court against the Plaintiff in a Summary Judgment motion. In addition, the merit of including such a factor in a tenure decision should be determined by a review of the official statement of qualifications for tenure as promulgated by the employer in written form. When "collegiality" is not part of the written criteria for tenure, FAAD is troubled further that the Court's decision to uphold Summary Judgment in this case may reinforce a double standard that exists for male candidates. Males who do well in their fields can often attain tenure even if deemed "uncollegial," whereas females deemed "uncollegial" may be denied tenure despite their academic achievements.

We strongly urge the Court to overturn the Summary Judgment.

Very truly yours,

Dr. Sharon Leder
President, Feminists Against
Academic Discrimination