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David Barnett, professor at center of termination battle, seeks \$2M from CU-Boulder

Barnett claims defamation by Chancellor Phil DiStefano, professor Alison Jaggar

By Sarah Kuta

Camera Staff Writer

POSTED: 11/03/2014 05:41:43 PM MST | UPDATED: ABOUT A MONTH AGO



David Barnett, a University of Colorado philosophy professor, poses for a portrait in Boulder on Monday. Barnett is seeking \$2 million from the university on grounds he was defamed by campus officials. CU is moving to fire the tenured professor. (Mark Leffingwell / Daily Camera)

Philosophy professor David Barnett, embroiled in a rare termination battle (http://www.dailycamera.com/cunews/ci 26294506/cu-firing-professor-david-barnett), is

seeking \$2 million from the University of Colorado on the grounds that Chancellor Phil DiStefano and another professor made false and defamatory statements against him.

The university moved to fire Barnett, a tenured professor, this summer after CU paid an \$825,000 settlement to a female philosophy graduate student. She claimed that Barnett retaliated against her after she reported being sexually assaulted by a former male graduate student in the department.

CU received a notice of claim from Barnett and his

(https://www.scribd.com/doc/245430149/David-Barnett-notice-of-claim) on Monday. Any person who wishes to sue a state entity must first file such a notice.

In the document, Barnett alleges that DiStefano and philosophy professor Alison Jaggar knowingly made false and disparaging statements about him, beginning last year.

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Patrick O'Rourke, CU's chief legal officer, said if need be, the university will fight Barnett in court. He declined to address specific allegations made by Barnett.

"The chancellor believed that he had good grounds for issuing a notice of intent to dismiss and nothing that is said in the notice of claim changes that," O'Rourke said.

Jaggar could not be reached for comment Monday.

In his notice of claim, Barnett says the statements made by CU officials have damaged his reputation; impaired his liberty, due process and free speech rights; and caused emotional and mental distress and suffering.

Barnett hinted that he will seek more money if the university eventually fires him. The dismissal process, which began on July 19, is confidential.

"... Those damages will increase dramatically if (CU) carries through with its threat to terminate his employment and tenure," according to the notice of claim.

Barnett declined to be interviewed for this story.

'Normal procedural move'

Only three tenured professors have been fired in the university's 138-year history. All three — Ward Churchill, R. Igor Gamow and Mahinder Uberoi — took legal action against the university in connection with their firings.

"This is a normal procedural move by Barnett's attorney," CU's O'Rourke said. "Whenever the university attempts to take disciplinary action against a tenured faculty member, we get accused of violating that faculty member's rights, and it's an effort to shift the attention away from what the faculty member did."

To be dismissed, a tenured faculty member must demonstrate professional incompetence, neglect of duty, insubordination, conviction of a felony, sexual harassment or moral turpitude, a legal term often defined as an act that violates accepted moral standards.

At the core of CU's attempt to fire Barnett is a 38-page report he sent to DiStefano and CU President Bruce Benson after learning that a male graduate student had been found responsible for sexually assaulting a female graduate student.

The Camera is neither identifying the woman, because she is the victim of sexual assault, nor the alleged assailant, because he wasn't arrested.

Barnett said he was acting as a whistleblower by reporting "willful misconduct" by the office that investigated the alleged assault. Barnett and CU have declined to provide the Camera with Barnett's 38-page report.

The woman, however, claimed that Barnett began his own investigation into the sexual assault, and talked to other members of the philosophy department about the woman's marital history and sexual behavior.

Barnett denies these accusations.

'Retaliatory smear campaign'

After settling with the woman and moving to fire Barnett, DiStefano released a video message to the campus that explained the situation — part of a "broader public relations strategy," according to the notice of claim.

Barnett claims that DiStefano knew when he made the video that he would be destroying Barnett's career and reputation.

In the notice of claim, Barnett alleges that DiStefano acted in response to recent scrutiny surrounding Title IX, the federal gender equity law that prohibits sexual assault, sexual harassment and retaliation. The U.S. Department of Education is investigating the Boulder campus, along with more than 80 other schools nationally, for potentially violating Title IX.

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Barnett also claims that Jaggar, a full professor who has taught at CU since 1990, encouraged the female graduate student to pursue administrative and legal action against Barnett.

He claims that Jaggar repeatedly accused Barnett of conducting a "retaliatory smear campaign" against the woman, according to the notice of claim.

'Lack of due process'

In the notice of claim, Barnett writes that witness testimony was omitted or misstated "in a manner more supportive of finding guilt" during the university's investigation into the alleged sexual assault. Barnett writes that, as an example, eyewitness statements about the female graduate student's sexual behavior on the night of the assault were omitted.

Colleges and universities rely on a "more likely than not" standard when investigating sexual misconduct.

Additionally, Barnett writes that he was found to have retaliated against the woman during a single, private conversation with a colleague.

He claims that an attorney hired by CU to investigate the matter found that interviewing witnesses and submitting the 38-page document did not constitute retaliation under Title IX.

Barnett writes that he was justified in submitting his complaint because sexual misconduct investigations are matters of "public concern." He criticizes CU's investigatory processes and claims that accused parties do not receive due process.

"In large part because of this lack of due process and transparency, the activities of (CU's Office of Discrimination and Harassment) have been a matter of considerable concern among members of the CU Boulder faculty," according to the notice of claim. "More generally, the manner in which universities investigate and discipline for allegations of sexual misconduct has been a subject of intense public interest and debate over the past few years."

Turmoil in philosophy department

Barnett's case arose in the midst of much-publicized turmoil within the philosophy department on the Boulder campus.

In January, the university made public an independent report that summarized sexual harassment and other unprofessional behaviors within the department.

Later, CU banished professor Dan Kaufman from campus for more than two months and reinstated him after he was assessed by a violence expert. Kaufman also is <u>seeking \$2 million in damages (http://www.dailycamera.com/cu-news/ci_26389408)</u> from the university.

The same attorney hired by CU to look into allegations against Barnett <u>also is investigating</u> <u>philosophy professor Brad Monton (http://www.dailycamera.com/cu-news/ci_26404195)</u> for undisclosed reasons.

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David Barnett notice of claim (https://www.scribd.com/doc/245430149/David-Barnett-notice-of-claim)



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estebanico (http://intensedebate.com/people/estebanico)

Of course none of us can know what's going on. Are these millions upon millions of dollars being well spent? Are these accusations just? It's a secret.

The lawyers are making out pretty well. That much we know.

The university will tell us that secrecy guarantees a safe working environment. Seems to me that it creates a climate of fear.

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ttp://intensedebate.com/people/Illusions)

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Illusions (http://intensedebate.com/people/Illusions)

While I don't know exactly what happened we do know this is an ugly mess and NO ONE is going to come out of this looking good

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-6

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Gene (http://intensedebate.com/people/LongmontGene)

I'm not surprised he's litigating. He sure as he\$% couldn't find a job elsewhere. Who but C.U. would consider hiring him?

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(http://intensedebate.com/people/grandjacques) . 5 weeks ago

grandjacques (http://intensedebate.com/people/grandjacques)

"The Camera is [not] identifying the woman, because she is the victim of sexual assault. . . "

Dear Camera: Are you ever going to learn to spell the word "alleged"? This woman's supposed victimhood has never been proved and is, in fact, one of the issues in play in this typically sordid CU mess.

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(http://intensedebate.com/people/cigol) cigol (http://intensedebate.com/people/cigol) · 5+1

Vietimbood? What is that?

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sedebate.com/people/haydukelives) . 5 weeks ago

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haydukelives (http://intensedebate.com/people/haydukelives) Well ... not saying this guy has a case, but there is precedent for another guy named Barnett getting a nice chunk of change from the university on his way out the door.

1 reply - active 5 weeks ago



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Gary Barnett was wronged

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ratio101 (http://intensedebate.com/people/philo111)

The article quotes O'Rourke who makes the following accusation:

"This is a normal procedural move by Barnett's attorney," CU's O'Rourke said. "Whenever the university attempts to take disciplinary action against a tenured faculty member, we get accused of violating that faculty member's rights, and it's an effort to shift the attention away from what the faculty member did." "

But even from what is quoted from the document by Sarah Kuta it is clear that Barnett is not at all trying to shift attention away from what he actually did. Rather, he clearly wants to focus attention on what he did in fact and have its real character analyzed and evaluated in a sober and objective manner. Hopefully this will now happen. It seems Barnett originally did not publicize his findings at all, but (appropriately) sent his whistle-blowing report only to the Chancellor and the President. Ironically it is actually O'Rourke's comment here that is totally boiler-plate, and looks very much like an attempt on the part of the University's lawyers to shift attention away from what the University did.

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05 weeks ago

If anyone knows what really happened in this situation please let us know. Something is going on that is not at all what it appears to be. Not making a judgement on any of it. Would like to really know what was going on in that philosophy department.

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/intensedebate.com/people/Illusions

· 5 weeks ago

Illusions (http://intensedebate.com/people/Illusions)

Just assume everyone did the worse they could have, back off about 25%, and you will be close

(http://intensedebate.com/people/Bing987)

+12 5 weeks ago

Bing987 (http://intensedebate.com/people/Bing987)

> The woman, however, claimed that Barnett began his own investigation into the sexual assault,

"Investigation" does not constitute "retaliation." If it did, the police departments would be accused of it all

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Boulder Citizen (http://intensedebate.com/people/CU Professor)

Bartlett was not trained to conduct this "investigation". He was not authorized to do it. It is not part of his roles and responsibilities at the university.

"The woman, however, claimed that Barnett began his own investigation into the sexual assault, and talked to other members of the philosophy department about the woman's marital history and sexual

Seriously, Bartlett didn't see that as a problem?

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Bing987 (http://intensedebate.com/people/Bing987)

> Bartlett was not trained to conduct this "investigation". He was not authorized to do it. It is not part of his roles and responsibilities at the university.

Nope. But everyone has the right to ask questions and do independent investigation when they suspect that something isn't right. Just because it wasn't a part of his job description doesn't mean that he is not allowed to ask questions.

> Seriously, Bartlett didn't see that as a problem?

No. Nor should anyone else. Asking questions and solving mysteries is something that all intelligent people do.

Besides, he compiled his report and turned it in to his superiors. Those superiors leaked the report to the public. If she is going to be mad at anyone, it should be DiStefano for releasing the report instead of handling it as a private personnel matter.



(http://intensedebate.com/people/philo111)

· 5 weeks ago

ratio101 (http://intensedebate.com/people/philo111)

It is clear, if you actually read the Notice of Claim, that (contrary to what O'Rourke insinuates) Barnett is not at all shying from having what he did be the focus of this law suit. As one Professor of Law from the University of Chicago already says on his blog: "the "Notice of Claim" letter from Barnett's lawyer ... is quite damning about the University's conduct if accurate. The response of the University official is quite snide, and fails to note that, in fact, Ward Churchill prevailed with a jury in his lawsuit against Colorado."



(http://intensedebate.com/people/donlamprecht) . 5 weeks ago

0

donlamprecht (http://intensedebate.com/people/donlamprecht)

Another useless story from the DC. If the critical facts are missing in a news story why even write it? Why not wait until if and when the facts are known?

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(http://intensedebate.com/people/BSDetector53) . 5 weeks ago

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BSDetector53 (http://intensedebate.com/people/BSDetector53)

Victim receives a \$850K settlement from CU for what Barnett, the CU employee, did to aggrieve the victim. If what he did wasn't over the line, why would CU settle for nearly a cool mil? I suspect there's more to the 'investigation' than some simple facts.

(http://intensedebate.com/people/Patriarch4	4) ⋅ 5 weeks ago	+3
Patriarch4 (http://intensedebate.com/people	le/Patriarch4)	
BSD, I would guess that the university settled the lawsuit in order to maintain a coverup. If they had litigated, the Barnett report would have become public during the trial, as would the administration's coverup of the ODH misconduct.		
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(http://intensedebate.com/people/Patriarch4)	5 weeks ago	+4
Patriarch4 (http://intensedebate.com/people/Patriarch4)		
Does anyone else find the interpretation of "retaliation" here troubling the idea that it would be illegal to defend someone from a criminal charge? If you think that person A has wrongly accused B of committing a serious crime, and you meet someone who has been taken in by A's accusation, it is *illegal* to tell that person about the evidence that B is innocent?		
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By Sarah Kuta Camera Staff Writer Updated: 11/03/2014 08:40:09 PM MST

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