

1 Kevin Vanginderen, Plaintiff Pro Per
2 637 Third Ave., Suite E1
3 Chula Vista, CA 91910
4 Telephone: (619) 585-7414

5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA

8 KEVIN VANGINDEREN,)
9 Plaintiff,)
10 v.)
11 CORNELL UNIVERSITY,)
12 Defendant.)
13)
14)
15)

Case No. 07-CV-2045-BTM-JMA
Hon. Barry T. Moskowitz
AFFIDAVIT OF PLAINTIFF KEVIN
VANGINDEREN IN SUPPORT
OF PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES
IN OPPOSITION OF DEFENDANT'S
MOTION TO STRIKE PLAINTIFF'S
COMPLAINT
Hearing Date: December 21, 2007
Time: 11:00 a.m.
Place: Courtroom 15

16 I, Kevin Vanginderen, declare:
17 1. I am the Plaintiff for the above captioned matter commenced on October 1, 2007,
18 against Cornell University in the Superior Court of California, County of San Diego, for causes of
19 action for Public Disclosure of Private Facts and Libel regarding a publication distributed by
20 Cornell University in 1983, and now for the first time disseminated on the World Wide Web in
21 2007. I am fully familiar with the procedural facts and circumstances of this matter as set forth
22 below.
23 2. I attended an undergraduate degree program at Cornell University (Defendant) and
24 obtained a Bachelor of Science degree between August of 1979, and May of 1983.
25 3. The causes of action stem from an article published in the *Cornell Chronicle* by Cornell
26 University (Defendant) regarding a single specific incident: an arrest and a single charge brought
27 against myself in March of 1983.
28 4. The charge was made for the taking of books from a room in a campus academic

1 building. The incident occurred at a cubicle attached to one of my classrooms at that time.

2 5. In August of 1983, all charges brought against me were dismissed in the County Court
3 of Tompkins County, New York on the basis that the District Attorney had overcharged me for
4 the circumstances involved. The records were then sealed.

5 6. On August 23, 2007, a conditional discharge was granted to my plea for petit larceny
6 on a separate Accusatory Instrument for the same incident and I subsequently learned that in 1985
7 the entire record was sealed.

8 7. The Defendant has never received an Order to Unseal Records at any court to date.

9 8. Until September 2, 2007, I had never seen any copy of, nor had even been aware of the
10 existence of, the *Cornell Chronicle* or any article within that publication regarding myself.

11 9. I first learned that a libelous article regarding myself was contained within the March
12 17, 1983, edition of the *Cornell Chronicle* on September 2, 2007, when I conducted an annual
13 *Google* search of my name on the Internet.

14

15 I declare under penalty of perjury under the laws of the State of California, that the
16 foregoing is true and correct and this AFFIDAVIT was executed this 20th day of November, 2007,
17 in San Diego County, California.

18

19 DATED: November 20, 2007

20

21

Respectfully submitted,

22


Kevin Vanginderen

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***Google.com* search results for William B. Duke, Cornell University
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**Email correspondence from Cornell University Counsel Nelson Roth
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Cornell Chronicle/Chronicle Online (formerly Cornell News Service) is part of the Division of University Communications and serves as the primary source of news about Cornell University. Its publications include the Cornell Chronicle (published 37 times a year), Chronicle Online (updated daily), the Chronicle Magazine and Cornell e-News, as well as podcasts, e-mail lists and RSS feeds.

Chronicle publications cover the university's seven colleges; the four graduate professional schools; Cornell's New York City campuses; the New York State Agricultural Experiment Station in Geneva, N.Y.; Arecibo Observatory in Puerto Rico; Shoals Marine Laboratory on Appledore Island in the Gulf of Maine; and Weill Cornell Medical College in Qatar.

The Chronicle staff includes six news writers, a newspaper editor, a senior editor, a Web editor, a graphic designer, administrative staff and usually a few student interns. Writers report on Cornell research and events in science, technology, the humanities, the arts and the social sciences. They also write news and features on faculty, administrators and students. Regular columns cover new books, innovations, New York City campus events and the university's land-grant mission. A weekly calendar highlights upcoming events. Chronicle Online also maintains a searchable Web archive of all stories and PDF versions of past Cornell Chronicle issues.

Media queries and requests for reviews should be directed to the Press Relations Office.

David Brand, Director

deb27@cornell.edu

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- The default search is an OR with relevance. The search will find all pages containing any of the words you enter, but will list first the pages containing all of them, or many occurrences of some.
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Talent Identification Program (TIP), died Monday at the age of 84. ...

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Date: Wed, 19 Sep 2007 21:15:59 -0400
To: "Kevin Vanginderen" <kvangin1@yahoo.com>
From: "Nelson E. Roth" <ner3@cornell.edu>
Subject: Re: Inquiry to Cornell University Library

Dear Mr. Vanginderen:

Thank you for getting back to me. Before responding either to your request that the Cornell Library redact page 6 of the digitized copy of the March 27, 1983 Cornell Chronicle it maintains in its collection (or remove it from the collection) or to the assertions of law in your e-mail, we would like to be sure that we have all of the pertinent facts so that we can assess the accuracy of the publication and your present factual assertions. Thus, it would be very helpful to us in addressing your request if we could examine the original police and prosecution records relating to the matters referenced in the publication. I understand that the records are available but were sealed in 1985. For that reason, we will need to obtain a court order to unseal the records. This is routinely done, of course, in the event of litigation, but we will need a stipulation from you to obtain a court order at this point to examine the records. If you are willing to sign a stipulation so that we may attempt to resolve this matter short of litigation, please let me know and I will prepare the appropriate document.

Sincerely,

Nelson E. Roth

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, at _____, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

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1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF San Diego

I am employed in the county of San Diego, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 637 Third Avenue, Suite E-1, Chula Vista, CA 91910

On, 11/21/07 I served the foregoing document described as A copy of the Memorandum of Points and Authorities in Opposition of Defedant's Motion to Strike Pursuant To California Code of Civil Procedure 425 on Defendant Attorney in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

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Bert Deixler, Esq., Proskauer Rose LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067-3206

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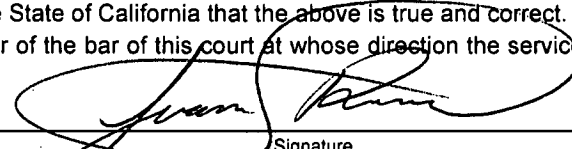
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Juan Ramirez

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