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Oxy Caught in the Crossfire **Civil libertarian groups blast Oxy's sexual harassment policy**

by Dane Muckler, Contributing Editor

Over the past five months civil-libertarian groups and Occidental College administrators have been engaged in an often-heated struggle over one student's alleged violation of the College's Sexual Harassment Policy. What started as a debate-by-letters over the legal definition of sexual harassment has escalated into a disagreement over the very facts of the case. While the administration eventually cut off contact with civil-libertarian groups, the organizations have continued to write letters, conduct parallel investigations and attract as much media attention as possible. Their hope: to force Occidental to overturn its decision.

As a student, Jason Antebi has a reputation as one of the most controversial figures on campus. Vice President of Policy under the late student government (ASOC), Antebi survived an attempted recall marred on both sides by claims of mudslinging and foul play. Just prior to the dissolution of student government he was fired from his position as a KOXY radio host, and his show "Rant and Rave" was yanked off the air after three student government rivals of Antebi filed sexual harassment petitions against him for the content of his March 11th show. Among other things, Antebi's show parodied two student senators who had run an unsuccessful recall effort against him, calling one a "douche" and another a "bearded feminist."

Title IX Officer and History Professor Maryanne Horowitz, who is in charge of investigating complaints of sexual harassment and gender inequality on Occidental's campus, concluded that the show constituted sexual and gender harassment and creating a hostile environment. Eventually Antebi was also accused of tire slashing, vandalism, distributing and abusing prescription drugs and additional criminal acts.

Speaking anonymously, one of the harassment complainants insisted that Antebi's show was only the tip of the iceberg, "however, as the radio show was the only part of the harassment that could be recorded, it was the aspect of the harassment that could be tried. It was the only lever that anybody could grab to put a halt to the daily abuse," he said.

Now an Oxy alumnus, Antebi continues to generate controversy as he battles what he and his advocates say has been an unjust conviction.

Shortly after the charges were filed, Antebi contacted the East Coast based Foundation for Individual Rights in Education (FIRE), a non-profit, organization dedicated to defending the first amendment

rights of professors and students at state and private universities. FIRE recently helped students defeat a restrictive speech code at the University of Texas Tech.

Calling Fire

Occidental's Title IX officer, Maryanne Horowitz, who investigated the sexual harassment complaints, found Antebi guilty of sexual and gender harassment, creating a hostile environment. Her report also concludes that Antebi's comments were "racist" and "sexist."

FIRE then launched its own investigation into Jason Antebi's accusation of sexual harassment and came to the conclusion that Antebi's radio show was well within the limits of constitutionally protected speech. Initially, facing the possibility of expulsion, Antebi managed to graduate, in part he says due to FIRE's help.

Although FIRE and other organizations have alleged a connection between the dissolution of Occidental's Student government last semester and Antebi's sexual harassment complaints, they insist that their primary goal is having the charges of sexual harassment removed, and forcing the college to amend its sexual harassment policies.

We didn't start the FIRE: Civil-Libertarian Groups Dispute Oxy's Sexual Harassment Policy

FIRE's Director of legal and public advocacy Greg Lukianoff responded to Occidental's decision to prosecute Antebi. In a letter to Occidental's general counsel, Sandra Cooper, Lukianoff urged the college to stop its proceedings against Antebi, claiming the host's speech was constitutionally protected. FIRE cited case law and a letter from the US Department of Education's Office for Civil Rights (OCR), which warns colleges that it is illegal to punish speech that is merely "offensive."

Secretary Gerald Reynolds wrote "OCR has recognized that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment... harassment must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive."

After Cooper responded to FIRE's letter with her own assessment of the legal definition of sexual harassment, and background information about the Antebi case, FIRE published a 28-page rebuttal to Cooper in which it not only attacked her interpretation of what constituted sexual harassment, but also relied on independent fact-finding to refute what it called "unfounded accusations." Lukianoff informed *The Occidental Weekly* that Cooper has not responded to its latest letter.

In an interview with *The Occidental Weekly*, Lukianoff said "I have been [at FIRE] for three years, and I've never seen anything so ruthless, cynical and dishonest, as Attorney Cooper's handling of this case." He added "(Sandra Cooper) has made this case much more serious...[it is] one of the most important free speech situations on a college campus today."

He believes that the unfounded accusations in Attorney Cooper's letter were intended to dissuade organizations like FIRE and the ACLU from defending Antebi.

Asked whether Antebi's speech should be barred for its offensiveness, Lukainoff responded, "the idea that satire and making fun of things has no value is scary." He cited John Stuart's *The Daily Show* as evidence that humor can carry a significant political message. He then added that any restriction of free speech is a step towards a closed society. "You have to imagine what a limitation of speech would be like in the hands of your worst enemy," he said

Antebi goes one step further.

"I believe Cooper knew she was punishing protected speech, so she needed to come up with unprotected harassment to justify punishing me," Antebi stated in a phone interview. "What do you have when you don't have examples of unprotected harassment? If you're Sandy Cooper, you make it up."

According to Lukianoff, the Antebi case is generating more and more press over time, in part because of the Administration's bizarre and ruthless behavior. Besides FIRE, the ACLU of Southern California, Students for Academic Freedom, Student Press Law Center, PEN Center USA, and the Individual Rights Foundation have all expressed their support for Antebi. University of North Carolina, UNC professor and author Mike Adams published a scathing editorial titled "Oxy's Morons" on *Townhall.com* and *ifeminists.com*. Lukianoff co-authored an op-ed in both the legal publications, *Los Angeles* and *San Francisco Daily Journal* and Antebi was recently interviewed on both KABC 790 AM and KLSX 97.1 FM The case has also been mentioned in the *Providence Journal* and the liberal-leaning online publication *Guerilla News*.

The Administration Holds Its Ground: "hostile sexual and gender epithets"

After Occidental General Counsel Sandra Cooper responded to FIRE's first letter, informing the organization that Antebi was being investigated for tire slashing, vandalism, distributing and abusing prescriptions drugs, and additional criminal acts, Cooper justified the College's punishment by citing an American Civil Liberties Union (ACLU) sexual harassment policy paper. When FIRE responded with a 28-page rebuttal Cooper cut off all communication with the organization.

Asked why she ceased communicating with FIRE Cooper said "It was hopeless. They misrepresented the facts."

Cooper added the law prevented her from discussing any of the particular facts of the Antebi case FIRE got wrong in its 28-page letter, but she gave one case citation from FIRE's letter, *R.A.V. v. City of St. Paul*, as an example of a miscitation. According to Cooper, that case, which FIRE elaborates on extensively in its 28-page letter was overruled. She also said that she was tired of receiving obscene phone calls at her office, and blamed FIRE for unprofessional conduct in putting

her telephone and email address online. Asked if FIRE had targeted individuals at the college Cooper answered "yes they have, they've sent letters to the trustees."

FIRE asserts that Cooper was the first person to cite *R.A.V. v. City of St. Paul*, which *The Occidental Weekly* confirmed by examining the letters. FIRE also defends its decision to send letters to the Occidental trustees arguing that "Oxy has violated the law and has committed serious ethical violations. When Cooper was unwilling...to respond to the 28 page letter that listed all the ways in which she had misrepresented the facts and the law, we sent a letter informing the Trustees of this situation. This is standard FIRE practice."

Horowitz, who made the initial ruling against Antebi, said she cannot lawfully confirm or deny any of the facts of the "alleged" Antebi case and said she was unsure as to whether anyone would ever be able to see her records. Asked whether, and under what circumstances anyone inside the Occidental administration would be free to discuss the alleged matter, Horowitz replied "the beauty of my job [as a title IX officer], is that no one (who isn't directly involved) ever has to know what happens [between us]...this is not about punishment, but is a learning experience."

The Occidental Weekly has obtained Horowitz's records and in a copy of the Title IX report, Horowitz writes "I find sexual and gender hostile environment harassment in the March 11th radio show" and recommends that Dean Frank Ayala place a copy of her letter in Antebi's academic file. FIRE has many issues with Horowitz findings, calling them "extremely strained" and "bizarre," particularly referring to the following excerpt: "Similarly, he applied hostile sexual and gender epithets...to the...name of [Male ASOC Complainant...], Mr. Antebi turns [his last name] into "Douche," an instrument designed for women to utilize for vaginal cleansing, and Antebi states 'And [Male ASOC Complainant] who looks like a vagina.' Thus, Antebi, an officer in the ASOC, distorted the imagined face of a fellow student, attributing to him a female body part in location suggestive of oral sex." FIRE calls Horowitz's interpretation of Antebi's comments "bizarre."

The ACLU Gets Involved: But are they "for real?"

Only days after Cooper sent out her first letter to FIRE, managing attorney Peter Eliasberg of the ACLU of Southern California sent a letter to Cooper informing her that they are "extremely concerned about Occidental's decision to punish Jason Antebi for sexual harassment and your attempt to rely on the ACLU's position on unprotected harassment to justify that decision."

According to the ACLU, Antebi's "sophomoric insults" do not constitute as sexual harassment because they "were spoken during a radio program, rather than 'addressed directly' to the complaining students and because the speech is not frightening or intimidating even if it is insulting." The ACLU also expressed distress over Cooper's allegations that Antebi had committed a wide range of other harassing acts without offering any evidence that the acts have been committed by Antebi.

Cooper says that shortly after receiving the ACLU letter, she telephoned Peter Eliasberg to ask him

"if he was for real." Eliasberg insisted that he was and reiterated the ACLU position that speech has to be directed to the target, in order to be harassment. Eliasberg said he was most disturbed by the section in her letter where she made accusations against Antebi without offering proof.

"When Cooper called me, she threw out a lot of things and told me 'I'm pretty sure we'll be able to show he was involved [in them]," Eliasberg said.

Cooper said that she did not discuss specifics of the case with the ACLU and said that Eliasberg's letter constituted a radical departure from ACLU policy. She suggested that Peter Eliasberg did not represent the ACLU.

"The correct ACLU policy is on their website," she added.

Peter Eliasberg, who has been the managing attorney for the Southern California Chapter of the ACLU since 1999, said he was insulted by Cooper's remark and commented that the ACLU has been consistent in its definition of sexual harassment, since it drafted its policy in 1999

The Future: A Final Appeal

To date no lawsuits have been filed involving the Antebi case, and the situation can still be resolved within the Occidental Administration. In June Antebi filed for the highest level of appeal to President Ted Mitchell. Mitchell's response has been pending since June. Antebi said, "President Mitchell, unfortunately, allowed this to go for way too long, it would be a start if he would apologize and rescind all findings of guilt regarding this situation."