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Occidental Offenses

Nothing's free on one L.A. campus.

By Anthony Dick

In 2003 and 2004, Jason Antebi, a student at Occidental College in Los Angeles, hosted a popular student-radio program that he now describes as “a satirical cross between Rush Limbaugh and Howard Stern.” He and his co-host delivered commentary from an edgy conservative perspective, using crude and sometimes intentionally offensive language to lampoon various student activists and administrators. At the same time, Antebi was elected to serve as the vice president of his student government. In that capacity, he was critical of many aspects of Occidental's political climate. He consistently opposed the hypersensitive political correctness that dominated the college, and he outspokenly criticized the campus Women's Center for its radical-feminist posturing. He was, in other words, an abrasive, unapologetic opponent of the campus establishment.

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That was more than enough to put a bull's-eye on Antebi's chest. Three appalled students began a petition campaign to recall him from his elected office. They circulated rumors that he was racist, anti-Semitic, and misogynistic. Yet the facts suggested otherwise: Antebi, for one thing, is Jewish. Further, he has been described by the founder of Occidental's Sons and Brothers club, an anti-sexual-assault organization, as “an invaluable ally and friend” who fought “to institute a Zero-Tolerance policy for sexual assault.”

The smear tactics of Antebi's opponents were exposed in the student newspaper, and the recall effort ultimately failed. On his radio show, Antebi retaliated by satirizing two of the students who had led the charge against him, Samara Neely-Cohen and Stephan Van Der Mersch. in his signature coarse style.



“BIG”

“TIMELY”

“IMPRESSIVE”



In response, the student petitioners filed sexual-harassment charges against Antebi: One complained of the “offensiveness” of the nicknames Antebi used, while the other claimed that Antebi had created a “hostile environment” in violation of Title IX of federal law. Without waiting for a trial, the dean of students summarily decided to terminate Antebi’s position as a student-radio host. The management of the radio station objected, citing Antebi’s continuing popularity among listeners. But the dean prevailed.

Next, Occidental president Ted Mitchell unilaterally decided to disband the Associated Students of Occidental College (ASOC) — the student government in which Antebi was vice president. To explain this move, Mitchell cited “examples of abusive, intimidating, harassing behavior that have no place on our campus” that were “masquerading as open expression,” as well as “an unacceptable number of complaints and cross complaints involving ASOC officials.” This was an obvious reference to Antebi.

It was only after this that Occidental officially declared Antebi to be guilty of sexual harassment. His case was investigated — and decided — by the school’s Title IX officer, Marianne Horowitz, who didn’t stop to interview Antebi before pronouncing her verdict. In fact, according to Antebi, she suggested he apologize and consider counseling before she had even heard a recording of his show or started her investigation. (At press time, Horowitz has not returned a call to her office for comment.)

Horowitz’s ultimate decision read in part: “[Antebi] applied hostile sexual and gender epithets and ancestry/country of origin to the Dutch name of Van Der Mersch. Mr. Antebi turns [his last name] into ‘Douche,’ an instrument designed for women to utilize for vaginal cleansing, and Antebi states ‘And Vander Douche 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.”

Antebi — his guilt stamped on his permanent academic record — was ordered to apologize to the students he had offended. But he refused: “No sexual harassment, no apology,” he says. Instead, he’s fighting back, with the help of the Foundation for Individual Rights in Education (FIRE) and the American Civil Liberties Union (ACLU), to try to get his record cleared.

FIRE sent a letter to Occidental in late March 2004 explaining that Antebi’s speech was protected by both the California and the U.S. Constitution. The letter cited a memo from the U.S. Department of Education’s Office for Civil Rights (OCR), which stated: “[I]n addressing harassment allegations, OCR has recognized that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment. . . . Harassment, to be prohibited by the statutes within OCR’s jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.”

It was clear, in other words, that Antebi had engaged in protected speech and not harassment. And, while Occidental College is a private school, it is nonetheless bound by California’s “Leonard Law,” which requires all colleges in the state to respect the free-speech rights of their students. In addition, FIRE points out that Occidental College independently “promises to respect students’ freedom of speech,” and thus “can be held accountable for flagrantly violating its own policies.”

Occidental responded to FIRE in April 2004 with a barrage of evasions, factual misrepresentations, and diversionary accusations. Occidental’s vice president for legal affairs and general counsel, Sandra Cooper, claimed that Antebi had been making threats and attempting to “silence” his political opponents. She cited a blog entry of his in which he had



written: “anyone [who] buys into the nonsense of only whites can be racist, should be murdered in their sleep by a santa suit wearing fat man.” Cooper also implied, without basis, that Antebi had been vandalizing cars, abusing drugs, and making anonymous harassing phone calls to students — all false charges that in any case had no relevance to the sexual-harassment charge of which he had been declared guilty. FIRE’s president Greg Lukianoff responded to Cooper in May 2004 with a 28-page refutation of her claims, accusing her of “grossly and systematically misrepresent[ing] the facts.”

Having run out of other options over the following year, Antebi finally filed a lawsuit against Occidental in March 2005, alleging that the school had violated California’s Leonard Law by trampling his free-speech rights. The suit also sought damages for defamation, pointing to the maliciously false accusations of vandalism and other offenses that the college had made against Antebi.

The lawsuit is now in the appeals process. A lower-court ruling has held that Antebi may proceed with his defamation claims, but it has also strangely judged that the Leonard Law does not apply in this case since Antebi had already graduated by the time he filed his lawsuit. (Antebi had been trying to find a lawyer that he could afford, but was unable to find one until after graduation.) What’s strange about the court’s ruling is that Antebi was an undergrad at the time he was punished by Occidental — and his conviction for “sexual harassment” continues to harm him as an alumnus by hampering his ability to apply to graduate schools.

If the courts hold that students can seek relief under the Leonard Law only during the time that they are actually enrolled as students, this would dramatically weaken the force of the law. It would mean that schools could freely censor students who were about to graduate, or that they could even prevent students from filing lawsuits by simply expelling them.

Bill Leonard, the California legislator who wrote the Leonard Law, says the “spirit of the law” clearly agitates against the court’s decision in a case like Antebi’s. Leonard tells National Review Online: “If he suffered some kind of school penalty as a result of his speech, he is entitled to contest that. . . . The fact that he has left the school is irrelevant.”

Antebi is hoping that California’s supreme court will agree to review his case and correct the lower courts’ error. The stakes are high. As FIRE’s Lukianoff has put it, “Oxy found a student guilty of violating federal harassment law for on-air jokes and insults — a redefinition of harassment law that is representative of a disturbing shift in California’s ability to distinguish between unprotected harassment and free speech.” Now California’s highest court has the chance to step in and make that distinction crystal clear — and render overdue justice to Jason Antebi.

—Anthony Dick is an NR associate editor.

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