



## Office of The General Counsel

February 3, 2006

**Via Facsimile Only (215) 717-3440**

Mr. Robert Shibley,  
Program Manager  
Foundation for Individual Rights in Education  
601 Walnut Street, Ste. 510  
Philadelphia, PA 19106

Re: Walston

Dear Mr. Shibley:

We received your letter dated today and the included waiver signed by Matthew Walston. Your letter indicates that you believe we can now discuss all aspects of Mr. Walston's case with you. We disagree that our ability to discuss the case is now complete – as you know, FERPA also protects the individual right to privacy of any other students involved or who might be individually identified in the records. Those rights are not released, indeed cannot be released, by Mr. Walston's waiver of his own rights. That said, we feel that the information below is within our limited ability to provide information on this case.

I believe that we can summarize the thrust of your January 31, 2006, letter as stating the premise that the university should not and perhaps could not punish a student for calling another student an idiot and a fool. That although the conduct may be childish, hurtful, and immature, it is generally within First Amendment protections presuming there are not other hateful motives behind the speech that are based on the categories you identified, among others. The university agrees with you in the abstract. The university also knows that this discussion is off point.

It appears that Mr. Walston has not given you a complete rendition of the factual background of his case. Mr. Walston was not charged with calling another student an idiot and a fool. He was charged with personal abuse – harassment based on statements (written) alleged to have been made by him that (1) said that another student had sex with an immediate family member, which is a crime, and (2) that another student laundered money, which is a crime. This was all explained in detail to Mr. Walston when he met with Mr. Nicolas Olesky. Surely we can agree that accusing another of a crime without proof is not protected free speech.

President's Division


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This is not a legal case, and the university's student conduct procedures, just like those at higher education institutions across the country, are not equivalent to those of a court of law. But if you are interested in legal citation, the common law of the State of Florida considers false statements alleging criminal activity to be per se defamatory. *Tip Top Grocery v. Wellner*, 135 Fla. 518, 186 So. 219 (1938); *Richard v. Gray*, 62 So.2d 597 (Fla. 1953); *see also Wolfson v. Kirk*, 273 So.2d 774 (Fla. 1973). While it has not been established yet whether Mr. Walston is in violation or not in violation of the university's rules, that is the entire purpose of the hearing Mr. Walston is scheduled to attend on February 6, 2006. The university finds it distressing that your foundation, supposedly committed to the advancement of individual rights, would seek to impede another's right to seek redress under the university's rules.

We expect that Mr. Walston will appear for his hearing on Monday, February 6, 2006, at 10:00 a.m.

Sincerely,



Youndy C. Cook  
Associate General Counsel

cc: Beth Barnes  
Patricia S. Mackown