



## Foundation for Individual Rights in Education

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November 20, 2002

Richard A. Yanikoski  
President  
Saint Xavier University  
3700 West 103<sup>rd</sup> Street  
Chicago, IL 60655

Dear President Yanikoski:

The Foundation for Individual Rights in Education (FIRE) is a non-profit civil liberties organization dedicated to the promotion of academic freedom, free speech, and fair procedures in American higher education. As you can see from our Board of Advisors, FIRE is non-partisan and enjoys the advice, support, and respect of public intellectuals, academics, journalists, and others who have a common concern for these vital areas of American public life. Please see our website, [www.thefire.org](http://www.thefire.org), to gain a further sense of our identity, activities, and resonance. Although we are often identified with defending the victims of “political correctness” on our nation’s campuses, we are, as in all cases involving the defense of liberty, profoundly concerned with the case of Professor Peter Kirstein.

The events that led to Professor Kirstein’s apology to Cadet Robert Krupiel, and then to the corps—apologies accepted by the cadet and by the Air Force Academic Assembly—reveal the profound truth of Justice Louis Brandeis’s celebrated dictum that “Sunlight,” not repression, “is the best disinfectant.” Professor Kirstein—a self-professed pacifist and critic of American foreign and military policy, as he has every right to be—replied to a communication from an individual who was not a student at Saint Xavier University. His letter was made public, and it provoked a flood of letters and public discussion, much of it as intemperate as Professor Kirstein’s letter to the cadet. In response to sincere criticism of his own letter, Professor Kirstein apologized contritely, and he publicly has termed his own letter to the cadet “wrong, impetuous, careless, and provocative.” That is how freedom works.

The subsequent suspension and official reprimand of Professor Kirstein are not how freedom works. I write as someone who has defended appropriate academic freedom on all sides. Thus, although I am a non-Catholic, I twice have delivered the Cardinal Newman Lecture at annual meetings of the national Cardinal Newman Society, because of my defense of the liberty of Catholics in higher education. In those lectures, I invoked the image of St. Thomas More as “a man for all seasons,” willing to extend the protection of law to heretics and to stand by principle whatever

the cost. I urge you, sir, to be now “a man for all seasons,” however strong the winds that blow in the political arena. There is too much at stake for you to do otherwise.

It would be a truly dangerous precedent to punish Professor Kirstein officially, and to do so in the name of AAUP Guidelines. Simply put, no citizen, by choosing an academic vocation, should suffer a diminution of those rights enjoyed by his or her fellow citizens in our free society. Written to an individual who was not his student, and who was not even a potential student at Saint Xavier University, Professor Kirstein’s words—however ill chosen—were protected expression. Politics educes passions, on issues of war and peace, life and death, abortion and choice, affirmative action, and on, and on. We must know how each other thinks, and we must respond to speech that we abhor with further speech, with moral witness, and with disapprobation—not with coercion or with official sanction. Universities are not too weak to live with freedom. Students are not too weak to live with freedom.

In particular—and we shall stand by Professor Kirstein’s side in this matter for as long as necessary—it would be unbearable if Professor Kirstein’s post-tenure review were **in any manner whatsoever** affected by his exercise this past fall of his rights as a citizen of a free society. You have every right to apply your normal and regular procedures and standards to an evaluation of his teaching at Saint Xavier University (for which, we understand, he won an award for distinguished teaching) and of his scholarship. You know, however, I am certain, that you have no right to apply any standard that would threaten academic freedom, the liberty of a free nation, the civic rights of the American professoriate, and the core American value that free expression is a way of being human. Professor Kirstein may be judged, of course, in the court of public opinion for the exercise of his rights as a citizen. He may not be judged for that exercise in a post-tenure review. That latter judgment would cast a pall over freedom itself, and it would announce that the choice of an academic life entails a diminution, not an enhancement or even a preservation, of one’s civil rights. It would chill debate. It would introduce into a free society the ways of authoritarian regimes.

This moral obligation to protect the rights of Professor Kirstein, and, through him, the rights of all who have chosen or who are considering an academic vocation, extends equally and necessarily to the issue of addenda to his contracts. Professor Kirstein’s contracts should be the standard contracts of your institution, not vehicles for retribution that would chill the civic participation of your faculty and faculty everywhere. You have every right to demand the same qualities of teaching, scholarship, advising, and participation in university life that you demand of others. You have no right to chill his ability to participate in public debates and to stigmatize him for his exercise of protected rights. Post-tenure review, as your university itself has articulated, must never be the occasion for a weakening of academic freedom, for a threat to the institution of tenure, and for punishment or sanction. To say the least, it must never be the occasion for a diminution of that liberty and civic participation upon which the future of our society depends.

We will be watching these events with the utmost attention, determined to see this vital matter affecting liberty and academic freedom through to a resolution compatible with core American values. We ask you, indeed, to be a man for all seasons. I would not chop down the trees of legal protection to get at the devil himself, Thomas More states in Robert Bolt’s magnificent play, because if we did that, where would anyone stand when the winds blow strong? The winds are blowing strong now. Keep those trees strong and protective. We hope that moral appeal suffices, but please know that we shall commit our full resources and public credit to the protection of Professor Kirstein’s rights, as we have

done innumerable times for the protection of the rights of those threatened by political correctness and abuses of power. Liberty is not partisan.

The present or future punishment of Professor Kirstein establishes principles catastrophic for a free people: that repression of protected free speech and its attendant passions is warranted at times of public controversy or dependent upon the side of the political spectrum from which it emanates; that professors, expressing themselves outside the classroom on matters of intense public passion, should have less freedom of expression than their peers in civil society; and that the momentary gratification of the punishment of speech that one finds uncivil, cruel, or self-indulgent outweighs the moral truth that freedom of speech is not a tactic, but a way of being human. Do not visit such principles upon those of us who labor on behalf of the core values of a free people and the lifting of the shadow of coercive orthodoxy from American academic life. Saint Xavier University knows better. American campuses need *more* intellectual pluralism and more unfettered expression, not less. Until that greater pluralism occurs, let us preserve, not destroy, the freedom that is its natural and essential soil.

With sincerest regards, and looking forward to your reassurances,



Alan Charles Kors

cc:

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