



## Foundation for Individual Rights in Education

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June 4, 2004

Mrs. Catherine Young Selleck  
Chair, Occidental College Board of Trustees  
Three Oliver Court  
Menlo Park, California 94025

Dear Chairwoman Selleck,

The Foundation for Individual Rights in Education (FIRE) works on behalf of liberty, legal equality, freedom of religion, academic freedom, due process, and freedom of speech and expression on America's college campuses. We write to you and the other members of the Occidental College Board of Trustees today to inform you of a situation on Occidental's campus which indicates possible serious misconduct by Occidental's administration, exposes the college to legal liability, and threatens the very existence of student rights at Occidental. The Occidental College administration's persecution of student Jason Antebi has been so outrageous, in fact, that its actions have been condemned not only by FIRE but also by other civil liberties groups including Students for Academic Freedom (SAF), the Student Press Law Center (SPLC), and the American Civil Liberties Union (ACLU).

On March 30, 2004, FIRE wrote to Occidental College President Ted Mitchell to protest disciplinary proceedings that were then being held involving Jason Antebi, a senior at Occidental and a former disc jockey on Occidental's college radio station, KOXY. (This letter is attached.) For three years, Mr. Antebi hosted a radio show called *Rant and Rave* on KOXY. Like many radio shows both on campus and off, *Rant and Rave* relied on what some would consider a "shock jock" brand of bawdy and provocative humor, satire, and parody. The program often mocked Occidental's administration, its student government, and various political and social causes.

Two students who believed that Mr. Antebi had mocked them on the air filed sexual harassment complaints against him in March 2004 due to the content of his radio show. These complainants were student government rivals of Mr. Antebi who had unsuccessfully tried to have him recalled from office on different grounds earlier in the year. A third student, apparently associated with the two complainants, also filed a brief complaint broadly accusing Antebi of sexual harassment because she was "disgusted" by his radio show. They claimed that Mr. Antebi's on-air comments constituted "hostile environment" harassment, citing among their complaints some of Mr. Antebi's remarks insulting his own

mother, his apparent mockery of several members of the student government, and “disrespect and slander” against “women, diversity, and Occidental College.” These students evidently believed that Occidental College could and should punish Mr. Antebi for the “offensive” and “demeaning” content of *Rant and Rave*.

In its March 30 letter to President Mitchell, FIRE pointed out that Mr. Antebi’s comments were protected speech under the First Amendment and that due to a California statute called the “Leonard Law” (California Education Code Section 94367), which requires that even private universities in California extend First Amendment protections to student speech, Occidental was forbidden from punishing Mr. Antebi for his comments. FIRE also pointed to a letter from the U.S. Department of Education’s Office for Civil Rights and to several U.S. Supreme Court cases that make it clear that even highly offensive speech is protected by the First Amendment.

On the same day that Occidental received the letter from FIRE, President Ted Mitchell announced that he had decided to dissolve ASOC (Associated Students of Occidental College—Occidental’s student government). Although President Mitchell did not refer to Jason Antebi by name, almost all of the reasons Mitchell gave for closing down ASOC were related to the college’s accusations against Mr. Antebi. The dissolution of the student government means that the college administration has taken over the distribution of nearly \$500,000 in student fees that would normally be administered by the students’ elected representatives.

On April 2, FIRE received a response to its March 30 letter from attorney Sandra A. Cooper, Occidental College’s general counsel. Ms. Cooper’s five-page letter (attached) accuses Mr. Antebi of a laundry list of offenses including threats, possible drug use, and abuse of his student government position. Cooper then added that Occidental “is still investigating” incidents of harassing telephone calls, anonymous e-mails, defacing brochures, slashing tires, and yelling insults across campus. However, she presented no evidence of any kind that would link Mr. Antebi to this second, more serious set of accusations. She concluded by implying that the ACLU as well as the Department of Education’s Office for Civil Rights, along with the law, would support the college’s punishment of Mr. Antebi.

While FIRE was at first impressed with the apparent thoroughness with which Occidental responded to our letter, further investigation revealed that most of Ms. Cooper’s assertions of fact were false and/or fabricated, and that her understanding of the law and positions that other organizations would take on this case were invalid. **Indeed, many of the college’s factual assertions could be so easily disproved that it strains credulity to believe that these statements could be mistakes rather than deliberately false assertions.** We urge you to read FIRE’s twenty-eight page comprehensive response to Ms. Cooper’s assertions, sent to Ms. Cooper on May 6, 2004, (attached) to gain a full understanding of the outrageous and immoral campaign of deceit that Ms. Cooper and other administrators waged against one of Occidental’s own students. Our research, detailed in that letter, shows that **Occidental College, through Ms. Cooper, omitted crucial facts, reversed and ignored timelines, made claims that are contradicted by multiple independent student sources, and jumped to unwarranted and unsupportable factual and legal conclusions—all in an apparent attempt to dissuade organizations like FIRE and the ACLU from coming to Mr. Antebi’s defense.**

On April 12, 2004, Occidental College Title IX Officer Maryanne Cline Horowitz found Mr. Antebi guilty of on-air “sexual and gender hostile environment harassment” based on arguments nearly identical to those made to FIRE in Ms. Cooper’s letter of April 2, and recommended that the letter be placed in Mr. Antebi’s academic file. Like Cooper’s letter, Horowitz’s findings included a long list of “related acts”—offenses for which she produced no real evidence of Antebi’s alleged involvement (Horowitz herself acknowledged that “[n]ot all of them may be directly attributable to Mr. Antebi”) but whose inclusion she justified by claiming that “they echo his intimidating, demeaning, and threatening tone.”

Occidental College’s deceitful actions have failed to dissuade organizations such as FIRE and the ACLU from continuing to be involved on behalf of Mr. Antebi. Indeed, on May 7, 2004, attorney Peter Eliasberg of the ACLU of Southern California wrote to General Counsel Cooper (this letter is attached) expressing the ACLU’s opinion that Mr. Antebi’s remarks are not punishable speech and that Ms. Cooper’s statements that ACLU policy would support Occidental’s punishment of Mr. Antebi are false. The ACLU letter also urges Occidental to rescind any punishment or finding of liability for harassment regarding Mr. Antebi. The Los Angeles-based organization Students for Academic Freedom (SAF), which has chapters on 135 campuses across the country, has also expressed its condemnation of Occidental’s actions. Yet Occidental has so far failed even to respond to FIRE’s May 6 letter exposing its administration’s falsehoods and distortions.

Far from succeeding in silencing Mr. Antebi or others like him, Occidental College’s administrators have merely succeeded in unifying FIRE, the ACLU, SPLC, and SAF in opposing Occidental’s heavy-handed attempt to silence its students and its complete and utter disregard for the First Amendment rights guaranteed to Mr. Antebi under California law. **FIRE urges you, Chairwoman Selleck, and the members of the Occidental College Board of Trustees to take the time to read the material attached to this letter and decide for yourselves whether Occidental College’s administrators have held themselves to the professional standards that you, as the trustees of Occidental, have a right to expect.** The welfare of a college’s students and an open and free academic climate on campus are necessarily among the highest priorities of any college or university, yet Occidental administrators have lawlessly persecuted one of its own students, attempted to silence campus dissent, and brought a coalition of civil rights organizations down upon Occidental College. We urge you to contact President Mitchell with your opinions of Occidental’s handling of this matter and ask that the unfair and unlawful punishment of Jason Antebi be rescinded.

Please feel free to call me at (718) 852-0998 if you have any questions regarding the important matters in this letter.

Respectfully yours,



Greg Lukianoff  
Director of Legal and Public Advocacy

*(next page)*

cc:

Ted Mitchell, President, Occidental College  
Frank Ayala, Jr., Dean of Students, Occidental College  
Kenyon Chan, Vice President for Academic Affairs/Dean of the College, Occidental College  
Sandra Cooper, General Counsel, Occidental College  
Maryanne Horowitz, Title IX Officer, Occidental College  
Ross Papish, Associate Dean of Students/Director of Student Life, Occidental College  
Rameen Talesh, Associate Dean of Students/Director of Residence and Greek Life, Occidental College  
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Peter Eliasberg, ACLU of Southern California  
Eugene Volokh, UCLA School of Law  
Carol Sobel, Esq.  
Harvey A. Silverglate, Esq.  
Jason Antebi

Encl.