



Foundation for Individual Rights in Education

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February 10, 2009

President Barry Mills
Bowdoin College
Hawthorne-Longfellow Hall
5700 College Station
Brunswick, Maine 04011-8448

Sent by U.S. Mail and Facsimile (207-725-3795)

Dear President Mills:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to freedom of speech and academic freedom posed by Bowdoin's investigation of Professor Jonathan Goldstein in response to his distribution of a research paper ranking Bowdoin the worst of 36 colleges in terms of "control over athletics' impingement on the academic mission" of the respective schools. In addition, Dean for Academic Affairs Cristle Collins Judd threatened Goldstein's freedom of speech by demanding that he show "civility on the campus" after he told her to "[g]et lost" at the start of her wide-ranging investigation.

This is our understanding of the facts. Please inform us if you believe we are in error.

During the first eight months of 2008, Goldstein researched and wrote a paper which, in relevant part, investigated several variables in his study of the effect of athletics on academics at 36 colleges. The paper related that some schools, including Bowdoin, "appear at the bottom of the [ranking] due to the pervasive nature of athletics and the failure to regulate athletics resulting in negative feedbacks on the academic mission."

On August 21, 2008, Goldstein distributed a summary of this paper to prospective students and their parents in the Lancaster Lounge of Moulton Union at Bowdoin. He distributed it in the lounge of the Admissions Building on August 22 and 25.

Later on August 25, Judd phoned him and summoned him to a meeting to be held twenty minutes later. Goldstein had another appointment at that time and told Judd to “[g]et lost.”

On August 27, Judd wrote Goldstein informing him that his distribution of the paper was being investigated. Judd’s letter catalogued multiple allegations against Goldstein. It stated that his distribution of the paper was being formally investigated “in the realm of harassment and hostile work environment, as well as the possible violation of other College policies.” These allegations were to be investigated by Director of Human Resources Tama Spoerri. Judd also suggested that “issues” with Goldstein’s “research methods ... may need to be considered by the appropriate faculty committee and my office.”

Judd, Goldstein, and Spoerri met on September 11. At that meeting, according to her letter to Goldstein on September 15, Judd added further elements to the investigation. Namely, the investigation would now also include whether Goldstein failed to follow “the protocols outlined by the Research Oversight Committee” and whether he had revealed confidential information.

In another letter on September 29, Judd informed Goldstein that she was formally referring the research misconduct aspect of the investigation to an inquiry committee. Judd’s allegations for the inquiry committee were described as “[f]ailure to cite sources” and “[p]lagiarism.”

Most of this panoply of allegations was found to be meritless. According to a letter to Goldstein from Judd on October 17, Spoerri’s investigation cleared Goldstein of the harassment and hostile environment allegations. Instead, Spoerri found only that Goldstein had failed to treat colleagues “with respect and proper protocol.” In addition, after Goldstein secured the assistance of attorney Howard Reben on September 11, the Research Oversight Committee investigation into misuse of human subjects was simply dropped. Likewise, the allegations that Goldstein had improperly revealed confidential data apparently were dropped without further comment.

Judd’s October 17 letter, however, added that since Goldstein had told her to “[g]et lost” over the phone on August 25, he had violated the expectation of “civility on the campus.” In order to try to demonstrate a pattern of so-called incivility, Judd drew upon a letter from 2002 alleging that Goldstein had made “offensive and inappropriate comments in both written and verbal exchanges.” In the October 17 letter, Judd added that “such outbursts—either in verbal or written form—in the future ... will not be tolerated.”

As for the remaining allegation of academic misconduct, on November 10 the three members of the inquiry committee (faculty members William Barker, Kristen Ghodsee, and Scott MacEachern) determined that the allegation was “of sufficient substance to warrant further investigation.”

The committee added in its report to Judd, however:

We also found that consideration of this case is complicated by a number of external factors, including the fact that the document at the center of the allegation is potentially somewhat embarrassing to the college. We note as well the possible perception of a conflict of interest in oversight of the case, given your status as

complainant. Should you decide to form an investigative committee to further examine these allegations [of “failure to cite sources” and “plagiarism”], we also recommend that that committee consider: (1) the status of the document in question, and its position along a continuum between draft and published paper; and (2) the question of ‘honest error’ in cases of alleged research misconduct, as noted in section I.D.1.a of the Faculty Handbook.

Although Judd had the option not to continue prosecuting her own case against Goldstein, she chose to continue doing so. In a letter to Goldstein on November 18, Judd announced that she was going to “convene a formal investigation” of her allegations against him. In a subsequent letter on December 1, Judd notified Goldstein that she had appointed faculty members Ron Christensen, Marilyn Reizbaum, Louisa Slowiaczek, and Calvin MacKenzie to the investigative committee. No findings from this committee have yet been reported.

Although Bowdoin is a private college not legally bound by the First Amendment, it is morally and contractually bound to honor its promises of freedom of speech for faculty members. Bowdoin’s *Faculty Handbook 2008–09* promises:

Free speech is a constitutional right in a democratic society and a cornerstone of intellectual life at Bowdoin. Members of the college community are encouraged to express their views on all matters including controversial, political issues in the public domain. Preservation of freedom of speech is a primary task of the College; the right to express both popular and unpopular views is to be protected. The College furthers this end best by serving as a forum where ideas may be debated and discussed.

As should be readily apparent, any honest reading of this admirable guarantee must conclude that Goldstein’s speech was entirely protected by Bowdoin’s explicit promise of free expression on campus. To argue otherwise would be simply unreasonable.

Furthermore, Goldstein’s speech in his paper is fully protected by every traditional understanding of academic freedom. Indeed, the *Handbook* states that “[t]he students and faculty of Bowdoin College belong to a community of scholars dedicated to the principles of free inquiry and free expression.”

Let us be clear: If Goldstein had not come to embarrassing conclusions in his paper and had not distributed his paper to the public audience (i.e., prospective students and their parents) he deemed most likely to be interested in his findings, it is difficult to imagine that Bowdoin would have investigated any of the claims filed and investigated by Judd. The fact that the complaints of research misconduct were both filed and assessed by Judd—the same person who originally intended to proceed against Goldstein on insupportable and fanciful grounds of “harassment”—makes the true purpose of this investigation abundantly clear, as does the fact that Judd did not make the choice to avoid a blatant conflict of interest by letting someone else assess the inquiry committee’s findings and recommendations. Choosing to investigate Goldstein for his paper sends a clear message to all faculty members who might reach similar findings: Embarrassing Bowdoin via scholarly research will lead to official investigation and threats of punishment.

Finally, we must note that Judd's vague requirement of "civility" would never pass muster at a public college bound by the First Amendment. FIRE can find no Bowdoin policy that mandates civility. The only mention of this term in the *Handbook* appears in an aspirational statement about nondiscrimination, harassment, and intimidation:

The students and faculty of Bowdoin College belong to a community of scholars dedicated to the principles of free inquiry and free expression. The College is also a community of men and women whose pursuit of knowledge and whose social relations should rest upon the ethical foundations of a free and humane society: tolerance, honesty and civility. An institution of higher learning, devoted in large part to the examination of human values, can realize its goals only when each of its members recognizes the dignity and worth of every other member, and when the community as a whole is willing to declare intolerable any act or statement that constitutes or results in the harassment or intimidation of another human being. Every student and faculty member at Bowdoin must maintain toward every other student and faculty member an unqualified respect for those rights that transcend differences of race, sex, or any other distinctions irrelevant to human dignity. When violations of those rights occur, Bowdoin will assume its responsibility to protect the members of the college community from discrimination and intimidation.

Goldstein's paper is clearly very far from harassment, intimidation, discrimination, or a violation of "human dignity." If debate on campus is to be robust and if Bowdoin is to be a true marketplace of ideas, persons on campus frankly need a thicker skin than those who would take umbrage when told to "[g]et lost" during a conversation. As Bowdoin history professor Patrick Rael wrote for *The Bowdoin Orient*:

Frankly, I think we should all grow up. "Civility" has become a code word for complacency, and complacency should not be catered to.

In civil society, free speech is not free. Its price is comfort—the very comfort we seem to prize above all else here at Bowdoin. Free speech guarantees that we will be made uncomfortable. A lively, intellectually-engaged community is one in which ideological conflict is not simply tolerated, but welcomed. "If we don't believe in freedom of expression for people we despise," writes linguist Noam Chomsky, "we don't believe in it at all." ...

The problem at Bowdoin is not that we lack civility, it is that we are too civil. At every lively campus in this nation, you will read strident voices from all parts of the political spectrum.... There will be crisis, chaos, anger, and pain. Such conflict is the secret to a lively intellectual climate. But here, the weather is dull, dull, dull. (133:20, April 16, 2004)

FIRE requests that Bowdoin end its investigation into Goldstein's paper. Please demonstrate to the faculty at Bowdoin that promises of academic freedom and freedom of speech are respected on campus. Since faculty members should not fear retribution for their academic work, we

further request that you announce to the faculty that their writings will never be investigated simply because of the conclusions they draw and the distribution of their findings.

We request a response by March 3, 2009.

Sincerely,



Adam Kissel

Director, Individual Rights Defense Program

cc:

Cristle Collins Judd, Dean for Academic Affairs

James Higginbotham, Associate Dean for Faculty Development

Scott Meiklejohn, Interim Dean of Admissions

William Torrey, Senior Vice President for Planning and Development and Secretary of the College

Jeffrey Ward, Director of Athletics

Scott Hood, Vice President for Communications and Public Affairs

William Barker, Isaac Henry Wing Professor of Mathematics

Steven Cerf, Professor of German

Ron Christensen, James Stacy Coles Professor of Natural Sciences

David Collings, Professor of English

Thomas Cornell, Richard Steele Professor of Studio Art

Deborah DeGraff, Chair, Economics Department

John Fitzgerald, Professor of Economics

Paul Franco, Professor of Government

Kristen Ghodsee, Associate Professor of Gender and Women's Studies

John Holt, William R. Kenan, Jr., Professor of the Humanities in Religion & Asian Studies

Jane Knox-Voina, Chair, Russian Department

Daniel Levine, Thomas Brackett Reed Professor of History and Political Science Emeritus

James McCalla, Associate Professor of Music

Scott MacEachern, Professor of Anthropology

Sarah McMahan, Associate Professor of History

Carey Phillips, Professor of Biology

Patrick Rael, Chair, History Department

Marilyn Reizbaum, Professor of English

Rosemary Roberts, Professor of Mathematics

Scott Sehon, Chair, Professor of Philosophy

Lawrence Simon, Chair, Philosophy Department

Louisa Slowiaczek, Professor of Psychology

John Turner, Professor of Romance Languages

David Vail, Adams-Catlin Professor of Economics

James E. Ward, Professor of Mathematics

William Waterson, Edward Little Professor of the English Language and Literature

Jean Yarbrough, Chair, Government Department