

May 7, 2004

Via Facsimile to 323-341-4921

Ms. Sandra A. Cooper, General Counsel
Occidental College
1600 Campus Road
Los Angeles, CA 90041-3314

Re: Jason Antebi

Dear Ms. Cooper:

I am extremely concerned about Occidental's decision to punish Jason Antebi for sexual harassment and your attempt to rely on the ACLU's position on unprotected harassment to justify that decision. I have reviewed the harassment complaints filed by Occidental students against Mr. Antebi for statements he made, as well as numerous statements you point to in your April 2, 2004 letter to Greg Lukianoff of FIRE, and it is clear to me that however crude or offensive some people might find them, they constitute protected speech.

As I am sure you know, Occidental is covered by the Leonard Law, Cal. Educ Code § 94367, which states in pertinent part:

No private postsecondary educational institution shall make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution of Section 2 or Article 1 of the California Constitution.

As a result, Occidental may not punish students for a wide variety of speech that many people, including Occidental students and professors, might find sophomoric, crude, or deeply offensive. *See, e.g., Cohen v. California*, 403 U.S. 15 (1971) (jacket stating "Fuck the Draft" protected by the First Amendment); *Hustler v. Falwell*, 485 U.S. 46 (1988) (holding that imposing liability for intentional infliction of emotional distress for parody ad that states that Jerry Falwell had his first sexual experience with his mother in an outhouse violates the First Amendment). Thus, for example, while you point to Mr. Antebi's describing Occidental as "such a socialism peddling cunt" as apparent support for the school's punishing him, the law actually forbids Occidental from punishing him for speech like that. Similarly, Mr. Antebi's statement that "anyone [who] buys into the nonsense that only whites can be racist should be murdered in their sleep by a santa suit wearing fat man," obviously does not constitute a threat that is unprotected by the Constitution's First Amendment. *See, e.g., Watts v. United States*, 394 U.S. 705, 707-08 (1969) (reversing conviction for violation of statute prohibiting threat to harm

