

Foundation for Individual Rights in Education

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Ted Mitchell, President
Occidental College
Office of the President
1600 Campus Road
Los Angeles, CA 90041

URGENT

Sent By U.S. Mail and Facsimile (323-259-2907)

Dear President Mitchell,

As you can see from our Directors and Board of Advisors, 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, freedom of religion, academic freedom, and—in the case of Jason Antebi—freedom of speech and expression on America's college campuses. Our web page, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned by the threat to free speech posed by the punishment of and continuing proceedings against Jason Antebi, a senior at Occidental College who is only weeks away from graduation. Simply because a radio program he hosted offended certain students, Mr. Antebi has been charged with sexual harassment, removed from his position at KOXY, Occidental's college radio station, and may now face removal from his position as vice president of policy for Occidental's student government, the Associated Students of Occidental College (ASOC). Occidental's administration must surely realize that if everything that anyone considered rude or offensive could be banned, we would all be reduced to silence. Nevertheless, Occidental College has aggressively pursued these punishments against Antebi based on his speech alone.

This is our understanding of the facts, based on numerous official documents, university minutes, and reports from students. We ask you to correct any misunderstanding of the facts, if any exists. Jason Antebi has been the co-host of a popular campus radio show called *Rant and Rave* for three years. *Rant and Rave*, like many college radio shows, relies on what some describe as a "shock jock" brand of bawdy and provocative humor, satire, and parody. The program mocks everything from the student government to popular social causes. On

Friday, March 12, 2004, Mr. Antebi was informed that a sexual harassment complaint was filed against him by several fellow students. Soon after, on March 16, Dean of Students Frank Alaya e-mailed Mr. Antebi to tell him that the administration had banned him from KOXY radio. By March 25, three sexual harassment claims had been filed against Antebi due to the content of his radio show.

Two of the complaints against Antebi were filed by rivals from the ASOC who believed that he had mocked them on the air. These two complainants, who had unsuccessfully attempted to have Mr. Antebi impeached from the ASOC on unrelated grounds earlier in the school year, alleged that the rude and insulting words Antebi used in his radio show and in the advertisements for his show constituted “hostile environment” harassment. Among the aspects of Mr. Antebi’s shows that the students complained about were Mr. Antebi’s insults of his own mother, his apparent mockery of some members of student government, statements that one complainant called “‘ad hominem’ satires,” and “disrespect and slander” against “women, diversity, and Occidental College.” The complainants even went so far as to report other ASOC senators who called in to “support” Antebi and “his comments.” The complainants clearly believed they had a right to punish Mr. Antebi due to the “offensive” and “demeaning” content of his radio program.

Occidental College’s moral obligation to guarantee its students’ free speech rights and to protect its students from censors is clear; its legal obligation to uphold First Amendment standards for speech under California Education Code Section 94367 (the “Leonard Law”) is indisputable. While removing a student from his position in the student media is highly suspect from a legal standpoint, Mr. Antebi is currently primarily concerned with avoiding any further punishment based on his viewpoint and expression.

The fact is that despite the stunning breadth of the three complaints against Mr. Antebi, none of them state a single claim that would transform Mr. Antebi’s speech from fully protected provocative speech to unprotected harassment. Fortunately for our society, the protection of the First Amendment does not end the moment satire

something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive. [Emphasis added.]

The OCR letter also explains that in order to qualify as sexual harassment under the law, the pattern of harassment “must be sufficiently serious (*i.e.*, severe, persistent or pervasive) as to limit or deny a student's ability to participate in or benefit from an educational program.” Indeed, Mr. Antebi’s radio show comes nowhere near the realm of sexual harassment, because in order for the complainants even to experience the allegedly harassing speech they would have to actively tune in to the show. By way of comparison, it is only common sense that someone who knowingly attends an R-rated film and finds the content objectionable does not have the right to have the film’s producers punished for “harassment.” Laws against harassment simply do not protect anyone who actively seeks to experience the allegedly “harassing” behavior.

While their charges of harassment have no basis in law or fact, the complainants are not without recourse. They are free to expose speech they see as offensive to the community, as they have done here. They are also free to bring their opinion of Mr. Antebi’s character to the student government, as they have done, and they are free to protest his views and expression in the student media and a variety of forums. What they are not free to do is to utilize the official power of Occidental College, a college bound by the standards of the First Amendment, to punish speech that offends them.

To be clear, highly offensive material, includi

