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May 6, 2004

Sandra Cooper

General Counsel

Occidental College

1600 Campus Road

Los Angeles, California 90041-3314

Dear Attorney Cooper,

When I initially received your April 2, 2004, letter defending Occidental College's punishment of Jason Antebi, I was appreciative of the apparent time and effort you had put into answering our concerns. When the Foundation for Individual Rights in Education (FIRE) states in our letters, "We ask you to correct any misunderstanding of the facts, if any exists," we are quite sincere. In fact, many of FIRE's cases have been resolved by an effective answer on the part of a university administration. Upon further review of your letter and research of your facts, however, my opinion is quite different. Your explanation of the facts is often demonstrably false, you include unsupported allegations of wrongdoing, and you misinterpret case law, OCR regulations and ACLU policy to such a dramatic extent I can only conclude that such actions were willful.

I find no small irony in the fact that, at a time when the FCC and corporate radio
seem to be in a (often dem)R

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Update

It is essential to note that since sending our letter Occidental has taken some remarkable steps, including:

- 1) On March 30, 2004, Occidental President Ted Mitchell announced that he had decided to dissolve ASOC (Associated Students of Occidental College—the Occidental College student government). As justification for this dissolution, he described various “examples of abusive, intimidating, harassing behavior that have no place on our campus” that were “masquerading as open expression,” as well as “an unacceptable number of complaints and cross complaints involving ASOC officials.” Although President Mitchell did not cite Jason Antebi by name, almost all of the reasons Mitchell gave for closing down ASOC related to the college’s accusations against Antebi. The dissolution of the student government means that the college administration has taken over some \$441,000 in student fees¹ that would usually be administered by the students’ elected representatives.
- 2) In a report dated April 12, 2004, Occidental Title IX officer Maryanne Cline Horowitz ruled that Antebi’s broadcast did constitute sexual harassment against his audience. Horowitz’s ruling was in response to sexual harassment complaints from three students who were offended by the content of Antebi’s *Rant and Rave* radio show, and the ruling included findings based exclusively on Horowitz’s own reaction to the content of Antebi’s radio show.

Summary

Upon a careful factual review of the assertions made in your April 2 letter and in Horowitz’s report, and after examining literally hundreds of pages of documentation in this case, I conclude the following:

- 1) **The factual assertions made in your April 2 letter grossly and systemically misrepresent the facts of this case.**
- 2) **The sexual harassment claims against Antebi are baseless. Antebi’s speech was not in fact unprotected harassment, but rather fully protected speech under the First Amendment and California’s “Leonard Law,” which binds Occidental College.**
- 3) **Occidental’s legal errors and factual misrepresentations were so gross that they are either intentional or are part of an unlikely series of extraordinary errors that coincidentally supported the college’s claim that it has engaged in no wrongdoing in its behavior towards Antebi.**

¹ The source for this figure is Stuart Silverstein, “Occidental suspends student government; The college president says ugliness in campus politics got ‘out of hand.’” *The Los Angeles Times*, April 2, 2004, page B1.

- 4) **If (as appears likely) these false statements were intentional, then this series of factual misrepresentations, baseless accusations, and legal distortions were likely an attempt to deter groups like FIRE and the ACLU from aiding Antebi in this case.**
- 5) **Far from succeeding, this strategy has only made FIRE more committed to protecting the rights of students on Occidental's campus from these extraordinary abuses of power. These abuses are made all the more extraordinary by the fact that they have been aided and abetted by you, an attorney, constrained not only by the requirements of academic freedom but also by the ethical codes of our profession.**

**Factual and Legal Errors and Distortions In Your Letter
and in the Findings of Maryanne Horowitz**

After carefully examining the allegations in your reply letter, I cannot help but conclude that your account of the facts in Antebi's case is so highly selective and misleading as to create an almost entirely false picture of how the present situation unfolded. The greatest problem is that you recount numerous incidents and alleged incidents out of proper chronological order and in ways that imply chronological and causal relationships that not only do not actually exist but also that, in some cases, reverse the true relationships.

In the paragraphs that follow, I will try to put your allegations into the proper sequential and factual context, as well as to provide any necessary clarifications of your description of the events in question. With the chronology thus straightened out, I will then address the legal issues.

The "Leonard Law" and its Protection of Free Speech Rights at Private Colleges and Universities in California

As a preliminary matter, it is helpful to quote California Education Code 94367, the so-called Leonard Law, which imposes First Amendment and free-speech standards on Occidental College.

"California Education Code 94367. (a) 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 or Section 2 of Article 1 of the California Constitution..."

Occidental's Leadership Retreat (August 2003)

The earliest distortion in your le

“blog,” meaning a web site which consists of successive time-stamped entries written by the author. LiveJournal sites differ from other kinds of blogs in that they are “online diaries,” expressing immediate and often private feelings and thoughts for public or semi-public viewing.) On page 1 of your letter, you provided an excerpt from this entry to support your contention that Antebi is “attempting with both words and actions to silence students who disagree with his political philosophy.” On page 2 of your letter, you characterized this entry as deserving a formal disciplinary response because it “labeled [his political opponents] all as people who ‘should be murdered in their sleep by a santa suit wearing fat man.’” The paragraphs you quoted, along with the relevant context from the entry, are as follows:

Retreat

I hated the "leadership" retreat in palm springs. It was filled with loser kids who are all peppy about getting nothing done. they'll sit and cheer and clap and try to motivate each other. it was pathetic.

the facilitators preached socialism and told us that only white people an be racist. i didn't speak the entire three days i was there. well i did say "i wasn't listening" when the facilitator asked me a question.

it was such a fucking joke. oxy is such a fucking socialism peddling cunt. it's all about brainwashing students and anyone buys into the nonsense of only whites can be racist, should be murdered in their sleep by a santa suit wearing fat man.[...]

Both of your readings of the entry take individual sentences completely out of context. First, this entry was posted more than two weeks before the September 5 deadline for students to indicate their intention to run for ASOC offices, so it is not even clear that Antebi would have known who his political opponents would be when he wrote it. Second, the other parts of the entry make it clear that Antebi was merely using vivid language to complain about a leadership retreat he disliked, not attempting to “silence” his future opponents or incite the Santa-suit-wearing fat men of the world to carry out nocturnal political assassinations. One would think that the reference to these Santa-Assassins would signal to an honest investigator that this speech was not, in fact, a threat, but rather a hyperbolic expression of derision.

“Token Black Girls,” ASOC Firings, and a Nasty Break-Up (November-December 2003)

On November 4, Antebi’s KOXY show aired a short segment entitled “Token Black Girls.” In your letter you claim that Antebi created this segment in order to taunt or punish two students whom he had recently fired from the radio station. **That allegation is patently false.**

The promo for the episode, which was sent out to theTw-0.9(relyiridn“n)]Td0.0004(r parts o(m)7-20.))TJET72

ASOC Senate meetings. In it, he denounced the ASOC Senate and stopped just short of calling them “fascists.” At the bottom of the e-mail, Campagna wrote, “KOXY: We get in trouble so you don’t have to.”

On February 10, Campagna’s e-mail was sent out to the entire campus as part of the Student Digest e-mail. After receiving the e-mail, several people, including Jason Antebi, complained to the station director about it. On February 12, Campagna resigned from his position at KOXY, stating, “It has become clear that the Station Director and I cannot trust each other and therefore can no longer work together. If I do not resign, Jennifer [the station director] will terminate me.” He lamented that “[his] presence has become incompatible with the new vision of KOXY,” and stated, “I take immense pride in what I have done for the station, the controversy and problems I have caused, and it has all made for Good College Radio. I will not apologize for any of this.”

While your letter correctly states that Antebi called for Campagna’s resignation, and also correctly states that Campagna was in favor of broadcasting student government meetings, you not only omit the fact that Antebi was not alone in calling for Campagna’s resignation, but you also omit the actual reason why Campagna resigned: there were serious conflicts between him and the station director over his refusal to apologize for sending an all-campus e-mail, under KOXY auspices, and that inflamed an already fractious relationship between the radio station and the student government. By failing to present all the relevant facts, your account has lied by omission, presenting a very misleading picture of the situation.

Problems Between Antebi and Student Government Advisor Ross Papish

he didn't feel like discussing it with him then. "Mr. Papish pretty much sealed the deal for me not wanting to ever be alone with him or deal with him again," wrote Antebi. "The only dealings I am mentally comfortable with are the ones that are necessary with eboard present, or with some email communications [...] I don't respect the attitude he gives me, nor do I respect the strategies he uses to get what he wants." Antebi continued, "He makes me uncomfortable. It's taken two years to get to this point. I've had problems with him the same way MANY others

discontent with my actions. She had explained how those recalling Jason Antebi had told her he said racial slurs, sexually harrassed women, and most importantly made disparaging remarks on Jews. I told her he was a Jew, and to my knowledge I have never heard anything racist, sexist, or blantly offensive come out of his mouth. She didnt buy it, and listed the things he had done, which to my knowledge were completely false.

Antebi has told us that he was aware that the letter was being written and by whom it was sent, but he did not set up the arrangement and was not involved in writing the letter. If you have documentation that contradicts this, I would encourage you to produce it.

Moreover, the descriptions of the petition process above suggest that the letter, regardless of its

Your letter describes Antebi's March 11 KOXY broadcast in detail and suggests that it violated the federal Drug-Free Schools and Communities Act. It then alludes to the sexual harassment complaints that three students filed against Antebi after hearing the March 11 broadcast by embarking on an extended discussion of harassment, free speech, and hate speech. I will deal with the legal validity of what you say later; for now, I will focus on filling in the necessary background information that you left out of your letter.

As you know from your conversations with him, Antebi complained to various administrators multiple times about his door being vandalized by recall petition supporters, and also about **Female ASOC Complainant** and **Male ASOC Complainant**⁶ using the newspaper and the student digest to "spread lies about me." In February, he sought to file a harassment complaint with Dean Frank Ayala. You and Dean Ayala had meetings with Antebi to discuss his complaint, during which, according to Antebi's recollection, you told him that his complaints did not constitute harassment, that the college administrators were not his parents, and that he would have to fight his own battles with these students. Even if Antebi's recollection of the exact things said during the meeting is flawed, it is clear that there was no full-scale investigation of his claims. This is significant in light of the college's disciplinary response to his March 11 broadcast.

On March 11, Antebi and his co-host broadcast a show in which they promised to "get really trashed" and to "make fun of Dan and Vander Douche." During the show, both students pretended to take Vicodin (a prescription pain reliever)⁷ on the air, made insults to various people including Antebi's own mother, and detailed the adventures of a character named "Vander Douche" who was "half man, half vagina." The Vander Douche character was an obvious parody of **Male ASOC Complainant**, one of the senators who had unsuccessfully pushed for Antebi's recall and made various accusations against him in the school newspaper. Even if Antebi's remarks were not parody, they would be protected speech, but as parody they are part of a long tradition of parodic speech that has received extraordinarily strong protection by the U.S. Supreme Court. Indeed, in the case of *Hustler Magazine, Inc et al v. Jerry Falwell*, 485 U.S. 46 (1988), you will see that the Supreme Court justifies its protection of parody not *despite* its ability to wound its objects and targets, but precisely *because* of its power to do so. You are seeking to ban sharp parodic speech precisely because it contains the elements that, according to the Supreme Court, call for its heightened protection.

In your letter, you describe these admittedly sophomoric antics as possibly running afoul of the Drug-Free Schools and Communities Act and of contributing to the college's decision to take disciplinary action against him. Indeed, later that month, Antebi received notice that three sexual harassment complaints had been filed against him because of the March 11 show. All three complaints were filed by people who had unsuccessfully pushed for his recall the previous

⁶ All complainants' names have been changed to protect their identity from further unnecessary dissemination. FIRE's concern i497 TD7(t h65 0 T)e otity fromndisciplb003 Twb003 C adrthec-0.0c-0.0003 Twg T

month, and two of the complainants were the *very same* student government officers whom Antebi had accused of harassing *him* during the recall campaign.

The first complaint, by **Female Complainant**, was very short. It described how she was “horrified, hurt, terrified, offended, and left utterly speechless” by the way in which Antebi insulted his own mother, insulted the student newspaper editors, asked sexual questions of a Seven-Eleven employee, and mocked the upcoming Take Back the Night event. She listed no cause for her complaint other than having been offended.

The second complaint, by **Female ASOC Complainant**, was much longer and more detailed. In addition to describing and analyzing the elements of the show which had also offended **Female Complainant**, **Female ASOC Complainant**’s complaint noted the insulting nickname Antebi had allegedly created for her: “Sam the bearded feminist.” She concluded her complaint by making the remarkable argument that Antebi’s radio show should be considered *more* harassing than a personally harassing communication: “By disseminating his comments over the air and the internet, Antebi inevitably contributed to a hostile environment, not just for me and [**Male ASOC Complainant**] but for women at Occidental College and everywhere.”

In the third complaint, **Male ASOC Complainant** described the “Vander Douche” character on Antebi’s show and stated his claim for relief thusly: “For the last month, I have had to bear constant public sexual ridicule. All my friends have seen Jason Antebi’s statements in the Student Digest. Some heard his comments on the radio. I have to walk around campus every day wondering who is laughing at me for being the ‘Vander Douche,’ looking like a vagina, and spreading jokes of what I have up my ass.”

Antebi’s earlier complaint against **Female ASOC Complainant** and **Male ASOC Complainant** was properly dismissed as a matter for the free marketplace of ideas to resolve. By any reasonable and lawful definition of sexual harassment, the three students’ harassment complaints should have met the same fate. Yet the college decided to go ahead with a full-blown investigation against Antebi less than a month after it refused to do the same for Antebi’s complaints against the two ASOC members who complained. (Indeed, Horowitz’s findings, issued on April 12, 2004, reached the remarkable conclusion that the March 11 show was literally an “assault” on women that created a hostile environment for women and those who support them.)

There is a double standard at work here. Occidental’s recent production of the Vagina Monologues was permitted to use sexually explicit terms that many people would find offensive (for instance, “Cum to the Chapel to Pray” and “I would eat my pussy if only I could. Yum” were among the phrases that appeared in the advertisements for the Monologues at Oxy). The recall petitioners were allowed to call Jason Antebi, who is Jewish, a racist and an anti-Semite. And Antebi’s co-host was allowed to say many of the same offensive things as Antebi himself did. But when Antebi himself used sexually explicit humor on his radio show and used insulting nicknames for his political opponents, he suddenly became the subject of an aggressive sexual harassment investigation that forced him out of the KOXY radio station and made it extremely difficult for him to perform his duties in the ASOC Senate.

Claim that Antebi Excluded the Complainants after Harassment Claims Were Filed

On March 15, Title IX officer Maryanne Horowitz instructed Antebi to “refrain from all contact, physical and electronic, with [**Female ASOC Complainant**].” When he asked, “How is she supposed to come to Senate when I’m the one who runs the meetings? Or am I prohibited from going to Senate meetings now?” Horowitz made the eyebrow-raising suggestion that Antebi and the complainants “alternate attendance while the investigation proceeds.”

Given the extremes to which Horowitz was willing to take this “no contact” directive, it is not surprising that Antebi decided to obey Horowitz’s command by removing **Female ASOC Complainant** from the unofficial e-mail list which Antebi used to make announcements to other student government officers. He was, after all, told to cease *all* contact with her. When, on March 22, Horowitz then instructed him to include **Female ASOC Complainant** in “all notices you send to the Occidental College student body, to the Senate, to committees on which she serves,” Antebi decided to deal with the apparently contradictory instructions by deleting his e-mail list and not sending *any* such notices to *anyone*. He did, however, have difficulty deleting the list, so he e-mailed and later called the computer center (ITS) for assistance.⁸ During the time when it was being deleted, Antebi did not use the listserv.

On page 2 of your letter, you describe this process as follows: Antebi “unsubscribed those in student government who disagreed with him from the student government list serve, told College administrators that no such list existed, and then, within minutes, contacted the computer center asking frantically for help in eliminating the list serve from the College’s email system.”

Your description presents Antebi’s fully understandable attempt to comply with seemingly contradictory duties as a wanton and hostile act. Antebi removed **Female ASOC Complainant** (**Male ASOC Complainant** had not yet filed his complaint) from his e-mail list not because he disagreed with her, but because he was attempting to comply with the Title IX officer’s instruction that he “refrain from all contact, physical and electronic” with her. Upon receiving contradictory instructions, he then deleted the e-mail listserv entirely. If there had been fewer distortions of this nature I might be more inclined to believe you were simply unclear on your facts, but the sheer number of misrepresentations intended to bolster your position indicate to me that Occidental’s case against Jason Antebi is far weaker than you would have the public believe.

Other Accusations

On page 2 of your letter, you state that Antebi “opined that he hated the elected representative of the College’s Women’s Center, and labeled her by name, a ‘cunt.’” You also state that Antebi suggested his political opponents “should ‘be tarred and feathered’ on a campus web page.” I

⁸ I do not have access to ITS calling records, so I am unable to identify the exact intervals between Antebi’s various communications with ITS. Antebi tells me that it was about a week. This suggests that your characterization of Antebi’s call a3(acte)TJ0 -fvvI1.396(o)(unagcal.0011s4 Tc-0.002-0.agcal.00IceIss TD0.deIfTgcal.Ou)6(su-4.c220.al.00Ich011s4 .del

am unable to find any documentation of either event. Nevertheless, as I will discuss later in my letter, both comments are protected speech.

On page 2 of your letter, you allege that Antebi “subscribed them [his political opponents] to ‘spam’ of all sorts, using campus computers.” Since you did not provide any documentation of this, and because the other assertions you have made which I have been able to fact-check turned out to be false or misleading, I am extremely skeptical of this assertion.⁹

On page 3 of your letter, you state: “The college is investigating the following:

- “Middle of the night sexual telephone calls placed to women who reside at the Campus Womens’ Center, who are also identified by Antebi in his various publications and radio broadcasts at ‘bitches’ ‘whores’ and ‘cunts’
- “Anonymous emails to members of the gay community at the College, alleging that these same women are ‘outing’ them
- “Defaced brochures in the student union advertising programs at the Womens’ Center with the words ‘cunt’ ‘bitch’ and ‘pussy.’
- “Two tires on a vehicle in the Womens’ Center parking lot were disabled, one by an apparent slashing, another by a screw that appeared to have been inserted.
- “Loud labeling by Antebi, of two of these same women as ‘bitches,’ as they crossed the campus to collect their mail.”

What I find significant about this list is that at the time of your letter Antebi had been formally charged with none of these offenses. It seems to have been just thrown in, as if it were okay to baselessly insinuate a student’s involvement in vandalism and other criminal acts. I suspect that ses. Itseabi in

In our letter we wrote, “While removing a student from his position in the student media is highly suspect from a legal standpoint, Antebi is currently primarily concerned with avoiding any further punishment based on his viewpoint and expression.” I believed this was clear enough indication that FIRE did not intend to pursue the firing of Antebi from his radio show. In your response you claimed, “The issue in this matter is not whether Occidental has infringed on Antebi’s free speech rights. It is whether the college is required to sponsor a forum to facilitate Antebi’s behavior, which includes hate speech as defined by both state and federal law, in his attempts to silence the speech of others.” Your characterization of the issue here is, like much of your letter, wrong. Occidental is going far beyond defending its choice not to sponsor a forum for Antebi; Occidental is attempting to punish him as a student for the content of a radio show, and has decided to dissolve the student government. If your statement had been true, and all that Occidental wanted to do was remove a host from his radio show, Antebi and FIRE would not be so concerned about this case.

While we are on the topic, however, it is important to note that Antebi was fired by the Dean of Students over the strong and principled objections of the student directorship of KOXY. I urge you to read the excerpts from the student director of KOXY Jennifer Clasen below. Her insightful objections apparently fell on deaf ears. The firing of Jason Antebi and the dissolution of the student government demonstrate a pattern of profound disrespect for student autonomy and decision-making at Occidental.

**From the Letter to Dean Ayala from Jennifer Clasen, 3/22/2004, Director of KOXY
Objecting to the Firing of Jason Antebi**

...Mr. Ayala, in all due respect, I wholeheartedly disagree with your decision to remove Antebi's show from the KOXY programming schedule...

Every week the newspaper publishes articles that cause backlash and at times, even outrage. However, it is understood that everyone is entitled to their opinion and that has to be respected. Additionally, if an individual is really dissatisfied with a perspective presented in the paper, they have the opportunity to publish their own opinion in various sections of the paper. The same opportunity is available at KOXY. If students disagree with the content of a show, they are more than welcome to come down to the station and present their own point of view. It is not appropriate, however, to shut down someone's program because a small minority of individuals are made uncomfortable. Again, this is a chance to create dialogue and debate. I assure you, that these issues will not die because Antebi's show is cancelled. On the contrary, they will begin to fester...

The beauty of radio is that when you don't like what you're listening to, you can turn the dial. For Antebi's show, people keep the dial on 104.7. We do not censor, and I'm not endorsing or enforcing your decision against Antebi because I feel something of a personal nature may be involved with this complaint that, for some reason, never went through KOXY.

The Sexual Harassment Claims

In our letter, we explained the sexual harassment claims against Antebi thusly:

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 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 Antebi's shows that the students complained about were 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'

I would like to quote again the July 28, 2003, letter from Assistant Secretary Gerald A. Reynolds of the U.S. Department of Education's Office for Civil Rights (OCR):

[I]n addressing harassment allegations, OCR has recognized **that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment** under the statutes enforced by OCR... Some colleges and universities have interpreted OCR's prohibition of "harassment" as encompassing all offensive speech regarding sex, disability, race or other classifications. Harassment, however, to be prohibited by the statutes within OCR's jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive. [Emphasis added.]

Again, the complaints against Antebi state little more than that Antebi's speech was offensive to some members of the Occidental College community. When a radio host sets out to challenge a community's sense of politeness or decorum, he or she is engaging in protected speech. Institutions of power are not allowed to do an "end run" around such protections by reclassifying "offense" as "discrimination."

2) The discrimination must be "because of sex"

As should be common sense, sexual harassment cannot be said to have taken place if there was no discrimination on the basis of sex. Otherwise merely rude speech could be punished in almost every circumstance. Title IX's prohibition of "discrimination" "on the basis of sex" is interpreted as equivalent to Title VII's prohibition on "discriminat[ion] ... because of ... sex."

Horowitz's finding strains itself to the point of absurdity in order to turn Antebi's omnidirectional jokes into discrimination on the basis of sex:

a) "Vander Douche"

The complaints and Horowitz's finding make much of Antebi's reference to a figure named only as "Vander Douche." The complaint of **Male ASOC Complainant** is primarily focused on the use of this insulting nickname. FIRE has collected information that indicates that this unfortunate nickname for **Male ASOC Complainant** is actually quite common and that its use preceded Antebi's radio show. Unfortunate and derisive nicknames for students and campus student officials are nothing new, and many students have to put up with being labeled things far worse than "Vander Douche."

The nickname is clearly intended as a mockery of the student's name and a personal insult; however, Horowitz's report has concluded that this is both sexual and ethnic harassment:

Similarly, he applied hostile sexual and gender epithets and ancestry/country of origin to the Dutch name of [**Male ASOC Complainant...**], Mr, Antebi turns [**his last name**] into "Douche," an instrument designed for women to utilize for vaginal cleansing, and Antebi states 'And Vander Douche who looks like a

vagina.’ Thus, Antebi, an officer in the ASOC, distorted the imagined face of a fellow student, attributing to him a female body part in location suggestive of oral sex.

This, frankly, is one of the strangest paragraphs I have seen in my time as an attorney. The conclusion that this is “suggestive of oral sex” is extremely strained (not to mention bizarre), and at no point indicates that Antebi’s use of the student’s unfortunate nickname was on the basis of sex.

Antebi and this student are political rivals; indeed, **Male ASOC Complainant** was one of the students who attempted to have Antebi dismissed from student government. You may not like his nickname or the fact that Antebi is rude to this student, but his political and personal disagreements with him do not transform this into harassment “because of sex.” Fortunately, there is no equivalent form of punishable “offense on the basis of political and personal dislike.” If there were, all of Washington, D.C., could be arrested.

One of the Multiple Letters Indicating the Pervasiveness of the “Vander Douche” Nickname

My name is Jeremy Gruber and I am a freshman at Occidental College in Los Angeles, California. The reason for this e-mail is to explain occurrences on campus regarding the "naming" of [**Male ASOC Complainant**] and the radio show hosted by Jason Antebi titled "Rant and Rave". It is to the best of my knowledge that [**Male ASOC Complainant**] 's campaign posters depicted his running for the position of Residence Hall Representative, posted mainly in Chilcott residence hall where he resides, had been written over in permanent marker with nicknames such as "Van Der Douche" a

basis of political difference. As for his use of the term 'bitch,' not only does case law firmly establish that the use of

these are clearly punishable acts”) indicates that the ACLU is talking about a directed pattern of behavior that invades a student’s personal realm at improper times, in inappropriate places, and/or in a directed and persistent manner. Both FIRE and the ACLU agree that these sorts of behaviors—most similar to stalking or common law harassment—are punishable. However, mere televised or broadcast insults do not rise to this level.

Also, as someone who has consulted with the Office of Civil Rights, I am exceedingly confident that the OCR would not deem Antebi’s behavior harassment. In fact, the very reason why the OCR issued its July 18, 2003, letter was to prevent the rampant and pervasive abuse of the legal concept of “harassment” to punish clearly protected speech.

The Speech in Question is, in fact, Clearly Protected Speech

Antebi’s performances on *Rant and Rave* are not merely outside of the legally punishable definition of harassment; they are also well *inside* the category of protected speech which Occidental is obliged to honor under the Leonard Law.

- 1) *Rant and Rave* was Parody and Satire

If you are only going to listen to ONE KOXY show this year... tune into another show, but if

To be clear, highly offensive material, including profanity, is fully protected under the First Amendment. We strongly encourage you to read the landmark U.S. Supreme Court cases *Cohen v. California*, 403 U.S. 15 (1971), and *Hustler Magazine, Inc. et al. v. Jerry Falwell*, 485 U.S. 46 (1988). In *Cohen v. [redacted]*, the Court ruled that *the Court ruled that Vietnam*

in mocking “Take Back the Night” he was, in part, being “ironic.” He points out “most of my friends who listen know I was a member of a committee that helped plan the Take Back the Night meeting the year before as well as push for the school to adopt a better sexual assault policy, when I served as a senator.” This is confirmed in a letter to FIRE by Jeremy Glatstein, founder of Occidental’s *Sons and Brothers* club, describing Antebi as “an invaluable ally and friend” who fought “to institute a Zero-Tolerance policy for sexual assault both inside student government” and who led by example, “attend[ing] *Take Back the Night* as well as multiple events during *White Ribbon Week*.”

Regardless, whether Antebi’s remarks were merely intended to shock, mock his own loudness, or to simply be ironic, his speech was protected.

Judging from Occidental’s impression of a First Amendment of fairly limited scope, I think you would be surprised at the range of speech that the Supreme Court has deemed to be protected. In *Terminiello v. Chicago*, 337 U.S. 1 (1949), the Court reversed a disturbing-the-peace conviction of a notorious racist and anti-Semite. Justice Douglas wrote that speech is protected even when its purpose is to “induce a condition of unrest, create dissatisfaction with conditions as they are, or even stir people to anger.” In another important civil rights case, *Gooding v. Wilson*, 405 U.S. 518 (1972), the Court reversed the conviction of a citizen who called a police officer a “white son of a bitch” and added “I’ll kill you.” In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), the Court ordered the reinstatement of a journalism student who had distributed a cartoon depicting policemen raping the Statue of Liberty and the Goddess of Justice. **The Court held that “conventions of decency” did not dictate what speech was protected on a public college campus.**

3) Viewpoint discrimination

As noted above, Antebi himself attempted to file a harassment claim that was certainly no more frivolous than the three complaints listed above. However, while Antebi’s claim was summarily dismissed, the complaints against Antebi were not only allowed to proceed, but he has actually been found guilty by Horowitz’s report.

In your letter you state that the Supreme Court case of *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992), is not applicable to this case, as if you were refuting a case I had mentioned (I did not, in fact, mention it). You go on to state “Indeed, FIRE has attempted to do exactly what Justice Scalia found unacceptable in R.A.V. v. City of St. Paul: ‘[L]icense one side of a debate to fight

The implication seems to be here that Antebi's speech made these crimes possible or more likely. This echoes the "bad tendency test" of the early twentieth century that allowed courts to punish any speech that they could conclude had a tendency to result in eventual bad behavior. (Please

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