



Foundation for Individual Rights in Education

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December 4, 2009

President Rev. Jeffrey P. von Arx, S.J.
Office of the President
Fairfield University
1073 North Benson Road
Bellarmine Hall 123
Fairfield, Connecticut 06824

Sent by U.S. Mail and Facsimile (203-254-4292)

Dear President von Arx:

The Foundation for Individual Rights in Education (FIRE; www.thefire.org) 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, freedom of conscience and religion, and freedom of association on America's college campuses.

FIRE is deeply concerned about the dire threat to freedom of expression and freedom of the press posed by Fairfield University's decision to pursue harassment charges against *The Mirror*, Fairfield's independent student newspaper, following the recent publication of a satirical column.

The following is our understanding of the facts. Please correct us if you believe we are in error.

The Mirror is an independent student-run newspaper, receiving some funding (roughly \$30,000) from Fairfield University pursuant to a contractual agreement (the "Mirror Funding Agreement"). In its September 30 issue, *The Mirror* published a "He Said" column entitled "The walk of shame." The piece, an installment in a long-running "He Said/She Said" dueling op-ed series, was authored by student Chris Surette and featured sophomoric, crude "advice" to male students about how to treat a woman following a sexual encounter.

The response to Surette's piece on campus was immediate and overwhelmingly negative. The ensuing protests prompted *Mirror* Editor-in-Chief Tom Cleary to issue an extensive response a day after the column was published. Cleary sought to explain the tone of Surette's piece, noting that

Surette was “playing the role of a character, a satirical, stereotypical college man.” Cleary also explained that “He Said” is “a satirical column in nature with the goal of being outrageous and over the top” and is thus “bound to offend some members of our campus community.” Finally, Cleary emphasized *The Mirror*’s independence:

The Mirror has a goal of providing a voice for the students, but as an independent publication that simply sells the papers to the University, we are under no obligation to print what the administration or the student body as a whole wants to hear. We receive no funding from tuition or student fees and have no oversight from any member of the administration or faculty. As editor in chief, I have the final say over what content goes into the paper each week.

At the same time, we encourage this sort of lively discussion. It is important for members of the campus to be passionate about topics, even if they are attacking something in our paper. We would rather you write to us and tell us what you see wrong, than stay silent.

Cleary’s note did not quell the outcry prompted by Surette’s column. On October 7, in response to continuing protests, *The Mirror* announced changes to the “He Said/She Said” column, including “restructuring it and being more considerate to all and any possible interpretations,” as well as “updat[ing] our Code of Procedure to include a section about ‘He Said/She Said’ to ensure that future columns will not include divisive or offensive language.”

Despite these changes, the controversy surrounding Surette’s column continued unabated. On October 9, Associate Vice President and Dean of Students Thomas C. Pellegrino wrote Cleary, informing him that both Surette’s column and another section of the publication (“Fairfield FML and Texts from last Night,” a selection of ribald text messages and commentary) failed to “comport or comply with the guidelines and standards set out in the Code of Ethics and/or Code of Procedure which are incorporated into the Mirror Funding Agreement for the Academic Year 2009-2010.” As such, Pellegrino wrote, the Agreement was now null and void. However, Pellegrino granted *The Mirror* thirty days to “take the following actions in order to ensure that provisions and structures are in place to help mitigate against future incidence [sic] such as those prompting The Mirror’s most recent apology and acknowledgements”:

Provide me with your proposal for a revised Code of Procedure and/or Code of Ethics that you would ask be made part of a revised funding agreement;

Per your release statement from this week, articulate a system for monitoring the editorial staff to ensure that these standards are adhered to; and

Provide me with your evaluation of advisement for The Mirror.

Further, a campus-wide e-mail announcement sent by university administrators on November 5 stated in part:

As the University signatory on [the Mirror Funding Agreement], Associate Vice President and Dean of Students, Dr. Thomas Pellegrino, advised *The Mirror* in writing that the content contained in various sections of the Coffee Break page were in violation of the ethical and procedural guidelines of the current funding agreement. As such, the current funding agreement is null and void.

In a November 11 response to Pellegrino's letter, Cleary disagreed with Pellegrino's contention that the funding agreement had been nullified due to non-compliance with the Code of Ethics and the Code of Procedure. Cleary wrote:

No section of the Ethics Code or Code of Procedure ties *The Mirror* to the student handbook. Therefore any alleged violation of the student code relating to sexual harassment would not result in the contract being broken. As an independent organization, *The Mirror* should not be held to any student conduct codes or be subject to disciplinary proceedings. The internal Ethics Code/Code of Procedure applies to *The Mirror*, therefore there is no reason for the student codes to apply.

The Fairfield Mirror Code of Ethics section on Sexual Harassment applies directly to inner-office relationships and the conduct of staff with their peers. It has no influence on the print product and therefore does not apply.

According to the Code of Procedure, *The Mirror* follows the guidelines laid forth in the AP Stylebook in regards to profanity. This style applies directly to news stories when profanity and obscenity is used in an article. The AP Stylebook provides guidelines only for how to use quotations that include profanity or objectionable content. In addition, the Code of Procedure allows leeway for Mirror editors to deviate from the AP Style. "*The Mirror* reserves the right to change its own style in regards to profanity and libelous material, but should strive to follow the guidelines of AP style even in a deviation." This is the normal procedure for newspapers. I.E. The New York Times uses AP Style guidelines, but has a completely separate style guide that at times goes against AP Style. *The Mirror* does not apply AP Style obscenity guidelines to columns, as that does not apply. Instead, *The Mirror* follows its own procedure in terms of columns. In that case, the code of procedure states: "*The Mirror*, as a strong proponent of the First Amendment of the Constitution, does not believe nor condone censorship. As stated, however, editors reserve the right to edit an individual's work— whether objective or subjective

pieces – but content shall generally not be removed simply because of a difference of opinion.”

Despite this disagreement, Cleary and *The Mirror* performed Pellegrino’s requested reviews “as a sign that we have truly learned from this experience and want to move forward and use this opportunity to make our newspaper stronger.” Cleary and his fellow managers evaluated their advisement, which they deemed “extremely successful,” and proposed further changes to *The Mirror*’s procedures, including the addition of an advisory board.

However, Cleary’s response to Pellegrino on behalf of *The Mirror* was apparently too late to prevent Fairfield administrators from allowing disciplinary procedures to be initiated against *The Mirror* and its staff. On November 9, just two days prior to Cleary’s response, Pellegrino met with *Mirror* staff and requested that the paper’s editors appear in a hearing before a student conduct board to answer charges of harassment brought by four offended students. The students claim that they were “personally harassed by *The Mirror*’s printing of offensive language in the Oct. 1 ‘He Said’ column.”

Despite receiving letters expressing grave concern from the Society of Professional Journalists and College Media Advisers, FIRE has learned that Fairfield is nevertheless proceeding with a hearing on the harassment charges against *The Mirror*. This is a deeply troubling development.

As a private, sectarian university, Fairfield is of course not directly bound by the First Amendment’s guarantee of freedom of the press. However, the university has a moral and contractual obligation to honor its promises to its students, including its extensive promises of free expression. As you know, Fairfield’s Mission Statement makes clear that the university “values each of its students as an individual with unique abilities and potential, and it respects the personal and academic freedom of all its members.” Fairfield’s Student Handbook renders the school’s commitment to freedom of expression clearer still, informing students that at Fairfield, they are “free to examine and discuss all questions of interest to them and to express opinions publicly and privately.” Further, the Student Handbook states that:

As an academic institution, Fairfield University exists for the transmission of knowledge, pursuit of truth, development of students, and the general well-being of society. **Free inquiry and free expression are indispensable to the attainment of these goals.** Fairfield University recognizes that academic freedom, freedom of expression, and responsibility are required to realize the essential purposes of the University. [Emphasis added.]

It is extremely difficult to reconcile these admirable commitments to free expression with Fairfield’s actions in the present case.

While the Handbook notes that these robust promises of free expression are not without limitations—per the “Student Responsibilities” section, students must not “interfere[e] with the freedom of expression of others” or “threaten the safety or security of others,” but must instead “respect the rights and beliefs of others, including the values and traditions of Fairfield University as a Jesuit, Catholic institution,” “support learning,” “engage others in a respectful dialogue,” and “comply with all University policies prohibiting harassment”—none of these limitations can fairly be said to be applicable to the supposedly actionable content published by *The Mirror*.

Given that *The Mirror* faces harassment charges, FIRE presumes that Fairfield is proceeding on the assumption that Surette’s column is punishable because it falls within the harassment exception noted above. But printing a satirical column, no matter how objectionable to some, is in no way tantamount to “harassment.”

Fairfield’s harassment policy reads:

Abuse and harassment include offensive behavior that interferes with a person or group’s educational status or participation in campus activities, or which creates a hostile academic, social, or living environment. Prohibited behaviors include threatening or offensive letters, use of threatening or demeaning language in any form and through any medium, vandalism or graffiti to student residences, and stalking or aggression relating to dating relationships.

Since this policy reasonably tracks federal harassment regulations, you should be aware that the Office for Civil Rights of the United States Department of Education clarified in a July 28, 2003 open letter to college administrators that harassment is legally understood to require “something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.” Rather, to legally constitute “hostile environment harassment,” the behavior in question 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.” This exacting legal standard, announced by the Supreme Court in *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 652 (1999), achieves an elegant balance between protecting students from true harassment and protecting student speech from undue censorship. FIRE asks that you allow this wise standard to guide your decision here.

Otherwise, by disregarding the principled balance enshrined in the *Davis* standard and punishing merely offensive speech, Fairfield will trivialize actual harassment and teach students an unfortunate and illiberal lesson: namely, that the proper way to react to speech with which one disagrees is by reporting it to authorities for official punishment and censorship. Having received their diplomas and entered the proverbial “real world,” however, Fairfield students will be disappointed to realize that the illusory “right not to be offended” that Fairfield seems intent on providing them in this instance does not exist.

Again, Surette's column cannot possibly be construed as harassment. Offended students, after all, were under no duty to read *The Mirror*. Indeed, rather than "harassment," Surette's column is an obvious exercise in parody and satire, areas of speech central to many of our country's honored political and social traditions. Parody and satire exist to challenge, to amuse, and even to offend. Such material is protected under the First Amendment and should likewise be protected at a university like Fairfield, which claims to respect its students' right to free expression. If speech like Surette's column is considered outside of the parameters of protected speech at Fairfield, then no expression is safe.

Prior to learning that disciplinary charges would be heard against *The Mirror*, FIRE was encouraged to read the comments you made to the student body in a campus-wide e-mail sent on October 8. You wrote:

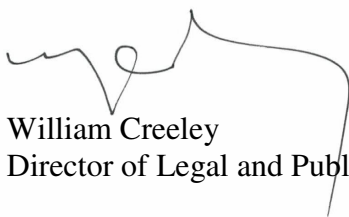
As a University, Fairfield will always support the free exchange of ideas. A willingness to accept and encourage the unfettered flow of opinions, ideas, and modes of expression is, and should be, a hallmark of a Jesuit education. This is our disposition because we believe that what is true and good will inevitably be revealed when there is an open exchange of views, provided that all the parties involved are committed to certain fundamental values — and those include a commitment to uphold and defend the dignity of the human person.

This laudable statement of principle gave us hope that Fairfield's response would serve as a model for how universities and students alike must deal with offensive expression: not with censorship, but with more expression; not with frivolous disciplinary charges, but with still more debate and discussion. Unfortunately, our hope has thus far gone unrealized, but there is still time to rectify the situation. While the complaints against *The Mirror* should have never progressed to a hearing—there is nothing to adjudicate in this matter—Fairfield must now drop the charges against *The Mirror* and its staff and should inform offended students that the answer to an objectionable column is a well-reasoned letter to the editor, not baseless harassment charges.

For Fairfield's commitment to free expression to be at all meaningful, the impending hearing must not result in sanctions against *The Mirror*. Indeed, we urge Fairfield University to reject any possibility of punishment for *The Mirror* for publishing satire. We further ask that Fairfield University take its commitments to a liberal education and the encouragement of "[f]ree inquiry and free expression" seriously and work to assure its students that freedom of expression is to be celebrated, not feared.

FIRE hopes to resolve this situation amicably and swiftly. Nonetheless, we are committed to using all of our resources to oppose the punishment of *The Mirror* or any other campus publication punished for engaging in protected expression. Given the urgency of the matter before you and the imminence of the hearing, we request a response on this matter by December 11, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Creeley', with a long, sweeping horizontal line extending to the right.

William Creeley
Director of Legal and Public Advocacy

cc:

Mark C. Reed, Vice President of Administrative and Student Affairs

Thomas C. Pellegrino, Associate Vice President and Dean of Students

Sally Renaud, President, College Media Advisers

Frank LoMonte, Executive Director, Student Press Law Center

Joe Skeel, Executive Director, Society of Professional Journalists

Tom Cleary, Editor-in-Chief, *The Mirror*

James Simon, Adviser, *The Mirror*