



Foundation for Individual Rights in Education

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November 30, 2006

President Mary Reap, IHM
Office of the President
Marywood University
2300 Adams Avenue
Scranton, Pennsylvania 18509

Sent via U.S. Mail and Facsimile (570-340-6014)

Dear President Reap:

Thank you for your response to our inquiry of September 19, 2006. We appreciate your thoughtful consideration of the points made in our letter and the timely nature of your reply. We write again today to address certain statements made within your letter, as they raise further questions about the state of speech at Marywood. We hope that through continuing this dialogue with you, FIRE can help Marywood work toward creating an environment in which students and professors feel free to express opinions and engage in dialogue without fear and without being rebuffed.

FIRE is concerned about the implications of your characterization of the Mohammad cartoon as “hate speech,” as expressed in the first sentence of the fifth paragraph of your letter: “My recommendation considered both the faculty member’s right to free speech, and the rights of others on our campus not to be subjected to hate speech.” FIRE strongly believes that Professor Frederick Fagal’s posting of the cartoon in no way constituted “hate speech.” Rather, it was an attempt to inform Marywood community members about a topical global controversy. Indeed, the Mohammad cartoon is arguably the most historically significant editorial cartoon of all time, as editorial cartoons often reflect—but rarely provoke—global strife. If it cannot be discussed at our nation’s institutions of higher learning, we do our national dialogue a great disservice.

Although Marywood is a private university and not bound by the First Amendment, it is important to recognize that there is not now, nor has there ever been, a judicially recognized hate speech exception to the First

Amendment. The First Amendment fully protects speech that many may find offensive, unpopular, or even racist. The U.S. Supreme Court stated the general rule regarding “hate speech” eloquently in *Texas v. Johnson*, 491 U.S. 397 (1989), in holding that the government “may not prohibit the verbal or nonverbal expression of an idea merely because society finds the idea offensive or disagreeable.” Federal courts have consistently followed this holding when applying the First Amendment. For example, while invalidating sanctions placed on a fraternity for holding an “ugly woman contest,” a federal district court held that “[t]he First Amendment does not recognize exceptions for bigotry, racism, and religious intolerance or ideas or matters some may deem trivial, vulgar or profane.” *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University*, 773 F. Supp. 792 (E.D. Va. 1991).

Deeming objectionable speech “hate speech” is problematic because the fact that expression might provoke a strong reaction is a reason to protect it, not an excuse to punish it. As Justice Oliver Wendell Holmes famously remarked: “If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate.” *United States v. Schwimmer*, 279 U.S. 644, 655 (1929).

It is equally crucial that Marywood understand and recognize the clear distinction between posting the cartoon and endorsing the statement it makes. In posting the Mohammad cartoon, Professor Fagal was attempting to initiate a dialogue about the cartoon and what values or assumptions it might implicate or suggest. To conflate the faculty member’s posting the cartoon with an endorsement, either explicit or tacit, of its sentiment is to render vast amounts of debate and discussion effectively off-limits on Marywood’s campus. To effectively deliver the liberal education that Marywood promises, the school must ensure that students and professors enjoy the full privileges of academic freedom contained in the university’s promise of “the principle of justice and [the] belief that education empowers people.”

Finally, we must remind you that Marywood has still not provided its faculty and students with a clear pronouncement of the status of free expression on Marywood’s campus. Would future attempts to post material that others may find objectionable be similarly shut down?

Of course, FIRE recognizes that Marywood University is a private, Catholic institution, and we respect and honor Marywood’s commitments to its values as such. However, we adamantly believe that Marywood’s values need not be in conflict with a commitment to academic freedom and freedom of expression. We therefore encourage you to explicitly grant students and professors the right to free expression—even if that expression is deemed offensive by some members of the community. The entire Marywood community would benefit from an administrative acknowledgement that open dialogue is welcome at Marywood.

Sincerely,

Samantha Harris
Director of Legal and Public Advocacy

cc:

Sister Patricia Matthews, Special Assistant to the President, Marywood University

Sister Margaret Gannon, Social Sciences Department Chair, Marywood University

Kurt Torrell, Dean of Liberal Arts, Marywood University

Rod Carveth, Communication Arts Department Chair, Marywood University

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Donald Goodwin, Dean of Students, Marywood University

Patricia Dunleavy, Assistant Vice President for Human Resources, Marywood University

Frederick Fagal