



Foundation for Individual Rights in Education

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March 24, 2005

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Dear Father Holtschneider and Chairman Simon:

As you can see from the list of our Directors and Board of Advisors, 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, due process, freedom of speech, and academic freedom on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about DePaul University's suspension of Professor Thomas Klocek for his involvement in an out-of-class argument about Israeli-Palestinian issues with a number of pro-Palestinian students. Professor Klocek was suspended without a hearing for his expression and found to be in violation of the regulations in DePaul's faculty handbook. DePaul University claims to respect academic freedom, yet its suspension of Professor Klocek flies in the face of the university's own stated goals and its promises to students and faculty members.

This is our understanding of the facts based on university documents, press reports, and information provided by Professor Klocek. Please inform us if you believe we are in error. On September 15, 2004, Professor Klocek was at a student activities fair held at DePaul's Loop campus, and approached tables set up by Students for Justice in Palestine (SJP) and United Muslims Moving Ahead (UMMA). Professor Klocek picked up an SJP handout which decried Israeli policy in the Palestinian territories, and engaged in a debate with the students at

the table. During this debate, Professor Klocek cited an article by Neil Steinberg of the *Chicago Sun-Times* that quoted the general manager of the Al-Arabiya television network as saying, “It is a certain fact that not all Muslims are terrorists, but it is equally certain, and exceptionally painful, that almost all terrorists are Muslims.” A heated but strictly verbal argument ensued, during which time Professor Klocek argued that a Christian viewpoint, not merely a Muslim or Jewish one, should be considered in dealing with the issue at hand. The argument concluded when Professor Klocek walked away from the SJP and UMMA tables and thumbed his chin at the students in what he believed to be an Italian hand gesture meaning “I’m outta here.”

On September 24, 2004, nine days later, Dean Susanne Dumbleton of the School for New Learning and Loop Campus Coordinator Michael DeAngelis met with Professor Klocek about complaints that had been filed by the students involved in the argument. Professor Klocek reports that at that meeting, Dean Dumbleton suspended him with pay and ordered him to stay off campus. Dumbleton reportedly further instructed Professor Klocek not to talk to the campus newspaper in regard to a possible upcoming story about his situation and told him that the School for New Learning would reply on his behalf.

Professor Klocek notes that he did not receive a hearing regarding his suspension and was not given a written copy of the students’ charges against him or of any charges that DePaul might have filed against him. This failure to grant Professor Klocek even the minimal due process of a written charge of wrongdoing denied him the opportunity to prepare an effective defense. He was also denied the chance to confront or cross-examine the complaining students, or to engage counsel for his defense. In short, Professor Klocek was denied nearly every aspect of due process in the September 24 meeting.

The *DePaulia* ran a story on the situation on October 1, 2004, in which Professor Klocek feels he was misquoted and which he feels was inaccurate; however, because of Dean Dumbleton’s admonition to him not to discuss his situation with the newspaper, Klocek had no chance to communicate his side of the story. On October 8, the *DePaulia* ran a letter from Dean Dumbleton claiming that Professor Klocek’s participation in the argument meant that the “students’ perspective was dishonored and their freedom demeaned. Individuals were deeply insulted.” She went on to describe Professor Klocek’s actions as an “assault” on the students’ dignity, his assertions as “erroneous,” and said that she was “saddened” by the “pain” the professor had caused the students, despite the school’s commitment to “social justice.”

On November 10, 2004, Dean Dumbleton finally wrote to Professor Klocek, informing him of her decision that he would be able to teach only one course in the upcoming semester and would have to agree to unscheduled classroom observations during that course, after which he would again be considered for future teaching assignments with DePaul. At no time prior to this punishment was Professor Klocek given a formal hearing at which he might have challenged these sanctions.

DePaul’s actions in this circumstance constitute both a violation of the due process promised to professors by DePaul’s own regulations and a violation of the standards of academic freedom that DePaul purports to uphold. As a private, religious university, DePaul has a moral and contractual obligation to live up to the standards it has set for itself in regard to academic

freedom and the way it treats its employees. Dean Dumbleton's treatment of Professor Klocek did not fulfill DePaul's obligations in these areas.

Academic freedom is explicitly protected in DePaul's faculty handbook. The 2000-2001 version of the handbook (the latest available on DePaul's website) states that "DePaul accords academic freedom a prominent position as an integral part of the university's scholarly and religious heritage." It goes on to state:

Not only the faculty, but students and other members of the university community enjoy this freedom as they participate in the various forms of open inquiry and debate, as for example, classroom presentation and discussion, research and publication, public statements made as a citizen in one's own name, and other forms of creative expression.

DePaul's handbook further states that it has adopted the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure together with its interpretative comments, although it reserves the right to make changes to this statement through the Faculty Council. The AAUP is very clear that professors should enjoy a great deal of academic freedom, especially when they speak outside the classroom. The AAUP, in its 1964 "Committee A Statement on Extramural Utterances" that aids in the interpretation of the 1940 statement, discussed "extramural speech" such as Professor Klocek's, stating:

[t]he controlling principle is that **a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position.** Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar. [Emphasis ours.]

This commitment to academic freedom, which DePaul voluntarily assumed, does not seem to have been applied in Professor Klocek's case. Professor Klocek made statements "as a citizen in [his] own name" in an admittedly heated debate outside of class on a topic—the Israeli-Palestinian issue—that has been the subject of many heated debates through the years. He did not engage in this debate during class, nor is there any evidence that he attempted to restrict the academic freedom of students who may have disagreed with his position. Indeed, this would have been difficult, as Professor Klocek reports that none of the students involved in the debate were in any of his classes. By all reports, the debate, while it might have been vehement, was nonviolent and touched on a wide range of issues having to do with the Mideast conflict, demonstrating that both sides conducted themselves in an orderly way. Professor Klocek took no action against the students besides publicly disagreeing with them, while the students, in contrast, complained to the administration in an attempt to silence Professor Klocek.

DePaul's commitment to academic freedom is meaningless unless it protects those whose speech might challenge or offend others. Speech or ideas that have no potential to create strong feelings in others are in no need of protection. It is with contentious issues such as those discussed by Professor Klocek and the pro-Palestinian students that an institution's commitment to academic

freedom is truly tested. While the students may have been offended by Professor Klocek's words, hurt feelings are a risk that every citizen in an open society must take if freedom is to have any meaning. If every person had the power to punish those who expressed ideas they found offensive, we would all soon be reduced to silence. Any university that would attempt to mandate that no member of the community can ever be offended would soon see the death of the free and open debate that marks the life of the mind.

In this case, however, DePaul does not appear to have attempted to silence all ideas that might be found offensive. Instead, by disciplining Professor Klocek in response to the students' complaints, it has chosen to silence Professor Klocek's side of the debate alone and to do so without regard to DePaul's own policies or the rights of Professor Klocek. Dean Dumbleton's admonition to Professor Klocek not to speak to the *DePaulia* about the incident, which left him with virtually no way to defend himself within the university community, is a lamentable example of this attitude.

DePaul's denial of due process to Professor Klocek is no less disappointing. For instance, Professor Klocek's September 24, 2004, suspension by Dean Dumbleton appears to have violated DePaul's policy on suspension from its faculty handbook. The Handbook states:

For serious cause the University may suspend a faculty member from his or her teaching duties and other obligations and responsibilities and prohibit that faculty member from using University facilities. This action can be taken only to prevent probable and serious harm to the reputation of the University or to its ability to carry out such important functions as instruction. **The faculty member is guaranteed that fair and consistent procedures will be used for making any suspension decision.** [Emphasis ours.]

It goes on to state that an "emergency" suspension, which becomes effective immediately (and which Professor Klocek evidently suffered), can only be ordered by the Executive Vice President for Academic Affairs, and that the faculty member so suspended still has the right to a formal grievance hearing after the fact.

Dean Dumbleton's suspension of Professor Klocek violated DePaul's own regulation on suspension in several ways. To begin with, Dean Dumbleton is not the Executive Vice President for Academic Affairs. She is the dean of the School for New Learning and does not have that authority. In fact, the Executive Vice President for Academic Affairs during the time in question was John J. Kozak. If the Executive Vice President for Academic Affairs did in fact order Professor Klocek's suspension, Professor Klocek is not aware of it. Indeed, the November 10, 2004, letter to Professor Klocek that outlined his possibilities for future teaching assignments was also authored by Dean Dumbleton. There is no sign that the decision to oust Professor Klocek was made by anyone other than Dean Dumbleton.

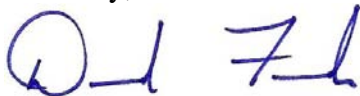
Further, by no stretch of the imagination does Professor Klocek's situation constitute an "emergency," as school spokesperson Denise Mattson is reported to have claimed to Joel Mowbray of the *D.C. Examiner*. A true emergency situation would not have been addressed nine days after the incident and only after a meeting between the aggrieved students and

administrators. DePaul's argument that Professor Klocek's speech constituted an "emergency" is completely unsupportable in light of this fact. Indeed, aside from credible threats to physically harm another person, it is difficult to think of any kind of speech that might actually constitute an "emergency" to be dealt with through a summary suspension. Being challenged on one's beliefs and identity is not harmful—it is part of the process of a college education.

Like any good liberal arts institution, DePaul University has chosen to define itself as a school where open and free debate should flourish. Indeed, the university boasts that one part of the "Essence of DePaul" is "Risk-Taking." The university states, "DePaul dares to take a chance. Historically, the university has stepped outside tradition and beyond conservative approaches, consistently demonstrating an adventurous and entrepreneurial spirit." This "risk-taking" will not take place if DePaul does not respect the academic freedom of its professors. There are few things that could make the DePaul community more risk-averse than an atmosphere of fear among professors and students that punishment could ensue if they dare to argue about controversial issues. At the same time, DePaul students must agree to take the risk that someone, sometime, may vehemently challenge them on their beliefs—and they must learn that the answer to such a challenge is to speak and argue for themselves, not to request administrative censorship.

FIRE requests that DePaul reexamine its treatment of Professor Klocek in light of the aforementioned academic freedom and due process concerns, and that the university recommit itself to practicing the values that it claims to uphold. FIRE is committed to using all of its resources to come to a just conclusion to this matter. DePaul must honor its moral and legal obligation to abide by its representations to students, faculty members, and the community at large. We request a response on this matter by April 4, 2005.

Sincerely,



David French
President

cc:

Susanne Dumbleton, Dean, School for New Learning, DePaul University
John J. Kozak, Executive Vice President for Academic Affairs, DePaul University
Bridget K. Butwin, Vice President & General Counsel, DePaul University
Michael DeAngelis, Loop Campus Coordinator, DePaul University
Denise Mattson, Assistant Vice President for Public Relations, DePaul University
Elizabeth Ortiz, Senior Executive for Institutional Diversity, DePaul University