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in Education, Inc.

FIRE is a nonprofit educational foundation devoted to free speech, individual liberty, religious freedom, the rights of conscience, legal equality, due process, and academic freedom on our nation's campuses.



THE FOUNDATION

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 Read excerpts from *The Shadow University* by Alan Charles Kors & Harvey A. Silverglate.

Chancellor Robert C. Dynes
University of California, San Diego
9500 Gilman Drive, MC 0005
La Jolla, California 92093-0005

URGENT

Re: Disciplinary Charges against *The Koala*.

Dear Chancellor Dynes:

As you can see from the list of 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, due process, and 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 threats to free speech, due process, and constitutional protections posed by the actions taken against the student publication *The Koala* during the past academic year. With regard to the most recent charges, it seems unmistakable that UCSD is targeting *The Koala* for its content, which high officials of UCSD have condemned on numerous occasions. The tragic events of the past year have made it abundantly clear that freedom of expression is an essential, precious, and fragile right in any progressive society. We must be vigilant against any and all means used to attack it.

FIRE is further concerned about the attempts to exclude *The UCSD Guardian* from reporting on the hearing against *The Koala*. When the University makes decisions with profound consequences for free speech and fundamental fairness, it is crucial that the proceedings be open to public scrutiny. If UCSD believes it is in the right, it has nothing to fear from public exposure and discussion of this case.



Read *Memo to Free Speech*
Advocates University of
Wisconsin-Madison by Harvey A.
 Silvergate.

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This is our understanding of the facts. *The Koala* is a student run publication that satirizes and parodies everything and everyone at UCSD and beyond. University representatives have harshly condemned the publication on numerous occasions. Last fall, for example, Vice Chancellor Joseph Watson, regarding a recent issue of *The Koala*, stated, "On Behalf of the UCSD community, we condemn *The Koala's* abuse of the Constitutional guarantees of free expression and disfavor their unconscionable behavior." (It is noteworthy that the only "behavior" engaged in was constitutionally protected expression.)

While the University is certainly entitled to its own opinions, the administration proceeded to lodge a series of charges against the paper for numerous questionable infractions. On November 19, 2001, *Koala* members attended a meeting of the student group *Movimiento Estudiantil Chicano de Aztlan* (MEChA), to which many *Koala* members were invited. A *Koala* photographer who took a number of photos of the MEChA president was asked to leave. After taking additional pictures, the photographer left; many *Koala* members remained at the meeting until it ended, without incident. The pictures were then used to satirize the President of MEChA, who had been highly critical of *The Koala* in the past. In late February of 2002, *The Koala* and all the students involved in the November 19 meeting were accused of breaching student code 22.14.10.27 ("obstruction or disruption of teaching, research, administration, disciplinary procedures, or other UCSD or University activities.") for the alleged November 19 "incident." *The Koala* has been threatened with being derecognized, defunded, and dissolved.

This differs greatly, of course, from UCSD's ringing endorsement of the constitutional freedom of MEChA's *Voz Fronteriza* in 1995, when that student publication urged the death of Hispanic agents of the Immigration and Naturalization Service. "All Migra pigs should be killed, every single one....It is time to organize an anti-Migra patrol," *Voz Fronteriza* wrote in its May 1995 issue. In response to calls for censorship and punishment issued by an outraged public and by members of Congress, Vice Chancellor Watson told the San Diego Union-Tribune: "**Like most student newspapers, they make an effort to achieve some shock value.**" On July 5, 1995, UCSD issued a formal statement, insisting, "**The University is legally prohibited from censoring the content of student publications....**Previous attempts by universities and other entities to regulate freedom of speech, including hate speech, have all been ruled unconstitutional." Vice Chancellor Watson wrote to U.S. Representative Duncan Hunter that, ***Voz Fronteriza* had "the right to publish their views without adverse administrative action."**

FIRE would love to debate in public your shocking double standard; we would be pleased, however, to achieve the quiet restoration to *The Koala* of the same rights that you emphatically protected for MEChA's own *Voz Fronteriza*.

When charges were brought against *The Koala*, *The UCSD Guardian* sought to cover this potential case of censorship. The paper tried repeatedly to gain access to the hearings involving *The Koala*, as it is a matter of great public importance and interest on the UCSD campus, but was repeatedly denied. The administration based their exclusion on a variety of theories, including that campus media could not be allowed to be present due to the Federal Education Privacy Act (FERPA).

The first issue that needs to be addressed is the extraordinarily overbroad interpretation of 22.14.10.27. In order to be legally enforceable, rules must be reasonably specific, clear, and applied in a way that does not threaten protected speech or journalistic practice. No university that claims to value openness or transparency could make photography at a student meeting a serious and punishable offense. This action announces to all student media that UCSD regards them as little more than semi-tolerable nuisances, not an essential part of the University community. Furthermore, it is highly dubious that the photographer's presence was a meaningful disruption, and equally doubtful that the public meeting was the sort official "University activity" that the rule was designed to protect. The very weakness of this "disruption" charge indicates that UCSD has an outside motive for prosecuting *The Koala*, and it appears all but certain that this motive is *The Koala's* controversial content.

While it is predictable that a paper that consistently and harshly satirizes, parodies, and mocks the school would disgruntle a university, this form of dissent and social criticism is nevertheless an invaluable component of life in a free society. *Voz Fronteriza*, whose rights the vice chancellor so vigorously defended in 1995, went so far as to depict then-Governor Wilson in the crosshairs of a sniper's rifle. Strong criticism, including parody and satire, are areas of political speech that are at the core of our country's honored traditions, and they exist to challenge, to amuse, to provoke, and to offend. We strongly encourage you to read the landmark 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). Taken together, these cases protect-as core political speech-highly offensive material, farce, profanity, and exaggeration, and confirm the essential role of parody and satire precisely because they challenge readers' deepest assumptions and beliefs. No campus that claims to take seriously the free

speech rights of students can retaliate against a student publication because it offended a student organization or the administration. To allow this to happen would spell the end of robust discourse at UCSD. Even if UCSD maintains that all of the sanctions and accusations against *The Koala* have nothing to do with the publication's content, it should still cease any hearings against the paper, as the popular perception that UCSD is targeting a publication for its content is enough to silence debate and dissent.

As you know full well, and as you repeated in 1995 in the matter of *Voz Fronteriza*, UCSD is a public university and, therefore, has an overarching legal obligation (in addition to its moral obligation) to ensure the First Amendment rights of its students. UCSD must not initiate any action, or even threaten any action, against a student or student publication on the basis of clearly protected political statements, regardless of the offense given to others. UCSD cannot claim that it does not understand the full contours of its duties to free speech; the University stated in its own *Policies and Procedures Applying to Student Activities*: "UCSD is committed to ensuring that the exercise of constitutional rights of free and open discussion, expression, and advocacy are not only protected but encouraged as a vital aspect of the spirit of free inquiry appropriate to a university setting." We ask you to live up to this noble commitment.

FIRE urgently requests that UCSD terminate any proceedings and drop all charges against *The Koala*, its staff, and its writers. A hearing is scheduled for tonight. There should be no hearing. Even considering these charges as worthy of a hearing produces a chilling effect across the campus. If considered in a spirit of legal equality—that the same rules at UCSD apply to all—it would chill everyone's right to engage in political speech of every kind. Furthermore, we request that UCSD affirm the full protection of *The Koala's* right to parody, satire, and freedom of expression, and that no University policy or contrivance will be used to circumvent those rights.

Finally, if UCSD takes the unfortunate step of allowing the hearing to occur, we urge you then, at least, to open it to the student media. As the accused in this case fully consents to their presence, and as it concerns an issue of great public importance, it is vital that the campus media be present. Neither UCSD nor FERPA can overrule the First Amendment, which incorporates a right to access information of public importance. The possibility that UCSD may be trying to shut down a publication due to its content is indeed a matter of the greatest public concern.

No one wishes these matters (and UCSD's double

standards) to become the subject of national scandal, but you may be certain that they will if these charges are not summarily rejected by the administration. UCSD has legal, academic, contractual, and constitutional obligations to the rights of its students. As a result of this action, your students now live in insecure possession of what should be their common human, legal, and academic rights as members of a great University. Let me assure you that many individuals and organizations devoted to free expression are watching, with acute attention, the chilling of such freedom.

FIRE hopes we are able to resolve this dispute discreetly and amicably. However, we are committed to using all of our media and legal resources to support *The Koala* and, ultimately, to see this matter through to a just and moral conclusion. Please spare UCSD the embarrassment of fighting against the Bill of Rights by which it is morally and constitutionally bound. We hope reason and decency will prevail.

I look forward to hearing from you.

Sincerely,

Greg Lukianoff
Director of Legal and Public Advocacy

cc:

Marsha A. Chandler, Senior Vice Chancellor
Joseph W. Watson, Vice Chancellor for Student Affairs
James M. Langley, Vice Chancellor for External Relations
Alison Norris, Editor-in-Chief, *The UCSD Guardian*
George Liddle, Editor-in-Chief, *The Koala*
Tom Agee, Student Conduct Coordinator, UCSD
Parisa Baharian, Chairperson, UCSD Campus-Wide
Judicial Board
Patricia Scott, Advisor to the UCSD Campus-Wide
Judicial Board



Because Your Liberty is a Precious Thing

