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November 1, 2007

Dr. Gene Nichol  
President, The College of William and Mary  
P.O. Box 8795  
Williamsburg, VA 23187-8795

**VIA FACSIMILE AND U.S. MAIL**

Dear Dr. Nichol:

The essence of a college experience should be the free exchange of ideas. However, William and Mary's decision to impose a "bias reporting" system—coupled with a recent history of yielding to censorious special interest groups—raises troubling questions about the College's willingness to protect the rights of students, professors and others to explore and express various points of view. We call upon you to reaffirm William and Mary's commitment to academic freedom and the First Amendment and to end the Bias Reporting system.

As we understand the facts, William and Mary has recently implemented a "Bias Reporting Web site" where members of the campus community can report "bias incidents." The College defines a "bias incident" as "harassment, intimidation or other hostile behavior that is directed at a member of the William and Mary community because of that person's race, sex (including pregnancy), age, color, disability, national or ethnic origin, political affiliation, religion, sexual orientation, or veteran status. A bias incident may be verbal (whether spoken or written) or physical."

Students and employees are urged to make reports in person or by phone, fax, or online form; the Web site expressly encourages people to make reports even if they "are not certain whether an occurrence meets the ... definition." The College Bias Reporting Team will evaluate all reports to determine which ones warrant further action. The Team's stated goals include "confronting behavior that undermines community in a timely and sensitive manner," and "to use whatever happens as a teachable moment." The Team will treat with particular urgency reports in which physical harm, wide community impact, or "the presence of hate or bias-related symbols" feature centrally.

While the College certainly should not condone harassment, physical attacks, or other illegal behaviors, the definition of a "bias incident" and the procedures devised to pursue such alleged incidents appear to go far

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beyond the law, reaching into the freedoms of expression and association that are fundamental not only to a healthy academic environment, but to a free society.

Will an off-color joke that offends someone constitute a bias incident? Will a politically incorrect t-shirt, button, or poster? Are Confederate flags bias-related symbols? Would inviting Lawrence Summers to give a speech be considered harassment? Can a student group stage a protest in favor of abortion? What about students who, in their coursework or casual conversation, criticize affirmative action, or argue that there is a biological basis for sexual difference?

And what about professors who, exercising their academic freedom, introduce controversial material into class discussion? Such questions are left wide open by the Web site, despite the disclaimer that “because the expression of an idea or point of view may be offensive or inflammatory to some, it is not necessarily a bias-related incident.” The Web site’s failure to mention the importance of ensuring due process for the accused only heightens these problems.

William and Mary’s *Student Handbook* proclaims that students enjoy “freedom of expression and belief, freedom of association and peaceful assembly,” that they have the “[r]ight to hear and study unpopular and controversial views on intellectual and public issues,” and that “students, faculty, and administrators ... shall enjoy all rights, privileges, and immunities guaranteed to every citizen of the United States and the Commonwealth of Virginia.”

That is why the new Bias Reporting arrangement is particularly troubling. Speech codes of this sort, whatever they are called, betray the College’s legal obligation to protect individual rights on campus. Under the guise of creating a more welcoming “community,” William and Mary has undertaken to adjudicate which viewpoints are acceptable—and which are not. The inherently vague definition of “bias incident” sends a singular message to members of the community: Shut up! Or else!

We are not alone in our concern. The William and Mary Bias Reporting system has already drawn the criticism of one of the College’s own legal luminaries, Professor William Van Alstyne. A specialist in constitutional law who has led both the ACLU and the AAUP, Professor Van Alstyne has described the system as a “purely ‘touchy-feely’ ‘political correctness’ rule” that does not forbid intimidation and harassment so much as *license these behaviors by imposing discriminatory criteria for determining when they are and are not condoned by the College*. “One may harass, or seek to intimidate, another for all sorts of reasons,” Professor Van Alstyne observes. “So, when is ‘harassment’ all right? And when is ‘intimidation’ equally all right? Evidently, by the metric of this rule, whenever it occurs for any reason other than one of the twelve ‘prohibited’ reasons for harassment and/or intimidation.” The end result, Professor Van Alstyne notes, is an absolutely Orwellian parody of justice. “If, but only if, the individual is ‘harassing’ another person or ‘intimidating’ another person FROM SOMETHING THE COLLEGE REGARDS AS AN UNACCEPTABLE KIND OF ‘BIAS,’ THEN they are subject to be reported, placed on some kind of ‘list,’ and referred to some other body for possible suspension or worse.”

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It is simply impossible to understand why such a new system is necessary or how it would comport with William and Mary's long and proud history of academic freedom and integrity. The fact is, William and Mary already has on the books a range of policies stipulating the obligations of students, faculty, and staff to conduct themselves within the limits of the law.

In far too many recent cases, the College has shown a distressing tendency to submit to censorious pressures. In 2003, the administration prevented a group of students from protesting affirmative action. Earlier this year, the Wren Cross was nearly removed because some found it offensive. This fall, the College banned the use of Native American symbols in the Homecoming Parade—a patent violation of students' First Amendment rights. By contrast, University of Illinois chancellor Richard Herman overturned a similar ban at Urbana-Champaign, drawing a clear distinction between students' expressive rights and the University's decision to drop its Native American mascot in compliance with NCAA requirements.

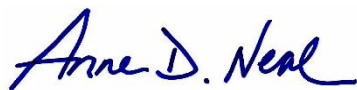
It is difficult not to regard the Bias Reporting system as a new troubling chapter in the College's recent history of limiting free speech and free inquiry in the name of "community."

While the ideal of community is a worthy one, it should not be pursued at the expense of free exchange—and free exchange, when it is truly free, does mean that sometimes, some people are going to be offended by what other people say, do, and believe. It is well worth remembering that no one has the right not to be offended, and that one person's "bias" may well be another person's sincerest truth.

As a public college, William and Mary is bound by the First Amendment. To implement policies and procedures that chill legitimate student and faculty expression, and that create a culture of surveillance in which people face investigation and even punishment for exercising their First Amendment rights, is unconscionable. As the nation's second oldest institution of higher learning, William and Mary has a particular obligation to act as a standard bearer in matters of free inquiry and academic freedom. The College should act swiftly to defend the First Amendment by ending the bias reporting system and any other troubling restraints on free speech.

The American Council of Trustees and Alumni has a network of alumni and trustees from institutions across the country, including William and Mary; they are dedicated to academic freedom, academic excellence, and accountability on our nation's campuses. We await word, at your earliest convenience, of your plans to address this serious problem.

Sincerely,



Anne D. Neal  
President

cc: Michael K. Powell, Rector