

Sept. 15, 2016

Dr. Eli Capilouto  
Maxwell Place  
University of Kentucky  
HAND DELIVERED

Dear Dr. Capilouto:

The undersigned faculty of the School of Journalism and Media strongly object to your insulting treatment of the Kentucky Kernel and its editor, and to the university's contravention of state laws designed to ensure transparency and accountability in government.

When you told the Board of Trustees that the Kernel, in its story about the James Harwood sexual-assault case, published "salacious details to attract readers," you impugned the reputation of the newspaper and its editor, Marjorie Kirk, and cast aspersions on journalism faculty who have taught, and are teaching, Kernel staff. An apology is called for.

We are confident that audience building was not the motive of the Kernel or its editor, because she has proven herself to be an excellent, professional journalist who observes the tenets of the Society of Professional Journalists' Code of Ethics, which we teach in our courses and promote in our service work. Journalism faculty play no direct role in the Kernel, but we follow it closely and we are familiar with Marjorie Kirk's work. We selected her as the School of Journalism and Media's print representative to a New York Times development program for student journalists, and her stories and columns, and the Kernel's editorials, on the Harwood case and ensuing matters are outstanding examples of public-service journalism that should be lauded, not insulted.

We also find offensive your attempt to ascribe motive to the student without ever discussing this story with her. We teach our students to write what they know and what they see, and not to go beyond that in news stories – and to not report what they think people are thinking and ascribing motives for what they do.

You also got your facts wrong. The details of the sexual assault in the story were not salacious, by any dictionary definition. As the Kernel says in its front-page editorial this morning, calling such details salacious further stigmatizes the victims you say you are trying to protect. Making matters worse, you selectively released letters from the victims to make your case, and one of the letters revealed the first name of one of the victims. It was Marjorie Kirk who alerted your staff to that violation.

Protection of the rights of victims is important, but so is the accountability of you and other officials who are charged with the responsibility of protecting them. That accountability requires transparency. Without it, the public whose tax dollars support this institution, and especially the students and their parents, cannot be confident that the university handles cases of sexual assault in a way that advances the cause of a safe campus for all students. As you surely know, Northern Kentucky University is being sued by a student and her parents who argue that NKU violated the law in failing to execute its obligations when a rape was reported.

The university handled the Harwood case in a way that did not provide protection to potential victims. The Kernel's story revealed that, and apparently prompted more responsible action by you and your subordinates. You should be thanking the Kernel for helping protect victims' rights, not accusing it of violating them – especially in this case, where the victims went to the Kernel to get the full story told.

In falsely accusing Ms. Kirk and the Kernel, you appealed to the distrust that many Americans have of the news media, often for illegitimate reasons. Such attacks from high-ranking officials like you can weaken the news media and their ability to perform the service envisioned in the First Amendment. Such attacks undermine democracy. And as the president of a Research I institution, it would have been commendable if you had discussed this with news-media experts before turning a principled fight into an attack.

The main motive behind this letter is to defend our student and the Kernel, but regardless of the facts of that particular case, we are deeply concerned about the larger First Amendment principles of accountability and transparency, and your contravention of a state law that makes the attorney general the initial arbiter of disputes under the Open Records Act and the Open Meetings Act. By refusing to submit documents for confidential review, you are substituting your judgment for that of the attorney general, who is a judicial officer bound by the rules of confidentiality.

In difficult cases like the Harwood matter, we believe the interests of privacy, and transparency that serves accountability, can be balanced with thoughtful redaction of the documents. Yet, the university refuses to engage in any balancing of those interests, and you bluntly say that you choose privacy over transparency, thus forfeiting the university's responsibility under the law and forcing a lawsuit that is bringing the university into national disrepute.

You have done much good for the University of Kentucky, particularly your emphasis on the interests of students. In the old Appalachian saying, you have laid up much treasure with the people of the commonwealth. But now we fear you are wasting that essential asset.

We believe that you owe the editors of the Kernel, the faculty of the School of Journalism and Media, the attorney general and the taxpayers of Kentucky an apology. We also believe that the university should drop the lawsuit against the Kernel. Thank you for considering our views on these important issues.

Respectfully,

Dr. Michael Farrell, professor and director, Scripps Howard First Amendment Center  
Al Cross, associate professor and director, Institute for Rural Journalism and Community Issues  
Buck Ryan, associate professor and director, Citizen Kentucky Project, First Amendment Center  
Scoobie Ryan, associate professor and sequence coordinator, journalism  
Dr. Zixue Tai, associate professor and sequence coordinator, media arts and studies  
John Clark, associate professor of media arts and studies  
Dr. Deborah Chung, associate professor of journalism  
Mel Coffee, associate professor of journalism  
Andrew Dawson, lecturer, journalism  
Dr. James Hertog, associate professor of media studies  
Dr. Kyra Hunting, assistant professor of media arts and studies  
Dr. Yung Soo Kim, associate professor of journalism  
David Stephenson, lecturer, journalism  
Kakie Urch, associate professor of multimedia  
Dr. Lars Willnat, director, School of Journalism and Media