



Foundation for Individual Rights in Education

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January 30, 2007

Chancellor Richard Herman
University of Illinois at Urbana-Champaign
317 Swanlund Administration Building
601 E. John Street
Champaign, IL 61820

Sent by U.S. Mail and Facsimile (217-244-4121)

Dear Chancellor Herman:

As you can see from our directors and board of advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of free speech, academic freedom, due process, legal equality, and voluntary association on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and our activities.

FIRE is deeply concerned about the threat to free expression posed by the University of Illinois at Urbana-Champaign's (UI's) investigation of several students for posting potentially objectionable yet constitutionally protected comments on Facebook.com about the controversy surrounding the UI mascot.

This is our understanding of the facts; please inform us if you believe we are in error. In November 2006, in response to controversy over UI's "Chief Illiniwek" mascot, a group of students started a Facebook.com group entitled "If They Get Rid of the Chief I'm Becoming a Racist." Several students posted comments on the group's "wall," including statements that "now i hate redskins and hope all those drunk, casino owning bums die" and "apparently the leader of this movement is of Sioux descent...I say we throw a tomohawk [sic] into her face." On January 8, 2006, a group of faculty in the university's American Indian Studies Program and staff at the Native American House issued a statement urging the university to "initiate disciplinary proceedings" against the students who posted the comments. The following day, you issued an e-mail to the UI community in which you stated that "[a]s Chancellor, I can not and will not tolerate such violent threats. The University will take all legal and disciplinary actions available in response to the threatening messages."

The First Amendment permits a state (and, by extension, a state agency such as UI) to prohibit only “true threats,” which the United States Supreme Court has held are “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). The threat must actually be intended to place the victim in fear of bodily harm or death, rather than simply being “political hyperbole.” For example, the Supreme Court held that a statement by an opponent of the draft that “[i]f they ever make me carry a rifle the first man I want to get in my sights is L.B.J.” was not a true threat on the President’s life, but rather was a constitutionally protected yet “very crude offensive method of stating a political opposition to the President.” *Watts v. United States*, 394 U.S. 705, 707 (1969).

Similarly, it is clear that the students who posted on Facebook.com were merely using vivid language to complain about those who are pressuring UI to abandon the “Chief Illiniwek” mascot, and were not actually threatening to attack someone with an antiquated weapon. The reference to tomahawks, as well as the suggestion that the Sioux leader of the anti-Chief initiative was attempting to “kill[] off the Illini Indians,” clearly signals that this speech was not, in fact, a threat, but rather a hyperbolic expression of anger and derision.

Please spare UI the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. UI must immediately cease its investigation of the students involved in this controversy for engaging in constitutionally protected expression. FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just and moral conclusion.

We request a response on this matter by Tuesday, February 13, 2007.

Sincerely,



Samantha K. Harris
Director of Legal and Public Advocacy

cc:

Linda Katehi, Provost and Vice Chancellor for Academic Affairs, University of Illinois at Urbana-Champaign

C. Renee Romano, Vice Chancellor for Student Affairs, University of Illinois at Urbana-Champaign

Michael Jeffries, Associate Dean of Students and Director of Minority Student Affairs, University of Illinois at Urbana-Champaign

William Riley, Dean of Students and Associate Vice Chancellor, University of Illinois at Urbana-Champaign