

**CATHERINE R. LOCALLO**  
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June 1, 2015

Peter Bonilla  
Director, Individual Rights Defense Program  
Foundation for Individual Rights in  
Education (FIRE)  
170 S. Independence Mall W., Suite 510  
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VIA E-MAIL: [peter@thefire.org](mailto:peter@thefire.org)

**Re: Oakton Community College and Chester Kulis  
FIRE Letter to Oakton Community College Dated May 22, 2015**

Dear Mr. Bonilla:

Please be advised that this office represents Oakton Community College (the "College"). The College is in receipt of your correspondence of May 22, 2015, and has asked that we provide this response on the College's behalf. As will be more fully addressed later in this letter, the College has not "ignored clear legal precedent, violated Kulis's rights, and deeply chilled expression on campus." To the contrary, the College has acted consistent with the legal precedent that "true threats" are not entitled to First Amendment protection.

First, your recitation of the relevant facts is inaccurate. Chester Kulis ("Kulis") is not presently employed by the College in any capacity, and has not been employed by the College since the end of the Spring 2014 semester (May 2014). Since Kulis is not employed by the College, he is not covered by the 2013-2017 Collective Bargaining Agreement between the College and the Adjunct Faculty Association of Oakton Community College (AFA).

Kulis is no longer engaged in a grievance arbitration dispute with the College. An arbitration award has been issued, and Kulis's grievance was denied in its entirety.

With respect to the claim that Kulis sent the email to "several colleagues", the College only knows that it was sent directly to and received by College President Dr. Margaret Lee. As noted in the email, the "To" was an "undisclosed-recipient" list, so Dr. Lee had no knowledge that it was sent to others.

Second, the College does not now and has never disputed that First Amendment rights of free speech and association extend to college campuses. Though, as you are aware, the right of free speech and association is not an absolute right. Notably, the College has never previously taken issue or attempted to censor Kulis's speech, whether it is emails, blogs/postings, or statements made at meetings held by the College's Board of Trustees, etc. The College recognizes Kulis's right to free speech which is protected by the First Amendment. However, Kulis's May 1, 2015 email to Dr. Lee constituted a "true threat" and the College was within its right to issue Kulis a limited cease and desist order from sending such communications in the future.

Third, the cases cited on page 2 of your letter are distinguishable from the instant matter which involves a “true threat”. The facts in *Texas v. Johnson*, 491 U.S. 397 (1989), involved an individual who burned a flag after marching through city streets as part of a political demonstration, and the issue addressed by the Court involved the relationship between offensive, vulgar, abusive or insulting speech and the First Amendment, and not a “true threat”.

In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), the Court addressed the issue of obscenity and the First Amendment as it related to a student who was expelled for publishing unapproved content (headline story and a political cartoon) in the school newspaper.

Turning to *Terminiello v. Chicago*, 337 U.S. 1 (1949), this case involved the conviction of an individual for breach of peace and unlawful assembly in violation of an ordinance. The issue ultimately decided by the Court pertained to an instruction given to the jury concerning the definition of breach of peace, and the Court determined that the instruction was not constitutional.

While the Court did discuss the definition of “true threats” which are not protected by the First Amendment in *Virginia v. Black*, 538 U.S. 343 (2003), this case involved a conviction for cross burning and the constitutionality of a statute. The Court determined that the State’s ban on cross burning with intent to intimidate did not violate the First Amendment. However, similar to *Terminiello*, the jury instruction given at trial in connection with what constitutes an “intent to intimidate”, specifically in connection with cross burning, was not constitutional.

In the instant matter, the facts and issue are completely different from the above cases. This is not a case involving a public demonstration, assembly, or breach of peace. It also is not a case in which the College finds Kulis’s email offensive, generally disruptive, or obscene. There is no statute at issue or jury instruction which is being examined to determine if a criminal conviction will stand. Rather, this is a case where Dr. Lee interpreted Kulis’s email as a threat and feared for her personal safety based upon the circumstances presented, the subject line and content of the email, and having familiarity with Kulis’s other forms of speech.

Fourth, as you undoubtedly know, “[s]peech that constitutes a true threat of violence, by being a serious expression of intent to cause present or future harm, may be prohibited.” *Id.* The speaker of a true threat does not need to have the intention of carrying out the threat. *Virginia v. Black*, 538 U.S. 343, 359–60, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). The prohibition on true threats is meant to “protect[ ] individuals from the fear of violence, from the disruption that fear engenders, and from the possibility that the threatened violence will occur.” *R.A.V. v. St. Paul*, 505 U.S. 377, 388, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992).

“The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.” *Schenck v. United States*, 249 U.S. 47, 52, 39 S.Ct. 247, 63 L.Ed. 470 (1919). “It is a question of proximity and degree.” *Id.* “[T]he character of every act depends upon the circumstances in which it is done.” *Id.* “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.” *Id.* “The freedom to exercise one’s right of free speech is often curtailed temporally, geographically or even demographically.” *United States v. Turner*, No. 09–CR–00650, 2009 WL 7265601, at \*1 (E.D.N.Y. Oct. 5, 2009).

The College hosted a gala for Dr. Lee in honor of her 30 years of service to the College and upcoming retirement. Generally, the public was aware of the event, and Kulis was certainly aware of it. The gala was held on April 25, 2015. On May 1, 2015, Dr. Lee received an email directly from Kulis and the subject line was "The Antidote to the Peg Lee Gala". It was not clear by the email that it was sent to anyone else, nor did Dr. Lee know of any other recipients. Merriam Webster defines "antidote" as "a substance that stops the harmful effects of a poison" and "something that corrects or improves the bad effects of something". See <http://www.merriam-webster.com/dictionary/antidote>. The email content stated "[h]ave a happy **MAY DAY** when workers across the world celebrate their struggle for union rights and remember the Haymarket riot in Chicago." It is common knowledge that the Haymarket Riot involved a bomb-throwing incident at a striking worker's rally in Chicago which resulted in 11 deaths and more than 70 people injured.

In viewing the subject line and the email content together, and considering that the communication was not posted to a blog/website but sent directly to Dr. Lee, she interpreted the communication as a threat against her personally, which incident could possibly occur at the College and impact others. Dr. Lee's interpretation and the fear for her personal safety was reasonable based upon the totality of the communication by its content and the factual circumstances related to the email. Namely, that a violent act was the "antidote" to Dr. Lee, who Kulis clearly is not fond of. Considering that the anniversary of the Haymarket Riot was just three (3) days after Kulis sent the email, it was also reasonable for Dr. Lee to fear that a violent act against her by Kulis was imminent and could even occur on campus and impact hundreds of students and staff.

In closing, the College has recognized and will continue to recognize Kulis's First Amendment rights; however, it will not tolerate "true threats" communicated by Kulis, which clearly are not afforded constitutional protection. With this response, the College considers this matter closed.

Very truly yours,

**ROBBINS SCHWARTZ**



By: Catherine R. Locallo

cc: Dr. Margaret B. Lee, President, Oakton Community College  
Mum Martens, Executive Director of Human Resources, Oakton Community College  
Philip H. Gerner III