



## Foundation for Individual Rights in Education

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June 27, 2011

President Richard W. Lariviere  
University of Oregon  
Office of the President  
110 Johnson Hall  
Eugene, Oregon 97403

*Sent via U.S. Mail and Facsimile (541-346-3017)*

Dear President Lariviere:

As you know from our letter to you on July 21, 2010, concerning a different matter, FIRE (thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty and, as in this case, freedom of speech on America's college campuses.

FIRE is gravely concerned about the threat to free speech, academic freedom, and due process posed by the University of Oregon's (UO's) decisions to suspend faculty member Peter Quint, and to deny his reasonable expectation of being rehired, due to his relevant and protected classroom expression. Not only did UO unconstitutionally punish Professor Quint's protected speech, but UO did so without providing him any of the protections afforded by the Oregon Administrative Rules governing the punishment of non-tenured faculty members.

This is our understanding of the facts. Please inform us if you believe we are in error.

Peter Quint was appointed by UO as an American Sign Language (ASL) Instructor in UO's College of Education for 2009–2010. In July 2010 his appointment was renewed for the 2010–2011 academic year. The syllabus for his spring 2011 ASL 203 class stated that “it is expected that all attempts at communication be made visually,” but some students frequently violated this classroom policy, leading Quint to consult with his supervisor, Assistant Professor Kathy Roberts, several times about how to address the students' misbehavior. In consultation with Roberts, Quint took several steps in April 2011 to address the misbehavior.

On May 4, 2011, in an attempt to persuade his ASL 203 students to show respect in a “foreign” environment such as an ASL classroom, Quint told his class a story about his experience in Pakistan when his ability to communicate with others in a

foreign environment helped him escape threats against his life. In an email to College of Education Dean Michael Bullis the next day, Quint explained that the story involved

a situation in Pakistan where I had to deal with a threat involving a group of Pashtun tribesmen, one of whom had a gun. It was all in reference to one of the goals of ASL classes; that is to create in students a strength of heart from active practice and involvement in a “foreign” environment.

Later during the May 4 class, some students began talking aloud, and Quint expressed his frustration that they had violated the classroom policy. According to Quint in private correspondence with FIRE, he then said, “Do you want me to take a gun out and shoot you in the head so you understand what I am talking about? I had to practice being respectful in Pakistan otherwise I would have been shot. Can you practice the same respect here?”

Quint’s account is consistent with the story printed by the *Oregon Daily Emerald* on May 16, 2011, which is based primarily on interviews with students in Quint’s class. (See “American Sign Language instructor terminated after in-class incident, students say,” available at <http://www.dailymerald.com/2011/05/16/american-sign-language-instructor-terminated-after-incident-students-sa>.)

After class on May 4, Bullis emailed Quint, notifying him that Bullis was investigating a complaint he had received that day “regarding a comment you made in one of your classes.” Bullis stated that Quint was “suspended from teaching” and ordered Quint not to come to any of his classes on May 5. Bullis also stated that he and Clinical Sciences Department Head Cynthia Anderson would meet with Quint’s students during the May 5 classes.

In an email to Quint on May 6, Korrin Bishop, a student in his ASL 203 class, stated that Bullis and Anderson, accompanied by two officers from UO’s Department of Public Safety (DPS), had attended Quint’s ASL 203 class on May 5 and asked whether the students “had felt threatened” by Quint’s expression. Bishop stated in her email that “I know of many students who spoke to the DPS officers and told them that this had been taken out of context, misinterpreted, and that you were a safe and caring individual.” No criminal or other charges were filed against Quint as a result of this investigation.

Later in the day on May 5, Bullis emailed Quint again, informing him that he was “suspended from teaching all classes and should not come to campus” and that Bullis intended to schedule a timely meeting with Quint. No meeting ever took place, however. Instead, on May 11, Bullis emailed Quint informing him that he had been placed on leave with pay until the end of his term on June 15, 2011, and that he would not be reappointed. Bullis also terminated Quint’s computing privileges, including access to his UO email account; ordered Quint not to visit the college before the end of his term; and ordered Quint not to “contact faculty, staff, or students” before the end of his term.

Bullis did not identify any reason whatsoever for these severe punishments, nor did he mention or offer any of the due process protections afforded by the Oregon Administrative Rules (OAR) governing the punishment of non-tenured faculty members. Indeed, OAR 580-021-0320 *et seq.*

set out a process that Bullis completely ignored: In Quint’s case, there was no “preparation of formal charges”; there was no “state[ment of] the facts” justifying any sanction; no notice of charges was provided to Quint; Quint was not provided the required notice “of the right to a formal hearing”; there apparently was no “written finding stating ... that there is a clear and present danger” posed by Quint to justify an emergency suspension; and there was no formal hearing.

As a public university, UO is both legally and morally bound by the First Amendment’s guarantees of freedom of expression and academic freedom. The Supreme Court has held that academic freedom is a “special concern of the First Amendment” and that “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.” *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). Furthermore, as the Supreme Court wrote in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. ... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

That the First Amendment’s protections fully extend to public universities like the University of Oregon is settled law. See *Rust v. Sullivan*, 500 U.S. 173, 200 (1991) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”).

Terminating a non-tenured faculty member because of his or her protected expression violates the faculty member’s First Amendment rights. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 283–84 (“[A teacher’s] claims under the First and Fourteenth Amendments are not defeated by the fact that he [does] not have tenure. Even though [a teacher] could have been discharged for no reason whatever, ... he may nonetheless establish a claim to reinstatement if the decision not to rehire him was made by reason of his exercise of constitutionally protected First Amendment freedoms”); see also *Mabey v. Reagan*, 537 F.2d 1036, 1045 (9th Cir. 1976) (“Withal, it is our duty to protect First Amendment values. Initially, our concern is to guard the rights of the terminated instructor. But, more importantly, we examine alleged First Amendment violations because of their potential chill on others, especially those situated like the complainant. *Although a person’s tenure status is irrelevant to the First Amendment inquiry*, our close examination is particularly appropriate where, as here, a complex of reasons may as well

mask an unlawful motive as legitimately motivate a refusal to rehire ...”) (internal citations omitted) (emphasis added). While a public university is allowed to choose not to rehire a non-tenured faculty member for a very wide variety of reasons, or for no reason at all (unless contractual agreements state otherwise), it is not permitted to make such a decision for a constitutionally impermissible reason, including punishment of protected speech. All indications are that UO has done precisely this to Quint.

Quint’s statement, while made in frustration, was germane to the topic of instruction and protected by his right to free speech in the classroom as part of his academic freedom. While a college may suspend a professor for genuinely harassing or threatening expression, Quint’s statement does not constitute such unprotected speech. Particularly noting its peaceful context, Quint’s statement does not come at all close to meeting the exacting legal definition of a “true threat” articulated by the Supreme Court in *Virginia v. Black*, 538 U.S. 343, 359 (2003), in which the Court held that *only* “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” are outside the boundaries of First Amendment protection. It strains all credulity to think that any reasonable student would take Quint’s statement as a true threat to kill his students. Indeed, the police officers present with Quint’s students on May 5 apparently did not think Quint was a threat or a “clear and present danger,” for no charges were filed after investigating and inquiring with Quint’s students. Bishop likewise notes that many students reported that “this had been taken out of context [and] misinterpreted.”

The principles of academic freedom and free expression in the university setting mandate far more tolerance than UO has afforded Quint. As the Supreme Court stated in *Texas v. Johnson*, 491 U.S. 397, 414 (1989), “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” The Court handed down such a robust defense of potentially offensive speech precisely because deeming certain speech to be offensive is an entirely subjective exercise. In a milieu as diverse as the modern academy, speech is bound to be misinterpreted, and offense is virtually unavoidable. Free speech needs breathing room in order to thrive.

Finally, UO’s punishment of Quint raises grave due process concerns. Bullis completely failed to provide any protections or follow any part of the process spelled out in the Oregon Administrative Rules (OAR) for the punishment of non-tenured faculty members. The utter lack of notice, charges, a hearing, or an opportunity to appeal constitutes a severe violation of Quint’s due process rights under the rules and a betrayal of fundamental fairness. Moreover, Bullis’ requirement that Quint not “contact faculty, staff, or students” before the end of his appointment was a further violation of Quint’s free speech rights which also made it effectively impossible for Quint to defend himself and his reputation.

But for UO’s retaliation against his protected expression, Quint would have completed his teaching for the spring semester and would have had a reasonable expectation of reappointment for the 2011–2012 academic year. FIRE asks that the University of Oregon publicly acknowledge Bullis’ errors in this case, immediately reverse its punishment of Peter Quint,

remove all disciplinary records regarding this matter from his employment files, and honor Quint's reasonable expectation of reappointment.

Let us be clear: UO may use no policy or contrivance to interfere with, restrict, or deny Quint the full exercise of his constitutional rights or to retaliate against him for exercising his rights. We hope to resolve this matter swiftly and amicably, but we are prepared to use all of the resources at our disposal to ensure a just resolution. Please spare the University of Oregon the embarrassment of fighting against the Bill of Rights.

Peter Quint has waived his right to privacy in this matter, permitting you to discuss this case with FIRE. A waiver to this effect is enclosed.

We request a response to this letter by July 18, 2011.

Sincerely,



Peter Bonilla

Assistant Director, Individual Rights Defense Program

Encl.

cc:

Michael Bullis, Dean, College of Education

Cynthia Anderson, Head, Department of Special Education and Clinical Sciences

Kathy Roberts, Assistant Professor, Communication Disorders and Sciences

Robert Kyr, President, University of Oregon Senate

Christopher Prosser, Executive Coordinator, University of Oregon Senate