



Foundation for Individual Rights in Education

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May 29, 2007

President Linda Hanson
Office of the President
Hamline University MS-C1914
1536 Hewitt Avenue
St. Paul, Minnesota 55104

Sent via U.S. Mail and Facsimile (651-523-2030)

Dear President Hanson:

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 liberty, due process, legal equality, voluntary association, freedom of speech, and academic freedom on our nation's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned about the danger to freedom of speech and due process posed by Hamline University's actions against graduate student Troy Scheffler. Because Scheffler's e-mails sent on April 17 and April 19 do not meet the legal standard of a "threat," FIRE asks that you lift the "interim suspension" against Scheffler and forego the mandatory mental evaluation necessary before administrators reevaluate the charges against him.

This is FIRE's understanding of the facts. Please inform us if you believe we are in error. On April 17, Vice President of Student Affairs David Stern sent an e-mail to the Hamline community stating that in the wake of the Virginia Tech shootings, Hamline would offer extra counseling for students. Scheffler responded directly to Stern later that day in an e-mail that addressed his understanding of the frustration that some students must feel on campus because of Hamline's financial and diversity policies. Scheffler also criticized Hamline's ban on concealed weapons in that e-mail.

On April 19, you sent an e-mail to the campus community again addressing the tragedy at Virginia Tech. Scheffler responded to you that same day in an e-mail that again criticized the concealed weapons ban, Hamline's academic standards and financial policies, and the university's efforts to promote diversity. Scheffler's April 19 e-mail, like the one sent on April 17, contained

nothing that met the legal standard of a threat. You even responded to Scheffler's April 19 e-mail by writing on Friday, April 20:

I understand that you have concerns about a number of matters...and I appreciate that you are willing to engage in a dialogue. We are always interested in the concerns of students and suggest that you meet with some of our university personnel to discuss your views. If you will provide us with 2-3 times on Monday or Tuesday of next week when you are available to meet, we will arrange an opportunity at the Minneapolis Center for your convenience.

Yet, on Monday, April 23, before Scheffler even responded to your e-mail, he received a hand-delivered letter notifying him that the "e-mails sent to David Stern, Vice-President for Academic and Student Affairs on April 17, 2007 and to Linda Hanson, President on April 19, 2007" were "deemed to be threatening and thus an alleged violation of the Hamline University Judicial Code." The letter enumerated that Scheffler specifically violated Hamline's prohibition of "[p]hysical abuse, verbal or written threat, intimidation, harassment, coercion, sexual violence, and any conduct, which threatens or endangers the health or safety of any person." In order to lift the "interim suspension"—or even take part in a hearing of the decision—Scheffler must undergo a "mental health evaluation," to be conducted by a licensed mental health professional, the results of which will be evaluated by Dean of Students Alan Sickbert or his designee.

While Hamline's overreaction to Scheffler's e-mails was doubtless prompted by a reaction to the Virginia Tech shootings, it is important that administrators not let an understandable amount of apprehension lead to an abridgement of liberty for peaceful, law-abiding students. Scheffler's comments expressed strong political opinions and may have offended some members of the Hamline community, but contained constitutionally protected political expression. In this time of heightened sensitivity to contentious expression, it is wise to let the U.S. Supreme Court's determination of protected expression, rather than emotion, lead your actions.

The First Amendment permits the prohibition only of "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). Likewise, *Virginia v. Black* states that "[i]ntimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." 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). The comments contained in Scheffler’s April 17 and April 19 e-mails are similarly protected points of view and fall short of the legal definitions of “threatening” or “intimidating” speech.

While Hamline, as a private university, is not directly bound by the First Amendment’s guarantee of free speech, like most universities advancing a liberal education, Hamline is ostensibly committed to free expression. The Hamline policy on “Freedom of Expression and Inquiry” states that:

Hamline students and student organizations are free to examine and discuss all questions of interest to them and to express opinions publicly and privately. They are free to support causes by all orderly means without interference from the university or any part of it so long as their activities do not interrupt the regular and essential business of the university, or interfere with the rights of any member of this community.

Your response to Scheffler’s April 19 e-mail even expressed an interest in engaging in dialogue about Scheffler’s concerns, rather than punishing his unpopular expression. It is extremely difficult to reconcile these admirable commitments to free expression with Hamline’s hasty actions against Scheffler.

The lack of due process in suspending Scheffler also poses concern about the state of liberty at Hamline. Instead of conducting a fair and just evaluation of Scheffler’s comments, Hamline has rushed to judgment and demanded a mental health evaluation of Scheffler before even considering a meeting with him. A psychological evaluation, to be overseen by a Hamline administrator, is one of the most invasive and disturbing intrusions upon Scheffler’s individual right to private conscience imaginable. Because Scheffler has shown no proclivity toward violence and has made no threatening comments, this psychological evaluation seeks to assess his political opinions, implying that an outspoken advocate for Second Amendment rights or a critic of “white privilege” doctrine is somehow mentally unstable. Does Hamline really wish to operate a system of campus discipline in which conclusions are made prior to evaluation of the facts or where evaluation of the facts requires that students subject themselves to intrusive psychological evaluations to be judged by campus administrators? The manifest lack of fundamental fairness in the university’s treatment of Scheffler should cause administrators to rethink their procedures to ensure that fairness and due process are followed and that students’ individual consciences are respected.

FIRE does not suggest that Hamline fail to take seriously true threats or that it refuse to act when such threats are made. On the contrary, we call upon Hamline to treat serious threats with the seriousness to which they are entitled. FIRE requests that Hamline reconsider the “interim suspension” of Troy Scheffler in light of the fact that the content

of his e-mails does not meet the legal definition of a “threat,” and of the total lack of due process in his case. Please lift the “interim suspension” to allow Scheffler access to the Hamline campus so that he and administrators may fairly and equitably evaluate the content of his e-mails.

Enclosed please find a waiver of his rights under the Family Education Rights and Privacy Act (FERPA) signed by Troy Scheffler, permitting Hamline to discuss this disciplinary matter with FIRE. Because of the serious nature of the rights being denied to Scheffler, FIRE requests a response on this matter by Tuesday, June 12, 2007.

Sincerely,

Tara Sweeney
Senior Program Officer

cc:

David Stern, Vice President of Academic and Student Affairs, Hamline University
Julian Schuster, Dean of Graduate School of Management, Hamline University
Shirleen Hoffman, Director of Safety and Security, Hamline University
Alan Sickbert, Dean of Students, Hamline University
Patti Klein, Assistant Dean of Students, Hamline University
Troy Scheffler

Encl.