



Foundation for Individual Rights in Education

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February 23, 2009

President Robert J. Zimmer
University of Chicago
President of the University
Administration Building
5801 South Ellis Avenue
Chicago, IL 60637

Sent via U.S. Mail and Facsimile (773-702-0809)

Dear President Zimmer:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to free expression posed not only by the University of Chicago's censorship of a student's Facebook.com photograph album in violation of his freedom of speech, but also by Dean Susan Art's invocation of a university policy against "disrespect" to censor such off-campus postings.

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

On January 19, 2009, University of Chicago student Andrew Thompson posted a photograph "album" on his personal Facebook.com page. The title of the album was "[Name of ex-girlfriend] cheated on me, and you're next!" Some of the photographs in the album were of Thompson's ex-girlfriend, and dozens of the photographs were not. On January 19 and 20, a number of people other than Thompson posted comments about the allegation of cheating; one person wrote, "Seriously though, what a fucking whore."

On January 20 at about 9:00 a.m., Thompson's ex-girlfriend sent Susan Art, Dean of Students in the College, an e-mail claiming that the album's title and the third-party comments on the title constituted "libel." The woman stated that

Thompson had refused to change the title of the album upon her request and asked Art “if this could be removed quietly and quickly from the internet.”

At 2:00 p.m., Art e-mailed Thompson, revealing the entire content of the ex-girlfriend’s e-mail, and demanded the censorship of Thompson’s album:

[Name of ex-girlfriend] has brought to my attention that you have posted her name on facebook and that this has drawn some critical comments from others. I am writing to ask you to remove her name and remove the pictures you have posted of her. We have an expectation that members of the University community treat each other “with dignity and respect.” This kind of post is disrespectful. I know you think it is a joke, but it is very upsetting to her.

Can you let me know when her name and her pictures are removed from your facebook page?

I expect this to happen right away.

Very shortly afterward, Thompson complied with Art’s censorship demands, but he resisted the idea that a University of Chicago dean could censor his protected speech. On January 21, he asked her by e-mail, “Can the university really regulate internet speech? I did not say anything subjective or false, so I don’t see how I can be forced to do this...”

In a very troubling response e-mailed to Thompson later that day, Art essentially declared that the university’s *Student Manual [of] University Policies and Regulations* permits censorship of “disrespectful” speech:

Every member of the University - student, faculty, and staff - makes a commitment to strive for personal and academic integrity; to treat others with dignity and respect; to honor the rights and property of others; to take responsibility for individual and group behavior; and to act as a responsible citizen in a free academic community and in the larger society. Any student conduct, on or off campus, of individuals or groups, that threatens or violates this commitment may become a matter for action within the University's system of student discipline.

If the University of Chicago really intends to start policing the “personal ... integrity” of students as interpreted by its deans, one might wonder how thoroughly the university is going to call upon its Baptist roots. How are students to know which aspects of “personal ... integrity” might be adjudicated by the university—honoring one’s father and mother? sloth? gluttony? sexual infidelity?

According to Thompson, when he met with Art again on February 4, she again told him that the *Student Manual* permits her to order students to remove online materials that she deems “disrespectful.”

For Art to quote the *Student Manual* in the name of censorship is a shameful betrayal and repudiation of the University of Chicago's vaunted tradition of freedom of expression. You hardly need to be reminded of this tradition. In 2007, for instance, you announced that the University of Chicago would not divest from companies doing business in Sudan because of the principles of liberty ensconced in the university's renowned Kalven Report (1967), which states in relevant part:

A university faithful to its mission will provide enduring challenges to social values, policies, practices, and institutions. By design and effect, it is the institution which creates discontent with the existing social arrangements and proposes new ones. In brief, a good university, like Socrates, will be upsetting....

[Yet,] [t]here is no mechanism by which [the university] can reach a collective position without inhibiting that full freedom of dissent on which it thrives....

The neutrality of the university as an institution arises then ... out of respect for free inquiry and the obligation to cherish a diversity of viewpoints. And this neutrality as an institution has its complement in the fullest freedom for its faculty and students as individuals to participate in political action and social protest....

[T]here emerges, as we see it, a heavy presumption against the university taking collective action or expressing opinions on the political and social issues of the day, or modifying its corporate activities to foster social or political values, however compelling and appealing they may be.

In addition, the university promises freedom of expression in its *Student Manual*: "At the University of Chicago, freedom of expression is vital to our shared goal of the pursuit of knowledge. Such freedom comes with a responsibility to welcome and promote this freedom for all, even in disagreement or opposition." The *Student Manual* also states: "The ideas of different members of the University community will frequently conflict and we do not attempt to shield people from ideas that they may find unwelcome, disagreeable, or even offensive. Nor, as a general rule, does the University intervene to enforce social standards of civility."

It is impossible to see how the university's commitment to freedom of expression can coexist, without contradiction, with policies that restrict that freedom. For example, the House System Rules and Regulations, as stated in the *Student Manual*, state that "if a posting is deemed to be offensive to a particular group or individual, the posting may be removed."

Likewise, the Office of the Vice President for Campus Life and Dean of Students in the University's (VPDoS's) website at civility.uchicago.edu claims that "The University of Chicago is committed to fostering an environment free from racism, sexism, ageism,

heterosexism, homophobia, ableism, [and] xenophobia.” As noble as it may seem to institutionally oppose these aspects of discrimination, the university goes too far when it employs such policies to restrict and censor clearly protected speech on or off campus.

At many schools, such policies are merely goals to be achieved, not requirements to be enforced. Unfortunately, Susan Art’s invocation of “respect” as a prerequisite for student speech can only serve to chill expression across the campus. The principle of “respect” offered here is a world away from the legal standard for peer harassment announced by the Supreme Court in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 652 (1999), in which the Court defined student-on-student harassment as conduct which is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities.”

The University of Chicago must not let Susan Art’s censorship or the principle behind it stand against its long tradition of protecting the freedoms of its students and faculty members. Now that the *Chicago Maroon* has publicized this case (February 3, 2009), all students are on notice that they could be censored and prosecuted for exercising their right to free expression online or anywhere on or off campus, so long as Art or some other administrator deems that expression “disrespectful.” Taken together with the VPDoS’s statement that her office is committed to freeing the university from various kinds of discrimination, students have strong reason to fear such censorship and prosecution for taking reasonable positions that some administrator might deem, for example, heterosexist or xenophobic. Is strong opposition to homosexual marriage or advocacy against illegal immigration now to be taken as disrespectful, both proscribed and punishable at the University of Chicago? Is it to be taken as a failure of “personal ... integrity”? Students now have a good reason to think so.

FIRE thus requests that all students be assured that their right to free speech and free inquiry remains entirely intact. Please inform all students that they do not lose their right to free expression when they enroll at the University of Chicago and that the university will never again censor or punish “disrespectful” speech. At the least, FIRE requests that the censorship against Thompson be reversed; he and all students must be allowed to publish photographs and true statements, within the law, even if they disturb other students in some way.

In addition, FIRE requests that the University of Chicago revise its posting policy by removing its prohibition on “offensive” postings. Doing so would comport with common sense, the freedom of speech, and the university’s own statement that “The ideas of different members of the University community will frequently conflict and we do not attempt to shield people from ideas that they may find unwelcome, disagreeable, or even offensive. Nor, as a general rule, does the University intervene to enforce social standards of civility.”

With this letter we enclose a signed FERPA waiver from Andrew Thompson, authorizing you to discuss his case with FIRE.

FIRE hopes to resolve this matter amicably and swiftly, but we are prepared to use all of our resources to see this situation through to a just and moral conclusion. We request a response by March 13, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with the first name "Adam" written in a larger, more prominent script than the last name "Kissel".

Adam Kissel, A.M. 2002
Director, Individual Rights Defense Program

Encl.

cc:

Kimberly Goff-Crews, Vice President for Campus Life and Dean of Students in the
University, University of Chicago

Susan M. Art, Dean of Students in the College, University of Chicago

John W. Boyer, Dean of the College, University of Chicago

Gregory A. Jackson, Vice President and Chief Information Officer, University of Chicago

Tracy Weiner, Associate Director, University Writing Program