



Foundation for Individual Rights in Education

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June 1, 2011

Chancellor Holden Thorp
The University of North Carolina at Chapel Hill
Office of the Chancellor
103 South Building, Campus Box 9100
Chapel Hill, North Carolina 27599

Sent via U.S. Mail and Facsimile (919-962-1647)

Dear Chancellor Thorp:

As we stated in our letter of October 15, 2010, regarding a separate matter, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, free speech, legal equality, due process, the right of conscience, and academic freedom on America's college campuses.

FIRE is concerned about the threat to freedom of expression presented by the University of North Carolina at Chapel Hill's (UNC's) decision to revoke the account access of Professor Emeritus Elliot Cramer following complaints from a person unaffiliated with UNC about a private dispute between the two. In the course of making this decision, UNC inappropriately required Cramer to remove from his webpage on the university network a hyperlink to an external page that, in turn, linked to still another external page that addressed the dispute. Although Elliot removed the link, UNC nevertheless inappropriately revoked his Internet privileges.

This is our understanding of the facts; please correct us if you believe we are in error.

Professor Cramer, who became a faculty member at UNC in 1966, has been an emeritus faculty member since 1994. Cramer, who also is President of the Board of Directors of the Piedmont Animal Welfare Society (PAWS), has been in a private dispute with Joseph Villarosa that apparently originated with complaints about an animal shelter in Robeson County, North Carolina. Villarosa has repeatedly attempted to draw UNC into this dispute via email. For example, on April 17, 2011, Villarosa emailed UNC General Counsel Leslie C. Strohm stating concern that Cramer's webpage at www.unc.edu/~cramer contained a link to the PAWS website, <http://ourpaws.info>, which in turn linked to a page about the dispute at www.ourpaws.info/joe. In particular, Villarosa wrote:

It is now been SIX MONTHS since I first reported this matter to UNC[.] During this time, there's been NO effective action taken by the University[.]

On April 20, 2011, Strohm emailed Cramer, stating that Villarosa had complained to UNC "again" about Cramer's alleged "use of University resources to continue [Cramer's] dispute" with Villarosa. Strohm added:

I've looked at the website you maintain on the University network and see that there is a link to a website for the Piedmont Animal Welfare Society (PAWS), which includes a link to a website that contains references to Mr. Villarosa. Would you please remove - immediately -- from any University resources any links to material referencing Mr. Villarosa, either directly or indirectly.

Strohm emailed Villarosa later that day, stating that Cramer

is not our employee, and we have no responsibility for his actions.

As a retired faculty member, Dr. Cramer is granted access to a UNC email account and is permitted to maintain a limited webpage. The University does not monitor the content of the email accounts or webpages maintained by retired faculty.

[...]

I have looked at Dr. Cramer's personal webpage, which is mentioned in your [April 17] email. **I see no reference to you whatsoever.** [Emphasis added.]

[...]

Your recourse is directly with Dr. Cramer. He alone is responsible for his words and his actions. This is not a University matter.

On April 24, Cramer notified you via email that he had removed the link to PAWS from his personal webpage. On April 27, however, you wrote Cramer via email that "[t]he use of the university IT network is a revocable privilege" and that you personally had authorized UNC's IT Security staff to permanently disable his network privileges. You explained:

You have embroiled the university in your personal issues and diverted university resources from the things we really need to focus on to a degree that is simply unacceptable. That is a violation of the campus "Personal Use Policy."

[...]

I won't be responding to any more of your emails. If you want to go to my superior about this, that would be President [Thomas] Ross.

Cramer appealed to President Ross on April 28. On May 17, however, ITS Security Executive Director Stan Waddell emailed Cramer, stating that the Information Security Office would need a request from the Office of University Counsel in order to restore Cramer's account access. Finally, on May 26, Vice President and General Counsel Laura B. Luger emailed Cramer, stating:

The matter of the campus withdrawal of your IT privileges is squarely within the discretion of the campus, and there is no basis under law or University policy for an appeal to this office.

While it might be within UNC's discretion to prevent an emeritus faculty member from having access to his email address and webpage on the university network for a variety of reasons, it is unconstitutional to deprive him of such access for a constitutionally impermissible reason. Here, UNC did so due to the exercise of Cramer's constitutionally protected speech, permitting a "heckler's veto" to trump the First Amendment.

There can be no doubt that the content of Cramer's speech—a mere link on his webpage to an external webpage—is protected by the First Amendment against retaliation from UNC. Moreover, it is entirely unreasonable to ask the impossible, namely, that a faculty member police every page of every website to which his own website links, so as to prevent "indirectly" referencing Villarosa.

Furthermore, Cramer's website and necessary communications about it with UNC due to Villarosa's complaints do not violate UNC's Personal Use Policy in any way. Strohm admitted in her April 20 email to Villarosa that UNC has "no responsibility for [Cramer's] actions," that "[t]his is not a University matter," that UNC "does not monitor the content of the ... webpages maintained by retired faculty," and that Strohm saw "no reference to [Villarosa] whatsoever" on Cramer's personal webpage. Even if the Personal Use Policy does apply to Cramer (who, as Strohm noted, is not a UNC employee), it is not permissible to punish Cramer due to Villarosa's persistent complaints. Although you stated that Cramer had "embroiled the university in [his] personal issues and diverted university resources," the evidence shows that Villarosa is the one who did so. Cramer has made numerous efforts to isolate UNC from the private dispute, and he even removed the link about which Villarosa complained. Further, Cramer has been within his rights to seek redress from UNC about UNC's investigation, censorship, and punishment of his protected expression stemming from Villarosa's complaints.

UNC's actions against Cramer constitute a classic case of a "heckler's veto," whereby the government or its agents censor a speaker's expression because of the disruptive actions of a third party. In this instance, UNC has permitted someone holding a grudge against a UNC professor to silence him simply by being a nuisance to the university. FIRE commended you in 2009 when your administration removed and arrested six hecklers who disrupted a campus speech by former Virginia congressman and illegal immigration opponent Virgil Goode. Likewise, you apologized to then-congressman Tom Tancredo in 2009 after violent protesters disrupted his speech at UNC. At that time you wrote:

Carolina's tradition of free speech is a fundamental part of what has made this place special for more than 200 years. Let's recommit ourselves to that ideal.

Today we ask that you protect the fundamental rights of a longtime member of the UNC community by standing up to Elliot Cramer's heckler.

ITS Security awaits a request from the Office of University Counsel to restore Cramer's account access. FIRE asks that the University of North Carolina at Chapel Hill uphold its obligations to free speech by immediately reinstating Cramer's account access. 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. Please spare UNC the diversion of resources required to continue fighting against the Bill of Rights.

We request a response to our letter by June 15, 2011.

Sincerely,



Peter Bonilla

Assistant Director, Individual Rights Defense Program

cc:

Leslie C. Strohm, General Counsel, The University of North Carolina at Chapel Hill
Stan Waddell, Executive Director, ITS Security, The University of North Carolina at Chapel Hill
McKay Coble, Chair of the Faculty, The University of North Carolina at Chapel Hill
Jan Boxill, Chair-Elect of the Faculty, The University of North Carolina at Chapel Hill
Charles Milone, President, UNC-Chapel Hill Retired Faculty Association
Andrew W. Dobelstein, President-Elect and Past President, UNC-Chapel Hill Retired Faculty Association
Laura B. Luger, Vice President and General Counsel, Office of Legal Affairs, The University of North Carolina