



Foundation for Individual Rights in Education

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December 5, 2005

Chancellor Patricia A. Sullivan
University of North Carolina at Greensboro
303 Mossman Building
P.O. Box 26170
Greensboro, NC 27402-6170

Sent by U.S. Mail and Facsimile (336-256-0408)

Dear Chancellor Sullivan:

As you can see from our Directors and Board of Advisors, 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, freedom of religion, academic freedom, due process, and, in this case, freedom of speech and expression on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the unconstitutionally restrictive speech policies of the University of North Carolina at Greensboro (UNCG). The university's Facility Use Policy, which designates only two small areas on UNCG's campus as "free speech and assembly" areas, chills expression on UNCG's campus and ignores constitutional guarantees of freedom of speech that UNCG, as a state-supported institution, is obligated to protect. At UNCG, protests, demonstrations, pamphleteering, speeches, and even petitioning must all receive complex prior and official approval if they occur outside of the "free speech and assembly" areas. Even student groups planning to gather within the designated areas must provide prior notice to university officials. UNCG's implementation of "free speech zones" is a perversion of constitutional and statutory law and has no place at an institution committed to intellectual rigor, robust debate, and a free and vibrant community.

This is our understanding of the facts. Please inform us if you believe we are in error. On November 16, 2005, UNCG's College Libertarians, including College Libertarians president Allison Jaynes, joined a number of other students and student groups in peaceful protest of the university's unconstitutional restrictions on speech and assembly. The protest occurred outside the confines of UNCG's "free speech and assembly" areas, in an effort to bring attention to the unconstitutionality of the policy defining those areas. Jaynes reports that UNCG

Police approached her and demanded that she cease demonstrating outside the free speech areas. Jaynes refused, citing the unconstitutionality of UNCG's Facility Use Policy, which limits the free exercise of speech and assembly to "(1) the east lawn area of the Elliott University Center (facing College Avenue); and (2) the east portion of the lawn area in front of the Julius Foust Building (the side nearest Aycock Auditorium)." Jaynes' Charge Violation Form reflects Jaynes' account of the event, as it states that she "held a free speech demonstration in a non-free speech area and refused to move when given a directive from an official."

Jaynes now faces a disciplinary hearing for her actions, with UNCG asserting that by participating in a demonstration outside of the "free speech areas," Jaynes violated the Student Code of Conduct's value of "Respect." UNCG's unconstitutional restrictions on free speech have therefore turned Jaynes into a campus "criminal" because she refused to respect an unconstitutional policy and instead exercised one of the fundamental rights of every student at our nation's public institutions of higher learning.

The tragedy of UNCG's strict regulations on speech is that the special function of the university as a whole, in any free society, is to serve as the ultimate "free speech area." UNCG affirms this sentiment in its mission statement, in which it claims to be "a community of **actively engaged** students, faculty, staff, and alumni founded on **open dialogue**, shared responsibility, and respect for the distinct contributions of each member." [Emphases added.] Even the Student Code of Conduct's description of the "Respect" value—the very policy that Jaynes supposedly violated—acknowledges that "[a]n academic community of integrity recognizes the participatory nature of the learning process and honors and respects a wide range of opinions, ideas, and cultures." Yet "Respect" apparently also demands that students submit to policies that directly contradict principles of academic integrity and the "participatory nature of the learning process." UNCG's Facility Use Policy runs afoul of both the First Amendment and UNCG's own commitments to free speech by restricting speech and assembly to two tiny, out-of-the-way areas of its nearly 200-acre campus.

A university serious about the search for truth should be seeking at all times to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way people think. Contrastingly, a university that is intolerant of the often messy reality of a free society is incapable of teaching students to live in freedom. By limiting free speech to a small fraction of its campus, UNCG sends the message that speech is to be feared, restrained, and monitored. This message is completely incompatible with a free society and stands in stark opposition to the ideals of higher education. UNCG would be wise to remember the Supreme Court's timeless expression of the important role of our universities 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.*** No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made... Scholarship cannot flourish in an atmosphere of suspicion and distrust. 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. [Emphasis added.]

UNCG's actions in regulating free expression create the very "atmosphere of suspicion and distrust" against which the justices warned.

Further, UNCG's establishment of free speech zones that restrict and corral free expression is legally insupportable. The only possible defense of UNCG's policy would be that it is a "reasonable time, place and manner" restriction as allowed by cases like *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). There is nothing "reasonable," however, about transforming the vast majority of the university's property—indeed, *public* property—into a "censorship area," and in maintaining a system of onerous requirements by which students must abide in order to exercise their fundamental rights. Federal case law regarding freedom of expression simply does not support the transformation of public institutions of higher education into places where constitutional protections are the exception rather than the rule. Time and again, courts have determined that to be considered legal, "time, place, and manner" restrictions must be "narrowly tailored" to serve substantial governmental interests. The generalized concern for order that underlies the establishment of free speech zone policies is neither specific enough nor substantial enough to justify such restrictions.

FIRE, which recognizes the threat to liberty represented by free speech zones on public college or university campuses, has challenged the establishment of free speech zones at universities across the nation, including at West Virginia University, Seminole Community College in Florida, Citrus College in California, and Texas Tech University. In all of these cases the institutions challenged have either decided on their own to open up their campuses to expressive activities or have been forced by a court to do so. For instance, in FIRE's case at Texas Tech, a federal court determined that Texas Tech's policy must be interpreted to allow free speech for students on "park areas, sidewalks, streets, or other similar common areas...irrespective of whether the University has so designated them or not." *See Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004). UNCG would be well advised to take this into account in considering its own policies.

Please spare UNCG the embarrassment of fighting against the Bill of Rights—a statement of both law and principle by which the university is legally and morally bound. We urge UNCG to dismiss the charges against Allison Jaynes, to show the courage necessary to admit its error, to undo this unjust policy, and to tell the world that free speech at UNCG is to be celebrated, honored, and broadened—not feared, restrained, and hidden. Let your students exercise their basic legal, moral, and human rights; let them speak, assemble, and protest as their consciences dictate.

FIRE is committed to using all of its resources to abolish the unconstitutional limits on freedom of expression at UNCG. Because Allison Jaynes faces a hearing on this matter soon, we request a response on this matter by December 12, 2005.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. Shibley". The signature is written in a cursive style with a blue ink color.

Robert L. Shibley
Program Manager

cc:

Erskine B. Bowles, President, University of North Carolina System
Jen Day Shaw, Dean of Students, University of North Carolina at Greensboro
Brett Carter, Assistant Dean of Students, University of North Carolina at Greensboro
Bruce J. Michaels, Director of Student Life, University of North Carolina at Greensboro
Kathleen McGirty, Assistant Director for Facilities & Services, University of North
Carolina at Greensboro