Foundation for Individual Rights in Education
601 Walnut Street, Suite 510 • Philadelphia, PA 19106
T 215-717-3473 • **F** 215-717-3440 • fire@thefire.org • www.thefire.org

January 12, 2006

Leslie J. Winner
Vice President and University Counsel
University of North Carolina
Office of the President
P.O. Box 2688
Chapel Hill, North Carolina 27515-2688

Sent by U.S. Mail and Facsimile (919-962-0477)

Dear Vice President Winner:

In response to your letter of January 5, 2006, the Foundation for Individual Rights in Education (FIRE) welcomes the opportunity to provide advice on the "free speech and assembly areas" at the University of North Carolina–Greensboro (UNC-G).

First, in response to your assertion that you may not discuss the cases of UNC-G students Allison Jaynes and Robert Sinnott with FIRE because of federal privacy laws, that concern has been addressed. Both Jaynes and Sinnott have signed Federal Educational Rights and Privacy Act (FERPA) waivers that allow UNC administrators to discuss their cases with FIRE. UNC-G has had these waivers on file since December 14, 2005, but for your convenience we have attached copies to this letter.

As for our input on UNC-G's position on free expression, we refer you to our December 5, 2005, letter to UNC-G Chancellor Patricia A. Sullivan (attached), which details relevant case law declaring policies that place unreasonable or excessive time, place, and manner restrictions on protected speech unconstitutional on public campuses. That letter also highlights FIRE's successful challenges to the establishment of free speech zones at universities across the nation, including 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 to open up their campuses to expressive activities or have been forced by a court to do so.

As FIRE explained in our letter to Chancellor Sullivan, the case law supporting the establishment of "time, place, and manner" restrictions on speech makes it clear that such restrictions must be "narrowly tailored to serve a significant government interest." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460

U.S. 37, 45 (1983). On December 9, 2005, University Counsel Lucien Capone responded to FIRE by citing the recent opinion in *ACLU v. Mote*, 423 F.3d 428 (4th Cir. 2005), in an attempt to justify the establishment of "free speech zones" on UNC-G's campus. You need to be aware, however, that the *Mote* case does not apply to the situation at UNC-G.

Briefly, *Mote* was the case of a non-student who entered the University of Maryland's College Park campus, uninvited by any campus person or group, to pass out campaign literature for Lyndon LaRouche. The University of Maryland had set aside some parts of campus for exactly this use, but the literature distributor chose to violate these rules when he was told that there was no room for him in the designated areas. After the university issued him a citation and ordered him to leave the campus, the literature distributor sued.

In finding for the university, the *Mote* court determined that for the purposes of those unaffiliated with the university, the campus was a limited public forum and that content-neutral determinations could be made about when and how outsiders might speak. Yet the decision made no attempt to adjudicate the rights of actual students of the university. The court did point out that "the Supreme Court decision in *Widmar v. Vincent*, 454 U.S. 263 (1981)…recognized that 'the campus of a public university, at least for its students, possesses many of the characteristics of a public forum.'"

Mote is not the only recent case to deal with free speech zones. In *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004), a case instigated by FIRE, a federal court opined that "to the extent [that a] campus has park areas, sidewalks, streets, or other similar common areas, these areas are public forums, at least for the University's students, irrespective of whether the University has so designated them or not." Together, *Mote* and *Haragan* cannot possibly offer comfort to those who would defend the blanket restriction of expression to a few free speech zones comprising only a tiny fraction of UNC-G's 200-acre campus. Indeed, it is this very concern that must be driving UNC-G's re-evaluation of its policies on free expression.

Further, it hardly seems appropriate for Jaynes and Sinnott to undergo the burden of being tried for violating a policy that UNC-G is not even sure it wants to keep. Jaynes and Sinnott are charged with "violations of respect" for protesting UNC-G's Facility-Use Policy outside of the two designated "free speech and assembly areas." The only violation of "respect" seems to be that the students did not abandon their protest when ordered to—the protest itself was peaceful, and even after the protestors refused to leave, the police did nothing to stop the protest. It is ludicrous to hold students responsible for failing to show "respect" to an administrator for politely disobeying an unconstitutional order. For Jaynes and Sinnott to face hearings or discipline at all makes a mockery of justice; this is doubly true when the legitimacy of the very policy they violated is seriously being questioned by the university itself.

FIRE sincerely hopes that in making a decision about this policy, the University of North Carolina will consider the legal precedent cited in this letter and in our previous letter to Chancellor Sullivan, along with the moral ramifications of infringing upon the fundamental rights of UNC-G students engaged in a peaceful, outdoor protest. UNC-G should take note that every challenge FIRE has posed to "free speech zones" has been successful, and has met with overwhelming public approval. We urge UNC to remember America's tradition of toleration of

public dissent and to refuse to punish its own students merely because they would not allow their expression to be corralled into two small, out-of-the-way areas of UNC-G's campus. Let your students exercise their basic legal, moral, and human rights; let them peacefully protest as their consciences dictate.

Sincerely,

Robert L. Shibley
Program Manager

Erskine B. Bowles, President, University of North Carolina System
Patricia A. Sullivan, Chancellor, University of North Carolina–Greensboro
Lucien Capone III, University Counsel, University of North Caroline–Greensboro
Jen Day Shaw, Dean of Students, University of North Carolina–Greensboro
Elizabeth Bunting, Associate Vice President for Legal Affairs, University of North Carolina System
David Lombard Harrison, Associate Vice President for Legal Affairs, University of North Carolina System
Kemal Atkins, Director of Academic & Student Affairs, University of North Carolina System
Brett Carter, Assistant Dean of Students, University of North Carolina–Greensboro
Bruce J. Michaels, Director of Student Life, Assistant Vice Chancellor for Student Affairs, University of North Carolina–Greensboro
Kathleen McGirty, Assistant Director for Facilites & Services, University of North Carolina–Greensboro
Allison Jaynes
Robert Sinnott

Encl.