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December 22, 2008

Samantha K. Harris
Foundation for Individual Rights in Education
601 Walnut Street, Suite 510
Philadelphia, Pennsylvania 19106
Sent by U.S. Mail and Facsimile (215) 717-3440

Re: Free Speech

Dear Ms. Harris:

Your letter of December 8, 2008 has been referred to me for response. Please direct future correspondence regarding this matter to my attention.

In your letter you invite the University to correct your understanding of the facts concerning the University's free speech zone. I am assuming that you gleaned your information in large measure from policies, maps and other information on our website. I am also assuming that you have never been to our campus and thus have an incomplete understanding of the adequacy of our free speech area. That area is indeed in the northwest section of McMicken commons which I think it is fair to say is at the very heart of our uptown campus. The commons is surrounded by the student union, the central administration building and various academic buildings. While speakers are limited to the northwest corner, their potential audience can and does fill the entire commons. Thus your apparent conclusion that free speech is limited to an inaccessible part of the campus is not correct. McMicken commons, because of its central location and campus traffic patterns offers students and outside groups superb access to the University community. In fact, it has been our experience that when in the past the University has offered other venues in lieu of McMicken groups have complained that we are engaging in precisely the type of conduct that you condemn in your bullet point #2: limiting speech "to inaccessible or sparsely used/populated areas of the campus."

Needless to say, I disagree with your conclusion that our establishment of a free speech area is unconstitutional or otherwise illegal. At least in this federal circuit the courts have rejected the notion that simply because a University is public, its common areas are necessarily unlimited public fora subject only to time, place and manner restrictions. Thus in a recent case involving Miami University of Ohio in which the establishment of free speech zones was challenged, the Sixth Circuit Court of Appeals concluded:

Plaintiff has failed to persuade us to depart from the *great weight of authority*, which has rejected the notion that open areas on a public university campus are traditional public fora. Accordingly, we find no error in the district court's determination that the subject open areas at Miami University represent limited public fora.

Gilles v. Garland, 281 Fed.Appx. 501, 511 (C.A.6 2008)(emphasis added) Your suggestion that the entire University should be considered a traditional public forum for all persons to talk about all topics at all times is not the law, and as a practical matter does not strike the appropriate balance between individual free speech on the one hand and the University's obligations to its student body as a whole and the potential for disruption to the University's educational mission on the other.

I have reviewed the six bulleted and recommended guidelines for speech policies at the end of your letter. As far as I can discern, except for our disagreement over whether the entire campus is a traditional public forum, the University's policy on use of facilities is entirely consistent with your recommendations. We have no speech code and do not place undue or burdensome restrictions on the use of the free speech area.

I hope you have found these clarifications helpful. If you have further questions or suggestions please do not hesitate to direct them to my attention.

Sincerely,



Mitchell McCrate
General Counsel

MDM

Monica Rimai
Anthony Perzigian
Mitchel Livingston
Frank Bowen