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THE FIRE QUARTERLY

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New Federal Regulations Limit Due Process, Free Speech Rights on Campus

In response to new federal regulations announced in April that require colleges and universities to dramatically reduce students' due process rights, FIRE sent an open letter to the United States Department of Education's Office for Civil Rights (OCR) sharply criticizing the agency's new requirements. Under the new regulations, announced in an April 4, 2011, letter from Assistant Secretary for Civil Rights Russlynn Ali, colleges and universities receiving federal funding must employ a "preponderance of the evidence" standard—a 50.01%, "more likely than not" evidentiary burden—when adjudicating student complaints concerning sexual harassment or sexual violence. Institutions that do not comply face federal investigation and the loss of federal funding.

OCR is the federal agency tasked with enforcing federal civil rights laws, including Title IX, in educational programs and institutions that receive federal funding. OCR's April 4 letter decrees that under Title IX, the "prompt and equitable resolution" of student complaints regarding sexual harassment and sexual violence requires that "school[s] must use a preponderance of the evidence standard *(i.e.*, it is more likely than not that sexual harassment or violence occurred)"—a requirement not previously discovered in the 39-year-old law. OCR explicitly rules out the use of higher standards of proof, stating that university judicial systems maintaining the "clear and convincing" standard—which requires accusers to prove that "it is highly probable or reasonably certain that the sexual harassment or violence occurred"—are "not equitable under Title IX." Both standards of proof fall far short of the "beyond a reasonable doubt" standard required in every criminal case in the United States.

FIRE's open letter points out that Supreme Court precedent argues strongly against using the preponderance of the evidence standard in campus hearings concerning allegations of sexual harassment and sexual violence. In cases where "the private interest affected is commanding; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring that standard is comparatively slight," the Court held in *Santosky v. Kramer* (1982) that use of the preponderance of the evidence standard is "inconsistent with due process." In the educational context, the Supreme Court further observed in *Goss v. Lopez* (1975) that when "a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," due process requires "precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school."

FIRE's letter also notes that lowering the burden of proof in sexual harassment and sexual violence cases will reduce confidence in campus judiciary systems and inevitably result in more incorrect guilty verdicts. Rather than provide for the "prompt and equitable" resolution of student allegations, FIRE contends that OCR's new requirement "serves to undermine the integrity, accuracy, reliability, and basic fairness of the judicial process." Further, relying on the preponderance of the evidence standard in sexual violence claims "turns the fundamental tenet of due process on its head, requiring that those accused of society's vilest crimes be afforded the scant protection of our judiciary's least certain standard."

FIRE's concerns about the threat to due process rights presented by OCR's new mandate are exacerbated by the fact that many colleges and universities continue to maintain overly broad harassment codes that prohibit protected speech. For example, the University of Florida lists "humor and jokes about sex that denigrate a gender" as

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From the Senior Vice President

Robert L. Shibley



Defenders of the U.S. Department of Education's Office for Civil Rights' recent mandate that nearly every school in the nation use the "preponderance of the evidence" standard to make decisions in cases of sexual assault or harassment are attempting to reassure the public that this low standard was appropriate for such serious cases. Their argument? "This is the same standard used in multimillion-dollar lawsuits! Surely it's fine for a simple college trial!"

What they don't mention is that the preponderance standard is so low (a person need only be 50.01% likely to be guilty) that its use is forbidden in any criminal trial—even for the simplest misdemeanors. To find a student guilty of sexual assault is to judge that person guilty of a serious crime. College trial or not, that finding carries with it a lifetime stigma and serious repercussions for a student's future. Both the accused and the alleged victim deserve for such offenses to be taken more seriously than is provided for by our society's lowest standard of proof.

Nevertheless, even the preponderance standard, when conducted impartially, requires that the weight of the evidence (no matter how slight) tend to prove that the accused is guilty. With no choice but to use this standard, upon pain of loss of federal funding, universities must be working hard to ensure the fairest possible trials for their students, right?

Not so much.

Stanford University, for example, supplies the student members of its tribunal for sexually related offenses with dozens of pages of eye-opening "training" material. Among what Stanford calls "Key Points To Remember" are these gems (these are direct quotes):

- Everyone should be very, very cautious in accepting a man's claim that he has been wrongly accused of abuse or violence. The great majority of allegations of abuse—though not all—are substantially accurate. And an abuser almost never "seems like the type."

- When people take a neutral stand between you and your abusive partner, they are in effect supporting him and abandoning you, no matter how much they may claim otherwise.

Imagine being a male Stanford student at a hearing. The "jury" has been told not to believe you if you say you're wrongly accused. If you seem nice, or act "persuasive and logical," that's an indication that you are guilty. The student panelists have been told that if they try to be neutral, they're helping the cause of violence against women. And to top it off, the federal government has now required Stanford to use the lowest possible standard of proof to determine your guilt. Any bets on the result?

As political observer Michael Barone put it, this is a recipe for "marsupial justice." And it's not merely a theoretical point—this happened to a Stanford student only weeks ago.

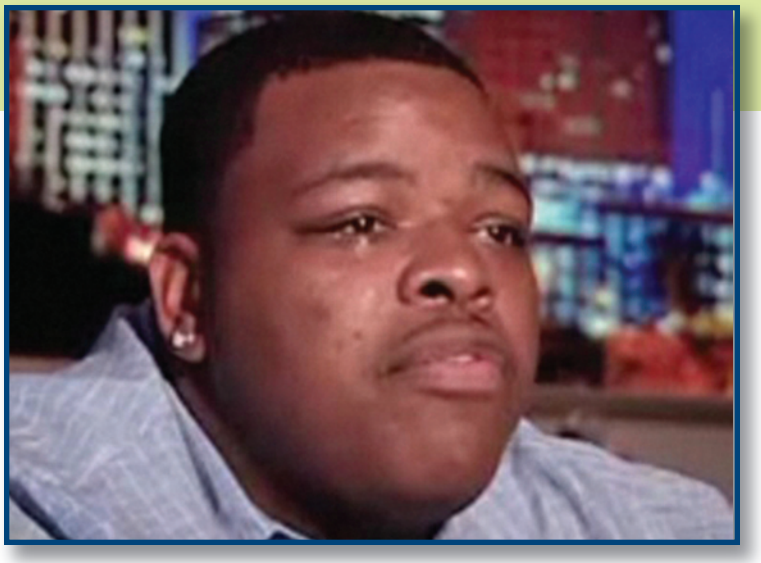
Stanford is not alone. At the University of North Dakota, a student was kicked out for three years after the university found him guilty of sexual assault using the preponderance of the evidence standard. Meanwhile, local police refused to charge the student and instead charged his accuser with lying to them about the assault. When FIRE wrote to UND requesting a new hearing for the student in light of this startling turn of events, UND's response was that none was needed, since the college already knew all the information that led the police to charge the accuser. The very same evidence that led UND to find a student guilty of sexual assault led real law enforcement professionals to charge his accuser with lying.

How could this happen? FIRE has issued an open records request to UND to find out how that university is "training" its student jurors. Anecdotal evidence suggests that Stanford-style training, which is intended to make students even less impartial than they are already inclined to be about sexual offenses, may be rife on campuses across America. To find out, FIRE is planning on using the power of open records requests to systematically shed light on training materials on public campuses across the nation. It's a huge task, for which we need your support.

These due process abuses are tragic, and so is the potential for the government's misguided new requirement to further squelch campus speech. After all, sexual harassment codes—which are now governed by this federal mandate—are the weapon of choice for colleges to crush dissenting speech. For instance, CSU-Chico deems "continual use of generic masculine terms such as to refer to people of both sexes" to be sexual harassment. Under this new regime, all the university need do is prove that it is 50.01% likely that a student said "he" instead of "she" once too often, and that student is to be branded a harasser. The marketplace of ideas cannot long survive under these conditions.

Sexual assault and harassment are serious problems that deserve serious solutions, not politically driven federal regulations. And accused students deserve impartial justice. The groups who are happy to sacrifice traditional principles of justice to advance their own political causes on campus are powerful and organized, but they have a critical weakness: they cannot defend in public what they wish to do to students in private. The fight to restore justice to campus will be long and difficult, but with your help, it is a fight we can win.

Robert L. Shibley



Student Sues College That Banned Him from Graduation for 'Negative' Facebook Post

On July 8, Saint Augustine's College (SAC) graduate Roman Caple filed suit against SAC and SAC President Dianne Boardley Suber after he was forbidden from participating in spring 2011 graduation ceremonies due to a comment he posted on Facebook about how the college was handling its recovery from tornado damage. Caple's complaint, filed in North Carolina state court, alleges that SAC violated its extensive promises of freedom of expression when it disciplined him for what it called a "negative social media exchange." Caple, who is represented by attorney Brandon S. Atwater, also came to FIRE for help.

"Like any reasonable student, Roman Caple believed Saint Augustine's guarantees of freedom of expression were genuine. But the college betrayed Roman's trust in an incredibly petty, mean-spirited way," FIRE Senior Vice President Robert Shibley said. "This filing sends a message not just to Saint Augustine's, but to private colleges across the country: If you promise your students freedom of expression, you can't break that promise without consequences."

On April 16, a tornado hit Raleigh and cut off electrical power to many SAC students. On April 18, SAC announced via Facebook that it would reopen, although some students remained without power. Following complaints, SAC announced a public meeting with Progress Energy and students on April 19. In response, Caple posted this message on SAC's Facebook page, encouraging fellow students to bring any necessary documentation to the meeting and to anticipate SAC's response: "Here it go!!!!! Students come correct, be prepared, and have supporting documents to back up your arguments bcuz SAC will come hard!!!! That is all."

On April 27, Caple met with SAC Vice President for Student Development and Services Eric W. Jackson. That same day, Jackson wrote Caple a letter notifying him that he would not be allowed to participate in SAC's 2011 commencement activities. Jackson wrote that the sole reason for Caple's punishment was his "negative social media exchange during the institution's recovery from the tornado." Jackson added that "[a]ll students enrolled at Saint Augustine's College are responsible for protecting the reputation of the college and supporting its mission."

On April 29, SAC issued a public statement regarding Caple's punishment, claiming that Caple's comment and other unspecified comments were unacceptable because they "were designed for the sole purpose of inciting students to react to the College's continued efforts to manage a difficult situation," were an "attempt to create chaos," "were designed to disrupt" the meeting with Progress Energy, and were intended solely "to fuel an already tense situation." Despite a request from FIRE, SAC has never produced the other alleged comments.

According to the complaint, Caple was forced to receive his cap and gown from a security officer.

FIRE wrote Suber on May 18, pointing out that this punishment violated the college's extensive promises of freedom of expression. SAC's Student Handbook states that "[s]tudents enjoy the same basic rights and are bound by the same responsibilities to respect the rights of others, as are all citizens." These rights include "freedom of speech." SAC's Student Handbook also states that SAC has an "obligation to provide an open forum to present and debate public issues," and SAC policies further explicitly note that the college is not "a setting described in the concept of *in loco parentis*" (emphasis in original)—that is, SAC students are to be treated as adults.

On May 24, a law firm representing SAC replied to FIRE, arguing that SAC had "legitimate reasons" to punish Caple. The firm failed to indicate any of those reasons or to explain why SAC appeared to act entirely outside of the due process procedures that it promises to students. Despite the college's apparent breach of several contractual promises, the firm insisted that SAC "did not err or violate Mr. Caple's rights."

In the complaint, filed in North Carolina's Superior Court Division, Wake County, Caple names SAC and President Suber as defendants. The complaint alleges breach of contract, intentional infliction of emotional distress, and negligence. It also requests monetary damages to compensate him for expenses incurred in anticipation of his participation in SAC's graduation ceremonies.

Caple also seeks a commencement ceremony and reception like those his fellow graduates enjoyed. Caple is a first-generation college graduate in his family.

"Saint Augustine's College can't promise students freedom of expression, then break that promise as soon as a student says something the college doesn't like," Will Creeley, FIRE's Director of Legal and Public Advocacy, said. "The plain fact is that Roman Caple was punished for expressing an opinion. Now Saint Augustine's will have to answer in court for betraying its promises."

FIRE Names the Seven Best Schools for Free Speech on *The Huffington Post*

On May 24, FIRE commended the nation's seven best colleges and universities for freedom of speech in an article by FIRE President Greg Lukianoff on *The Huffington Post*. The colleges listed were Arizona State University, Dartmouth College, The College of William & Mary, the University of Pennsylvania, Carnegie Mellon University, the University of Tennessee-Knoxville, and the University of Virginia.

"FIRE spends most of its time bringing much-needed attention to the sorry state of free speech for students and faculty on our nation's campuses," FIRE President Greg Lukianoff said. "We wanted to positively recognize those institutions that respect free speech and the First Amendment and encourage others to follow their admirable examples."

In determining the seven best colleges and universities for freedom of speech, FIRE considered whether the school's policies restrict speech protected by the First Amendment and whether the school had censored speech in recent years. Each of the seven institutions chosen has earned a "green light" rating in FIRE's Spotlight database of university policies. FIRE awards a college or university a "green light" rating if it does not maintain any policies that seriously imperil speech on campus. Only 14 schools out of the nearly 400 FIRE rates have earned "green light" ratings.

Lukianoff invited *Huffington Post* readers to nominate their own candidates after reading FIRE's list, and he urges them to report to FIRE any serious free speech violations that they might know about at any of the seven schools named.

FIRE's list of the seven best institutions for free expression followed FIRE's list of the 12 worst colleges for free speech, published in late January on *The Huffington Post*. That list, which generated over 400 comments from readers and was one of *The Huffington Post*'s most viewed articles at the time of publication, helped generate favorable outcomes for free speech at two of the institutions named on the list. Syracuse University dropped its months-long investigation of a student blogger whose parody website led the school to threaten him with charges of "harassment," while University of Massachusetts Amherst revised its policy governing "controversial rallies" on campus.



Continued from page 1

an example of actionable sexual harassment, and Illinois State University bans "discussions about sexual activity" as sexual harassment. Universities also enforce codes of conduct that define sexual assault in vague, inexact ways. For example, in April 2010, Duke University instituted a "sexual misconduct" policy that could render a student guilty of non-consensual sex simply because he or she is considered "powerful" on campus.

OCR's new regulations have already prompted colleges and universities across the country to abandon their commitment to due process protections for students accused of sexual harassment and sexual violence. Brandeis University, Stanford University, Yale University, and University of Massachusetts Amherst all have announced revisions, either already instituted or forthcoming. Given the threat of federal investigation and the loss of federal funding for failing to comply with OCR's directives, hundreds of institutions will follow.

The new federal regulations are part of a worrying national trend as federal and state legislators rush "anti-bullying" acts and similar legislation into law. The proposed Tyler Clementi Higher Education Anti-Harassment Act and Campus Sexual Violence Elimination (SaVE) Act would similarly restrict fundamental liberties and violate students' rights.

In the open letter, FIRE also criticizes OCR for failing to explicitly remind colleges and universities of the importance of protecting students' right to free expression. In previous letters, OCR specifically addressed First Amendment concerns, making it clear that universities must protect student speech rights and emphasizing that there need be no tension, under OCR regulations, between addressing sexual harassment and ensuring freedom of expression.

Gainesville State College Censors Faculty Artwork Critical of Confederate Past

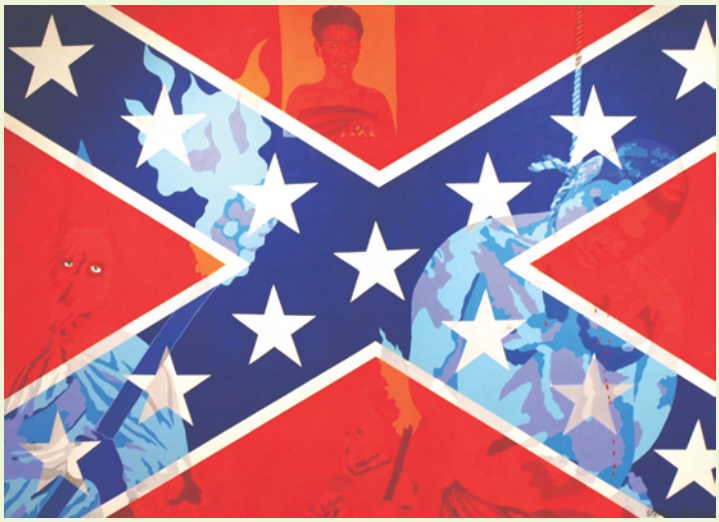
Gainesville State College (GSC) in Georgia is defending its censorship of a faculty member's painting involving the Confederate flag. FIRE has come to the defense of art instructor Stanley Bermudez, whose painting portraying the Confederate flag in a critical context was removed by administrators from a faculty art exhibition.

"President Nesbitt turned a simple controversy into a First Amendment case when she pulled the artwork off of the wall," Adam Kissel, FIRE Vice President of Programs, said. "Instead of taking the high road of defending one of her own professors, she chose the low road of intolerance.."

The painting, titled "Heritage?", was featured as part of GSC's 2011 Faculty Biennial Exhibition. It depicts torch-wielding members of the Ku Klux Klan and a lynching superimposed onto a Confederate flag. After the painting was publicly criticized on the blog *Southern Heritage Alerts*, GSC President Martha T. Nesbitt removed it on January 25, without notifying or consulting either Bermudez or the director of the gallery where it was displayed. The next day, at an official reception for the exhibition, the space where "Heritage?" had previously hung for two weeks was empty except for the personal statement Bermudez had prepared to place next to the painting.

Following the censorship, GSC faced serious criticism from FIRE and national and local media outlets for its decision. Nesbitt released statements on February 2 and February 4 defending the decision to remove "Heritage?", stating that she had to consider the "health and reputation of the institution" and that the painting's imagery "has been perceived as aggressively hostile in other areas of the country."

FIRE wrote to President Nesbitt on March 7, asking GSC to disavow its violation of Bermudez's First Amendment rights. FIRE's letter also pointed out the threat GSC's censorship poses to academic freedom, which the Supreme Court noted in *Keyishian v. Board of Regents* (1967) is "of transcendent value to all of us and not merely to the teachers concerned." After GSC declined to respond, FIRE repeated its concerns in a letter sent to President Nesbitt on April 13, once more asking GSC to state that it will never again silence the protected expression of the members of its community.



Censored art: "Heritage?" by Stanley Bermudez

Nesbitt again failed to respond. In a letter on July 12, FIRE has asked University System of Georgia Chancellor Henry "Hank" M. Huckaby to intervene. FIRE noted that "Nesbitt's violations of Bermudez's right to freedom of speech and academic freedom have brought widespread and well-deserved criticism upon GSC."

"Stanley Bermudez had planned a companion work exploring the more positive side of the South, but thanks to Gainesville State's censorship of his first work, he no longer has any plans to do so," Robert Shibley, Senior Vice President at FIRE, said. "Gainesville State's shameful actions have provided a textbook example of how disregarding the First Amendment chills expression and impoverishes our culture."

From the CFN
CAMPUS FREEDOM NETWORK

Meet FIRE's 2011 Summer Interns!



In June, FIRE welcomed eight undergraduate interns from across the country to Philadelphia for FIRE's Summer Internship Program. The ten-week internship invites intelligent and energetic current undergraduates who are interested in FIRE's mission to research free speech issues at today's universities and develop strategies for protecting open discourse on their own campuses. Interns also participate in weekly seminars with FIRE staff and other prominent experts on civil liberties. We are delighted to have these students in our office this summer!

FIRE's 2011 Undergraduate Intern Class (left to right): Elizabeth Jacobs, Hillsdale College '12; Alex Lewis, Rutgers University '12; David Deerson, UNC-Chapel Hill '13; Oliver Rosenbloom, Brown University '13; Rachel Cheeseman, DePauw University '12; Kenny Tan, Vanderbilt University '14; Mallika Vinekar, University of Pennsylvania '13, Emily Kraus, Brandeis University '12

Rachel Cheeseman is a rising senior from DePauw University, where she is a member of the Media Fellows Honors Program majoring in biology and political science. She is currently managing editor of *The DePauw*, the campus newspaper, and she received a grant from the university to work as a political reporter for *Oregon Capitol News*, a news website based in Portland, Oregon.

David Deerson comes to FIRE from the University of North Carolina at Chapel Hill, where he is a rising junior pursuing a double major in history (U.S.) and philosophy, with a minor in philosophy, politics, and economics. David is also vice president of the UNC-CH College Libertarians, and he previously interned with the North Carolina GOP.

Emily Kraus is a rising senior at Brandeis University, where she is majoring in English and politics with minors in legal studies and philosophy. She is editor in chief of Brandeis' independent student newspaper, *The Justice*, as well as a member of the Brandeis University Mock Trial Association. Previously, Emily has interned for the City of Philadelphia through the Mayor's Internship Program and for the Anti-Defamation League as part of the JEVS Ash Internship Program.

Elizabeth Jacobs is a rising senior at Hillsdale College, where she majors in political science with a concentration in founding history and American politics. Elizabeth is the president of her sorority, Chi Omega (Rho Gamma chapter). She also serves on the executive committee of Greek InterVarsity, a Christian ministry specifically designed for members of fraternities and sororities.

Alex Lewis is a rising senior at Rutgers University, where he majors in political science and journalism & media studies with a minor in Arabic. He is the executive director of the Rutgers Model Congress, which promotes civic engagement and empowerment for high school students. Alex also founded the BrosUniteD autism mentorship program through his fraternity, Theta Delta Chi.

Oliver Rosenbloom is a rising junior at Brown University, where he majors in history. He is an opinion columnist for the school newspaper, the *Brown Daily Herald*, and an editor for the *Brown Journal of History*. Oliver also volunteers as a college advisor and enjoys playing soccer and frisbee.

Kenny Tan is a rising sophomore at Vanderbilt University, where he majors in computer science with a minor in financial economics. Kenny is also president and founder of the Young Americans for Liberty chapter at Vandy and a frequent contributor to campus publications *The Vanderbilt Torch* and *The Vanderbilt Hustler*.

Mallika Vinekar is a rising junior at the University of Pennsylvania, majoring in urban studies with a minor in legal studies and history. At Penn, she has developed an interest in education policy and its intersection with the law. She works as a writing fellow at Penn's Critical Writing Center, is a member of the Penn Student Government's Nominations and Elections Committee, and serves as president of Penn Alternate Spring Break.

Postcard from the 2011 CFN Conference

FIRE's fourth Campus Freedom Network Conference was held July 14–16 at Bryn Mawr College, just outside of Philadelphia. Students from across the country came together for the weekend to learn about their rights and meet fellow advocates for free speech on campus.

The conference began Thursday with a dinner featuring keynote speaker Nick Gillespie, editor in chief of Reason.com and Reason.tv. On Friday, students heard from First Amendment experts about their rights on campus and participated in breakout sessions to discuss important issues including the philosophy of liberty, due process rights, and how to fight speech codes. Friday night's keynote speaker was Robert Corn-Revere, a partner at Davis Wright Tremaine in Washington, D.C., and the lead attorney representing student Hayden Barnes against Valdosta State University and its former president, who expelled Hayden over a Facebook collage in 2007. On Saturday morning, the students heard from a panel of students who were involved in FIRE cases or who are leading campaigns to challenge restrictive speech codes on their campuses. The conference closed with a lunch keynote address by Professor Jan Blits, a professor in the University Honors Faculty at the University of Delaware, who received FIRE's Prometheus Award in 2009 for his efforts in ending the University of Delaware's appalling student indoctrination program.





FIRE Senior Vice President Robert Shibley addressed students at the conference at his breakout session *Due Process Rights on Campus.* "In a way it was kind of scary that schools can charge you for sexual assault with such little evidence," FIRE summer intern and breakout session participant Oliver Rosenbloom (pictured on left) said. "To me it was just another example of how fundamental constitutional rights are frequently ignored in colleges. I noticed that common theme throughout the whole conference."

UNC-Chapel Hill Surrenders to 'Heckler's Veto,' Revokes Emeritus Professor's Network Access

The University of North Carolina at Chapel Hill (UNC) has surrendered to the "heckler's veto" by revoking Professor Emeritus Elliot Cramer's network access following outside complaints about a link on his website to an organization that advocates for animal welfare. Despite telling the complaining individual that the dispute was "not a University matter" and that the university did not monitor the content of websites maintained by professors, UNC nevertheless demanded that Cramer remove the link from his website and later canceled his network access entirely.

"Apparently, UNC is willing to punish its own professors on the basis of their speech at the request of an outside party, if that person is simply persistent enough," FIRE President Greg Lukianoff said. "Instead of protecting members of its community from outside threats to free speech, UNC has let this 'heckler's veto' trump free expression on campus."

Cramer, a psychology professor at UNC since 1966 and an emeritus faculty member since 1994, is an active scholar as well as President of the Board of Directors of the Piedmont Animal Welfare Society (PAWS). For months, Cramer has been in a dispute with Joseph Villarosa that apparently originated with complaints about an animal shelter in Robeson County, North Carolina—a matter of public concern. Villarosa repeatedly drew UNC into their dispute by frequently complaining that Cramer's website on the university network contained a link to the PAWS website, which in turn contained a link to a page about the dispute.



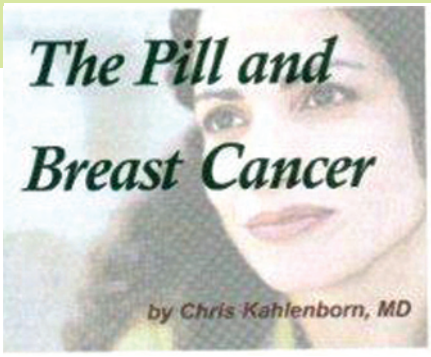
On April 20, 2011, UNC General Counsel Leslie Chambers Strohm, apparently tired of dealing with Villarosa's complaints, emailed Cramer ordering that he immediately remove "any links to material referencing Mr. Villarosa, either directly or indirectly." Later on the same day, however, Strohm informed Villarosa via email that she had visited Cramer's website and had seen "no reference to you [Villarosa] whatsoever," that Villarosa's recourse lay "directly with Dr. Cramer," and that this issue was "not a University matter."

Cramer promptly removed the link, but it was too late. UNC Chancellor Holden Thorp notified Cramer on April 27 that he had ordered UNC's IT Security office to permanently disable Cramer's UNC network privileges, which also cut off Cramer's access to electronic library resources. Thorp accused Cramer of violating UNC's Personal Use Policy by "embroil[ing] the university in your personal issues and divert[ing] resources ... to a degree that is simply unacceptable."

FIRE wrote to Chancellor Thorp on June 1, pointing out that it was not Cramer who "embroiled" UNC in the dispute or who caused the "diversion" of university resources, and that free expression on campus is in jeopardy when an outside party must merely prove sufficiently annoying in order to cause UNC to cut off network access for a member of the university community.

UNC General Counsel Strohm replied to FIRE on June 15, stating that UNC would not restore Cramer's network access and characterizing Cramer's reasonable, good-faith efforts to defend himself as part of the problem. Strohm also claimed that UNC had not acted due to the content of Cramer's expression, despite the fact that Strohm herself had ordered Cramer to remove content from his website.

"UNC itself says its emeritus professors are a 'valuable resource' who are 'continuing members of the university community,'" FIRE Senior Vice President Robert Shibley said. "Yet when UNC was forced by an outside party to defend an emeritus professor's right to free speech, it instead decided to punish and silence him. Is this really how UNC chooses to treat its longest-serving faculty?"



Ohio College Prohibits Student from Peacefully Distributing Literature on Abortion, Birth Control

Sinclair Community College (SCC) has banned a student from distributing literature about abortion, birth control, and breast cancer to her classmates after class. The college also bans all distribution of literature on vast areas of campus.

"The right to distribute literature about controversial topics is one of Americans' most hallowed rights," FIRE President Greg Lukianoff said. "If someone's claim to be offended by speech were all it took to overrule the First Amendment, we would all be reduced to silence. Thankfully the Constitution does not recognize a 'right not to be offended.'"

On a single occasion during National Breast Cancer Awareness Month last October, Sinclair Community College student Ethel Borel-Donohue distributed roughly 15 flyers relating to National Breast Cancer Awareness Month to various students in her Probate Law I course after class. Borel-Donohue is a student in SCC's Paralegal Program. The flyers discuss possible risks of breast cancer related to birth control and abortion.

Borel-Donohue was summoned to the office of Judge Michael Brigner, Paralegal Program Chair, and they met on November 2, according to Borel-Donohue's written account. Brigner reportedly stated that a student had complained to him about being "offended by the material in the brochures." Brigner then told her she "had no right to hand out any materials to students in the classroom." On January 4, 2011, Borel-Donohue asked Brigner to verify the conversation, but he refused to correct her account, which he merely said was "not accurate" in a reply the same day.

On February 22, FIRE sent a letter to SCC President Steven Lee Johnson, making clear that "while SCC instructors may limit the expression of students during class time in the service of SCC's educational mission, such narrowly tailored restrictions for instructional purposes cannot lawfully be extended to restrict all distribution of literature outside of class time." In a 1979 decision striking down The Ohio State University's similarly broad restrictions on literature distribution, a federal district court in *Solid Rock Foundation v. Ohio State University* fully explained that absent "material disruption" or "substantial disorder," the distribution of literature on campus is student expression protected by the First Amendment, even if students complain about the content of the message distributed.

Ohio Assistant Attorney General and General Counsel Lauren M. Ross replied to FIRE's letter on March 16. Apparently in defense of SCC's unlawful action, Ross invoked a policy at SCC that bans all distribution of literature in "working areas" including "classrooms, laboratories, lecture halls, gymnasiums, libraries, offices, work stations, conference rooms, and corridors leading directly thereto which are an integral part of the work areas." SCC's Student Code of Conduct even more broadly bans "distribution ... of materials on Sinclair owned or controlled property," with the single exception of "recognized student organizations after registering with the appropriate college official."

FIRE wrote Johnson a second letter on March 23, copying Ohio Governor John R. Kasich and Ohio Attorney General Mike DeWine. FIRE asked Johnson to bring SCC's policies into compliance with the First Amendment. On May 10, SCC Board of Trustees Chair Lawrence Porter responded to FIRE, stating that the policies were being reviewed.

"Since the time of Thomas Paine," FIRE Vice President of Programs Adam Kissel said, "it has been inconsistent with basic American conceptions of liberty for the government to enact wholesale restrictions on pamphleteers. Sinclair Community College's attempt to prevent not only Borel-Donohue but all SCC students from peacefully expressing their views teaches students exactly the wrong lesson about individual liberty."

FIRE's THE TORCH Want more FIRE news and views? Check out *The Torch*, FIRE's blog, for daily updates at www.thefire.org/torch.

FIRE Says Goodbye to Departing Staff and Hello to New Colleagues

Without the relentless hard work and dedication of every one of our FIRE staff members, we would not be able to win the public and private victories that are so essential to restoring our campuses as centers for discourse and debate and preserving the futures of those individuals facing violations of their rights. This summer we say goodbye to four outstanding FIRE employees:

Development Officer Jennifer Feden leaves FIRE this summer after three years to attend the University of Pennsylvania Law School in Philadelphia, Pa.

Program Associate Jordan Fischetti ends his year at FIRE with the Koch Associate Program to attend George Mason University School of Law in Arlington, Va.

Justice Robert H. Jackson Legal Fellow Erica Goldberg ends her two-year fellowship at FIRE as she becomes a Visiting Assistant Professor at Penn State Law School in State College, Pa.

Program Associate Kyle Smeallie ends his three-year tenure as point man to Co-founder Harvey Silverglate. His next stop is San Francisco, where he plans to pursue his passion for civil liberties and the written word.

While we are sad to see such outstanding employees go, we welcome our newest FIRE staff members:

2010 Cornell Law School graduate Ari Cohn joins FIRE as a legal fellow until he begins work at Mayer Brown's Chicago office this fall.

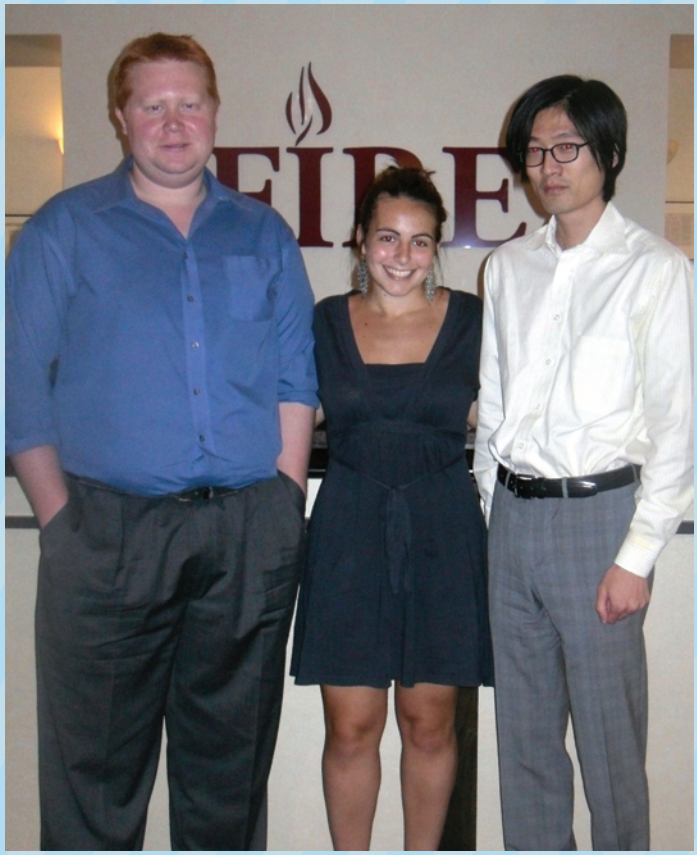
Former Drexel Co-op Peyton Cudaback joins FIRE's full-time staff to work with our Director of Finance and Operations and Vice President of Programs.

Ryan Ellis joins FIRE as a legal intern for the summer of 2011 following his first year of law school at the University of Texas School of Law.

Chris Lee, another FIRE legal intern this summer, comes to FIRE from Columbia Law School, where he is a rising second-year student.

Alison Meyer joins FIRE as our new Development Associate after graduating from Tufts University in 2011.

Daniel Schwartz joins FIRE as Co-founder Harvey Silverglate's new point man. Daniel attended Vassar College and has been working toward his Ph.D. at Brandeis University.



Ryan Ellis, Alison Meyer, and Chris Lee

Fanning the Flames: Help FIRE Uncover the Truth

FIRE is currently conducting an aggressive campaign to expose the corrupt practices of campus courts. As Robert explains on page 2, the Department of Education has mandated that nearly every school in the country use a "preponderance of the evidence" standard when deciding campus sexual harassment cases. While FIRE believes that this alone is unjust (as students charged with serious offenses deserve for their jury to be more than 50.01% sure they did it), we are even more concerned because **schools are training student jury members to be unfair in the name of political correctness.** For example, Stanford University tells student jurors that "acting persuasive and logical" is a sign that the accused is guilty!

The only way FIRE can find out what "training" universities are giving their student jurors is to issue requests under state Open Records laws to every school we believe is guilty of putting its thumb on the scales of justice.

With unlimited resources, we would request to see what every public university is using to either protect or undermine campus due process. Unfortunately, our resources are limited and open records requests aren't free. Universities frequently demand $200 or more for access—and that's not counting the time it takes FIRE to read and analyze all the material. Today, FIRE is asking that you use the envelope provided in this newsletter to send in a donation that we will use to directly fund these requests. The more money we raise, the more schools we can work to reform. If you donate $200, you can even let us know what public college or university you would like us to investigate.

It is crucial that we uncover this information, as we have seen school administrators back off or change course time and again when they realize they cannot defend in public the injustices they commit in private.

You also can make a donation online by visiting www.thefire.org/donate.

Follow FIRE on Twitter, Facebook, and YouTube!

FIRE has always been at the forefront of social networking and Internet technology, so it's no surprise that one of the most popular ways to get FIRE news and updates is by accessing our Twitter, Facebook, and YouTube accounts. To "follow" FIRE, go to twitter.com/theFIREorg, facebook.com/thefireorg, and youtube.com/TheFIREorg.

About This Publication

The FIRE Quarterly is published four times per year by the Foundation for Individual Rights in Education.

The mission of FIRE is to defend and sustain individual rights at America's increasingly repressive and partisan colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE's core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

FIRE is a charitable and educational tax-exempt foundation within the meaning of Section 501(c)(3) of the Internal Revenue Code. Contributions to FIRE are deductible to the fullest extent provided by tax laws.

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FIRE President on *Stossel*

FIRE President Greg Lukianoff was featured on Fox Business Network's popular TV show *Stossel* on Thursday, June 30. The theme for the show was "The College Scam," with Greg discussing speech codes, enforced political correctness, and kangaroo courts on campus, while host John Stossel and guests—including *Indoctrinate U* director Evan Coyne Maloney, economist Richard Vedder, and author and journalist Naomi Schaefer Riley—examined whether college is worth the high price. If you missed it, visit FIRE's website to watch the episode online!

