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- [Current Issue](#)
- [Back Issues](#)
- [The Archive](#)
- [Forum](#)
- [Site Guide](#)
- [Feedback](#)
- [Search](#)

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D.C. Dispatch | July 14, 2003

Legal Affairs

How Campus Censors Squelch Freedom of Speech



Under the guise of enforcing vague rules against racial or sexual 'harassment,' censorship is thriving

by **Stuart Taylor Jr.**

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Steve Hinkle, a student at California Polytechnic State University, was posting fliers around campus last November 12 that advertised a speech to be given the next evening. The fliers contained a photo of the speaker, black conservative Mason Weaver, and the words "It's OK to Leave the Plantation," the name of a book in which Weaver likens African-American dependence on government programs to slavery.

When Hinkle approached a public bulletin board in the lounge of the campus Multicultural Center, some African-American students who were sharing pizzas nearby objected. They told Hinkle not to post the flier because they found it "offensive" and "disrespectful." By all accounts, his response was something like, "How do you know it's offensive? Why can't we talk about it?" The offended students then said that the flier violated the Multicultural Center's "posting policy," and threatened to call the campus police. Hinkle left, without posting the flier.

That was not the end of the matter, however. One black student did call campus police, with what was recorded as a report of "a suspicious white male passing out literature of an offensive racial nature." She and others also urged university authorities to discipline Hinkle, a member of the Cal Poly College Republicans, for what she called "hate speech" (i.e., the flier).

Incredibly, university authorities did just that, under the pretext of punishing Hinkle for "disruption" of what complaining students later claimed to have been a Bible study dinner and meeting. (Nobody had told Hinkle that this was a "meeting" at all, and he saw no Bibles.)

This episode provides a window into the politically correct censorship that pollutes so many of our nation's campuses. For seeking peacefully and politely to exercise his First Amendment rights, Hinkle was subjected to a seven-hour disciplinary hearing, from which his lawyer was barred. He was found guilty of "disruption" of the "meeting." And he was ordered to apologize to the offended students, in writing, or face much stiffer

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penalties, possibly including expulsion. All of this is to go on Hinkle's permanent record, perhaps hurting his chances of getting into graduate school.

The bottom line is that like many other campuses, "Cal Poly gives some people the power to veto what others have to say," says Thor L. Halvorsen, the head of the Foundation for Individual Rights in Education (FIRE), a nonpartisan, Philadelphia-based free speech group that has come to Hinkle's defense.

Cal Poly's legal counsel, Carlos Cordova, responded to a complaint from FIRE by claiming in a May 9 letter that "many of your factual assertions ... are incorrect" and by denying that the disciplining of Hinkle was motivated by the perceived offensiveness of the flier. But Cordova did not specifically dispute any of the facts recounted in the first four paragraphs above, which are based in part on notes prepared by Hinkle's faculty adviser at the hearing. Those facts amount to an egregious violation of the First Amendment.

Cal Poly is but one of hundreds of campuses that penalize student speech of which they disapprove. This censorship regime has attracted little attention since the mid-1990s, after successful legal challenges at the University of Michigan, the University of Wisconsin, and Stanford University seemed to foretell the demise of speech codes.

But in fact, campus censorship lives on, often justified under the guise of enforcing vague rules against racial or sexual "harassment." Administrators typically interpret these rules to encompass any speech that offends nonwhite students or insults the left-liberal-radical-feminist-postmodernist orthodoxies of the academic class. The rules are typically enforced by campus kangaroo courts with no semblance of fairness.

Here are some representative examples of rules that appear to be current as far as FIRE could tell from checking university Web sites: Georgetown warns against "expression" that is "inappropriate" and that severely offends others on matters of "race, ethnicity, religion, gender, or sexual preference." (Would that include quoting Justice Antonin Scalia's acerbic dissent from the June 26 Supreme Court decision upholding gay rights?) At the University of Massachusetts, students can be disciplined for speaking in ways that create a "sexually offensive" environment, or for displaying "offensive or sexually suggestive" pictures, cartoons, or posters. At Princeton, they can be disciplined for "unwanted sexual attention that makes a person feel uncomfortable." (Asking for a date after being once turned down?) At Brown, "unwelcome verbal expressions," "degrading language," "jokes or innuendoes," "sounds or whistles," and "gestures" can amount to sexual harassment. At Dartmouth, "sexual harassment [can be] subtle and indirect, possibly even unintentional." Many campuses define "leering" as a form of harassment. A training document once used at the University of Maryland even warned against "holding or eating food provocatively." (Handle bananas with care.)

It is unclear how often such provisions are enforced. In any event, they hang over campus speech like a Sword of Damocles. Their vagueness and overbreadth violate students' First Amendment rights in the case of public universities and may violate their contractual rights in the case of those private universities that advertise themselves as devoted to free and open debate. Such rules nonetheless persist because few students or professors

have the stomach to challenge them.

The good news is that since 1999, those willing to fight back have a potent ally. FIRE has battled campus censors with great success since its founding by two men whose passion for the freedoms of speech, association, and religion transcends their politics: left-leaning lawyer Harvey A. Silverglate of Boston and right-leaning University of Pennsylvania professor Alan Charles Kors.

FIRE typically employs the threat of public exposure to persuade campus administrators to back off in individual censorship-through-discipline cases. It has also produced pamphlets informing students in detail of their legal rights. And in the past few months, FIRE has helped launch a litigation offensive against speech codes that is designed to make it "clear to universities across the country that they infringe on students' rights at their own peril," in Silverglate's words, by winning a succession of definitive judicial rulings. The defendants so far have been Shippensburg University, in central Pennsylvania (whose code prohibited conduct that "annoys, threatens, or alarms a person or group"); Citrus College, near Los Angeles (which has already surrendered); and 28,000-student Texas Tech University.

Texas Tech bans "communications [that] humiliate any person," such as "sexual innuendoes" or "referring to an adult as 'girl,' 'boy,' or 'honey.'" Like many other campuses, it also quarantines demonstrations, protests, and other free speech activities to a single "free speech zone" -- at Tech, a 20-foot-wide gazebo that can hold about 40 people. On the rest of the campus, students must seek official approval at least six days in advance to hold protests or demonstrations, make speeches, distribute newspapers or literature, or engage in other free speech activities.

FIRE champions flag-burners as well as flag-wavers, anti-Bush and anti-American dissidents as well as conservatives. In February, for example, it helped persuade Texas Tech not to confine a protest against President Bush's Iraq policies to the gazebo. But the vast majority of the students and professors complaining of campus censorship are to the right of center. American Enterprise magazine recently published some numbers that help explain this: At top universities -- including Brown, Cornell, Stanford, and the University of California (Berkeley) -- the ratio of professors registered in parties of the left (including Democrats) to those in parties of the right (including Republicans) in many departments ranges from almost 10-to-1 to more than 20-to-1. And many of them think of free speech as a right reserved to the politically correct.

Despite the cries of "McCarthyism" raised by the Left since September 11, there has been only a smattering of unwarranted attacks on leftist or anti-American speech. And on campus, you are a lot less likely to be disciplined for assailing President Bush than for assailing militant Islam. Take the Ethiopian student at San Diego State University who reproached some Saudi students in September 2001 for gleefully celebrating, in Arabic, the murders of 3,000 people at the World Trade Center and the Pentagon. A university committee warned the Ethiopian -- not the Saudis -- that offending fellow students in this way could get him suspended or expelled.

Political biases aside, campus censors commit a fundamental error in supposing that devotion to civil rights requires shielding traditionally

subordinated groups from hurt feelings by suppressing the civil liberties of others. As Kors has put it, "No one who tells people that they are too weak to live with freedom, legal equality, the Bill of Rights, or academic freedom is their friend."

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