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On Campus, Only Some Free Speech Protected

Tuesday, July 26, 2005
By Wendy McElroy

The publicly funded William Paterson University ([search](#)) in New Jersey **reprimanded Jihad Daniel** for discrimination and sexual harassment. The 63-year-old Daniel, who is both an employee and a student at the university, is now at the center of a **free speech controversy**.

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He is also a fine example of the sleight-of-hand being called "due process" by universities that quash politically incorrect speech.

The facts are uncontested.

On March 7, **Arlene Holpp Scala** ([search](#)), chair of the Women's Studies Department, sent Daniel an unsolicited **e-mail announcement** of an upcoming film event: "**Ruthie and Connie: Every Room in the House,' a lesbian relationship story.**" Scala advised those who wished to respond, "Please do not hit reply, click here," thus directing messages to her university e-mail address.

On March 8, Daniel clicked to **privately reply**, "Do not send me any mail about 'Connie and Sally' and 'Adam and Steve.' These are perversions. The absence of God in higher education brings on confusion. That is why in these classes the Creator of the heavens and the earth is never mentioned." [His message is quoted in full. No other communication with Scala ensued.]

On March 10, Scala filed a complaint with the university claiming Daniel's message sounded "threatening."

"I don't want to feel threatened at my place of work," she explained.

On June 15, university President **Arnold Speert** ([search](#)) issued a **letter of**

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reprimand, to be placed in Daniel's permanent employment file.

The unsavory matter might have ended there, but the stakes were raised by the **Foundation for Individual Rights in Education** (FIRE) and by Peter C. Harvey, the attorney general of New Jersey.

FIRE's mission 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."

Greg Lukianoff of FIRE **reminded Speert** that his university, as a public institution, had a duty to protect the "constitutional rights of all its faculty, staff, and students ... and that no federal, state, local, or university rule, policy, or regulation trumps the exercise" of those rights.

Lukianoff flatly stated, "No one here was 'harassed' or 'threatened' as defined by the law." Instead, the university "simply strongly disliked a student's point of view."

Interestingly, the **first response** to FIRE was not from Speert but from Attorney General Harvey, who replied "on behalf" of the university. Harvey said the penalty against Daniel would stand because, as an employee, he had violated New Jersey policies against discrimination, harassment and creating a hostile environment in the workplace.

Several aspects of the entire exchange are interesting.

First, the entire weight of the state's legal authority is being directed at quashing Daniel's personal response to an unsolicited e-mail — an e-mail that invited feedback by instructing recipients on how best to do so. The university obviously feels the need to draw a big gun on this little man.

Second, Lukianoff refers to Daniel as a student; both Speert and Harvey call him an employee. Daniel is legitimately both, but in the capacity of student he undoubtedly has more established procedural "rights" against the university. The attorney general's office clearly wishes to reduce the "rights" it needs to recognize.

But as Lukianoff states: "Even in a workplace, it is ridiculous to conclude that a one-time e-mail constitutes unlawful discrimination and harassment. It is especially ridiculous to apply such a policy to a working student at an institution of higher education that has a special responsibility to ensure academic freedom."

Here the concept of "due process" emerges in full. As with freedom of speech, the university's policies seem to reduce to the formula, "rights for me but not for thee."

For example, according to Speert's view of free speech, Scala has the right to send an unsolicited and unwanted promotion of a pro-lesbian film over the university's network. Daniel has no right to respond with his personal opinion and a request for no contact in the future.

According to Speert's view of due process, if Scala feels threatened by a moralistic dismissal of an issue she chose to raise, then the attorney general's office should flex its muscle to protect a frail woman so imperiled. Meanwhile, Daniel has no right to even examine the evidence brought against him. He merely has the right to appeal.

In his letter, Lukianoff stressed that "due process" was being disregarded in order to chill dissent. Both Speert and Harvey replied that "due process" was clearly in place and pointed to the administrative procedures to which Daniel could appeal.

Making someone jump through bureaucratic hoops that embody a biased procedure is not due process. A **kangaroo court** that includes the right of appeal to a higher kangaroo authority does not constitute due process. It is a travesty.

Due process does not reside in bureaucracy. It is a set of legal principles established through tradition to protect "the accused," who is innocent until proven guilty. Those principles include the right to face and question your accuser, the right to examine all evidence against you.

Daniel has been granted neither. And the most extraordinary aspect of this denial of free speech and due process is that the attorney general's office felt it necessary to so quickly and heavily weigh in on a small matter.

Or is it?

Wendy McElroy is the editor of ifeminists.com and a research fellow for The Independent Institute in Oakland, Calif. She is the author and editor of many books and articles, including the new book, "Liberty for Women: Freedom and Feminism in the 21st Century" (Ivan R. Dee/Independent Institute, 2002). She lives with her husband in Canada.

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