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online edition


[Front Page](#)
[News](#)
[Opinions](#)
[Sports](#)
[A&E](#)
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[Our Staff](#)
[Downloads](#)
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[Submit a Tip](#)
[Archives](#)

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Captain's Log

November 16, 2005 | Issue 11

## Opinions

In other news...

### [CNU Students Evicted for Alchohol](#)

Three freshmen were evicted following a fire code inspection...

Sports

### [Basketball Preview](#)

CNU basketball looks to challenge the USA South Conference as the 2005-2006 season begins...

A&E

### [Myths of Thanksgiving](#)

Thanksgiving, a day that we celebrate as a day to be thankful for what we have...

Opinions

### [Student Union opening concerns all](#)

Students wait for opening of Student Union with great anticipation...

## Hey Derek Zoolander: Stay away!

By Charles Mitchell

Foundation for Individual Rights in Education / KRT

Remember Derek Zoolander?

Many college students do. He is Ben Stiller's character in the 2001 comedy "Zoolander." And it's a good thing he didn't attend Northern Arizona University.

At one point in the movie, Derek says, "Rufus, Brint, and Meekus were like brothers to me. And when I say brother, I don't mean, like, an actual brother, but I mean it like the way black people use it. Which is more meaningful, I think."

To most people, that's funny. To NAU, that would be harassment. Let me explain.

NAU's "Safe Working and Learning Policy" (<http://www4.nau.edu/diversity/swale.htm>) recently earned the dubious distinction of being named the "Speech Code of the Month" (<http://www.thefire.org/index.php/article/6297.html>) by the Foundation for Individual Rights in Education (FIRE). That breathtaking code bans "stereotyping" or "negative comments or jokes" that are "based upon a person's race, sex, color, national origin, religion, age, disability, veteran status, or sexual orientation." It says such things are "harassment."

Read Derek Zoolander's quote again. At NAU, he would have been guilty of "stereotyping" that was "based upon a person's race." And so might be anyone who watches "Zoolander" — what if someone overhears that awful "stereotyping" and is offended?

That kind of censorship is not just inane — it's also unconstitutional. NAU is a public university, which is to say it is an arm of the state of Arizona. And state entities are legally bound to respect the First Amendment's guarantee of free speech.

By enacting a speech code, NAU is by definition not respecting the First Amendment. "Negative comments" and "jokes" are not even close to the line between protected and unprotected speech. If they were, most of the movies college students watch could be outlawed. And "stereotyping" is so vague that it is practically meaningless.

Courts have repeatedly held that vague and overbroad restrictions on speech don't pass constitutional muster, and NAU's speech code is a textbook example.

The worst part, though, is that NAU seems to know that its speech code is unconstitutional. The policy itself states, "When these harassing behaviors become severe, pervasive or persistent, they may also violate Federal and State law." If you translate that from administrative-ese into English, it says: We are banning more speech than the Constitution says we can.

NAU has the right to ban only what federal anti-harassment law bans. By admittedly going beyond that, it breaks the law. That's kind of a high price to pay to protect people from "negative comments" and dirty jokes.

Time for a dose of reality. In the real world, people have to deal with "negative comments" every day. NAU is doing its students an immense disservice by attempting to shield them from such things. As University of Pennsylvania professor and FIRE Chairman Alan Charles Kors often says, "No one who tells you that you are too weak to live with freedom and the Bill of Rights is your friend." That is exactly what NAU is telling its students.

And NAU is not alone in doing that. Countless universities have unconstitutional speech codes, and they use them. For example, FIRE is right now helping a Muslim student at William Paterson University who was convicted of "harassment" for stating his religious objection to homosexuality in a private e-mail. And if you think administrators in Arizona won't violate the law like their counterparts in New Jersey, look no further than Arizona State University, where apparently no one has heard of *Brown v. Board of Education*. FIRE had to intervene there just last month to stop a racially segregated class.

If that sounds ridiculous, it should. The same goes for a policy that admittedly tramples the Constitution. Those who teach and learn at NAU deserve — and should demand — better.