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By Sasha Polakow-Suransky

STUDENTS WHO WANT TO STAGE PROTESTS at Texas Tech University are directed to a 280-square-foot octagonal gazebo, the school's "free speech zone." The small structure can't hold more than 40 people. Jason Roberts, a law student, didn't want to be confined to the gazebo last May while he spent the afternoon distributing scripture-filled flyers and expounding his view that homosexuality is "a sinful, immoral, and unhealthy lifestyle." Roberts petitioned the administration in advance to ask if he could instead stage his protest outside the student bookstore, a gathering spot on the Lubbock campus. University officials eventually gave him permission to stand across the street from the bookstore and the crowds he hoped to address.

In June, when Roberts sued Texas Tech for violating his free speech rights, he linked up with the Foundation for Individual Rights in Education, a Philadelphia-based law center founded in 1998 dedicated to the defense of free speech. Most of FIRE's early clients were conservative students charged with racial or sexual harassment. Much of the group's foundation funding comes from the right, including the Bradley Foundation, the Earhart Foundation, and the Scaife Foundation. (Liberal foundations like Ford, Pew, and Carnegie have consistently turned FIRE down.) As a result, many on the left have been skeptical of FIRE's claims of nonpartisanship, writing it off as a front for campus liberal bashing.

But increasingly, FIRE is defending speech no matter who does the talking. The group decided to help challenge Texas Tech on behalf of not only Roberts, but also the campus organization Students for Social Justice, which wanted to protest the Iraq war outside the diminutive gazebo. The antiwar group isn't pleased that the case is being argued, with Roberts as plaintiff, by the Christian group the Alliance Defense Fund (though the peace folks don't mind that the ADF is paying the bill). The ADF's website advertises a book written by its president that's billed as exposing "the tremendous threat the homosexual agenda poses to religious freedom and the traditional family." And the group's latest news bulletin laments "a series of assaults nationwide by the ACLU on our nation's religious heritage," hardly a warm overture to civil-libertarian allies.

But the antiwar students decided the dissonance was worth it. "Can I justify working with these people who I don't just politically disagree with but downright loathe?" asked Trevor Smith, a leader of the school's antiwar movement. "It was a big internal moral argument. But free speech is something that affects all of us."

FIRE'S CO-FOUNDERS are Alan Charles Kors and Harvey Silverglate, a political yin-and-yang combination. Kors teaches history at the University of Pennsylvania and belongs to the conservative National Association of Scholars; Silverglate is a left-wing civil liberties lawyer

and self-described “child of the sixties.” In 1998, the longtime friends published *The Shadow University*, which chronicles the excesses of liberal college administrators and calls for abandoning politically correct speech codes.

FIRE’s supporters mirror Kors and Silverglate as odd bedfellows; they include Edwin Meese, attorney general under Reagan, and the *American Prospect* columnist Wendy Kaminer. “The organization will stand up for the First Amendment no matter who’s getting screwed,” said Kaminer of her interest in FIRE.

Many universities enacted speech codes in the 1980s during the ascendancy of critical race theory, the school of thought that puts race at the epicenter of the law. Some of the codes broadly punished speech that “victimized” or “stigmatized” women or minority groups. In 1989 and 1990, codes at the University of Michigan and the University of Wisconsin were struck down as too vague.

Wary of further litigation, many universities retooled their speech policies, using language from federal antidiscrimination law and renaming them racial or sexual harassment codes. But FIRE claims that little more than semantics has changed. The organization hopes to challenge Texas Tech’s ban on “communications [that] humiliate any person,” including references to an adult as “girl,” “boy,” or “honey.” Another FIRE target, Shippensburg University, entreats students to “mirror in their attitudes and behaviors” the university’s “commitment to racial tolerance, cultural diversity and social justice.” A judge recently blocked enforcement of part of the policy in response to FIRE’s lawsuit.

Civil libertarians applaud FIRE because they think the regulation of hate speech has backfired, creating First Amendment martyrs out of racists. “The right wing has reaped a tremendous benefit from this,” said Randall Kennedy, the Harvard law professor who wrote *Nigger: The Strange Career of a Troublesome Word*. Better to get slurs like the N-word out in the open, the thinking goes, than to regulate them.

But critical race theorists still defend the speech codes. A known racist isn’t less dangerous than a racist whose hateful views are stifled, argues Richard Delgado, a University of Pittsburgh law professor. “A system of fair, clearly written rules that respond to public values of decency and equality [is] the best guarantor that racism will wither away,” Delgado said.

EVEN SOME OF FIRE’S SYMPATHIZERS, though, criticize the group’s methods. The stories about speech-code violations that Kors and Silverglate tell in *The Shadow University* are biased, said Judge Avern Cohn, who struck down the University of Michigan’s speech code, and the book has been called self-serving and polemical. Some scholars who have studied speech codes say FIRE selectively deploys anecdotes that support its views. Speech restriction on campus “is not nearly as prevalent as FIRE argues,” said Jon Gould, a law professor at George Mason University whose dissertation is about the enforcement of speech codes. In saying that all codes stifle speech, Gould argued, FIRE lumps together “exhortative language and compulsory rules.” His own study of speech codes found that only 10 percent of colleges and universities had overly broad ones.

To Gould, FIRE represents “the new conservative white male victimhood.” The group sometimes reinforces that perception by responding with hostility to potential critics, including journalists. “I was stunned by the questions you asked,” CEO Thor Halvorssen wrote in response to my inquiries about the organization’s funding and ideology. “They showed a reflexive bias that is the antithesis of what high journalism, let alone high journalism about the academic world, should be. Good for business, no doubt, but very bad for truth and the historical record.”

FIRE’S DEFENSE OF SPEECH on the radical left has increased since September 11. When Richard Berthold, a University of New Mexico professor, declared, “Anybody who blows up the Pentagon gets my vote,” he found himself deluged by hate mail, denounced by colleagues, and threatened with suspension without pay. FIRE came to Berthold’s defense. Soon afterward, the University of South Florida moved to terminate computer science professor Sami Al-Arian

after he was accused of voicing support for violent Palestinian liberation groups and materially aiding terrorist organizations. FIRE challenged the university's action and USF retreated. When Al-Arian was eventually fired after being indicted on charges of aiding terrorism last February, FIRE championed his right to paid leave until he is found guilty.

Alan Kors is adamant that Al-Arian deserves the presumption of innocence. After Columbia University assistant professor Nicholas De Genova announced his wish for "a million Mogadishus" at the onset of the Iraq war, referring to the killing of 18 U.S. Army Rangers by a Somali mob in 1993, Kors spoke out on his behalf. De Genova's comment unleashed a maelstrom; outraged alumni threatened to halt donations to Columbia, 104 House Republicans demanded that De Genova step down, and university president Lee Bollinger said that De Genova's comments "went well beyond the range of normal viewpoints."

Kors argued that a university president should be the last person to denounce a faculty member's protected speech. But he has little use for De Genova's defenders on the left. "Where were they for 20 years?" he asked of the Columbia University Senate, which passed a pro-free-speech resolution in the fall of 2001. "They're hypocrites who discovered freedom after September 11 because for the first time they sensed the wind blowing in the other direction."

Yet the right also has its share of fair-weather First Amendment friends. Though he won't name names, Kors says that several individual donors withdrew their support after FIRE backed Al-Arian. Wendy Kaminer wonders whether the right's civil libertarians will continue to back the cause when the power balance in universities shifts in their favor. "I'm waiting to see if and when the left loses its hold on campuses, the people on the right who support FIRE will remain," she said.

Meanwhile, FIRE is setting its sights on the diversity trainings that universities often hold during freshman orientations. Many critics dismiss the sessions as harmless, if silly. Kors, however, likens them to Maoist "thought reform." Liberal administrators are "going after students' souls" before they "have read a single book in a college context or heard a single debate," he said. Silverglate also issues ominous warnings; his are aimed at rousing the left back into free-speech activism. In a post-9/11 world, diversity training could open a door to molding student opinion that the right can jump through. As Silverglate put it, "Patriotism training is just around the corner."

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