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## Fire on American Campuses

 Exclusive commentary by **Richard L. Cravatts**

May 7, 2003

In two recent controversies simmering on American campuses, university administrators seem to be giving credence to an observation by Abigail Thernstrom, who categorized left-leaning, politically correct institutions of higher education as "an island of repression in a sea of freedom." Instead of serving as marketplaces of ideas, universities continue to implement policies that control speech and attitudes that do not conform to the prevailing liberal view of politics, race, or culture.

Despite violating the very principals of free and open thought they so vigorously expose, campus administrators, in the view of Alan Charles Kors, co-author of *The Shadow University* and head of the Foundation for Individual Rights in Education (FIRE), persist in trying to implement speech codes as a way of suppressing unpopular thought. "Speech codes," Kors wrote with Harvey Silverglate, "prohibiting speech that 'offends,' protect ideologically or politically favored groups, and, what is more important, insulate these groups' self-appointed spokesmen and spokeswomen from criticism and even from the need to participate in debate."

FIRE has been vigilant in making legal challenges to colleges with policies that have a chilling effect of free speech, or that implement codes that are seemingly unconstitutional and have to be tested in the courts. In point of fact, it recently sued Shippensburg University in Pennsylvania for implementing a speech code it considered to be overly broad, vague, and contrary to forms of free speech protected by the Constitution.

Shippensburg's Code of Conduct tries to insure that students are free from harassment, intimidation, physical harm or emotional abuse, and provides them a "secondary" right to express a personal belief system in a manner that does not "provoke, harass, demean, intimidate or harm" other students. But the University, in its zeal to protect the delicate sensibilities of its potential student victims, prohibits behavior that "annoys, threatens, or alarms a person or group," through criticism, leering, sarcasm, jokes, "suggestive or insulting sounds," and similar antisocial behavior one would never expect to see on a college campus.

Such overly-broad and vague "offenses" appear in similar speech and behavior codes on other U.S. campuses: FIRE points out that Brown University, for example, prohibits conduct that might constitute sexual harassment, such as "invitations," "unwelcome verbal expressions," "degrading language," "jokes or innuendoes," "sounds or whistles," and "gestures;" Harvard University's harassment policy includes "intent to

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dishonor" as an offense of the code if the infraction touched upon "such characteristics as race, gender, national origin or ethnic group, religious belief, or sexual orientation;" or the code at University of Maryland-College Park, which censures virtually all social missteps, including "'jesting' and 'kidding' about sex or gender-specific traits," "suggestive or insulting sounds such as whistling, wolf-calls, or kissing sounds," "sexually provocative compliments," "staged whispers," and "pseudo-medical advice."

The message that FIRE wishes to impart to Shippensburg, and which the University has evidently failed to remember in its study of previous court decisions, is that there is one very good reason for not adopting speech codes: in every instance when such codes have been challenged in court, they have been struck down for being overly broad, containing ambiguous and vague guidelines, or for attempting to modify hateful *behavior* by suppressing hateful speech.

In fact, the Supreme Court has continually found that of all places, the university has to be fully dedicated to protecting unfettered expression, that, as it found in 1989 when it struck down in the University of Michigan's speech code, the University could not "proscribe speech simply because it was found to be offensive, even gravely so, by large numbers of people. These principles," the decision went on, "acquire a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution's educational mission."

In ruling campus speech codes to be unconstitutional, the Court has seen through the real intent of the university administrations: not to suppress all speech and attitudes, but merely those ideas with which they disagree, those ideas and political beliefs that are unfashionable. Timothy Shiell made this very observation in *Campus Hate Speech on Trial* when he noted that "too often, campus hate speech policies and those responsible for their enforcement are not interested in free speech or a level playing field, they are interested in retribution and a competitive advantage in winning the minds of incoming students by silencing and punishing their opponents."

The imposition of a specific social agenda is at the heart of the second case to which FIRE has recently turned its attention—an attempt by four conservative students at the University of Miami to form an officially-recognized student organization, and the School's repeated denial of that request—based on the spurious claim that conservative views already had representation through the campus' College Republican chapter. Although the University has multiple groups representing Democratic and, therefore, liberal beliefs, political outlooks, and causes, University President Donna Shalala, one of President Clinton's most liberal former cabinet members, has refused to intervene.

There is more than a little irony in the fact that Shalala, while chancellor at the University of Wisconsin-Madison, purported to be inclusive of all ideologies and designed her 'Madison Plan' to further diversity on campus. Even more stringent was Shalala's "hate speech" code, which, despite its ostensible intent to prevent racist and sexist expression, was struck down by U.S. District Judge Robert Warren in 1991 when he found that the use of speech codes "does as much to hurt diversity on Wisconsin campuses as it does to help it. By establishing content-based restrictions on speech, the rule limits the diversity of ideas among students and thereby prevents the 'robust exchange of ideas' which intellectually diverse campuses provide." Wisconsin administrators, like those at Shippensburg, though seemingly well-intentioned, decided to ignore the First Amendment rights of their students.

Shalala seems disingenuous, too, in denying a conservative group access to campus recognition in Miami while allowing multiple liberal groups, those in conformity to current orthodoxy, to have a presence on campus. But at least she is consistent in her political leanings: at

Wisconsin she allowed the racist, Anti-Semitic, anti-white demagogue, Louis Farrakhan, to speak on campus, but when conservative Paul Weyrich wished to use the School's television facilities for his National Empowerment Television, the administration essentially eliminated the option by insisting on being able to control program content.

Shalala, along with Shippensburg president, Anthony Ceddia, still hold the notion that free speech is only good when it articulates acceptable, seemingly hate-free, views. But great legal minds, including such jurists as Oliver Wendell Holmes, Jr., were dedicated to unfettered speech where the best ideas become clear through the utterance of weaker ones. For Holmes, the protection of free speech was of particular importance, not only to allow discourse of popular topics, but, more critically, in instances where unpopular or hateful speech is deemed offensive and repressible. "If there is any principal of the Constitution," he observed, "that more imperatively calls for attachment than any other, it is the principal of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

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Richard L. Cravatts, Ph.D., writes frequently on law, public policy issues, real estate development, banking, and politics.

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