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Monday, Nov 17, 2003

Education

Posted on Thu, Nov. 13, 2003

The Philadelphia Inquirer

Defending the right to offend

The Philadelphia-based Foundation for Individual Rights in

Education takes on campus free-speech cases in a climate of

what some see as overreaching political correctness.

By Beth Gillin
Inquirer Staff Writer

Snow White would not have done well at Bucknell.

"Oh! What funny little men!" - her animated cry upon meeting the seven dwarfs in the Disney movie - is the sort of comment forbidden at this private university in central Pennsylvania, where "disparaging remarks about one's physical disability" are outlawed.

Likewise, *Back to the Future's* Marty McFly could have been hauled before Bucknell's Community Judicial Board (secret proceedings, no lawyers permitted) for saying, "So Lorraine, do you mind if we park?"



A recent cover of the Counterweight, a university magazine published by the Bucknell Conservatives Club, represents the view that the school has gone too far in restricting speech.

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At Bucknell, that invitation could be interpreted as "exerting subtle pressure for unwanted sexual activity."

Bucknell is far from alone in issuing policies that restrict student behavior, some of which critics see as exercises in political correctness.

And when students and policies collide, complaints often find their way to the Washington Square offices of the Philadelphia-based Foundation for Individual Rights in Education, or FIRE. With a lively Web site (<http://www.thefire.org/>), and staff appearances on shows from *The O'Reilly Factor* to *Conan O'Brien*, FIRE has gained a reputation in five years as the ACLU of the campus.

Here, on the third floor of the N.W. Ayer building, a staff of nine gathers information for lawsuits, prepares congressional testimony, and calms students and professors who fear disciplinary action for saying something that upset somebody.

"When you hear speech you don't like, the solution is to counter it with more speech," said Thor L. Halvorssen, 29, chief executive officer of FIRE. "Without intellectual diversity, the life of the mind is finished at a university."

Furthermore, said Halvorssen, a University of Pennsylvania graduate who describes himself as a classic liberal, "there is no such thing as a right not to be offended."

Critics charge that policies designed to balance open expression and the rights of all students are strangling spirited debate about ideas where it should flourish most freely - on college campuses.

The harassment policy at Bucknell is "vague and overbroad," according to junior Charles Mitchell, who said speech that "seriously annoys" someone is verboten, as are "sexual innuendoes made at inappropriate times."

When, Mitchell wonders, are "the 'appropriate times' for making 'sexual innuendoes'?"

Mitchell is editor of the Counterweight, a student magazine published by the Bucknell Conservatives Club, which printed two dozen pop culture statements, including Snow White's and Marty McFly's, that it claims would violate college policy.

Offensive or provocative statements should never be suppressed, Mitchell said. "The best way to eradicate things like racism is to expose the fools who believe them to public ridicule."

Bucknell's vice president of academic affairs, Charles Pollock, told the campus newspaper, the Bucknellian, that the university did not have a "speech code." He said that because "the University is deeply committed to preventing harassment and to protecting students' ability to pursue their educations, which does require civility, certain acts and utterances are therefore discouraged... . But that is part of living in a community and it falls far short of a frontal attack on First Amendment rights."

Other universities take similar approaches:

Bryn Mawr College outlaws "suggestive looks" and Haverford College "unwelcome flirtations."

At Rutgers University, a Christian fellowship group was accused of violating antidiscrimination policy when it held an election and invited only Christian students to run for office.

At Shippensburg University, after the Sept. 11 attacks, dorm residents were ordered to remove posters expressing hostility toward Osama bin Laden from their doors. A resident director at the public college called such material "offensive" and a violation of the school's code of conduct, according to a student affidavit.

FIRE, which successfully fought for the Rutgers and Shippensburg students in court, does not solicit clients, Halvorsen said, but responds to students and professors who believe their rights have been violated.

"This generation is increasingly differentiating itself from its parents and crying out for individualism," Halvorsen said.

"We will represent anyone, liberal to conservative, atheist to evangelical. Our only client is the Constitution, specifically the Bill of Rights."

In what Halvorssen called one of its most "problematic" cases, FIRE defended the free speech rights of Sami al-Arian, a tenured computer science professor at the University of South Florida.

FIRE had protested vigorously when the university dismissed the professor after he aired anti-Israel views that already were well-known on campus on national television shortly after 9/11.

"The university received hundreds of letters from alumni saying they were withholding contributions because they found Arian's comments distasteful," Halvorssen said.

FIRE argued that the university knew Arian's views when it granted him tenure.

"You cannot terminate someone with tenure because he's disrupting your fund-raising," said Halvorssen, whose group has taken no position on Arian's guilt or innocence. "If that were allowed, almost anyone could be fired for expressing unpopular ideas."

Almost a year later, the university changed its grounds for firing Arian, saying it had evidence he was financing terrorist activity.

Arian was arrested in February and is being held in a federal prison near Tampa, charged in a 50-count indictment with using an academic think tank and a university charity as fronts for financing Islamic Jihad.

In September, FIRE filed a federal suit against California Polytechnic University president Warren Baker, accusing him of violating the First Amendment rights of Cal Poly student Steven Hinkle.

Hinkle was disciplined for posting a flyer promoting a campus speech by black conservative Mason Weaver, who argues that

dependence on government puts many African Americans in a situation similar to slavery.

The flyer contained only the time and place of the lecture, a photo of Weaver, and the title of his book, *It's OK to Leave the Plantation*.

Students called campus police to complain that the flyer was "offensive."

The university ordered Hinkle to appear at a seven-hour judicial hearing, where he was found guilty of "disruption," ordered to write letters of apology to the offended students, and told he could be expelled if he refused.

In taking on such cases, FIRE fulfills the mission of its founders and codirectors Alan Kors, a conservative professor of history at the University of Pennsylvania, and Harvey Silverglate, a civil-liberties lawyer in Boston, friends who met as Princeton freshmen in the '60s.

Together they wrote the 1998 book *The Shadow University: The Betrayal of Liberty on America's Campuses*.

"In the summer of 1999, over a large bottle of red wine, the three of us - a curmudgeonly professor, a hippie-type lawyer, and a kid of 24 - decided we would bring down the system," Halvorssen joked recently.

It was a system of rules rooted in the '60s and '70s, when overwhelmingly white and male campuses were forced to adjust to a sudden influx of female, African American, Hispanic, disabled and openly gay students.

Decades later, the rules remain. But increasingly, they are being challenged by students who see them as repressive and unnecessary.

In *The Shadow University*, Kors and Silverglate trace campus speech codes to, ironically enough, the student rebellions of the '60s, when activists challenged academe to accommodate dissent. One way to do that, philosopher Herbert Marcuse wrote in his influential 1965 essay "Repressive Tolerance," is

to withdraw tolerance for "groups and movements" promoting discrimination.

In the decades since, colleges even have argued that civil rights rules require restrictions on speech. That idea was quashed in August by the U.S. Department of Education.

In a letter to universities nationwide, Gerald A. Reynolds, a top civil rights official in the department, said its "regulations and policies do not require or proscribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment."

The words are Reynolds'. But he wrote them, Halvorssen said, after a meeting with staffers from FIRE.

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