

# The Dartmouth Review

- [front page](#)
- [about](#)
- [back issues](#)
- [search](#)
- [sections](#)
- [subscribe](#)
- [syndicate](#)

Thursday, October 23, 2003

## Campus Speech Codes At Dartmouth: Harvey Silverlate and FIRE

By J. Lawrence Scholer

In the 1943 West Virginia Board of Education v. Barnette, the United States Supreme Court handed down its most eloquent defense of free speech. Voting with the majority, Justice Robert Jackson wrote, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith."

Sixty years later these words do not ring true on college campuses, and the administrative networks have become a "disaster for education and for liberty," says Harvey Silverlate, a lawyer and the co-founder of the Foundation for Individual Rights in Education. Administrators have adopted speech codes which force a worldview upon students: "[College administrators] have decided there is one way of looking at life and one way of making sure everyone gets along." Such speech codes prove worse than forms of censorship—which simply prohibit the dissemination of ideas—because tantamount to speech codes is the notion that, "You shall believe, and you shall say what I tell you to believe and what I tell you to say." Campus administrators often create speech codes in the name of "community values" in essence, in the name of a false morality. To fight against speech codes is to understand that when you're fighting for liberty you're not fighting for the correctness of what is being said.

Silverlate spoke in Dartmouth Hall and later attended a dinner and discussion with students in Rockefeller Center on October 7. While the topic of discussion was "Free Speech on College Campuses: Before and After September 11," Silverlate described the abuse of freedom of speech on campuses as a problem that predated the 2001 terrorist attack. Since the Eighties, college administrators have waged war on free speech "in the name of making campuses more welcoming to students," Silverlate told the audience. The stifling of speech is not without precedent in this country and Silverlate feels that, after

two decades, the era of speech codes in its current incarnation is slowly coming to an end. Following his dinner discussion The Dartmouth Review spoke with Silverlate.

The Dartmouth Review: What would you say is the cause of what is frequently called the "double standard" in terms of freedom of speech?

Harvey Silverlate: The cause of the double standard is really as old as humankind itself. People in power like to reward and make nice to people who do as they say and make life miserable for people who disagree and dissent. And that's the cause of the double standard. They like you to think the double standard, assuming they agree it is a double standard, is based upon the fact that they approve of things which are good and moral, and they disapprove of things that are evil and immoral. But, in fact, their standard is usually much more personal. They reward the people who make their lives easier by agreeing with them.

TDR: Campus administrators often conflate "ideas" and "action" in their justification of enforcing speech codes. How would you describe this confusion?

HS: That's intentional. You read these speech codes and you read the letters from administrators and you see that they talk about things like "speech acts." [Administrators] in the same paragraph will talk about saying terrible things and doing terrible things when all they are really talking about is speech. It's an attempt à la Orwell. It's an attempt to redefine reality by redefining the English language, by abusing the English language.

TDR: Would some of that come from the education of some administrators? The education they received, say, if they went to school in the Sixties, from a certain school of thought.

HS: Actually, I think it comes from the fact that so many administrators are badly educated and quite ignorant. And others—I think it's more knowing and intentional and cynical. But an awful lot of administrators—remember they're not coming from the faculty and taking administrative jobs for a few years and going back to teaching. They are professional administrators and they should be working in corporations. They should not be working in higher education.

TDR: You used the analogy of a pendulum in your talk—a balance of uses and abuses of free speech throughout history. When will the pendulum swing on college campuses?

HS: First of all, I think that we are now seeing the beginning of the end of the tyranny of the politically correct on campuses. And that's because they have become the butt of interest and mocking by the mainstream news media. Alumni are beginning to get worried about it. It's affecting [colleges'] finances. I think that the game is close to being over and they're in retreat. [College administrators] will not publicly admit to what they're doing and that's a huge problem for them because it means that as soon as you publicize it means you have to pull back. [The] Dartmouth administration has been a bit more stubborn than most, but gradually we're getting them too.

TDR: For some time now, the Dartmouth administration has attempted to prohibit door-to-door distribution of the Review. Recently, they have started to threaten the student who delivers. Would this constitute a speech code?

HS: I can tell you this. The devices by which censors exercise censorship are as varied as the human imagination. And censors have been coming up with devices for censoring for eons and [with] device[s] of inhibiting delivery based upon knowledge that certain publications you disagree with deliver one way rather than another. For example, at the Civil Liberties Union we have had battles for decades on the banning of street newspaper boxes and all it means is no newspaper is allowed to use the street distribution box. The problem is that the newspapers that do use street distribution boxes—that those without the money for trucks, armies of trucks, that deliver. You're not inhibiting the major dailies. You're inhibiting the small, political, politically-oriented, alternative newspapers from publishing basically. Because if you can't distribute, there is no sense publishing. So these methods are not applied uniformly and even-handedly; they're chosen with certain targets in mind. And I have no doubt that here this rule about distributing to the dorms is targeted at The Dartmouth Review. It's the latest in a long series of ill-advised, ill-considered, immoral, unethical assaults on freedom of speech on this campus.

TDR: The administration regards the paper at your door as an action that will offend you.

HS: Let me tell you something: Anybody who's offended by having a newspaper delivered to their door should leave college and go to a mental hospital or a rest home and should relax.

TDR: Is there any precedent for this type of policy at other colleges?

HS: Yes. Various colleges have resorted to this. It's a well-known administrative trick for trying to get rid of unpopular publications. You outlaw the distribution channel that that particular newspaper uses more than other newspapers use. And that's how you do it. This is not very hard—as Bob Dylan said, "You do not have to be a weatherman to know which way the wind is blowing" on this one.

TDR: I'm looking at the response to FIRE from the school's attorney. The college seems to consider The Dartmouth Review as an off-campus publication and private—which we are—like the New York Times to consider us as solicitors. So, when, in this case, is a student not a student? When you're here in college you are held to Dartmouth's rules, but when you distribute the Review, they seem to hold you to another standard.

HS: The issue is here not so much whether you are a student—it's that you are living in a dorm. So what they are saying is that they are controlling place rather than people. However, when you're the landlord, it's the same thing, isn't it? It's just the latest in a long series of attempts to censor a newspaper and cover up how you're doing it. Nothing new. They're endlessly inventive. Censors are endlessly inventive, but they just don't admit they're censors.

TDR: Are students at a newspaper's solicitors?

HS: No. What [administrators] do not recognize is that there is a long line of Supreme Court cases that recognizes the distinctive nature and distinctive rights of news organizations. Remember, freedom of press is mentioned in the First Amendment<sup>o</sup>press. And it's different from an ordinary commercial solicitation venture. The school would like to look at The Dartmouth Review as a commercial undertaking subject to solicitation rules because it doesn't like its point of view. It is as simple as that. And they can have all kinds of inventive ways of trying to cover up the core reality and no one's ever going to believe it with a straight face.

TDR: Why are colleges so eager to take on student publications? Why exert so much energy taking on twenty and twenty-one year-olds?

HS: Ye shall know the truth and the truth shall set ye free. They want their spin to be the only one out there. They don't want alumni to get upset at what they are doing. They don't want alumni to know what they are doing. They don't want the mainstream news media barking at their heels. They don't even want their own Trustees to know what they are doing. And so they want to squelch this little annoyance in their midst. That's why and they'll do it however they can.

TDR: Would you consider what Dartmouth is doing as false advertising<sup>o</sup>by claiming to honor freedom of speech? How can they get away with printing that when it is so obviously false?

HS: It is false advertising. They reason they get away with it is because it is so hard to classify it as advertising and<sup>o</sup>you want to know the truth<sup>o</sup>they get away with it because the First Amendment allows them to say things like that. And the pressure on them really has to be publicity pressure, pressure with alumni. They have to be exposed. In the light of day, these lies just won't hold up.

Your browser is very old and isn't displaying this page the way it ought to. For a free upgrade, check out [Mozilla](#) (formerly known as Netscape). It's fast, secure, user-friendly, and free.

tdr online empire

- [tdr online](#)
- [tdr print](#)
- [dartlog.net](#)
- [inner office](#)
- [dartblogs](#)
- [blitz lite](#)
- [newswire](#)

support tdr

dartlog.net



[An Ulster table?](#): Rollo? >Date: 06 Nov 2003 16:40:09 EST >From: Meghan E. Hill >Reply-To: Accidents Happen >Subject: European Culture Night - Friday! >To: (Recipient list suppressed) International Students Association presents: --= European Culture...

[Drew Hall '05's catch vs. Harvard](#): Picture here. Video clip here. If you haven't seen it, it should've been on the Plays of the Week on Sportscenter. It was doubly big because it came on a 3rd and forever to go after a bizarre play in which the Dartmouth quarterback was tackled by the ...

[We found it!](#): The unified theory of political correctness: "Diversity May Curb Binge Drinking"...

>[Date: 05 Nov 2003 21:59:36 EST](#) >[From: Religious ...](#): >Date: 05 Nov 2003 21:59:36 EST >From: Religious and Spiritual Life >Subject: College Chapel >To: (Recipient list suppressed) Come to the student-led chapel service. By far the chilliest half hour at Dartmouth. Come and see. Rollins Chapel, 12...