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## Opinion

### Free Speech and its Limits

BY ROBERT B. **DONIN**, GUEST COLUMNIST AND GENERAL COUNSEL OF THE COLLEGE

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Richard Roberts ("Free Speech and Inconsistency," April 14) glosses over the facts of the Zeta Psi case to create the false impression that the College sanctioned the fraternity for the content of its ideas. In his recent speech to the Dartmouth Club of New York, President Wright stated why the fraternity was sanctioned:

"The Dean derecognized the fraternity because of the repeated publication of a newsletter that cruelly demeaned specific women on campus. This incident was about behavior, not speech -- the organization published articles describing the supposed sexual exploits of two undergraduate women who were identified by name."

To be specific:

During the summer of 2000, a fraternity member showed female student "A" a copy of the house newsletter in which the student was identified by name and in which certain sexual activities involving a fraternity member were attributed to her.

During the same summer, female student "B" saw another Zeta Psi newsletter, which described student "B" as "fat and syphilis-ridden."

Student A objected to the president and other members of the fraternity and was assured that the newsletters would be discontinued.

In April of 2001, however, student A found a copy of a new Zeta Psi newsletter. This copy attributed certain sexual activities to student A.

In 1987, Zeta Psi's recognition had been suspended for a year because of similar conduct. When the group's recognition was reinstated, it gave assurances that this type of misconduct would not be repeated.

A long line of First Amendment cases recognizes that freedom of expression is not absolute. Even where the First Amendment fully applies, as Justice Oliver Wendell Holmes, Jr. famously wrote, no one has the right to falsely yell "fire" in a crowded theater. Similarly, the First Amendment does not protect defamation, invasion of privacy, copyright infringement, threats or harassment, to cite just a few of the well-established, judicially approved limitations on free speech.

The Zeta Psi case falls squarely within the area of permissible regulation. This was not a case of students spewing racist, sexist or misogynistic ideas in the abstract. Such statements, however repugnant or contrary to Dartmouth's values, are protected under the College's Policy on Freedom of Expression and Dissent (Student Handbook, p. 9). (And members of the campus community can and do respond with their own views when they encounter statements they find objectionable or with which they disagree.) The statements in the Zeta Psi newsletter, by contrast, targeted two specific students for personal abuse in a repeated fashion even after the organization agreed to end this behavior.

Whatever one may think of the particular sanction imposed by the College, as a matter of First Amendment principle it is not correct to lump all speech together and suggest that merely because an activity is verbal, it is automatically immune from regulation.

The College's action in the Zeta Psi case was justifiable not because the fraternity's rights were outweighed by some vague sense of community values, but because the type of speech involved was similar to the types of speech for which our legal system permits recourse, notwithstanding the First Amendment.

Educational communities depend on the open exchange of ideas, however offensive certain ideas may be to some. No one should pretend that the line between "pure speech" and speech that warrants regulation will always be easy to discern. But the principle is clear: while members of the community have the right to express ideas freely, they do not have the right to single out other individuals for demeaning and humiliating treatment. The harm created by such conduct -- distinct from any "message" the speaker may be seeking to convey -- is not protected by the First Amendment.

The Foundation for Individual Rights in Education has cited comments in community letters written by President Wright and Dean Larimore shortly after the Zeta Psi decision as the basis for FIRE's contention that Dartmouth has a "speech code." Those two letters do express the writers' personal convictions about racist, sexist and homophobic behavior and the effect of such behavior on the College community.

Removed from the context of the Zeta Psi case, these comments might imply a broader regulation of expression. But the letters were prompted by, and addressed to, the specific case at hand. (Both letters were commenting on the decision already reached by Dean Martin Redman concerning Zeta Psi, rather than setting forth policies that led to that decision.) The assertion that the letters constituted official "policies" subjecting students to penalties for discriminatory or unpopular speech per se is incorrect.

One other thought about speech at Dartmouth: it is a shame that an isolated incident which occurred four years ago continues to obscure the robust, unfettered and wide-ranging debate that flourishes here daily. Within just the past six months, the list of campus speakers has included J.C. Watts and Daniel Pipes, with Dinesh D'Souza scheduled to visit in May -- hardly a pantheon of political correctness. A Dickey Center program last week featured pro-Israeli and pro-Palestinian speakers. Student publications and political organizations of every stripe are thriving. The marketplace of ideas seems to be doing a brisk business. To suggest that the atmosphere here is repressive is to ignore reality.



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