



Playing with FIRE

By **Michael J. Ellis** | [Monday, June 2, 2003](#)

When a college student's speech offends the sensibilities of his school's administration, the means of recourse are few. The case is easily hushed up by the campus PC police and the student is left to fend for himself amidst the stifling academic orthodoxy. To whom can the beleaguered student cry out for help? The resources normally called upon for aid in times of duress—parents, professors, administrators, or campus publications—are irrelevant or useless. They are either powerless to stop the persecution or quick to jump on the student for promulgating 'distasteful' speech.

But, since its inception four years ago, the Philadelphia-based Foundation for Individual Rights in Education (FIRE) has been working tirelessly to support students like these—working tirelessly to be that invaluable resource for students who would otherwise be at the mercy of autocratic administrators.

Dr. Alan Charles Kors and Harvey Silverglate are the dynamic duo of free-speech advocates that founded FIRE. In the current world of barbed academic partisanship, they are an unusual pair. Dr. Kors, a professor of history at the University of Pennsylvania, considers himself a conservative and brings the perspective of a life-long academic to FIRE. Harvey Silverglate, a Boston attorney and former president of the Massachusetts ACLU, complements that sentiment with the idea that 'liberty is non-partisan.' Mr. Silverglate is a self-professed liberal who specializes in civil liberties law.

Before starting FIRE, Dr. Kors and Mr. Silverglate penned *The Shadow University: The Betrayal of Liberty on America's Campuses*, a detailed account of the erosion of free speech at universities nationwide. The two were described by the *New York Review of Books* as 'old-fashioned civil libertarians who support everyone's right to sound off,' because of their deeply-held belief that the educational mission of universities means that they should be the 'forums of the most open, not the most limited, inquiry' in American society. In order for academics to continue their pursuit of truth, they must be assured of their freedom to speak freely and to be free from persecution for their ideas, no matter how unsavory they might be. This mentality forms the core of FIRE's mission.

FIRE fights for individual rights on campus through a variety of means, but their foremost weapon is publicity, for as esteemed Justice Louis D. Brandeis put it, 'sunlight is the most powerful of all disinfectants.' FIRE has initiated or been involved in over two hundred cases at colleges and universities across the nation, using strategic lawsuits and press releases to force schools to account for their actions.

Few are aware of the prevalence of suppression of free speech on campus. Beginning in the early 1980s, administrators began to curtail speech to placate radical campus activist groups and to preempt their staged protests and sit-ins. The disconcerting trend has only accelerated since then. I spoke with Mr. Silverglate for additional insights into both the academic culture that creates such a repressive atmosphere and the legal rationale for FIRE's actions.

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The movement to obtain what is considered by the campus orthodoxy ‘true equality’ for ‘historically-underprivileged’ minorities is widespread. While everyone supports equality and civil rights in principle, realizing them becomes slightly more sticky. In order to create a more ‘comfortable’ environment for these groups, the speech of ‘historically-empowered’ groups is curtailed on campus. Academia’s fundamental spirit of free discourse is regularly trampled by speech codes, ‘designated zones’ for free speech, and secret investigations and clandestine trials—all so that no one’s tender feelings are hurt. While administrators are at times the ideologues who crusade for a politically correct homogeneity of speech, more frequently they are just looking to cover their own hides: to appease the loopy feminists, blacks, Hispanics, or gays who imagine that they speak for all the students in their respective brackets. Knowing that these groups are most likely get all huffy or to make a scene if ideas they dislike are disseminated, administrators look to steer a course with ‘no trouble on my watch.’

Mr. Silverglate said, ‘Republicans, moderates, evangelicals, assimilationist blacks or Hispanics, and devout Catholics don’t occupy buildings or cause disruptions that will bring the media to campus. The improbable cry ‘the Lutherans are really mad’ will not send administrators into panic.’

One such incident occurred at Central Michigan University two years ago. In a display of patriotism after the September 11 attacks, four dormitory-dwelling students decided to hang an American flag on the outside their room, and accompanied it with newspaper articles about the war on terrorism. Within no time, the students were commanded to take down the display because it ‘offended people.’ The identities of those who ‘felt degraded’ by the flag were kept, of course, underground. After FIRE sent a letter to the CMU administration and the story was picked up prominently in the national media, the administration quickly folded and rescinded its original fiat.

Though all cases do not have so rosy a final act, FIRE continues to provoke, refusing to restrict targets to any particular spectrum of collegiate institutions, striking the Ivy League and community colleges alike. Harvard University, for example, is a prime offender. The undergraduate College, Business School, and Divinity School, among others, have all been challenged for their suppression of student rights.

Striking closest to home, Mr. Silverglate was also critical of the Dartmouth administration. Like Harvard, he described it as ‘another one of those campuses where the administration has taken a very strong position’ in favor of ‘diversity and multiculturalism’ at the expense of freedom of expression. He cited the College’s new policy banning door-to-door delivery of campus publications as an example of the kind of censorship common on today’s campuses.

Similar attempts by administrators to shut down ‘renegade’ student publications at the University of California-San Diego and Harvard Business School resulted in black eyes for each institution after the FIRE took up the cause.

The main channels currently in vogue for administrators to keep campus debate under wraps are speech codes. These regulations attempt to stifle expression at odds with the prevailing campus orthodoxies or that which might be construed as hurtful to select members of the community. According to Mr. Silverglate, the codes become ‘the enemies of free thought and free inquiry’ by preventing the exploration or discussion of any issue that pricks even the remotest sensitivities. One would think that a set of rules dictating what can and cannot be said would be based time, place, and manner. One, however, would be wrong. Common sense provisos have been supplanted by censorship based solely on content, appearing at first glance to be in blatant violation of the First Amendment.

The only legal precedent, however, relating to speech codes dates back to 1989, in a case where the University of Michigan’s code was ruled unconstitutional by a U.S. District Court. Shrewdly, the Michigan officials chose not to appeal the decision and thereby prevented an Appeals



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Court-level ruling that would be an applicable precedent nationwide.

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In a sweeping effort to force public universities to comply with the First Amendment, FIRE is currently facilitating lawsuits in all thirteen federal appellate circuits nationwide. Suits are already pending against Shippensburg University in Pennsylvania and Citrus College in California. In the next few months, the enterprise will pick up steam.

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At the same time, private colleges and universities, although they operate outside the provisions of the First Amendment, are not immune from FIRE's pressure either. FIRE is no longer able to sue on grounds of violating personal freedom, but they have shifted tactics. Now they publicize and ridicule the hypocrisy of the most egregious offenders. While administrators at private colleges profess outwardly to be staunch supporters of freedom of expression, the speech codes they design and enforce belie their puny claims.

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While grounds for suing a private university are more tenuous than the precedent against public universities, action can still be taken for breach of contract. As Mr. Silverglate explained, 'If a private university wants to suppress speech, that's fine—provided that they stop calling themselves a liberal arts college devoted to the search of truth.' Hopefully, a new precedent will be established by the courts, and free speech will once again be cherished in American academia.

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