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The 11th Annual Muzzle Awards

The Muzzle Awards: Collegiate Division

Stamping out free speech in academia

By HARVEY SILVERGLATE | June 25, 2008



The 11th Annual Muzzle Awards:
Silencing free speech. By Dan Kennedy.

Our annual Muzzle Awards survey scours all six New England states for free-speech violations. But it always causes the judges special pains when we find such cases at institutions of higher learning, which, in theory, are supposed to be the freest places in our society. In reality, however, college campuses are home to some of the most outrageous cases of censorship.

Brandeis University is a clear winner, thanks to its farcical treatment of veteran faculty member Donald Hindley this past fall.

Hindley's troubles began when he explained the origin of — and then criticized — the term “wetback” in his Latin American politics class. Two students did not approve of the professor's use of the term and complained to Provost Marty Krauss. Rather than noting that an intellectual discussion of the history of a slur is relevant subject matter and protected by academic freedom, Krauss indulged the students' fantasy that they were crusaders against racism. She wrote Hindley a letter in which she indicated that he had violated the school's anti-harassment code, then appointed a monitor to sit in on his classroom for the rest of the semester, and ordered him to attend racial-sensitivity training classes (which he refused to do). All before he was accorded the hearing to which he was entitled. Hindley had never been put on notice that he was under investigation, nor even given a chance to rebut the charges — a maneuver that the Faculty Senate unanimously denounced in a series of stinging rebukes. Meanwhile, Hindley demanded a hearing. (Disclosure: my law firm represented him in this matter, and the Foundation for Individual Rights in Education, the board of which I chair, has taken up the case.)

Once Brandeis faced a firestorm of criticism both internal and external, Krauss backed down, sort of — sending Hindley an even more ambiguous, four-sentence letter which closed with “I trust that you understand your responsibilities regarding the University's policies on non-discrimination and harassment. The University now considers this matter closed.” (Talk about the bloodied combatant leaving the battlefield while declaring victory.)

Supreme Court Justice Louis Brandeis would likely have been appalled by the disdain for freedom of speech, freedom of conscience, and due process at the institution carrying his name. But the great jurist can find solace in the fact that his quip about sunlight being the best disinfectant has once again proved true.

As a training ground for aspiring journalists, **Emerson College** has a relatively unblemished record when it comes to student speech. That's why it was such a disappointment when student Ashley Porter, a reporter for the Emerson television station, showed me the 2006-'07 and 2007-'08 versions of the school's student handbook and pointed out that what had once been a section on “Statement of Rights and Responsibilities” had been changed to simply “Statement of Responsibilities.” Without giving students any notice, Emerson's administration had, during the summer months, deleted wholesale the enumerated rights afforded to students, including their rights to freedoms of speech and press.

Thankfully, the bad faith shown by Emerson in the episode was matched by Porter's determination. Her vigilant coverage of the story,

including a well-timed request for an interview with the president of the Board of Trustees, forced Emerson's administration to reinstate the students' bill of rights.

Dartmouth College

has long had an unusual governance structure in which half of the seats on the school's Board of Trustees are reserved for "alumni trustees," who are democratically elected by their fellow alumni. For much of the school's history, when there was an alumni-trustee vacancy on the board, the remaining trustees would handpick a replacement candidate, who typically ran unopposed; the alumni association "election" was all but a formality.



This all changed in 2004, when Silicon Valley pioneer and Dartmouth alum [TJ Rodgers](#) (disclosure: a client of mine) gained enough signatures to get on the ballot, financed his own campaign, ran against the establishment-favored candidate, and, remarkably, won. Rodgers's platform of improving undergraduate education and honoring students' rights struck a nerve with his fellow alumni. Three other dissidents have since run on a similar platform in subsequent years, each time winning by a wide margin over the institutionally favored candidates.

Chair of the Board Ed Haldeman and his supporters have wielded the so-called trustees' oath in an effort to muzzle the outspoken alumni trustees. One such alumni trustee, Professor Todd Zywicki of the George Mason University Law School, was publicly taken to task in a letter sent out to all alumni by the board, for delivering a speech in which he criticized Dartmouth's leadership. Haldeman and his cohorts wrote in a statement on the board's Web site that Zywicki "violated his responsibilities as a trustee of Dartmouth College, which includes acting in the best overall interests of Dartmouth and representing Dartmouth positively in words and deeds." Similarly, the board has criticized Rodgers for sitting for news media interviews and discussing Dartmouth with considerable frankness.

The issue at Dartmouth appears to be whether a trustee, elected by alumni, does his duty when he offers constructive criticism of the university, or whether he must toe the company line, speak nothing but praise of the institution and its governance, and never hurt the financial statement. Stay tuned on this one.

With thanks to Jan Wolfe for his invaluable assistance.



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