

QUESTIONS AND ANSWERS

I am a freshman at a state university. During orientation, we were required to take diversity training. The diversity trainer told us that we were all racist, sexist homophobes who benefited from “white privilege.” She derided us as naive and blind to our own latent prejudice. She pressured us to reveal personal details about our beliefs and private activities to a group of peers I had met only the day before. I felt very uncomfortable. Does the law allow me to be excused from such sessions?

This is an area of the law where we do not have any direct, definitive, and authoritative court rulings. Nonetheless, the Supreme Court has stated that the Constitution strongly protects the right of conscience, sometimes called the right to believe or not believe. If the point of the training is to coerce you to change your

beliefs, then the training raises important constitutional questions concerning the right to conscience.

In addition, any such requirement that a student disclose personal beliefs or intimate details about himself or herself runs afoul of another constitutional protection that is tangential to the right to conscience on which this *Guide* focuses, namely, the right to privacy. Just as the state does not have the right to impose beliefs on a person, so it does not have the right to delve into a person's mind in order to see what is there. In this regard, the reader would do well to read the opinion of the Supreme Court in the 1969 case of *Stanley v. Georgia* which, while upholding state laws against the production and distribution of obscene materials, barred states from prosecuting the mere private *possession* of such materials at home. In establishing "conditions favorable to the pursuit of happiness," Justice Thurgood Marshall wrote for the majority, the drafters of the Constitution "recognized the significance of man's spiritual nature, of his feelings and of his intellect." The quintessentially human realm of private intellect, whether base or sublime, was beyond the control of the state: "Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds."

This type of training becomes more constitutionally questionable when it is mandatory. The university must, at the very least, allow students who find such training objectionable to opt out or to walk out of it when it

becomes indecently intrusive. A university administration that is wise and that takes its educational task seriously will avoid altogether such “training” of students’ minds. It is fine if students graduate while holding beliefs that are different from the administration’s “official line” as to what is “correct” and what is “incorrect.” Again as the Supreme Court observed in *Barnette*, “compulsory unification of opinion achieves only the unanimity of the graveyard,” and we must preserve “intellectual individualism,” “rich cultural diversities,” and the “right to differ as to things that touch the heart of the existing order.”

One occasional activity used in such sessions is for the diversity trainer to instruct students to line up in order of skin color and hue (lightest to darkest, or *vice versa*) and then to comment on the feeling and social meaning of their respective positions in the line. The degree of ideological coercion, and hence the constitutionality, of the activity depends on what comments are allowed or prohibited. If, for instance, students must explain their position in the “color line” solely in terms of structural racism or white privilege, then the activity has probably crossed the line into unconstitutional ideological coercion. If, however, students are permitted (or, better, encouraged) to question the purpose of the line-up, the sanity of the organizers, and the underlying assumptions of the activity, then the session is more likely to pass constitutional muster.

Another common activity is for the diversity trainer to instruct students to sort themselves into groups defined by race, sex, or sexual orientation. (Regardless of its constitutionality, the wisdom of instructing students who are fresh out of high school to “out” themselves as gay, lesbian, questioning, or whatever else, in front of relative strangers at orientation seems questionable at best.) Those who sort themselves into the “privileged” groups (*e.g.*, white, straight, male) are told to describe the advantages they have benefited from as privileged, while those in the “oppressed” groups (*e.g.*, racial minorities, gays, and women) are told to describe how they have been harmed by their membership in those groups. The structure of the activity makes it virtually impossible for students to dissent from the political arguments implied by the questions. Because of this, the activity raises serious issues of ideological coercion, as well as invasion of privacy.

Finally, whatever the constitutional issues, these programs are degrading, intellectually insulting, patronizing, divisive, and an arrogant abuse of power. Universities will be hard-pressed to defend such practices if students expose them to the public and the media. Remember what Justice Brandeis once said: “Sunlight is the best disinfectant.”

The University's job is educating students. If the University decides to educate students using diver-

sity training, why should a court second-guess the educational experts?

State colleges and universities cannot justify any and all curricular decisions by invoking their educational expertise, and diversity training is almost never given for credit as a formal class governed by the rules of academic freedom. Of course, courts should and do defer to the judgments of school officials in most educational questions, but a state university cannot mandate attendance at chapel services, or require students to recite the Pledge of Allegiance even with the best educational reasons backing up such requirements. Where a legitimate educational decision ends and a constitutional violation begins is not always clear, but such a distinction does exist. It is the court's job to determine when and where that line has been crossed.

Just because an activity is billed as “diversity training” or is politically charged doesn't mean that it contains coercive elements that would implicate the constitutional right to freedom of conscience. For example, a diversity training session that consisted solely of a school official describing the school's speech and harassment policies would not violate freedom of conscience, even if the speech policy itself is constitutionally suspect, because mere presentation of information on the policy does not attempt to coerce *belief* in or *agreement* with the policy. Also, it is not intrusive. Similarly, an ethnic studies course examining the concepts of “internalized oppression”

and “structural racism” would not violate freedom of conscience as long as the professor *educated* students and allowed them to reach their own conclusions, rather than *coerced* them to adopt one point of view. Whether the professor makes his or her point of view clear is not relevant; there is no element of coercion unless the professor tries to silence or suppress dissenting opinions.

The professor of my sociology class is a Marxist who derides capitalism and mocks Republicans and students who belong to fraternities or sororities. Another professor is a libertarian who quotes Ayn Rand and speaks contemptuously of socialists and liberals. Students are irritated about the belittling of their respective beliefs. Can these students take any action against these professors?

Probably not, and it's a good thing, too. The professors are not violating the constitutional rights of students by criticizing, even belittling their beliefs. Freewheeling debate is what the First Amendment is meant to protect. Even though a power imbalance exists in a classroom where a professor openly mocks or criticizes students, this is the rough and tumble of a free society. (This is not to say that it is necessarily good pedagogy for a professor to belittle an opposing point of view rather than respond to it with intelligent contrary arguments. However, good versus bad pedagogy is a subject beyond the scope of this *Guide*.) The professor may cross into

unconstitutional behavior if, however, he or she repeatedly singles out one student for personal derision and humiliation or for lower grades because of the beliefs the student holds. Professors may not insist that students profess belief in a certain viewpoint, as the college professor did who required her students to write President George W. Bush to criticize the war in Iraq. Professors do have academic freedom, but, as state actors, they too may be found to have violated a student's right to conscience.

In a mandatory class for my major, the professor hands out “Classroom Discussion Standards” on the first day of class. I must sign a statement saying that I agree to affirm each individual’s self worth, will not engage in inappropriate remarks that demean others, acknowledge that I am an unwitting recipient and advocate of a white male Eurocentric patriarchal power structure, and agree to work for structural change that will benefit all peoples, especially people of color and sexual minorities. Can a professor do that?

Although there are not yet any major court opinions directly on this question, it is likely that such standards violate the constitutional rights of college and university students. Professors cannot require students to agree to specific viewpoints or to vague standards of civility that may be easily broken depending on who is interpreting

what they mean. Even at private universities the AAUP guidelines, which most colleges and universities claim to accept, prohibit ideological litmus tests for studying a subject. In addition, if professors stifle debate and hinder the viewpoints that students may express, they undermine the entire purpose of a college education. Classroom guidelines that mandate values and commitment to certain schools of thought create a type of ideological loyalty oath that is injurious to intellectual freedom. (If you argue that such a requirement is in fact a type of loyalty oath, such as flourished during the McCarthy period, when individuals were instructed to sign oaths of loyalty to the government of the United States, you might very well cause the professor or administrator to see his or her tyrannical requirements in a light more favorable to you. Most people seeking to impose such requirements do not realize that they are akin to loyalty oaths.) A university in which students are not allowed to disagree with their professors on fundamental assumptions about reality is incapable of intellectual innovation, critical dialogue, meaningful discourse, or true scholarship. Any university that honors academic freedom may not stipulate a commitment to any one political philosophy as a condition of participation in the classroom or tell students what their beliefs must be in order to attain a degree. This is true no matter what the ideology in question. You have recourse to the law, and you have recourse to public exposure of such invasions of

your privacy and private beliefs. (You also have recourse to FIRE.)

I am a student desiring to major in social work at my state university. However, the department has a policy that students may not declare a social work major if they hold beliefs that they can “love the sinner but hate the sin” regarding homosexuality. The rationale is that social workers deal with people of varying sexual orientations and that if “judgmental” social workers deep down believe that homosexuality is a sin, they will not interact properly with those they are supposed to serve. May a public college department impose such a requirement?

No. The department is functioning like a “thought police” or “viewpoint police” with such a policy. Students may not be required to affirm or disavow a belief as a requirement to complete a course at the state university. Imagine if you were forbidden from believing deep down that this or that religion were wrong, because you would have to provide services to members of that religion. This restriction violates the Constitution.

My psychology class is requiring me to watch an explicit pornography film as part of the class curriculum. As a Christian, I believe that I can put no unclean thing before my eyes (Psalms 101:3). I cannot sit through a graphic film of sexuality without

defiling myself in violation of my religious beliefs. Does the state university have to grant my request to opt out of watching the film and instead to work on an alternative assignment?

My biology class requires me to dissect fetal pigs. As a Jewish pantheistic pacifist, I cannot do so because my beliefs teach me not to touch dead animals or unclean things or kill things, because they all possess the universal life force. Does the state university have to accommodate my beliefs and allow me an alternative, such as studying a computer program on the internal anatomy of the pig?

Court decisions come down on both sides of whether, or to what extent, the Constitution requires state educational institutions to accommodate the personal or religious beliefs and practices of students. School policies might also guarantee a right for conscientious objectors to opt out of specific assignments. You'll lose, however, if you develop, on the night before the test, a "religious" conviction against taking final exams!

As a matter of constitutional law, the university cannot force you to violate your beliefs. This, however, does not provide you with an absolute right to follow your religious practices in every class you take. In some cases, you may be forced to choose between following your religious practices or taking a particular class. For example, a black nationalist who objects to taking classes with white students, or a white supremacist who objects to

taking classes with people of color, would not be able to receive any accommodation for his racially discriminatory beliefs. He would have to choose between learning in an integrated classroom or leaving the integrated class. The proper legal test in such instances is rather complex, and your rights are more fully explained in *FIRE's Guide to Religious Liberty on Campus*.

I belong to a campus Muslim group that has asked its married leader to step down because he said he had become an agnostic and began sleeping with women he met at bars. Our group requires all members to believe in Allah and to refrain from sex outside of marriage. The University is claiming that we have engaged in religious discrimination and marital status discrimination, and is threatening to kick us off campus. May the University do that?

No. The Constitution protects individuals' right to associate with others around common ideas. A state university cannot use its nondiscrimination policies to compel an Islamic group to accept as leaders or members people who do not believe in God and who do not believe or practice the group's standards on sexual activity. The man is free to go start his own "Agnostic Muslims for Sexual Liberty Club" rather than impose his beliefs on others via the school's nondiscrimination policy.

It is important to note, however, that the right to free association does not protect invidious acts of discrimination *unrelated* to the group's purpose. For instance, the chess club would have no right to exclude Catholics, because there is no plausible relationship between being a chess enthusiast and being a non-Catholic. If the chess club were to institute such a restriction, then the university would be acting well within its power in punishing the chess club for religious discrimination. In addition, certain kinds of discrimination have such a long and ugly history that they must be justified by more than a mere rational relationship. Racial discrimination, in particular, is almost never defensible. Any group that bars people from joining based on their race or ethnicity would have an extremely difficult time justifying that policy, even if they argue that the restriction is related to the group's purpose.

CONCLUSION

We hope that this *Guide* makes clear the line over which authority may not step in a quest to mold the minds, beliefs, and consciences of free citizens, including students in a free society. Most people probably think that the world would be a better place if only everyone agreed with them (despite the fact that many such people claim to believe in “diversity”). Many college administrators, alas, act as if they have the power, and even the mission, to mold students’ minds to hold “correct” views in certain areas of life. Many of America’s laws, doctrines, and values, however, including the First Amendment to the U.S. Constitution and the principles of academic freedom, serve to protect us all from these authoritarian and even totalitarian forces. “Freedom to differ,” as the Supreme Court noted of American liberty, “is the right to differ as to things that touch the heart of the existing

order.” That freedom resides in each human heart and mind. This is the very essence of what it means to be free and human.