



Foundation for Individual Rights in Education

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April 2, 2007

President William Brody
Johns Hopkins University
Office of the President
242 Garland Hall
3400 N. Charles Street
Baltimore, Maryland 21218

Sent via U.S. Mail and Facsimile (410-516-6097)

Dear President Brody:

FIRE once again writes to express our concern about the state of free speech at Johns Hopkins University. As we first told you in our letter of November 28, 2006, we believe that the newly enacted “Principles for Ensuring Equity, Civility and Respect for All” (hereinafter “the Principles”) pose a substantial threat to the free speech rights of all students at Johns Hopkins University, and should immediately be repealed. You further condemned controversial speech in your December 11, 2006 column “Thinking Out Loud” in *The Johns Hopkins Gazette*, a statement that no doubt will, taken together with the Principles, have a damaging effect on discourse at Hopkins. Recently, FIRE learned that many of your own students are concerned about the state of free speech on their campus, and we felt compelled to write again in support of those who want Hopkins to live up to its promise of being “a forum for the free expression of ideas.”

According to you, the Principles were introduced in the wake of the “Halloween in the Hood” controversy as part of a series of efforts to “build a stronger community.” The Principles provide, in relevant part, that:

- The Johns Hopkins University is an environment in which all people behave in a manner that engenders mutual respect, treating each other with courtesy and civility regardless of position or status in the academy. ***Rude, disrespectful behavior is unwelcome and will not be tolerated.***
- Our community is one where we demonstrate respect for each other; we accept our individual differences; and we provide opportunities for everyone to maximize his or her potential. ***Every member of our community will be held accountable for creating a welcoming workplace for all.***

(Emphasis in original).

This code is truly remarkable in that it seems to be right out of the heyday of Victorian propriety regulations. The code, by its very breadth, turns common student interaction into actionable campus offenses. Because such a code is impossible to enforce uniformly (as virtually all students are guilty of being “disrespectful” at some point), the only option for Hopkins is to enforce this code selectively, whenever it deems its use appropriate. It therefore virtually guarantees arbitrary punishments and viewpoint discrimination. Ask yourself: why would parents wish to send their child to a college that maintains policies that mean their son or daughter may be punished at any time for normal college-age behavior? Why would any students wish to attend a university where their academic careers are so loosely protected?

Further, at public universities, it is well-settled that this type of policy is unconstitutional. The U.S. Supreme Court has held that:

Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. There is no room under our Constitution for a more restrictive view.

Terminiello v. Chicago, 337 U.S. 1 (1949).

Expression that is merely “rude” or “disrespectful” is most certainly not the type of “serious substantive evil” to which the Court referred. Rather, rude and disrespectful speech, the type that is “unsettling” and causes “annoyance, or unrest,” is precisely the type of speech the Court has deemed in need of the utmost protection.

Of course, Johns Hopkins is a private institution, but a private institution that claims to cherish the right to free expression cannot, in good conscience, extend fewer rights and freedoms to its students than a public institution, bound by the Constitution. Do students at Johns Hopkins truly enjoy fewer protections of expression than students at Maryland’s community colleges? To restrict freedom of speech is to create a stifled and intellectually bereft environment—the very antithesis of what a university like Johns Hopkins claims to be.

Your *Gazette* column about the Principles and the case of Justin Park calls Johns Hopkins’ commitment to free speech even further into question. You wrote:

What I see here is not a courageous trespass of taboo speech but rather a fundamental breach of civility of the sort that is so commonly displayed in disparagement, mockery or epithets drawn along racial or ethnic lines. It is, simply put, common name calling. This is what I believe we should agree is unacceptable in our community of free and open discourse.

Dr. Brody, speech that is uncivil and offensive is a part of the “free and open discourse” you claim to value. The Supreme Court and other courts across the nation have held this in cases too numerous to list here. Moreover, the Principles and your column indicate that you believe it is acceptable for your administration to judge the objective value of speech, to decide what constitutes “common name calling” and what, by contrast, is speech “of a substantive and serious nature.” Adapting one of your anecdotes to current circumstances, what if the *Gazette* ran a story calling President Bush a Texas cowboy who kills Iraqis for profit and pleasure? From the text of your column and the text of the Principles, there is no doubt that this statement alone qualifies as rude and disrespectful. What raises this speech from “common name calling” to speech of a “substantive and serious nature?” Will the administration begin to judge the value of the columnists who write for the *Gazette*? Will you begin to judge whether the arguments surrounding a controversial remark are good enough to raise the remark to a “substantive” and “serious” level?

You also make the dangerous assumption that rules and censorship foster respect. To illustrate your point, you write:

Look at the world we live in, where so many societies are literally falling apart because group A would rather encounter death and destruction than show basic human respect for group B. These are not trivial matters. Let us never underestimate the value of civility, not just to protect people’s feelings but to preserve the possibility of freedom itself.

Do you truly believe that simply telling group A to respect group B, whether the groups are warring peoples in the Middle East or Johns Hopkins students, will erase or diminish any animosity between them? The kind of atmosphere you ultimately hope to foster only comes through unfettered dialogue, and should not be hindered by forcing constant civility and respect on the surface when tensions may be roiling underneath.

I encourage you to read “Student gov. debates free speech policies” in *The Johns Hopkins News-Letter* (enclosed), which details how some of your students are fighting for their fundamental rights on your campus. In response to the Principles, the article reports that one class president stated, “These rules are too unclear... Rude and disrespectful—what does that mean?” The article also reports that in a letter sent to Dean of Students Susan Boswell, the Student Council expressed similar concerns:

How ought a student act in order to abide by this code? A student feels pressured to avoid communicating any idea that could be considered offensive in any way to anyone at any time... this is counterintuitive to the nature of a research university, which should be a source of free, independent thought.

Your students are asking all the right questions. How will you answer them?

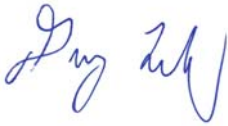
In response to these questions, Vice President of Human Resources Charlene Hayes told the paper: “It’s difficult to develop specific guidelines on rudeness, but there is common sense. We have to choose what’s rude, disrespectful, and civil. That’s our starting place.” This “starting

place”—unfettered administrative discretion over students’ most basic rights—is frightening indeed. The First Amendment provides the best guidance one could ask for when trying to foster free speech and academic freedom.

FIRE urges you to repeal these stifling policies and to give your students the freedom they deserve. To restrict freedom of expression is to stifle the free and open flow of ideas upon which higher education relies. Surely, this cannot describe your vision for Johns Hopkins University.

We request a response on this matter by April 23, 2007.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Lukianoff".

Greg Lukianoff
President

cc:

Susan K. Boswell, Dean of Students, Johns Hopkins University

Charlene Hayes, Vice President of Human Resources, Johns Hopkins University

Ralph Johnson, Associate Dean of Student Affairs, Johns Hopkins University

Steven Knapp, Provost, Johns Hopkins University

Myron Weisfeldt, Chairman of the Department of Medicine, Johns Hopkins University

John Miller, *National Review Online*

Jered Ede, Executive Editor, *The Carrollton Record*

Laura Hansell, President, Student Council, Johns Hopkins University

Encl.

[< Back](#) | [Home](#)

Student gov. debates free speech policies

By:

Posted: 3/1/07

Members of the Student Council (StuCo) expressed frustration with some of the University's newest policies concerning equality and respect in the workplace -- including those endorsed by President William Brody himself -- in a meeting with members of the administration Tuesday night.

The council met with administrators to discuss alleged ambiguities of the Principles for Ensuring Equity, Civility and Respect policy endorsed by Brody and the Johns Hopkins Committee on the Status of Women.

Several members said the principles were too vague and did not address the issue thoroughly, especially with respect to protecting free speech.

"These rules are too unclear," sophomore class president Prasanna Chandrasekhar said. "Rude and disrespectful -- what does that mean?"

In a letter sent in Dec. to Susan Boswell, dean of Student Life, the Student Council expressed their confusion with the policy.

"How ought a student act in order to abide by this code? A student feels pressured to avoid communicating any idea that could be considered offensive in any way to anyone at any time ... this is counterintuitive to the nature of a research university, which should be a source of free, independent thought," Student Council said in its letter.

"[We're here] to discuss the importance of freedom of expression for a research institute, and the need to insure a context in which free discussion and debate can take place," Knapp said. "[The principles] are really a set of aspirations of community, the kind of community we're trying to create here at Johns Hopkins, so we can have a pursuit of inquiry."

Members of the council were satisfied with the meeting.

"I feel like this has been very productive and illuminating," said Student Council President Laura Hansell. "I really feel like [the administrators] were listening to us, not just talking."

Student Council members expressed their opinions about the policy throughout the meeting.

"One main question is rudeness versus racism," another council member said. "Where's the line that you draw that equals harassment?"

The new principles are the basis for future policies and plans in hopes of promoting equity, equality, civility, and respect at Hopkins and throughout Baltimore. A commission chaired by Vice President of Human Resources Charlene Hayes and Chairman of the Department of Medicine Myron Weisfeldt has been organized to implement these principles.

"It's difficult to develop specific guidelines on rudeness, but there is common sense. We have to choose what's rude, disrespectful, and civil. That's our starting place," Hayes said.

"This Commission is nothing proscribed, it's all an open discussion, getting as much input as we can from all across the university," Hayes said. "We want to make an action plan. This might include the development of different policies, and diversity training ... We want to develop a ... plan that will bring these principles to life."

Most students believe this new policy to be a reaction to the controversial Sigma Chi "Halloweend in the Hood" party, for which a *Facebook* invitation was found to invoke racial stereotypes. However, the new principles have been in order for some time.

"This commission is a result of the recommendation of the Committee on the Status of Women," Hayes said. "The timing made it relevant to the fraternity incident."

President Brody received Vision 2020, the Johns Hopkins University Report on the Status of Women from the Committee on the Status of Women, and believed that "the principles seemed something that would apply not only to the Committee on the Status of Women, but also to the fraternity incident," Hayes said. "The principles were pulled from Vision 2020, because it's timely and relevant to issues we're facing right now."

Some administrators expressed hope that the principles would affect the way members of the Hopkins community treat one another.

"Even if we don't agree, at least we can have civil conversation," said Ralph Johnson, associate dean of Student Affairs and director of Multicultural Student Affairs.

"No policy is going to be satisfactory to everybody," said Provost Knapp. "Some people will think we're going too far, some too little, no matter what the policy is. Any kind of issue that affects people, not every group is going to agree with it, but I think it's important that there's an open process in developing these policies to make sure that everyone's views get heard."

Student Council's frustrations centered on five of the principles established by the policy:

1. rude, disrespectful behavior is unwelcome and will not be tolerated

2. every member of the community will be held accountable for creating a welcoming workplace for all

3. the University will not tolerate exclusion based on gender, marital status, pregnancy, race, color, ethnicity, national origin, age, disability, religion, sexual orientation, gender identity or expression

4. the University will not pay lower salaries to women and people of color simply because they are women and people of color

5. the University will not sacrifice the health of our employees and their families in its pursuit of excellence.