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Harvard Mulls Offensive Speech Ban

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BOSTON — Harvard Law School is considering a ban on offensive speech after a series of racially charged incidents, raising fears that the rules will inhibit the kind of sharp-edged intellectual combat so famously depicted in the movie "The Paper Chase."

In the meantime, the school is also offering first-year students a new course to help them "manage difficult conversations" and learn how to speak with sensitivity on touchy issues such as race and gender.

The speech-code proposal has stirred an intense internal debate about the commitment to freedom of expression at a school whose illustrious alumni have helped define the nation's free speech rights. Some are wondering whether a campus renowned for its bare-knuckled, confrontational style of teaching is getting a little touchy-feely.

"What I do find amazing is that it should be considered at a law school, any law school, because one thing that law schools do is study the constitution and these codes are clearly in violation of the First Amendment," said Harvey Silverglate, a Harvard Law graduate and civil liberties litigator.

Members of the Black Law Students Association, which called for the policy, say it is possible to curb chronically offensive behavior without infringing on the First Amendment.

"We've called for a discriminatory harassment policy that would basically punish or at least give the administration some way to review harassing behavior," said Joshua Bloodworth, a third-year student and president of the organization. "We're not trying to stop free speech."

The Committee on Healthy Diversity – made up of six faculty, six students and three law school staff members – will make its recommendations in the spring. Any code would be subject to approval by the full faculty.

There are about 1,800 students at Harvard Law, about 28 percent of whom are minorities.

Law school Dean Robert C. Clark created the committee last spring in the wake of an escalating series of race-related controversies over the past year, triggered by a student's use of the slur "nig" in a course outline posted online.

During the ensuing uproar, a second student sent an e-mail to one of his protesting peers, saying that "if you, as a race, want to prove that you do not deserve to be called by that word, work hard and you will be recognized."

That, in turn, led a professor to step down from teaching the class, a first-year course on tort law, and offer to defend the e-mailer in a mock trial. The mock trial was never held.

The Black Law Students Association also asked for a reprimand of another professor, who was quoted as saying in class that "feminism, Marxism and the blacks have contributed nothing to tort law." (That professor, David Rosenberg, has said he was referring to a body of legal thought known as critical race theory.)

This past week, several students and professors, including Clark, expressed discomfort with the idea of a speech code.

"There are many on the faculty, including myself, who have grave reservations about heading in this direction," Clark said in a statement.

Law school spokesman Mike Armini characterized the speech-code discussions as very preliminary. It is not clear yet whether the speech code would apply just in the classroom, or outside it, too.

Harvard Law School alumni have frequently been at the forefront of efforts to expand constitutional protections on speech.

Supreme Court Justice Oliver Wendell Holmes coined the fundamental definition of free speech in a 1919 dissent when he created the "marketplace of ideas" metaphor. Supreme Court Justice William Brennan broadened free-speech protections in a 1964 decision when he created the "actual malice" standard for cases of libel against public figures.

Law professor Alan Dershowitz, who is a member of the diversity committee, said the perception that classroom debates have become less spirited at Harvard is on target.

"I think there are a lot of professors who are afraid to confront students," Dershowitz said. "A lot of professors are afraid to take controversial views on any hot-button issues."

Lacey Schwartz, a third-year student and member of the diversity committee, acknowledged that the school may no longer resemble its depiction in 1970s pop culture.

"But the idea that we should do everything like we did back then is a little bit ridiculous," Schwartz said. "We always have to be completely reevaluating and re-examining ourselves to make sure that we are approaching the study of law in the best, most effective, and most representative manner."

On Tuesday, Harvard English professors reinvited an Irish poet to speak on campus, one week after his appearance was canceled because of his anti-Israeli comments. Tom Paulin has likened U.S.-born settlers in the West Bank to Nazis and said they "should be shot dead."

"Free speech was a principle that needed upholding here," professor Peter Sacks said. "This was a clear reaffirmation that the department stood strongly by the First Amendment."

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