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A space for speech

The constitutionality of university-designated free speech zones challenged by students

By Sarah Muench

Ruben Reyes stood on a small stage last November in the University of Texas at El Paso's Student Union and shouted to a crowd of more than 300 people.

"No one realizes that women make up the largest minority in the United States today," Reyes yelled. "They are the ones who are underrepresented, discriminated against and make less money."

Reyes, a UTEP creative writing sophomore, continued to shout his message about women's rights as his audience grew larger.

But Reyes' speech wasn't just about women. It was also a challenge to a UTEP policy requiring students to obtain permits for speeches and deliver them only in free speech zones.

Reyes did not have a permit for his speech and he was not speaking in a free speech zone.

In December, one month after his speech, Reyes said he received a letter in the mail from the UTEP administration saying he broke several rules outlined in the UTEP Handbook of Operating Procedure.

Reyes, 29, said he met with UTEP administrators, who said disciplinary action would be taken against him. Reyes reacted by filing a lawsuit in federal court March 3 against UTEP President Diana Natalicio and members of the University of Texas Board of Regents, saying his First



Media Credit: Photo Illustration by Lindsey Jacobsen

Universities nationwide have enacted free speech zones, where protesters are welcomed to voice their opinions and enjoy the civil liberties of the First Amendment. On ASU's campus, Hayden Lawn has been called a preferred speech zone where persons may express their thoughts.



Media Credit: David Lukens

Bryan Vanderhoof (above left and below), an ASU political science major, stands in downtown Phoenix where he was arrested during an anti-war protest last February.

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Amendment rights had been violated.

"I didn't think it would come to this," Reyes said. "It is real and, at times, it is real ugly."

UTEP administration declined to comment.

But Reyes isn't alone in his quest to voice his opinions anywhere he wants.

When the United States launched a military attack on Iraq in March, it also sparked a large-scale war at home - over free speech.



Media Credit: David Lukens

Public university officials, including those at ASU, are enforcing regulations restricting where students can exercise free speech, and some student demonstrators think that these regulations abridge First Amendment rights.

The policies created free speech zones - designated areas where students can demonstrate on campus. The zones range at different universities from preferred areas to locations limiting the number of students who demonstrate, the length of time at which they demonstrate and the manner in which they demonstrate.

Restrictive Policies, Angry Students

Reyes is one of many students tackling the free speech zones that are challenging student demonstrators at college campuses across the nation.

Students at San Diego State University, for example, are attempting to change their university's detailed free speech zone policy.

SDSU students can only legally demonstrate on "Free Speech Steps" in front of the student union from noon to 1 p.m., according to the Student Organization Handbook. An Associated Students Activities Policy Board must approve all demonstrations 48 hours prior to the event. If the event requires amplified sound, it must be approved a month in advance.

Under the SDSU's time, place and manner policy, free speech cannot be disruptive to classes and the steps are situated in such a place where rallies do not interrupt the school's educational goals.

The policy restricts signs and banners to dimensions of 18 inches by 20 inches, which can be placed on two designated walls. The handbook further prohibits painting, tacking, taping, gluing, stapling or chalking messages on campus.

"We are currently talking with the administration about changing the policy," said SDSU Associated Students President Priscilla Ocen. "I feel that it is against the citizens' and students' rights to have these free speech restrictions. Saying you have to be so many feet away from a building and you can only post a certain sized sign is infringing on our rights."

Similar complaints were filed at numerous other colleges and universities.

At the University of Houston, administrators refused to permit an anti-abortion group to display photos of dead fetuses in a heavily trafficked area, though a judge later ruled the university must allow the display. University of Houston officials reacted by setting up four free speech zones in locations away from large crowds of students.

The University of West Virginia recently revoked a policy requiring demonstration groups of 50 or more to gather in seven free speech zones, each the size of a small classroom. Students who violated the policy faced expulsion.

According to Reyes' lawsuit, he filed 24 requests for permits to hold rallies in UTEP free-speech zones since November, one of which dealt with "Censorship on Texas Universities."

All 24 were denied.

Maria Hernandez, Reyes' attorney, said she was compelled to join others in the fight against free speech zones.

"I think free speech zones are un-American and detrimental to students' education," Hernandez said.

Hernandez said she hopes the case will prove that UTEP's policies are flawed and will cause grounds for re-evaluation.

"I hope the administration develops a system that is objective and not arbitrary," she said.

ASU and free speech zones

According to ASU's Student Organization Resource Center policy, students are not restricted to free speech zones like they are on some campuses. However, the policy includes time, place and manner restrictions and cites Hayden Lawn as a "preferred area" of free speech.

But just before the first military strikes on Iraq in March, ASU President Michael Crow said he would monitor on-campus demonstrations and increase campus security.

However, Crow said he disagrees with restricting demonstrators to certain areas on campus and supports students' rights to express themselves.

"I believe strongly in freedom of speech and freedom of expression," Crow said. "I oppose free speech zones that would infringe on this philosophy."

If demonstrators gather in areas other than Hayden Lawn, administration would not force them to disperse, said Nancy Neff, assistant vice president of strategic communication.

"This is a place where people should be allowed to express their opinions," Neff said. "We wouldn't say 'You can't be here.' Hayden Lawn is where most people want to have that anyway because it is a high traffic area."

However, Deputy General Counsel Nancy Tribbensee said reasonable safety regulations could be imposed if demonstrators used dangerous elements like

open flames, for example.

Tribbensee recalled asking a group nearly 10 years ago to take down barbed wire it was using to depict a war scene.

"In a way we were interfering, but it was unsafe," Tribbensee said. "We said, 'You can do this in a different way.'"

Bryan Vanderhoof, ASU American Civil Liberties Union vice president and political science senior, said the University should put education first, but he believes limiting students' free speech in any way would be a violation of the First Amendment.

"As long as students aren't going into the classrooms and disrupting them, they should be able to protest everywhere," Vanderhoof said. "Universities are supposed to be one of the most expressive places of free speech."

Constitutional Rights

Reyes, who served in the military before going to college, said free speech zones infringe on what honorable men and women gave their lives for.

"Free speech zones are an affront to me and all Americans who have served to secure the liberties we so often read about in history class," Reyes said.

Reyes said by fighting free speech zones he is upholding the constitutional right of free speech.

"The Constitution and the Bill of Rights are not just old documents," Reyes said. "They are the bedrock that grounds our government by the philosophy and ethic that people are the power."

But the implementation of free speech zones has caused confusion as to how the First Amendment can be interpreted.

The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

And it's exactly that and nothing else, said ASU law professor Charles Calleros.

"A state institution would undoubtedly violate the First Amendment if it banned all speech in public areas except for a few designated by the university," Calleros said.

However, Calleros added that universities do have the right to regulate the time, place and manner of free speech.

"As an example, a school could not ban a demonstration because it protested, rather than supported, military action in Iraq, but it could ban it from marching through an English class that is in session," Calleros said.

"It could also ban it from using loud speakers to blast the message near a study area or the library and from congregating on a sidewalk and blocking traffic."

In 1989, the U.S. Supreme Court ruled "neutral time, place and manner regulations are permissible so long as they do not unreasonably limit alternative avenues of expression."

In the case, *Ward et al. v. Rock Against Racism*, a rock music group held concerts annually in New York City's Central Park and received numerous noise complaints. The city shut off power when a Rock Against Racism band refused to stop playing and its audience became violent. Several court appeals later, the time, place and manner regulations drowned out the band.

Adding Fuel to FIRE

Time, place and manner regulations didn't sit well with Thor Halvorssen.

Halvorssen, a Wall Street Journal columnist, helped create the Foundation for Individual Rights in Education, a non-profit organization that fights restrictions on free speech in public institutions.

FIRE has helped students obtain legal representation in more than 600 cases at more than 200 colleges and universities since 1999, Halvorssen said. FIRE's staff members file "friend of the court" briefs, aid attorneys who are not used to free speech suits and seek public exposure of their cases.

"We have been extraordinary in bringing about reform in specific cases," Halvorssen said.

He said FIRE's involvement with a free speech zones policy at West Virginia University was a success.

Two WVU students, Michael Bomford and Matthew Poe, asked FIRE for help in November 2001 to overturn a free speech zone policy restricting students to two areas on campus and to the hours of 1:01 p.m. to 1:13 p.m. FIRE members wrote to WVU President David C. Hardesty, asking him to "tear down the barriers to speech and declare all of WVU a free speech zone," according to FIRE's Web site.

FIRE then launched a media campaign to expose the policy and WVU's Board of Governors replaced it in November 2002, allowing students to demonstrate anywhere on campus as long as they remain outside of buildings.

"We are ensuring that universities comply with the spirit and letter of the law," Halvorssen said. "Free speech zones are unmistakably unconstitutional. They are declaring the death of free speech and are doing so with the breathtaking audacity to claim they are upholding the law."

Halvorssen admitted that time, place and manner restrictions do apply to public places, but the restrictions have to be reasonable.

"What colleges do is the equivalent of saying, 'Well, we can restrict time, place and manner, so from now on, we will have free speech in Area 'A' between the hours of noon and 12:10 p.m. on Wednesdays,'" Halvorssen said. "This is not reasonable. College administrators, who are no friends of freedom of speech, want to control student expression as much as possible."

Reyes, however, said his battle is not with time, place and manner restrictions.

"I understand that local municipalities have some restrictions due to safety and traffic concerns to implement time, place and manner, and I understand that

police at times will move the location of a protest with place and time as a consideration," Reyes said.

The Mesa Incident

Free speech zones are not limited to public universities and colleges. They have been established in other public places, too.

Women in Black, an anti-war group that frequently protests in silence at ASU was forced to stand in a free speech zone at the Main Public Library in Mesa on March 19.

Library administration allegedly asked the group to move from the front of the library to an approximately 3- by 12-foot zone between a wall and a bicycle rack, said Beth Swadener, Women in Black member and ASU College of Education curriculum and instruction professor.

Swadener and the group asked the Arizona ACLU for help and ACLU president Eleanor Eisenberg negotiated with Mesa Deputy City Attorney Joseph Padilla.

"Suffice it to say, we used to think America itself was a free speech zone and that's what we want it to be," Eisenberg said. "It shouldn't be necessary that the ACLU weigh in on their behalf."

Padilla and the library administration eventually allowed the group to stand outside of the zone, but in a single file line adjacent to the library entrance.

"The Main Library doesn't have an extensive mall," Padilla said. "There's a street near it and small kids are walking in and out all the time. For our safety, we designated an area."

Padilla said the library began having problems with 2002 gubernatorial election campaigners handing out fliers to library patrons going in and out of the building. As a result, city officials created a free speech zone at the library.

Though officials allowed the group to move out of the zone, Padilla said the regulations still stand.

"We haven't changed our policies on it and we still have our free speech zones," Padilla said. "[Eisenberg] blew this way out of proportion. When people say 'we should be able to protest anytime, anyplace, anywhere,' they are just plain wrong."

Swadener said there was no reason for the group to be confined to a zone.

"We don't harass or block traffic; we stand silently," Swadener said. "I thanked [Eisenberg] for reinforcing our freedom of silence."

Reyes, who ended his speech on women's rights in less than five minutes in UTEP's Student Union in November, has now been waiting for more than five months to see if his lawsuit will bring change to UTEP's free speech policy.

"I am hoping that more students will feel empowered to speak their minds and express themselves without fear of censorship on campus," Reyes said. "Students are only now beginning to fully understand the implications this lawsuit may issue up, and it seems that a wave of action and optimism is only moments from breaking over the horizon."

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