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THE CHRONICLE OF HIGHER EDUCATION

## Information Technology

From the issue dated December 16, 2005

### U. of Pennsylvania Officials Face Criticism Over Handling of Sex Pictures

By DAN CARNEVALE

As pictures of naked students having sex in the window of a University of Pennsylvania dormitory quickly circulated on the Internet, administrators flip-flopped on whether to charge a student who posted the images with violating university rules on computer use and harassment.



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After a monthlong investigation, the university initially charged the student, identified only as a junior who is majoring in engineering, with sexual harassment and misuse of electronic resources after he posted pictures of the nude couple on his personal Penn Web site for a couple of weeks. The university investigated the incident after one of the photograph's subjects complained.

If the student had been found guilty by the university, the incident could have ended up on his permanent record. But a day after reporters and bloggers besieged the university with calls and criticism, resulting in major national press coverage, university officials decided to drop the charges.

Andrew B. Geier, a graduate student in experimental psychology and one of a group of graduate students who serve as advisers to students undergoing disciplinary proceedings, volunteered to advise the engineering junior. Mr. Geier said university officials announced their decision during a meeting to discuss the issue on December 1. He said the officials offered to drop the charges, but then asked the accused student to apologize for posting the pictures online.

"I responded, 'There's only going to be one apology, and that's going to be from you to the student,'" Mr. Geier said. Neither party offered an apology, but the charges were dropped nonetheless, and Mr. Geier said he considered the matter settled.

University officials would not comment on the meeting or the issue, except to release this statement: "The University has decided not to pursue disciplinary proceedings. We are disturbed by the photographer's conduct in this matter. We are concerned about the wide dissemination of the intimate photos in a manner and to the extent that subjected another member of the Penn

community to embarrassment and ridicule. We have asked the student photographer to apologize and sincerely hope he does."

"They don't have a case," said Mr. Geier.

He said that the couple had been seen having sex in the window of a high-rise dormitory room on at least three separate days, and that more than one student had taken pictures of them. Taking pictures of so public an event could not be considered harassment, he said, nor could posting those pictures on the Internet. Although the subjects' faces are not clearly visible in the photographs, many Penn students eventually found out who they were.

*The Chronicle* tried to reach one of the students who filed the complaint, but was unable to locate her for comment. The students in the photographs have not been publicly named.

### **Echoes of Past Controversy**

Alan Charles Kors, a professor of history at Penn, also volunteered to advise the engineering junior, but the charges were dropped soon after. Mr. Kors is a free-speech advocate who is also co-founder and chairman of the Foundation for Individual Rights in Education, a nationally known free-speech organization. The foundation was not involved in the Penn case.

Mr. Kors said the incident reminded him of the famous "water buffalo" controversy of 1993. In that case, also at Penn, a white male freshman yelled at five black female students, "Shut up, you water buffalo." The male student said that he was just reacting to the noise the five students were making during a celebration. But the female students argued that the comment was racist.

When the five students complained, the university charged the male freshman with racial harassment. But as the national news media focused attention on the case, many observers concluded that political correctness had run amok at the university. After several weeks of news-media scrutiny, the five female students eventually backed down from the charges (*The Chronicle*, June 2, 1993).

Mr. Kors said Penn probably did not want to face weeks of negative publicity this time around.

He also said he found it curious that the university seemed to handle the situation more as a public-relations incident than as a judicial inquiry: The university's investigation into the incident lasted longer than a month, but after a day of news-media scrutiny, the university backed down.

But if it weren't for the titillating nature of the story, Mr. Kors said, it might not have been so broadly covered. Indeed, if it weren't for the willingness of the accused student to fight charges

he thought were unfair, the media might never have known about the incident at all, said Mr. Kors.

Mr. Kors, who has worked with many students who have been accused of wrongdoing by their universities, said most students are willing to plea-bargain to avoid the risk of being suspended or expelled. "It is an extremely rare student who is willing to say no," Mr. Kors said. "How much injustice is going on out there?"

### **Free-Speech Issue?**

Initially, the university's office of student conduct asked the engineering junior to write a letter of apology and to write an essay explaining why what he did was wrong. It also recommended that he be placed on disciplinary probation until graduation, a penalty that would create a permanent record of the incident.

Mr. Kors said that although the university is a private institution and is not held to the same First Amendment standards as a public institution, university policies protect students' right to free expression. Taking a photograph of a public event and then disseminating it is a matter of free expression, he said.

"That's university law," Mr. Kors said. "The very existence of an investigation of protected speech is chilling."

If anybody did anything wrong, he said, it was the students who were having sex near a window for all the world to see. He added, however, that he hopes the university doesn't investigate those students, either. University officials have not indicated that they plan on bringing any charges against the students.

"Don't make love in an open window," Mr. Kors said. "I wish that people had more respect for privacy, but there are times when it's appropriate to close the blinds."

Now that the case appears to be over, Mr. Geier said, the engineering junior wants to concentrate on studying for his finals. Mr. Geier, however, is still uneasy.

"The student is vindicated with the outcome, certainly, but I don't know if you could say that I'm satisfied," Mr. Geier said. "The charges were ridiculous to begin with."

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