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Promoting Order or Squelching Campus Dissent?

Protesters and civil libertarians object to the use of 'free-speech zones'

By SCOTT STREET

At Pasadena City College, they wanted to know what you'd say. That's what Philip Gibson learned when administrators stopped him from posting a list of top officials'

salaries on a campus bulletin board last fall.

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At New Mexico State University, they told you where to say it. Sean Rudolph butted heads with administrators there when he tried to distribute a flier that, ironically

enough, criticized the university for restricting speech.

Colleges are giving new meaning to being "in the zone." These days, that could mean a free-speech zone -- a part of the campus specifically sanctioned for the sort of angry protests that tore through campuses in the 1960's and 70's. If the idea of restricting such protests to a few select areas of campus sounds a bit too convenient, that's precisely the point. And some students, as well as legal scholars, aren't happy about it.

The situation is "incredibly frustrating," says Mr. Gibson, a sophomore at Pasadena. "But at the same time, it's kind of empowering, because it tells me I am doing something right."

Adherents of the policies believe that universities are simply exercising their rights as property owners, and, as such, are justified in restricting the time, place, and manner of certain protests. Under this philosophy, a student has no more right to post a flier on the wall of the student union

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than he does on the front door of his neighbor's house.

"Walls and boards and such are nonpublic forums," says Eugene Volokh, a law professor at the University of California at Los Angeles. "They are not places where students can traditionally speak."

As the debate has raged, free-speech zones and other such restrictions have proliferated. Policies have been adopted at Georgetown and Kansas State Universities, the University of California at Berkeley, and the University of Mississippi. They have also been discussed at Oklahoma State University and the University of Notre Dame -- in some cases drawing criticism from students and faculty members.

Unlike the 1980's, when speech codes focused on political correctness -- or P.C. -- the current policies have much more to do with P.R., according to critics.

Mr. Gibson, for example, wanted to make a point about the wide discrepancies between the salaries of top administrators (the president makes \$142,339 per year) and that of most faculty members (the average full-time professor makes \$64,971 per year). But his wish was denied by officials who cited a policy that all material distributed on campus must first be approved by the student-affairs office. Mr. Gibson says he tried to get his list approved, but Stephen Johnson, assistant dean of student affairs, counters that Mr. Gibson didn't return phone calls to verify the accuracy of the information.

Verification shouldn't have been difficult. The figures came from the college's own budget, which is public record.

The real motivation was clear, Mr. Gibson says: They wanted to shut him up. "They have no answer to it, so they are doing the only thing that they can, which is to try and silence me," he says.

At the University of Mississippi, protesters are limited to demonstrating in front of Fulton Chapel, designated in 1997 as the university's free-speech zone. Officials say a specified protest area is needed to prevent demonstrators from disrupting the business of the campus. Last August, Arthur Baker, a student and cofounder of a conservative campus group, was arrested for failing to obey a police officer who ordered him to move his protest against the student newspaper to the area.

Not all policies are so clear-cut. Karen Kenney, dean of students at Berkeley, says protesters on her campus can demonstrate anywhere, unless they use amplified sound devices, in which case they are relegated to the steps of Sproul Plaza, scene of Berkeley's many protests

in the 60's.

At New Mexico State, students can protest freely in three designated areas of the campus, but they must get permission from the university to demonstrate elsewhere. In September, Mr. Rudolph, a graduate student, was arrested for distributing a flier outside the zone without first getting permission from the university's student-affairs office. The flier was an advertisement for Mr. Rudolph's underground newspaper, which criticized the university's speech policy.

"We were trying to challenge the speech policy and bring attention to that through the flier," says Mr. Rudolph, who was distributing the material with another student, Marlene Yesquen, when he was arrested.

The two students filed a suit in October charging that New Mexico State's policies restricting speech were unconstitutional.

Some officials there claimed the policies were protected by the United States Supreme Court, which has in the past upheld time, place, and manner restrictions on speech.

At the time, Patricia Wolf, vice president of student affairs, said flatly, "We don't have a speech policy on this campus. ... Content is never addressed."

But Mr. Rudolph says content was the exact reason he was arrested. The university never would have approved the material, he says. "The time, place, and manner restrictions protect the ability to educate students," he explains. "There shouldn't be students going into classrooms and shouting. They shouldn't be going into libraries and using amplification equipment. Apart from that, [the university] shouldn't be able to regulate speech on campus."

Some administrators say the policies are meant not to restrict speech, but to keep some of the louder and more unruly protests from interfering with their chief mission of educating students. While they say they value free speech, they also remember events like the 1964-65 sit-ins at Berkeley that overwhelmed the campus.

"There's a delicate balance between universities cherishing the right to free speech and needing to run an institution," says Ms. Kenney of Berkeley.

Students argue that universities are inherently public forums, and have been since Bostonians gathered in Harvard Yard to debate the Stamp Act. They say that whether they are publicly or privately owned,

universities are restricting the most basic of civil rights: the right to free expression.

"Most administrators will readily concede that one of the best things to happen to us in the last 20 years was that the courts struck down every speech code that was ever tested," says Gary Pavela, director of the office of judicial programs at the University of Maryland at College Park. "They almost universally recognize that that's a good thing because we're busy developing programs to promote civic development."

While the courts have killed many campus speech policies, that hasn't kept new codes from sprouting up in certain places, if only for a few days or weeks.

Tufts University may have been the first. In 1989, the university, in an attempt to restrict so-called hate speech, designated "free-speech zones" in certain areas of the campus. The policy was sparked by a complaint about a male student who was selling T-shirts that explained "why beer is better than women." In response, the university attempted to ban sexist and racist speech, except in certain areas. Some students drew chalked lines across the campus, symbolically marking off zones where free speech would be accepted.

The news media's coverage of the protest made the university, in the words of Harvey A. Silverglate, a civil-liberties lawyer, look "like Berlin in 1946." Tufts dropped the rule a few days later.

The University of South Florida instituted a similar policy a decade later when it designated two speakers' areas on the campus. One was available on a first-come, first-served basis, while the other required reservation through the student-activities office. Following a public outcry, the university abruptly dropped the policy weeks later, saying it was too controversial.

On other campuses, proposals have been hotly contested. In 1998, at Oklahoma State University at Stillwater, Nancy Wilkinson, an art professor and head of the university's Faculty Council, spoke out against a rumored student proposal to create a free-speech zone and asked other faculty members to denounce it. Oklahoma State's president, James E. Halligan, publicly agreed with Ms. Wilkinson, saying, "It is healthy for our students to question and interact with other ideologies." The policy never came to be.

The days of speech zones and speech policies in general may be numbered, though, according to Mr. Silverglate, the vice president and

cofounder of the Foundation for Individual Rights in Education.

"The backlash is already brewing," he says.

It's starting with the students. The New Mexico State regents approved an interim policy allowing the distribution of material anywhere on campus without prior approval, so long as it is done between 7 a.m. and 7 p.m. That decision was reached largely because the university wanted to avert the lawsuit filed by Mr. Rudolph and Ms. Yesquen, according to Ms. Wolf, the student-affairs vice president. The lawsuit has since been dropped.

"Our intent was to resolve the concerns that the students had brought forth," she says. "This was a resolution everyone wanted."

The administration at Pasadena has been slower to react, perhaps because it has not faced a legal challenge. But Mr. Gibson says he is going to continue to tell his story in the hopes of garnering support from people on the campus and beyond.

That strategy worked at South Florida and at Tufts. And Thor L. Halversson, F.I.R.E.'s executive director, is convinced that it will work elsewhere.

"If people actually read and understood what New Mexico State was doing, they would be very concerned," he says. "And this kind of thing happens all the time."

But protecting free speech in a campus environment -- which is at once a workplace and a forum for discussion -- can be a touchy subject. Everyone, even the courts, seems to agree that no issue is black and white, and that no universal standard can be applied in every case.

"There is a gray area because no one really knows what the rules are," Mr. Volokh says. "The government has some rights, but it doesn't have unlimited rights."

The confusion makes finding a fair solution difficult. "Some campuses have gone to having designated protest areas, but that's almost an oxymoron," Ms. Kenney says. "With the history at Berkeley, to move toward a designated area -- that would be protested in and of itself."

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