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Letters to the
Editor



The Thought Police

By Seth Stevenson

Local colleges, of all places, are increasingly stifling unpopular opinion. Has this become the political correctness capital of the world?

Harvey Silverglate sums up his take on free speech in a single sentence, spoken in the cozy clutter of his Atlantic Avenue office. "You are not immune," he says, "from being called an asshole."

Colorfully put. In many ways, though, it's the very basis of the First Amendment: You may disagree with what I'm saying, but you may not silence my voice. Even when I'm calling you a bad name; even if what I say is not "politically correct." This is a bedrock constitutional principle, yet lately one local college in particular — let's call it Harvard — seems to have forgotten all about it. And that's got Harvey Silverglate hopping mad.

In just one year, at just that one school, there have been enough such flare-ups to give people around here PC fatigue. Harvard Law School, for example, is considering a harassment code under which students could be disciplined for remarks perceived as offensive, after a student used the racial epithet "nigs" in class notes posted on a Web site (he later apologized) and fliers were distributed denouncing Jews. When a professor subsequently argued that "feminists, Marxists, and the blacks" had contributed nothing to tort law (he says he was referring to academic proponents of race theory), the Black Law Students Association demanded he be publicly reprimanded and barred from teaching mandatory first-year classes. The law-school dean responded by appointing a "Committee on Healthy Diversity" and agreeing to tape the professor's lectures for students who do not wish to attend his course. When another professor suggested that a mock trial be held in which the entire controversy would be aired, students complained about him, too, and he was forced to stop teaching his first-year class on torts.

The shenanigans at Harvard next moved across the Charles River when administrators at Harvard Business School reprimanded the editor of a student newspaper after an editorial cartoon called employees of the career services department "incompetent morons" for botching scheduled

recruiting interviews. The cartoon, the administrators said, violated standards calling for "respect for the rights and dignity of others." The editor resigned.

Over in the English department, a writer invited to give a poetry lecture was disinvited after students and faculty members complained that he had said Israeli settlers on the West Bank should be shot. He was reinvited when the controversy leaked off campus. "We support a university environment that is host to a diversity of views," the department's chairman, Lawrence Buell, said after the faculty argued about the poet's invitation for two and a half hours. "We are ultimately stronger as a university if we together maintain our robust commitment to free expression," piped in Harvard President Lawrence Summers.

Of course, it was Summers who had kicked off the semester by declaring that critics who want Harvard to divest in companies doing business with Israel are anti-Semitic. That would presumably include the 71 Harvard professors who had made this demand in response to the Israeli-Palestinian conflict and who charged that Summers was trying to stifle the debate by calling them bigots.

How bad has it gotten? When he questioned them about their proposal for a speech code, Harvard Law Professor Alan Dershowitz reports, representatives from the Black Law Students Association told him he was violating the code simply "by being tough with [them] and demanding specifics."

All of this on one campus, in just one year. Which raises two questions: Does anybody actually study over there? and Is this the political correctness capital of the world?

But let's take our story to a different campus, in a different time: Princeton. Early 1960s. Harvey Silverglate, who leaned left, met a libertarian conservative fellow undergrad named Alan Kors. Through endless arguments (many over Vietnam), the two became friends, though they agreed about just one thing: the importance of free speech. Their inalienable right to call each other assholes.

Silverglate went on to Harvard Law, studied under Dershowitz, and opened his own practice, focusing on civil rights. In 1969, he defended a group of Harvard undergrads who occupied University Hall — again, over Vietnam. (The students were acquitted.) Kors became a history professor at the University of Pennsylvania. He found himself advising students called in front of campus disciplinary boards. Kors sought lawyerly advice from Silverglate, who mined Kors's take on academia.

Years passed. Silverglate and Kors began to notice that the students they defended were no longer being accused of occupying campus buildings. These students were on trial because of things they said. That got Kors and Silverglate all hot under their free speech collars. Together they vowed to fight the growing wave of "speech codes."

These codes have their roots in theories, which gained favor with campus radicals in the 1960s, contending that (as Silverglate and Kors put it in a book they cowrote) "[i]f the powerful and the weak were required to play

by the same rules . . . the powerful always would win." In other words, this theory goes, the disadvantaged need different rules. What's more, these rules should extend to speech, not just to actions, because speech can be just as powerful and hurtful. (Proponents of the theory seem unfamiliar with an axiom regarding sticks and stones.)

This is how the academic left, which once ferociously defended free speech, became, in Silverglate's and Kors's minds, the First Amendment's greatest enemy. Suddenly, campus leftists were calling for "speech codes." More than 90 percent of universities have now adopted behavior codes prohibiting offensive language about race, gender, sexual preference, and just about anything else. Silverglate says the speech-code advocates have forgotten the cardinal rule: You're never immune from being called an asshole. Or, as the case may be, a water buffalo.

The famous "water buffalo" case was the last straw for Silverglate and Kors. In 1993 at the University of Pennsylvania, a group of black female students was making noise in a courtyard when a white student yelled from a window: "Shut up, you water buffalo!" There was an immediate uproar. Black students demanded punishment, and the white student soon faced charges that he'd violated Penn's racial-harassment policy. Alan Kors took up the student's case. Silverglate collaborated.

No impartial person considered "water buffalo" a racist term. Yet administrators kept pressing for disciplinary measures. Kors and Silverglate came to the realization that it was easier for the university to prosecute a false accusation — even one it knew would amount to nothing — than to deal with the backlash it would otherwise face from black students and campus activists.

Eventually, the student got off with an apology for rudeness. But Kors and Silverglate were outraged by the whole fiasco. Not only were free-speech rights violated — after all, if you can't say "water buffalo," what can you say? — the student also was denied due process and other rights accorded a defendant in a trial. It wasn't until the case came to light beyond the campus gates that justice was ultimately served. As Justice Louis D. Brandeis said: "Sunlight is the best disinfectant."

Since the water buffalo case, Silverglate and Kors have been trying to shed sunlight on university policies everywhere. Their book, *The Shadow University*, details the philosophical roots of, and antidotes to, political correctness gone overboard. They launched (and codirect) the Foundation for Individual Rights in Education (FIRE). Its mission? To defend basic rights — freedom of speech and due process, in particular — on campus. That these rights now need defending at our universities more than anywhere else is, Silverglate thinks "the great irony of my life."

The Boston area, Silverglate contends, may be the most arrogant of all PC hot spots. Because of the number of schools here and their relative clout, he says, "hypocrisy is allowed to flourish." And Silverglate says we ignore it at our peril. Because universities are meant by definition to encourage argument and discourse, not snuff it out.

Silverglate runs the Boston branch of FIRE from his law firm downtown. On a bookshelf in his office sits a stack of books about Scientology, the

controversial church Silverglate once defended against a disgruntled member's claim that it was not a church at all. On another shelf is a series of books on drug law, mementos of a good deal of time Silverglate has spent as a drug legalization advocate.

Speech codes appeal to university administrators, Silverglate says, because they "keep things quiet on their watch" by preventing controversy with threats of discipline. To him, it's particularly galling to see a speech code proposed at Harvard Law School, where constitutional law is a recommended course. The proper response to that student who wrote "nigs"? "They should have held an open meeting," says Silverglate, "where the student and his opponents could talk. If the student wouldn't go to the meeting, he should be shunned by his classmates. You shouldn't be immune from social pressures. You should be immune from official punishment." As for the business school, by punishing the editor it had declared that "only the gentlest criticism of individuals . . . will be tolerated," Silverglate wrote in a letter to the dean.

The free speech FIRE defends is often conservative, taking up the cause of a student antiabortion group refused official recognition by Washington University in St. Louis, for example. Does Silverglate catch flak from his liberal friends? "Liberalism has lost its way," he says. "I haven't lost mine." For him, there are no politics when it comes to the First Amendment. There are simply those who defend it and those who trample on it.

As a private university, Harvard can mostly go ahead and establish speech codes as it sees fit. But Silverglate argues that while this may be legal, "Harvard has a moral obligation as a self-proclaimed bastion of free speech and fairness."

For Silverglate, there could be no greater cause.

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