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- News
- Oped
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- Arts
- Features

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Silverglate: Free speech in danger on campuses

By Vivian Chung



Harvey Silverglate, co-founder of the Foundation for Individual Rights in Education, warned that colleges and universities face unprecedented challenges to the right to free speech as administrators impose increasingly stringent speech codes on students.



Mark R. Williams/The Dartmouth Staff
Co-founder of FIRE Harvey Silverglate

In his lecture "Free Speech on Campus Before and After 9/11" Silverglate examined the history of free speech in the United States, likening it to a constantly swinging pendulum. Like a pendulum, he said, there is more or less freedom of speech depending on the public political opinion and events in that particular period of history.

This pendulum is extremely useful for the preservation of liberty, Silverglate said, for those currently in power have to recognize that they will not necessarily be in charge in the future.

"We are in the most dangerous time for liberty certainly during our lifetime and probably in the last century," Silverglate said.

Issues of free speech and the first amendment were not given any serious attention until the first and second decade of the 20th century. Silverglate gave examples from the anti-war movements during the First and Second World War.

Most prominent among these examples were cases involving educational institutions versus students. In 1969, a secondary school was prohibited from expelling two students who wore black armbands to protest the war in Vietnam, while in 1971 a student walked into a courthouse in California with a jacket that featured an explicit statement against the draft.

The student was arrested, but the court ruled in his favor, recognizing that "one man's vulgarity is another's lyric" and protecting two elements of speech: the emotive and the cognitive.

Along with increased diversity on college campuses in the 80s, there was a corresponding increase in the number of administrators specializing in the student life area.

This increase, he claimed, became a "bane" to free speech on colleges throughout the nation. In the wake of this change, administrators increasingly sought to make colleges more "welcoming," he said.

"I hate the word welcoming," Silverglate said, defining it as an excuse for "engaging in vile forms of social engineering" which lead to the adoption of speech and harassment codes.

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By the mid 80s, two types of codes arose, the first being offensive speech codes, which were challenged immediately in court. In three major cases, involving the University of Wisconsin, the University of Michigan and Stanford University, the Supreme Court ruled that the institutions were covered by the first amendment, and thus the speech codes were dropped.

Though the decision was final, college administrators simply rewrote the codes. They redefined the historical concept of harassment to include highly offensive speech, even though highly offensive speech is constitutionally protected.

After citing numerous examples of the protection of free speech at a national level, Silverglate went on to criticize Dartmouth's handling of the derecognition of Zeta Psi fraternity, calling it a "cause of disillusion."

He cited letters by President James Wright and Dean of the College James Larimore to the Dartmouth community as examples of attempts to cover up the College's encroachment upon the fraternity's right to free speech.

In the post-Sept. 11 era, the pendulum is swinging once again, and the speech code has flourished, Silverglate said, warning administrators to keep in mind that the restrictions on speech cut both ways.

"If you destroy the fundamentals of liberty," he said, once "you're not in charge, they will be coming after you."

"We all have a stake, left, right, center, black, white or yellow, we all have a stake in maintaining these structures of liberty," he said, encouraging students to involve themselves in the struggle against speech codes.

A graduate of Harvard Law School, Silverglate specializes in criminal defense, civil liberties, academic freedom and legal ethics. He has written for many major newspapers and co-authored a book with Alan Charles Kors entitled "The Shadow University: The Betrayal of Liberty on America's Campuses."

The lecture was hosted by the Dartmouth Civil Liberties Union, and co-sponsored by the McSpadden Public Issues Forum, Rockefeller Center and the Council on Student Organizations.



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