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The Washington Post

The Perils of Campus Candor

At a surprising number of colleges, students aren't supposed to say what they think

By Jay Mathews

Sunday, November 10, 2002; Page W18

The most outrageous threat to my free speech rights on a college campus occurred my senior year when my girlfriend, upset at the body-count callousness of the discussion, walked out on me and my political science department buddies as we talked in the dorm dining room about the Vietnam War.

She eventually realized I was not that insensitive, just immature, and agreed to marry me. But our daughter is going off to college next year. From what I hear, she risks much more stringent sanctions if she expresses an impolitic thought.

I can't tell if the volume of potentially offensive verbiage on campus has increased in the last generation, or if universities have become more sensitive, but a lot of youthful expression is being quashed. A San Diego State University committee accused a student of abusive behavior, and told him to engage in more "responsible" conduct, after he objected to other students expressing delight, in Arabic, at the September 11 attacks. A student court at Penn State told the Young Americans for Freedom chapter that its reference to human rights as "God-given" constituted religious discrimination. A student who frequently criticized American University officials was arrested by campus police for videotaping a Tipper Gore speech.

So I was pleased to encounter an upstart group, the Foundation for Individual Rights in Education, which is developing a free speech alert system that rates campuses on their tolerance for provocative words. It is based in Philadelphia, where Congress sat in 1791 when the states ratified FIRE's favorite 45-word sentence: the First Amendment of the U.S. Constitution.

The FIRE staffers are of both the left and the right. They campaign against speech codes and harassment rules that seem ready to stomp into the carpet any pimply freshman who causes distress by quoting Ayn Rand or Mao Zedong or Henry Miller or the Playboy philosophy. FIRE criticized Central Michigan University dormitory supervisors for telling student Don Pasco to remove what they said were offensive decorations after the September 11 attacks. Pasco was, naturally, a freshman who had not spent enough time on campus to realize that the flag, the eagle and the Miami Herald editorial on his door might be considered too political and controversial for public display. FIRE also supported civil rights and labor activists at West Virginia University who demonstrated against free speech having been limited to two outdoor spots on campus.

"There are now hundreds upon hundreds of colleges and universities that have restricted the First Amendment rights of their students and faculties," says Thor Halvorssen, FIRE's executive director, a 28-year-old Phi Beta Kappa graduate of the University of Pennsylvania. "At public universities, even when unchallenged, such codes are manifestly unconstitutional. At private universities, they are generally unadvertised."

-----Related Link-----

- [Selected Schools' Rankings Under the Foundation for Individual Rights in Education's Free Speech Alert System](#)

-----Video-----

- [Education Roundtable](#): Washington Post Education Reporter Jay Mathews talks with washingtonpost.com's Christina Pino-Marina about universities and colleges that have become more sensitive and repressive when it comes to students' freedom of speech.

-----About the Author-----

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Many of the codes have been written by university officials afraid that sexist, racist or aggressively political comments may make some students uncomfortable or start fights. Halvorssen says FIRE doesn't oppose private college speech codes if the rule makers are honest about them. "Freedom entails that individuals are free to associate voluntarily on terms that I myself would not choose, provided that they do not commit fraud," he explains. It is okay, he says, for Bob Jones University to ban anti-religious expression and Swarthmore to put consensus and community above individual rights (Swarthmore does not accept this interpretation), since they do it up front.

I asked Halvorssen to take an assortment of 14 colleges and universities, including several Washington-area campuses, and group them according to the alert system FIRE is developing. Red is "Danger: free speech suppressed"; yellow is "Warning: code could easily be interpreted to restrict free speech"; and green is "Free speech nominally protected by a code."

Halvorssen says the University of Maryland-College Park gets the red light because its speech and harassment guidelines are among the most constraining. What Maryland calls verbal behavior is regulated in a variety of surprising ways, he says. Among forbidden acts, for instance, are "holding or eating food provocatively." A University of Maryland spokesman says this language, from a university training document, is not official policy. Among local schools, George Mason University, Georgetown University and American University also got red lights.

Yale is a green-light school, Halvorssen says, because, despite some restrictive rules, it is still deeply influenced by a ringing endorsement of free expression written by the late historian C. Vann Woodward and others at the university in 1975. Whenever Yale officials crack down on verbal expression, FIRE points out how far they have strayed from the Woodward report. The result, says FIRE program officer Emmett Hogan, is that "they cave."

This kind of back-and-forth debate is healthy. Even threats to free speech can inspire useful corrective action. Since that day my future bride walked out on me and my friends, I have occasionally found myself editing my more inane comments before I utter them in her presence. Has my self-censorship reduced the quality of political discussion in the Mathews household? I don't think so. Judging from what I see on the Internet and cable TV these days, a little more thinking before typing or speaking would be a good thing.

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The Betrayal of Free Expression on America's Campuses—A Sampling by the Foundation for Individual Rights in Education

Here are the explanations by the Foundation for Individual Rights in Education (FIRE) for each of the 14 colleges and universities whose free speech policies were appraised in Jay Mathews's Nov. 10 Washington Post Magazine column. All 14 institutions were invited to respond, and the remarks from those who chose to do so follow the FIRE explanation for that school.

Substantively, speech codes form a barrier to that freedom in which an education worthy of free men and women can occur: debate; disagreement; speaking about what others would deem unthinkable; heterodoxy; eccentricity; passions. They deny things that should be self-evident--the indispensability of freedom to learning; the dignity and strength of meeting speech that one abhors with further speech; the need to counter bigoted expression with reason, evidence, cold contempt, moral outrage, or moral witness. Prejudice and ignorance do not disappear when their expression is suppressed; rather, they simply go deeper into people's souls. Then, no one has the chance to know how others actually think and to respond in appropriate form. Sunlight, as the great Justice Louis Brandeis correctly observed, is the best disinfectant.

Speech codes are inherently illiberal, but they become truly insufferable in practice by virtue of their intended and systematic double standards. Even if such codes govern by fearful self-censorship, they govern by a double standard of self-censorship. In a nation that depends for its progress on freedom of expression and legal equality--indeed, in a nation where the lived rights of the unpopular in belief and lifestyle depend absolutely upon equal justice under law--the double standard of speech codes at our universities is teaching the worst possible lesson: that one's freedom should depend upon one's local power. Education in a free society, to be edifying, must occur in conditions both of liberty of expression and of equality before the law. Neither exists on most campuses today.

What follows is a sampling of speech codes at America's colleges and universities, taken directly from language promulgated and publicized by university administrations. These codes are representative of what has become, over the past two decades, a national trend. Note the startling vagueness and overbreadth of these policies. With ambiguous and imprecise definitions, descriptions, and examples, these policies define free speech in significantly more restrictive terms than constitutional jurisprudence would do. The First Amendment is the legal standard for public institutions. It should also be the moral standard for private institutions that declare themselves committed to freedom of expression.

The existence of a policy does not indicate, of course, that it is regularly enforced. The problem, however, is that such codes are invoked at times of crises, which are the very moments when one most needs the protections of liberty and legally equality. Furthermore, a speech code does not even have to be enforced to have an impact. Students and faculty, in the face of a repressive and punitive policy, will censor themselves rather than run afoul of judicial systems, chilling free and robust expression.

A commitment to free expression is not signaled by the mere absence of speech codes. Sadly, even formal guarantees of free speech do not prevent the arbitrary violation of freedom of speech by administrators who are intent on repression. The policies of most of the colleges and universities listed here reveal their weak commitment to the principle of free expression. A free society should be alarmed by this phenomenon in higher education. A nation that does not educate in freedom will not long enjoy it, and, indeed, will not even know when it has lost it.

Green: Free speech nominally protected.

[Yale](#)

Yellow: Speech restrictions possible.

[George Washington](#) | [Howard](#) | [University of Pennsylvania](#)

Red: Free speech suppressed.

[American](#) | [Brown](#) | [Columbia](#) | [Cornell](#) | [Dartmouth](#) | [George Mason](#) | [Georgetown](#) | [Harvard](#) | [Maryland](#) | [Princeton](#)

Yale University

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In theory, Yale is governed in matters of speech by the report issued by the Woodward Committee in 1975, which explicitly safeguards and protects all campus speech. This policy, adopted by Yale, is one of the best articulations of the value of freedom of speech and expression to a college or university.

Nonetheless, Yale's "Information Technology Appropriate Use Policy" excludes the "display of offensive, sexual material" in the workplace. The workplace, of course, could include department offices, student organization offices, or even the classroom. This policy is open to potentially damaging abuse of power and selective enforcement. In the past, for example, Yale's student life administrators curtailed the free speech rights of the conservative student publication, *Light & Truth*. More recently, in the weeks after September 11, Yale student residence administrators moved to silence core political speech by banning a window display that expressed anger toward the terrorist attacks. When reminded of the Woodward policy, Yale backed down, unwilling to face public embarrassment. Good policy; tenuous commitment to it. [Green]

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George Washington University. The "Media Relations Policies" at the George Washington University (GW) restrict faculty free speech and expression. The Policies govern "employees' interactions with journalists and other members of the print, radio, and television media," decreeing that the "Public Affairs [Office] is the only GW entity authorized to issue news releases to external (non-GW) media," and that "it is important that all releases and quotes are approved by the appropriate officials." GW insists that, "even if a department is working with an outside public relations firm on a jointly-sponsored event, there must be a news release that emphasizes GW's participation."

The Media Relations Policies instruct faculty that they should not speak to members of the media on University matters: "If you are contacted by a member of the media who wishes to interview you about a matter you believe touches upon GW policy, please simply refer the caller to Barbara Porter, 994-6463." [Yellow]

George Washington responds: The George Washington University clearly states that its Media Relations Policy and Procedures are "separate from the right to free speech enjoyed by all of us. Members of the GW community have the right to articulate opinions on any topic to any person, media or otherwise." The document was developed as a guide for the University community in dealing with the media and to assist those who are authorized to disseminate official university policy to the media.

Our document mirrors those at many other entities, perhaps including The Washington Post Company.

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Howard University. In Howard's "Student Code of Conduct and Judicaries," speech may constitute actionable discrimination. Howard's harassment policy (in the same document) states that "inflicting psychological or emotional harm, or undue stress" could constitute harassment. Howard's definition of harassment also includes communication that is "verbal, electronic, visual, [or] written" and that "is likely to provoke or otherwise result in negative or injurious response or reaction." Lastly, Howard's "Policy against Sexual Harassment and Gender-Based Discrimination in Education Programs and Activities" lists "insults, jokes, or anecdotes," "gestures, verbal expressions, or comments," or "inappropriate displays [of] objects or pictures" as "examples [that] are illustrative of conduct that ... would be considered by the University to establish sexual harassment." [Yellow]

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University of Pennsylvania. After the infamous "water buffalo case" in 1993, the University of Pennsylvania abandoned its wide-ranging speech code. Penn's Board of Trustees announced that it expected Penn's students to enjoy the protections of the Bill of Rights, and that it would hold administrators to that standard. In June 1995, incoming President Judith Rodin wrote to Penn parents and alumni, assuring them that "the content of student speech is no longer a basis for disciplinary action." More recently, in a September 2002 letter to the campus newspaper, President Rodin declared, "If we cherish freedom of expression as a core academic value, then we must resist the urge to use the power of the University or the presidency to silence any lawful speech or flatten any speaker who expresses hateful and despicable views."

Despite these encouraging words, the Student Handbook at Penn still has language that may be used to restrict student speech. Penn's sexual harassment policy states, "It is the responsibility of each person on campus to respect the dignity of others. We expect members of our University to demonstrate a basic generosity of spirit that precludes expressions of bigotry." In the hands of an administrator of poor faith, such a broadly defined and ambiguous policy could be used to discipline a student.

Nevertheless, Penn's policies today are a radical improvement over those enforced by Rodin's predecessor, Sheldon Hackney, whose speech code caused the water buffalo affair. Penn's transformation should give hope to anyone who has become fatalistic about the loss of liberty, legal equality, and respect for individual dignity on our campuses. [Yellow]

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American University. American University's "Sexual Discrimination and Harassment Policy" includes "sexual humor" as potential sexual harassment. American gives as examples of sexual harassment such offenses as "inappropriate sexual innuendos, sexist jokes or remarks," or even mere "gestures or comments." The University's racial harassment policy lists "slurs, jokes, and other verbal, audio, written, computer generated, graphic or physical conduct" as potentially actionable expression. Further, American University

bans all posted materials that advertise "alcohol, drugs, gambling, or anything else that would be a violation of university policies, either through language or artwork." [Red]

American responds:

Contrary to the implication of your article, American University has a long and proud tradition of supporting and defending free speech, civil discourse, and personal rights and freedoms. The University's actions for more than a century are powerful contradictions to FIRE's analysis and your story. Your article misleads in stating that an AU student was arrested for videotaping a speech by Tipper Gore. The contractual agreement between our student-run speaker's bureau and Ms. Gore prohibited photographing or videotaping the event. The student referenced in your article was informed of the prohibition by University officials, but refused to follow their directives. Subsequently, the student was found responsible for violating the University Conduct Code. This incident and its consequences had no relation to any criticism of the University the student may or may not have made. It was a matter of the student's willful misconduct, not a First Amendment issue.

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Brown University. Brown's sexual harassment policy gives extraordinary, breathtaking examples of conduct that might constitute sexual harassment. Those examples include "invitations," "unwelcome verbal expressions," "degrading language," "jokes or innuendoes," "sounds or whistles," and "gestures." The policy applies to "objects, pictures, videotapes, audio recordings, computer communications, or literature." In its "Guide for Faculty, Students and Staff," Brown cites "suggestive jokes," "slurs," "pictures or displays," "gestures or sounds," and "written notes" as "examples [of what] may be considered sexual harassment." [Red]

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Columbia University. At Columbia, "demeaning" speech constitutes sexual harassment, according to the University's "Discrimination and Sexual Harassment Policy and Procedure." In addition, Columbia's "Academic Information Systems Computer and Network Use Policy" prohibits "nuisance e-mail" and rescinds any right of anonymity under any circumstance. These provisions allow great discretion for selective prosecution of speech. [Red]

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Cornell University. Cornell's sexual harassment policy states that "sexual harassment may include, but is not limited to...innuendo, jokes...suggestive comments or references to sex or gender-specific traits...notes, email...sexual propositions, insults...leering, whistling, or other sexually suggestive or insulting sounds or gestures." The policy also states that "displaying pictures, calendars, cartoons, or other material with sexual content" may constitute harassment. [Red]

Cornell responds:

This reference to Cornell University shows confusion between the meaning and purpose of a "speech code," which sets limits on permissible expression of thoughts and ideas, and a sexual harassment policy, which prohibits discrimination on the basis of sex. Cornell University does not have a speech code. It does have a sexual harassment policy which protects individuals against discrimination and harassment, within the meaning of Title VII of the Civil Rights Act of 1964, as amended, and Title IX, as well as under federal, state and local laws.

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Dartmouth College. Dartmouth's policy on sexual harassment states that "sexual harassment [can be] subtle and indirect, possibly even unintentional." Dartmouth lists, as an example of a complaint, the case of a student whose lab instructor "stares at him in lab and makes him feel uncomfortable."

In May 2001, President James Wright announced: "We do not have a speech code at Dartmouth, but a related speech issue illustrates the way we need to confront tensions between individual rights and the values of the community. Over the past few months, some members of the Dartmouth community have revived an old debate regarding the use of the Indian symbol. In a community such as ours, one that depends so much upon mutual trust and respect, it is hard to understand why some want still to insist that their 'right' to do what they want trumps the rights, feelings, and considerations of others." [Emphasis added.] Also in May 2001, Dean of the College James Larimore stated, "Some argue that anything that an organization can characterize as expressive conduct must be tolerated even though it violates the rules and standards of our community. They assert, in effect, that the Principle of Expression and Dissent 'trumps' all our other rules—that it is a license for an organization to engage in any and all expressive behavior, subject to no standard whatsoever. I respectfully disagree...." These statements, coming as they do from high administrators at a liberal arts college, betray a distressingly weak appreciation for the centrality of free, unfettered expression to the very mission of an institution of higher learning. The history of free expression at Dartmouth bears this out. [Red]

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George Mason University. George Mason University's policy—its "Sexual Harassment Policy and Grievance Procedures"—claims that sexual harassment "may include...sexual comments and innuendoes," and "visual displays of degrading sexual images." [Red]

George Mason responds:

It's difficult to respond directly to their complaint since FIRE offers no examples of how free speech was suppressed at our campus, nor how sexual harassment may have occurred. As a result, since FIRE's primary complaint about us seems to revolve around sexual harassment, let us do two things: first, refer them to our Web site at www.gmu.edu/facstaff/policy/sex.html for a complete review of George Mason's comprehensive policy against sexual harassment.

Secondly, we'd like to reinforce our strong and unwavering commitment to maintaining a free and open environment here at George Mason where students feel free and safe to pursue their academic goals, staff members feel free and safe to spend their working hours and meet their responsibilities to the best of their abilities, and where faculty feel free and safe to teach their classes and pursue their research under the essential umbrella of academic freedom. As a public institution of higher learning, George Mason is entrusted by the public to strive to operate to the best of its ability. This, of course, includes never losing sight of the fact that our highest priority is to maintain an environment where free speech is defended and encouraged and where the actions of any individual or group that seeks to impede that or seeks to make the members of our community feel unsafe or harassed are not tolerated.

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Georgetown University. Georgetown's policy on "Speech and Expression" claims "to ensure the untrammelled expression of ideas and information." Despite this, the policy declares that it will take "appropriate" action against "expression" that is "inappropriate" and that offends severely on matters of "race, ethnicity, religion, gender, or sexual preference." The policy offers extraordinary and dangerous latitude to administrators. [Red]

Juan Gonzalez, Vice President for Student Affairs at Georgetown, responds:

"Georgetown's speech and expression policy holds true to our mission as a university—as a place where ideas and information are freely exchanged. In the formulation of Georgetown's policy, John Henry Newman's ideas on free speech can be applied: "Flagrant evils cure themselves by being flagrant." The remedy for silly, extreme, or offensive ideas is not less free speech, but more, and this is the philosophy with which our speech policy is applied at Georgetown.

As needed, the University's Speech and Expression Committee reviews concerns about speech and expression issues and advises the Vice President for Student Affairs. As an academic institution, it is important to have a forum that allows the perspectives of all members of our community to engage in educational dialogue with one another when concerns are raised."

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Harvard University. Harvard's harassment policy cites "intent to dishonor" as an offense that could constitute harassment if the dishonoring touched upon "such characteristics as race, gender, national origin or ethnic group, religious belief, or sexual orientation." The policy warns, "Grave disrespect for the dignity of others may be addressed and punished under existing procedures...." Harvard's section on "Verbal or Symbolic Harassment" advises that "such expression may be punished where, from the standpoint of a reasonable person, they...insult, stigmatize, or intimidate the individual or individuals, and...indicate on the part of the speaker or speakers grave disrespect and an intent to demean the individual or individuals." The policy then indicates that an offense "is considered to violate the balance of rights on which the University is based" even if the expression is "purely verbal or symbolic." A "Faculty Policy Statement" on racial harassment lists as potential violations "epithets," "derogatory remarks," and "stereotypes." [Red]

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University of Maryland-College Park. The University of Maryland's code, promulgated by the Office of the President, can be seen as of now by visiting UMD's own secondary website: www.mith2.umd.edu/WomensStudies/GenderIssues/SexualHarassment/UMDManual/ (UMD has moved this policy to match public criticism.) This code is one of the most restrictive in the nation. The policy outlaws such things as "continuous idle chatter of a sexual nature and graphic sexual descriptions"; "sexual slurs, sexual innuendos, and other comments about a person's clothing, body, and/or sexual activities"; "offensive and persistent 'risqué' jokes"; "jesting' and 'kidding' about sex or gender-specific traits"; "suggestive or insulting sounds such as whistling, wolf-calls, or kissing sounds"; "sexually provocative compliments"; "staged whispers"; "pseudo-medical advice"; and "distribution of written or graphic materials that are derogatory are [sic] of a sexual nature." Lastly, this policy includes a category of purely non-verbal offenses, which "are expressive of an idea, opinion, or emotion." Examples of "unacceptable" offenses that might violate this policy include "licking lips or teeth" and "holding or eating food provocatively." [Red]

Maryland responds:

"The material underlying the FIRE material is NOT University policy. It was not promulgated by the President or any established or recognized policy-making body. It was generated by a former staff member of the Human Relations Office. It was not approved by the university's Legal Affairs Office, and we must note that it does not comport with our understanding of the law. It has never been used to prosecute anyone or ever used as a standard to measure conduct. It was at best a discussion document in a few training sessions by the HRO staff."

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Princeton University. Princeton's sexual harassment policy informs students and faculty that illegal

harassment may be "unwanted sexual attention that makes a person feel uncomfortable." Harassment "may result from an intentional or unintentional action." The policy on racial and ethnic harassment, too, states that anything that "demeans [someone]...because of ... personal characteristics or beliefs is subject to University disciplinary sanctions." As an example, Princeton suggests: "An adviser tells an African-American student not to take a certain course because the adviser says that other African-American students had difficulty in that course and are therefore not suited for this particular course." Another example: "A male student approaches an Asian Pacific-American woman student on several occasions and makes statements implying that certain sexual practices are common within her ethnic group." [RED]

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