

# An overdue outrage over speech codes

by Harvey A. Silverglate

*The Boston Herald, 26 April 1999*

It has been said that academic disputes are vicious because so little is at stake. However, there is a dispute raging on college campuses where the stakes are enormously high - the battle over whether freedom of speech, conscience and intellectual inquiry should take a back seat to the notion that all students in "historically disadvantaged groups" are entitled to four offense-free years.

Under prevailing rules adopted on campuses within the past 20 years, where speech codes, mandatory sensitivity training and politically correct freshman orientation programs are common, a citizen is less free to speak his or her mind than in virtually any other place in our society. In the process, women, African-Americans, Hispanics and gays are being patronized as if they are inferior beings in need of special protection from mere words. Equally disastrous is the fact that an entire generation of our best and brightest is being deprived of a living lesson in what liberty is all about. However, after two decades of living under such codes, students and professors are fighting back. The faculty at the University of Wisconsin at Madison for years suffered under a stringent faculty speech code implemented by Donna Shalala, the former chancellor of Wisconsin's public university system who became President Clinton's secretary of health and human services. Last month faculty members voted to repeal the most onerous provisions that interfered with a professor's ability to teach controversial material without fear of being accused of racial or sexual-orientation harassment.

Closer to home, Mount Holyoke College is reviewing its 1980s-era speech code. This review is being undertaken, according to the school's newspaper, as a result of a suggestion by politics Professor Christopher Pyle. Pyle was apparently inspired by a review of my book, "The Shadow University: The Betrayal of Liberty on America's Campuses," which castigates higher education for stifling freedom in an effort to achieve a dubious quiet and intellectual conformity.

On the other hand, not all campus censors are willing to go quietly into the night. Administrators at Macomb Community College in Michigan recently suspended English literature Professor John Bonnell on the basis of a complaint by a female undergraduate who charged that his use of vulgarity during an English lecture created a "hostile learning environment" constituting "sexual harassment," a form of sex discrimination according to academia's language police.

Under this theory, if one utters words or ideas that are offensive to some women, blacks or gays, the "hostile environment" thus created could cause the more thin-skinned to retreat from active participation in campus social or academic life, thereby depriving such students of the right to equal educational opportunities. (Administrators never bother to explain how colleges

can possibly be educating students for their role in the real world by "protecting" them from words and ideas that are constitutionally protected and heard every day.)

Because public colleges and universities are bound by the First Amendment's free speech guarantee that applies to all governmental institutions, Bonnell has filed a lawsuit in federal court.

And at the College of the Canyons in California, Los Angeles lawyer Gloria Allred has demanded that the school investigate a faculty member for sexual harassment because the professor had allowed a student to deliver in class a graphic talk about sex. According to Allred, Title IX, which outlaws sex discrimination in higher education, covers such classroom discussions. Allred and her allies claim, in other words, that unless colleges censor their professors' lectures, they are violating the civil rights of "vulnerable" students. (It used to be that civil rights laws were seen as protecting, not limiting, First Amendment rights.)

The battle has now been joined on campuses all over the country. Some students and professors are taking their institutions to court. Happily, in every case where a speech code has been challenged under the First Amendment, it has been declared unconstitutional. Elsewhere, faculties are rebelling and seeking to reinstate academic freedom, not to mention good sense. Administrators are now reluctant to admit that their campuses have speech codes. They refer to them as "harassment" codes directed against "verbal acts." Some legislatures are considering laws to apply First Amendment protections to private colleges and universities.

The forces of repression, parading as "progressive" protectors of "disadvantaged groups," are now beginning a retreat. The question is how long it is going to take, and how many administrators are going to have to be fired before the war is won.