

Judicially Suspect

Campus Speech Codes Are Being Shot Down As Opponents Pipe Up

A Fraternity Sues and Wins Over a T-Shirt; Alliances Target 'PC' Universities

Thought-Cops Get a Lesson

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RIVERSIDE, Calif. — Is the party over for the PC movement — shorthand for “political correctness” — on college campuses?

Growing evidence indicates it just could be. A swelling student backlash, litigious-minded public-interest groups and a rash of unfavorable court decisions are beginning to sweep aside or challenge the movement's most controversial icons: campus speech codes, and antiharassment policies that sometimes impinge on free-speech rights.

If so, the party animals at Phi Kappa Sigma, a loud and obstreperous fraternity at a University of California branch here, will have played a raucous role in their dismantling.

Shirts and Hurts

Indeed, this campus has been astir ever since university administrators, bowing to pressure by Hispanic student groups, banned Phi Kappa Sigma from campus because it printed a rush party T-shirt deemed offensive to some campus Hispanics. Instead of rolling over, the fraternity fought back. The shirt, featuring a sombrero-wearing man holding a beer bottle, was merely a cartoonish depiction of a South of the Border party, members maintained. Its logo — “It doesn't matter where you come from as long as you know where you are going” — couldn't be more innocuous, they asserted; furthermore, the shirt was designed by a Hispanic fraternity member.

So Phi Kappa Sigma got a lawyer. It sued in state court here, alleging violation of members' First Amendment rights to free speech. And last month, in an out-of-court settlement, it won reinstatement; in addition, two campus administrators have been ordered to sit through what John Howard, the fraternity's lawyer, calls “First Amendment sensitivity training.”

The irony isn't lost on anyone, given that so-called sensitivity training is the punishment of choice for those judged guilty by campus speech police. “What could be more fitting than to have *them* [administrators] go through some sort of sensitivity training?” says Mr. Howard.

A Chorus of Criticism

The victory is perhaps the most dramatic to date in a slew of recent successful challenges to campus speech codes or disciplinary actions against students for alleged “politically incorrect” behavior. Some believe, in fact, that a groundswell of anti-PC opinion, coupled with a 1992 U.S. Supreme Court decision that regarded a racially motivated cross-burning as protected speech, is putting a brake on a movement that has steamrolled through the nation's colleges for the past decade.

Numerous campuses, including the universities of Michigan and Wisconsin, have been forced by courts to abandon or narrowly rewrite speech and harassment regulations. And students are challenging punishments for prohibited speech at perhaps a dozen other universities, including University of California at Los Angeles, University of Southern California and Columbia University.

At Columbia, three male students won their jobs back after hiring a lawyer to fight their firing last year from jobs escorting women students to off-campus housing. They were dismissed by a female student supervisor after the students were overheard rating the looks — “chocolate” for attractive, “vanilla” for plain — of the women in their care. The men contend the remarks, however offensive, were protected speech; they also say their efforts to apologize were ignored by the university until their lawyer intervened. They are now demanding an apology from the university. (Columbia declines comment beyond saying their dismissal was “performance-related.”)

Moreover, some colleges, Tufts University and the University of Pennsylvania, for example, have voluntarily rescinded speech codes after concluding they were ineffectual, divisive or illegal. Tufts took action after rebellious students chalked out “free speech zones” on campus sidewalks to protest the codes.

Concerted Counterattack

And Penn came under fierce public scrutiny after its speech rules were used to threaten a Jewish student with expulsion after he called a group of noisy black women “water buffalo.” The term was regarded as racist by a university administrator — though the student said it simply was an English translation of a Yiddish term for a disruptive, ill-mannered person. Penn recently dropped the case.

Atop that, numerous groups across the political spectrum are coming forward to do battle with speech regulations or conduct codes — racial-harassment policies, for example — that they contend are sometimes so broadly drawn that they impinge upon free speech. One group is the Center for the Study of Popular Culture founded by two disaffected 1960s radicals; its general counsel, Mr. Howard, defended the UC Riverside fraternity and has another 10 cases in various stages of litigation or negotiation.

The Center for Individual Rights, a conservative Washington, D.C., public-interest law firm, has taken on a number of cases, including a recent successful lawsuit on behalf of a Sigma Chi fraternity chapter at George Mason University in Fairfax, Va. The group had been barred from campus after holding an “ugly woman” contest that offended campus feminists and minorities. The liberal ACLU says it has been involved in dozens of challenges to campus speech and conduct codes in recent years.

Alumni and students are gathering forces as well. A group calling itself the Intercollegiate Studies Institute is organizing chapters of influential conservative alumni to pressure schools — Yale, Duke, Vassar and Stanford, among them — into rolling back what they contend is a wave of political correctness — including nontraditional classes and speech codes. And the First Amendment Coalition, a 300-member student group based in Gainesville, Fla., has organized chapters at four Ivy League schools, including Penn, to combat what co-founder Dave Gentry calls “the new McCarthyism” fomented by speech codes.

Speech codes, generally aimed at prohibiting remarks judged abusive or threatening to minorities, women and homosexuals, grew hand in hand with the increasingly diverse enrollments on college campuses in the 1980s. A soon-to-be published survey by the Freedom Forum First Amendment Center, a Nashville, Tenn., press foundation, says that 383 U.S. public colleges and universities have some form of speech regulation. Most codes proscribe behavior — threats of violence, for example — that courts have generally ruled may be legally curbed. But many codes also contain provisions that legal scholars say have been consistently struck down when challenged. About a third, for example ban “advocacy of offensive or outrageous viewpoints . . . or biased ideas”; and some 15% also punish speech causing “intentional infliction of emotional distress,” the survey found.

Proponents argue speech codes are necessary to protect the rights of minorities on increasingly multicultural campuses from a dedicated core of campus bigots — invariably white men — who remain in chronic rebellion against this multicultural wave. But critics have scorned the codes as misguided regulations that run afoul of the First Amend-

ment while serving to reinforce racist or hateful attitudes by choking off free speech and robust debate. And episodes like the one at Penn — along with speech codes that have made “ill-timed laughter” among the punishable sins — have left the codes vulnerable to ridicule.

Still, no one thinks the PC movement, whose manifestations include mandatory “date-rape” counseling for men on some campuses, is going away overnight. And even some critics say they can sympathize with administrators caught between the demands of increasingly self-aware minority, women’s and gay-rights groups on one hand, and a responsibility to free speech on the other.

But many critics say speech codes aren’t the answer. “A lot of liberals who would ordinarily have been big defenders of free speech now feel a conflict,” says Robert Cole, professor emeritus at the University of California at Berkeley’s law

school. “The idea is, let’s just shut these people up and we’ll get equality. You don’t get equality that way.”

Ira Glasser, executive director of the ACLU, agrees. While the group has no problem with narrowly drawn regulations that protect people against actual physical harassment or demonstrable threats, it sees the UC Riverside case as another example of PC run amok.

“When someone wears a T-shirt that others find offensive, too bad,” says Mr. Glasser. “That’s different from threatening, intimidating or scaring someone.”

The UC Riverside flap, in fact, seems a prime example of how attempting to play speech cop between diverse groups results in a mess that sours relations all around. For *Movimiento Estudiantil de Chicana/os de Aztlan* and *La Union Estudiantil de la Raza*, two Hispanic student groups, the scene on Phi Kappa Sigma’s T-shirt implied “that all Mexicans are lazy bums on the beach,” argues Roberto Tijerina, a MEChA co-chairman.

Incensed, three students complained to Kevin Ferguson, campus-activities director. Mr. Ferguson reported the conflict to the school’s InterFraternity Council and told Phi Kappa Sigma chapter president Rick Correz to be ready to defend the group before a council disciplinary board.

In the flick of a toga, moods turned ugly. Mr. Correz says a student who looked Hispanic stopped a fraternity member wearing the shirt, demanded to “see” it, and pushed him when he turned to leave. Another member says he had a tire slashed. Obscene graffiti appeared on campus grounds accusing Phi Kappa Sigma of racism.

Mr. Correz met with Hispanic group members, trying to make amends. He cited the fraternity’s large minority membership — 22 of its 47 members. Mr. Tijerina wasn’t moved; MEChA wanted the chapter expelled.

By then, the wheels of campus justice were in motion. The chapter, after being ordered to appear at an InterFraternity Council judicial board hearing, was disciplined on charges of “violating the high moral and social standards of the Greek community on campus.” Then, Vincent Del Pizzo, assistant vice-chancellor of student services, weighed in. He cited a history of Phi Kappa Sigma offenses, ranging from drinking and lewdness, as well as “the recent incident, which is ignorant, insensitive and considered racist by many chicano/a and latino/a students.” He revoked university recognition of the chapter for three years, effectively banning it as a campus group.

The fraternity, already under sanction from its national office and the campus board, began looking for help. The ACLU declined, citing a heavy caseload. That is when Mr. Howard of the Center for the Study of Popular Culture, entered the picture, agreeing to take the case free of charge.

In a week, the two sides hammered out an unusual settlement: university recognition of the chapter; an agreement not to punish it based on past conduct; Phi Kappa Sigma compliance with sanctions from its headquarters — and First Amendment training for Messrs. Del Pizzo and Ferguson. The training has been scheduled for January, and what it will entail isn’t yet clear.

Although Mr. Ferguson says he isn’t angry, he seems miffed at having to sit through a First Amendment class, saying that “whoever made those decisions” apparently wasn’t aware he once taught U.S. government in high schools. Mr. Del Pizzo didn’t return repeated calls seeking comment.

Indeed, the resolution has left no one happy. MEChA’s Mr. Tijerina allows the T-shirt was a form of protected speech but says, “If it was causing a hostile environment, how can you allow that? I think freedom of speech is being twisted out of proportion.”

And Phi Kappa Sigma is treading carefully. The chapter still has to take sensitivity sessions, which will be taught by a former member of MEChA. Members aren’t wearing the shirts and don’t plan any parties with ethnic themes. Next up on the social calendar: a ’70s bash. “Hopefully, that will avoid offending someone,” says Leonard Huerta, the group’s Hispanic social chairman. He adds, “I was going to have a build-your-own-burrito night, but now I won’t even do that. Go to Del Taco if you want.” Still, Mr. Correz, the fraternity’s president, asserts: “We won the case and we can wear whatever we want.”

TUESDAY, DECEMBER 7, 1993

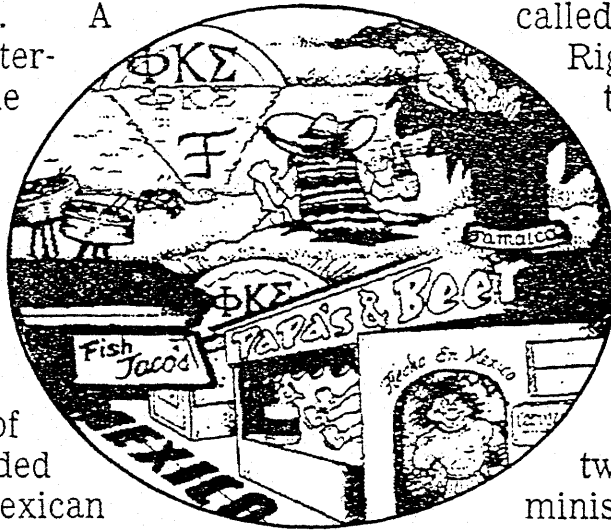
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REVIEW & OUTLOOK

Asides

Free Speech Refresher

The campus "speech" battlefronts are still feeling the shell shocks of a case this fall at the University of California-Riverside. A rambunctious fraternity there was in the process of being booted over a T-shirt advertising both a "South of the Border Fiesta" and a Jamaican theme party. It sported a montage of images that included both drinking and Mexican scenes. The actual logo is depicted nearby. Though the illustration was tame by the standard of souvenirs sold in one of the actual Mexican cantinas it featured, a campus Chicano



group took offense and raised a ruckus. Just as censorious administrators were lowering the boom, however, a shoestring legal outfit called the Individual Rights Foundation interceded on behalf of the frat. As it has done elsewhere, the IRF prevailed on university officials to honor the First Amendment. But this time the settlement had a new twist: Two school administrators have to attend seminars on the meaning of free speech. This looks to be a landmark victory recognizing the legal protections that restrain the universities' instinct to police thought.