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Clash of campus freedom, civility *Need for order can sometimes conflict with speech, protests*

BY ANDREW PETKOFSKY
 TIMES-DISPATCH STAFF WRITER Dec 11, 2005

When Tariq Khan staged a one-man demonstration against military recruiters, he felt safe because he was on a college campus.

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Then he was arrested.

"When the police officer started to handcuff me, I was pretty surprised," Khan said last week. "Usually we tend to think of college campuses as sort of safe havens for this type of thing, for people who want to raise consciousness about controversial issues."

Most colleges and universities, whether public or private, pride themselves on adhering

to principles of free speech and expression as protected by the First Amendment.

But at many schools, the practical problem of creating a civil atmosphere has spawned rules and conduct codes regulating expression to an extent that some feel stifles free speech.

Khan's arrest during a Sept. 29 protest at George Mason University, where he is a junior majoring in sociology, was one of several incidents on campuses across the state this fall that have ignited the concern of free-speech advocates.

At Hampton University, seven students were charged with procedural violations for holding a demonstration in their student center Nov. 2.

In a starkly different situation, some students at the University of Virginia were so outraged when unidentified drive-by name-callers shouted racial epithets at black students that they proposed to make such verbal harassment punishable under university regulations.

Neither Khan nor the "Hampton Seven," as they have been called, were penalized severely for their actions. Khan initially was charged with disturbing the peace and trespassing, but those charges were dropped at the request of the university. Six of the Hampton students were sentenced to community-service work, and the seventh received a warning about violating procedures.

And at U.Va., after much criticism by free-speech advocates, a student committee is considering whether it can draw up verbal-harassment regulations


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that do not violate students' rights to free expression.

Administrators speaking at all three universities last week reiterated their institutional dedication to the principles of free expression.

"We don't censor content," said Bennie McMorris, vice president for student affairs at Hampton University.

At George Mason, spokesman Daniel Walsch said the university has formed a committee of students, faculty and staff to review its speech policies.

"It's always a balance in terms of saying . . . we have free speech," Walsch said. "How do we protect my ability to speak freely and at the same time not hinder your ability to carry on your normal life."

David French, president of the Foundation for Individual Rights in Education, an advocacy group based in Philadelphia, said most colleges restrict free expression more than they will acknowledge.

"The reality is 70 percent of the top 400 schools in this country have speech-restrictive policies of one sort or another," French said.

His group has been involved in the recent cases at George Mason and Hampton universities, and it maintains that U.Va. also has policies that impede free speech.

Colleges may curb free expression inadvertently, or at least indirectly, by creating rules to govern where and when students may speak out, post handbills or hold events. But French said his organization gets even more complaints that grow from schools' overzealous efforts to protect people from harassment.

"They go beyond prohibiting harassment and actually prohibit speech," he said.

By law, private universities are not required to honor First Amendment rights, but French's organization says private schools that claim to honor the principles of free expression have a moral obligation not to stifle speech. He said religious schools claiming that other principles supercede the right to free speech are excused from scrutiny.

French said speech can be penalized without violating the First Amendment only if it actually inhibits a person's ability to do something. But some colleges, starting in the late 1980s, enacted "speech codes" that banned any speech that would offend some people or hurt their feelings.

Many of those early codes have been overturned by court rulings, but colleges continue to include the same sort of prohibitions in sexual-harassment and student-conduct policies. For instance, he said, some policies caution students about making sexual jokes of any kind or using language that might insult someone.

Robert M. O'Neil is a former president of the University of Virginia who now serves as director of the Thomas Jefferson Center for the Protection of Free Expression in Charlottesville.

Though his organization also advocates for free expression and hands out annual "Jefferson Muzzle Awards" to those who stifle free speech, O'Neil said he understands and supports the efforts of college administrations to find a balance in which they allow free expression but also discourage rude and hurtful language.

While there currently are no speech restrictions at U.Va. in the formal regulations that students may be penalized for violating, sexual harassment and other policies may acceptably recommend restraint, he said.

O'Neil also said colleges have set rules about when and where protests may be held, or where literature may be handed out, to maintain an orderly community that still allows everyone to have a say.

"If there aren't some rules, then obviously you have chaos," he said.

Patrick Harvey, a U.Va. senior and editor of the Cavalier Daily student newspaper, said his paper has not taken a stand on any of the changes that have been proposed to ban epithets. But he said those who say mean things hurt

themselves as much as their victims.

"Letting these people speak shows how truly idiotic they are," he said.

Jessica Zappia, a junior at the College of William and Mary from Mechanicsville, said speech on her campus has always seemed pretty freewheeling.

She did recall that the college administration was criticized by First Amendment advocates in her freshman year for interfering with an "affirmative-action bake sale" in which students from a Libertarian organization were setting prices for cookies based on a customers' ethnicity. The event was intended as a comment on racial preferences in college admissions.

"I don't think the students feel prohibited in their speech at all," she said.

At George Mason, Khan said that since his arrest, school administrators have granted him permission several times to stage protests against military recruitment.

"As soon as they started getting all this publicity," he said, "all of a sudden they're acting like they're my best friend."

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