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Send out the clowns:

The UMass censorship machine strikes again

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LIKE PATRONS of the Grand Hotel in the classic movie of the same name, administrators at the University of Massachusetts Amherst come and go, but nothing ever happens — at least as far as the school's longstanding devotion to unconstitutional censorship is concerned. Always advanced in the name of some alleged higher principle, UMass's history of censorship is actually rooted in a mundane bureaucratic need for order. And that makes it all the more screwball.

Many may remember the opposition UMass expressed when notorious gay-basher Paul Cameron was asked to give a speech on campus two decades ago. But it's also important to recall that 10 years earlier, New Left darlings such as Angela Davis also found themselves facing the wrath of a similarly censorship-happy, right-wing administration (Davis was required to provide for and pay for her own security when she spoke at UMass in the late 1970s). Even though the ideological pendulum has swung in the other direction — toward the multicultural left — the tactics and methods the university uses to stifle free debate on campus remain as shameless and despicable as ever.

UMASS'S MOST recent victim is the ancient art of political parody — this time involving a minority-student organization that made accusations of racism against other students. On March 26 of this year, a group of student-government leaders got together in the Office of the Student Center for Educational Research and Advocacy (SCERA), in the UMass Campus Center, for a party following student-government elections. Present at the party was Patrick Higgins, Speaker of the Student Government Association (SGA) and an unsuccessful candidate for SGA president. During the party, a student drew a caricature of Higgins on a dry-erase board hanging on a wall. In the picture, Higgins's tongue was drooping out of his mouth, giving him a decidedly moronic appearance, and he was wearing a pointed hat and white cape reminiscent of the Ku Klux Klan uniform. He was shown holding a burning cross, and the inscription grand wizard was emblazoned on his shirt. A speech bubble had him saying, "I love ALANA!!", a reference to a student group composed of "African, Latino/a, Asian/Pacific Islander, and Native American" students at UMass.

The drawing of Higgins was a clear reference to the just-concluded SGA-election campaign in which ALANA had accused him of being a "racist." Higgins had opposed a controversial UMass

quota system that would set aside a certain number of guaranteed positions for ALANA members in the SGA Senate. It did not take a very high IQ to realize that the drawing of Higgins as a mentally deficient KKK member was a parody meant to poke fun at his accusers. The point of the parody was quite clear: it was a transparent effort to ridicule Higgins's accusers, who argued presumptuously that anyone opposed to racial quotas is a racist.

Photographs were taken at the party, and several depicted the drawing along with various attendees striking silly poses. The photos found their way onto the Web site of student Brian Roberts, one of the revelers. Months later, another student discovered the photographs and circulated them along with a demand that the students standing around the drawing be expelled from student government. Some students insisted that the parodists be expelled from the university. The trouble then escalated.

Higgins's successful opponent in the student-government election, SGA president Eduardo Bustamante, called for action against Higgins. Seeing an opportunity to pander to would-be student censors supposedly fighting racism and to avert yet another embarrassing imbroglio on the benighted campus, Vice-Chancellor Michael Gargano went even further than Bustamante and called not only for the student parodists' removal from office, but for their subjection to official discipline for supposedly violating university policies against "harassment." Of course, that move not only failed to quiet the controversy, but it ignited an even more intense battle and began to garner national attention. In order to hammer the last nail in the parodists' coffin, Gargano sought to add a charge concerning consumption of alcohol at the party and other minor violations. Clearly, however, racial "harassment" was the central charge.

The technical charge was for "harassment conduct less than a physical attack." Here is the section of the UMass Code of Student Conduct that defines the supposed violation:

Conduct less than a physical attack or physical interference which interferes with a person in the conduct of his or her customary or usual affairs, such as the posting of threatening letters directed to the person, the use of threatening language directed at another, harassing or threatening telephone calls, or the vandalism of a person's room (e.g., graffiti). The University has special concern for incidents in which students are subject to such conduct because of membership in a particular racial, religious, gender or sexual orientation group.

The notion that parody, much less the cartoonish drawing in this case, constitutes harassment, a threat, or interference with another student's ability to conduct his or her life affairs is ludicrous on its face. However, even if one were to buy the notion that a student of normal (or even abnormal) sensibilities would find such a parody immobilizing, the fact remains that UMass is a public university bound by the constrictions of the First Amendment's free-speech guarantee. Hence, the parody is clearly fully protected speech.

The most recent binding affirmation of this protection of parody came from the US Supreme Court in 1988, when it reviewed the lawsuit filed by the Reverend Jerry Falwell against *Hustler*

publisher Larry Flynt. Flynt published a parody that claimed the good reverend lost his virginity in a drunken orgy with his own mother in an outhouse. Falwell sued for, among other things, "the intentional infliction of emotional distress," a species of harassment claim. A unanimous Supreme Court ruled in favor of Flynt and *Hustler*, noting: "The appeal of the political cartoon or caricature is often based on exploration of unfortunate physical traits or politically embarrassing events — an exploration often calculated to injure the feelings of the subject of the portrayal. The art of the cartoonist is often not reasoned or evenhanded, but slashing and one-sided." In other words, the very purpose of parody is to wound the sensibilities of the target. This is not "harassment," but, rather, 100 percent constitutionally protected speech.

The Supreme Court ruled in similar fashion four years later on a closely related issue when it upheld the constitutionality of so-called hate speech. It unanimously reversed a conviction under a municipal ordinance criminalizing cross-burning or the use of any other symbol "which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." While all the justices agreed that hate speech was protected, a majority added that the ordinance doubly violated the First Amendment by virtue of its *selective enforcement* against only a certain point of view. The application of this ruling to UMass's actions could not be clearer. Whether speech communicates love, hate, or something in between, it's all protected in this country. And, of course, it's doubly protected on college and university campuses, because notions of "academic freedom" join to supplement the First Amendment.

So even if the parody were a form of "hate speech," it would be protected. But this was not hate speech at all; it was simply poking fun at the overwrought, unfair, hypersensitive, and politically opportunistic accusations of "racism" hurled at students who opposed racial quotas. That didn't prevent Gargano from telling the campus newspaper, the *Daily Collegian*, in a September 27 article: "I have the authority to remove these people from office.... I could give them 500 hours of community service, have them conduct an open-forum discussion; I have a variety of sanctions at my disposal. I'm not ruling out dismissal." He urged the offending parodists — by then dubbed "the KKK Nine" by administrators and faculty slumming for political rectitude — to resign from student office. "Are we clear?" he warned them in the pages of the campus newspaper. "Resign!" Gargano was obviously pressuring the students into "voluntary" resignation in order to avoid an all-out war under the scrutiny of civil-liberties groups and the national news media.

Gargano's strategy appears to have worked so far. Higgins resigned from the SGA at the end of September, and the administration has built a wall of secrecy around the whole matter. According to inquiring reporters and others, Gargano responds to questions simply by noting that the students have already been reprimanded by the university, claiming he cannot say what was done to them so as to protect their privacy. In other words, under the guise of protecting students' privacy, the taxpayers who pay the salaries of Gargano and UMass Amherst chancellor John Lombardi, who has gone beyond mere pandering by creating a 22-member Commission on Racial Diversity to address the supposed crisis, are not allowed to learn

the details of their gross violations of students' constitutional and academic-freedom rights. The students, understandably frightened, have issued no public statement.

So far, letters of protest written by David French, president of the Foundation for Individual Rights in Education (FIRE), on October 7, and by attorney William C. Newman, staff counsel and director of the Western Massachusetts Office of the ACLU of Massachusetts, on October 3, have not forced the administration to back down. (Disclosure: I am a co-founder and current board member of FIRE, as well as an ACLU of Massachusetts board member.) The disciplinary action was actually imposed *after* those letters were received by Lombardi and Gargano.

LOMBARDI AND Gargano clearly have some understanding of First Amendment rights, and that makes their treatment of Higgins and his band of merry jesters all the more egregious. A year ago, the *Daily Collegian* found itself in the national spotlight following the combat death of Army Ranger Pat Tillman, who had left a successful football career in the NFL, joined the Army, and gone to fight in Afghanistan. UMass Amherst graduate student Rene Gonzales wrote a column for the *Collegian* that called Tillman "an idiot ... this ... 'G.I. Joe' guy who got what was coming to him" for "acting out his nationalist-patriotic fantasies forged in years of exposure to Clint Eastwood and Rambo movies." The column gained national attention for its outrageous insensitivity. When the inevitable attacks began against the student columnist, University of Massachusetts president Jack Wilson issued a statement denouncing the article as "a disgusting, arrogant and intellectually immature attack on a human being who died in service to his country." Still, he defended the columnist's free-speech rights, stating: "While I recognize Rene Gonzalez's right of free speech, I must also assert my right of free speech to criticize what he said." Rightly, the university administration protected the student's highly offensive and controversial exercise of his free-speech rights, and added its own views to the free marketplace of ideas.

So it is all the more disheartening that while the administration admirably protected columnist Gonzalez's right to offend millions of citizens at a moment of wartime tragedy, it has acted wholly unreasonably — and unconstitutionally — in its treatment of students who are perceived as out of sync with current campus orthodoxies. These administrators need to be reminded that there are greater values at stake in higher education than a quiet campus, or, for that matter, a politically correct one.

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