Free Speech Rights of Students on Campus

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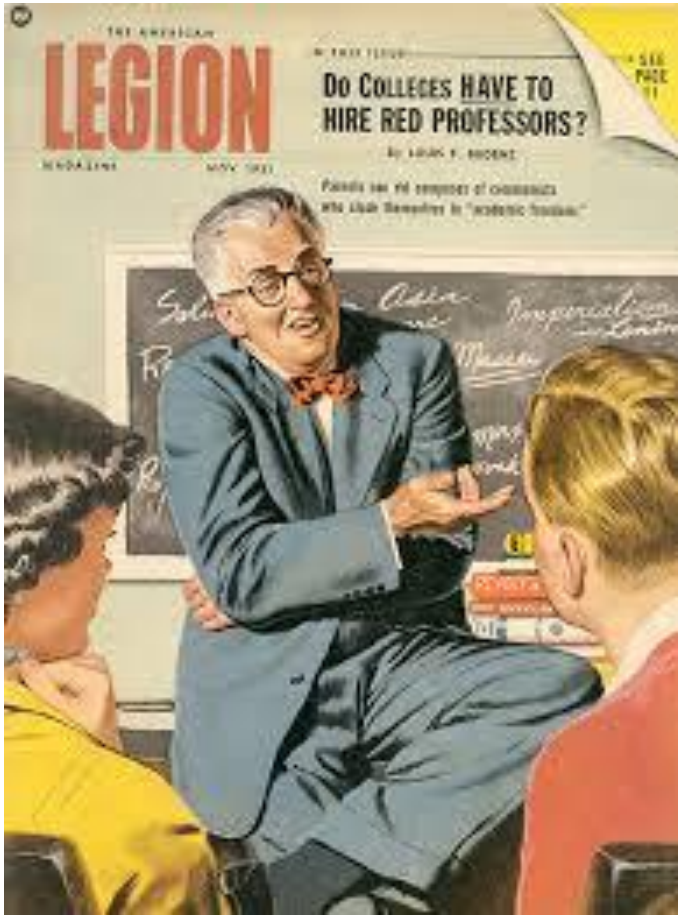
Sweezy v. New Hampshire (1957)

- "To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . "



Sweezy v. New Hampshire (1957)

- "Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

KEYISHIAN V. BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (1967)

- "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

Brown v. Li (9th Circuit 2002)

- Student placed profane disacknowledgement in master's thesis. "That section, entitled 'Disacknowledgements,' began: "I would like to offer special *Fuck You's* to the following degenerates for of being an ever-present hindrance during my graduate career ...." It then identified the Dean and staff of the UCSB graduate school, the managers of Davidson Library, former California Governor Wilson, the Regents of the University of California, and "Science" as having been particularly obstructive to Plaintiff's progress toward his graduate degree.

Student Free Speech Rights in Curricular Setting: *Brown v. Li*

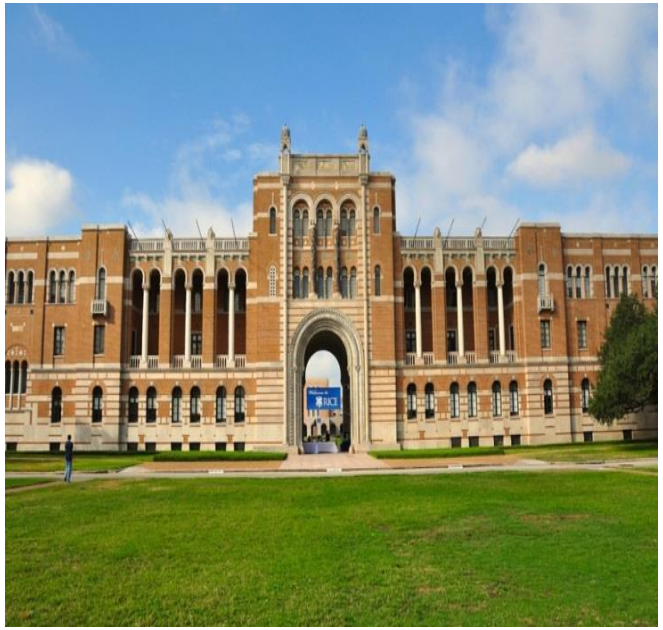
- Ninth Circuit: A student had no constitutional right to insert a profane "disacknowledgement" into his master's thesis. Ninth Circuit ruled that master's project is part of curriculum and that university can control speech in the curricular setting if it has a reasonable pedagogical rationale.

O'Neal v. Falcon, 668 F. Supp. 2d 979 (W.D. Tex. 2009).

A student has no constitutional right to choose abortion for a speech topic in her communications class.

Healy v. James (U.S. 1972)

- A college cannot ban recognition of a student group because it disapproves of the group's philosophy but it can insist that the student group abide by reasonable college rules.



Widmar v. Vincent (U.S. 1981)

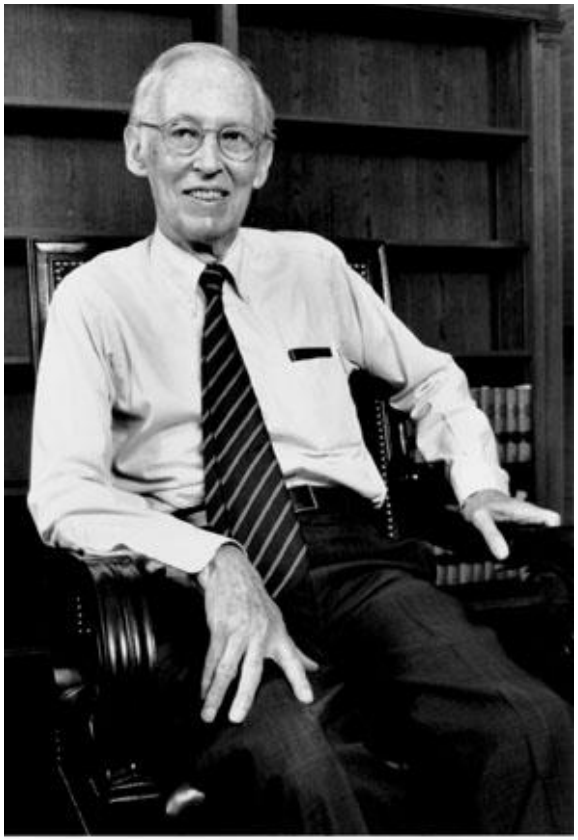
- University denied religious group from using campus facilities, even though it allowed access to more than 100 other groups. University claimed granting access to religious group would violate the Establishment Clause.
- In 8-1 decision, Supreme Court ruled University violated group's First Amendment rights.

Widmar v. Vincent (1981)

Having created a forum generally open for use by student groups, the University, in order to justify discriminatory exclusion from such forum based on the religious content of a group's intended speech, must satisfy the standard of review appropriate to content-based exclusions; *i.e.*, it must show that its regulation is necessary to serve **a compelling state interest**, and that it is narrowly drawn to achieve that end.

Widmar v. Vincent (1981)

- Justice Lewis Powell: "Our holding in this case in no way undermines the capacity of the University to establish reasonable **time, place, and manner** regulations."



Cristian Legal Society v Martinez (2010)

- Supreme Court, in 5 to 4 decision, upheld decision of UC Hastings Law School to exclude Christian Legal Society from being recognized student group on grounds that group discriminated against people who would not sign group's "Statement of Faith," which included adherence to traditional notions of sexual morality and marriage.

Christian Legal Society v. Martinez (2010)

Justice Ginsburg, writing for majority (4-1-4), said university has a reasonable interest in maintaining a diverse and inclusive student body and thus could enforce its "admit all comers" policy for all student groups, a policy that was viewpoint neutral.

"[T]he Law School reasonably adheres to the view that an all-comers policy, to the extent it brings together individuals with diverse backgrounds and beliefs, "encourages tolerance, cooperation, and learning among students."

Gay Student Serv. v. Texas A & M (5th Cir. 1984)

- A public university cannot refuse to recognize a gay student club because it disapproves of the club's views on homosexuality (citing *Healy* and *Widmar*).
- Nor can it refuse to recognize a student club for advocating activity that is illegal.

Do students have a constitutional right to curse in class? Probably not.

Martin v. Parrish (5th Cir. 1986)

“[Y]ou may think economics is a bunch of bullshit," and "if you don't like the way I teach this God damn course there is the door.“

Martin v. Parrish (5th Cir. 1986)

- Court concluded that Martin's speech did not address a matter of public concern.
- "Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse" [citing]*Bethel School District v. Fraser*)
- Higher education "carries on the process of instilling in our citizens necessary democratic virtues, among which are **civility** and **moderation**."

Pugel v. University of Illinois (7th Cir. 2004)

- A graduate student and teaching assistant had no constitutional right to present fraudulent data at an academic conference.

Student Newspapers

The constitutional protections enjoyed by campus newspapers can vary based on the nature of specific campus publications, but in general they enjoy broad First Amendment protection from censorship. See, e.g., *Stanley v. McGrath* (8th Cir. 1987)

Papish v. Bd. of Curators at Univ. of Missouri (1973)

- Graduate student expelled for distributing off-campus newspaper that contained profanity and cartoon depicting sexual act.
- "We think *Healy* makes it clear that the mere dissemination of ideas -- no matter how offensive to good taste -- on a state university campus may not be shut off in the name alone of "conventions of decency."
- Since the First Amendment leaves no room for the operation of a dual standard in the academic community with respect to the content of speech, and because the state University's action here cannot be justified as a nondiscriminatory application of reasonable rules governing conduct, the judgments of the courts below must be reversed."

Off-Campus Speakers
Padgett v. Auburn Univ. (M.D. Ala. 2017)

- "Auburn University cancelled the speech based on its belief that listeners and protest groups opposed to Mr. [Richard} Spencer's ideology would react to the content of his speech by engaging in protests that could cause violence or property damage. **However, discrimination on the basis of message content "cannot be tolerated under the First Amendment," and "[l]isteners' reaction to speech is not a content-neutral basis for regulation." . . .**

Time, manner & Place Regulations *Sonnier v. Crain* (5th Cir. 2010)

- Universities can enforce content-neutral time, manner, and place regulations on off-campus speakers. Fifth Circuit upheld SELU's policy of:
- Seven-day notice requirement
- Two hours a week limitation
- Collection of personal information
- Struck down security fee provision which allowed fee to be waived at sole discretion of University: "Because of the unbridled discretion this provision gives to the University, we conclude that the district court abused its discretion in denying a preliminary injunction with regards to the security fee."

Pro-Life Cougars v. Univ. of Houston (S.D. Tex. 2003)

- University policy allowing Dean of Students to move speech event [pro-life display] from Butler Plaza to obscure location if Dean considered speech to be potentially disruptive violates group's constitutional rights. Policy gives unfettered discretion to a college administrator to determine site.

Take Aways

- Universities have the right to control the curriculum and to regulate student speech in the curricular environment (*Brown v. Li*). Classrooms are not open forums.
- Student newspapers are generally considered to be independent from the university and cannot be censored.
- Students cannot be disciplined for distributing newspapers and pamphlets that contain profane elements or images (*Papish v. Bd. of Curators*).
- Universities that recognize numerous student groups have created limited open forums and cannot exclude a group from that forum based on the group's viewpoint (*Widmar v. Vincent*). But see *Christian Legal Society v. Martinez*.

Take Aways

- Universities may impose reasonable, content-neutral regulations on time, place and manner of campus speech.
- Regulations that are vague or that give unfettered discretion to campus administrators to treat groups differently based on content are unconstitutional and may be struck down See, e.g., *Pro-Life Cougars v. University of Houston*.