

SAFS Newsletter

Society for Academic Freedom and Scholarship

Maintaining freedom in teaching, research and scholarship
Maintaining standards of excellence in academic decisions about students and faculty

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April 2007

MEMORANDUM TO PRINCIPALS, DEANS, ACADEMIC DIRECTORS & CHAIRS

Vivek Goel

Vice-President and Provost, University of Toronto

PDAD&C #38 (2006-07)

Date: February 6, 2007

Re: Upcoming controversial Events On Campus

As been our custom over the last few years, I am writing to alert you to the fact that over the coming weeks and months, there are likely to be a number of student group events and activities which some members of the University community may find controversial.

The essential purpose of the University is to engage in the pursuit of truth, the advancement of learning and the dissemination of knowledge. To achieve this end, all members of the University of Toronto are afforded full freedom of speech and expression, and freedom of assembly. That means members may comment on any issue or idea, and also have the right to criticize the University and society at large.

Discourse and debate have long been recognized as means by which significant contributions have been made to social and political change and the advancement of human rights. To enable the free exchange of ideas and views, the university's core values include tolerance, mutual respect and civility. More specifically, the University believes that all members of its community have the right to study, teach, work, live and debate in an environment that is inclusive, free of discrimination and harassment on the basis of individual attributes such as religion, ethnicity, sexual orientation or gender identity.

Continued on page.... 2

SAFS 2007

CONFERENCE ISSUE

SEE PAGE 11
FOR PROGRAM AND OTHER
INFORMATION

IN THIS ISSUE

- 4 Laurentian University: Academic Freedom
- 5 Carleton University: Academic Freedom
- 5 San Francisco State University: Free Speech
- 6 European Union: Free Speech Fears
- 8 Students' Right to Free Speech
- 9 Free Speech in Halifax
- 9 SMU: More on Censorship Debate
- 12 Campus Tribunals
- 14 The New forced Segregation
- 14 Equity and Excellence
- 16 Diversity in Job Ads at U of T
- 16 Colleges Respond to Ban on Race Preferences

Goel... continued from page 1

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Acting Editor: Dr. CLIVE SELIGMAN

E-mail: safs@safs.ca

Fax for newsletter submissions: (519) 661-3961

Mail for newsletter submissions:

Dr. Clive Seligman

Psychology Department

University of Western Ontario

London, Ontario, N6A 5C2

As a corollary, the University deplores any abuse of the rights of freedom of speech and assembly that shuts down the voices of others or intimidates identifiable individuals and groups. The administration acknowledges that some forms of expression fall short of the legal limits on hate speech, but nonetheless are harmful to identifiable members of our community. The University recognizes that harmful speech is a destructive force on our campuses and, though not prohibited by law, is repugnant to the administration.

In its efforts to deal with harmful speech, the administration will reach out to those individuals and/or communities who are affected by harmful speech or who as a result, collectively, fear for their safety. Those who engage in harmful speech will be warned about the damaging nature of their words and tactics, and urged to advance provocative opinions in a manner that stimulates the widest range of dialogue and debate in a spirit consistent with full freedom of expression in an academic setting.

Events with a high likelihood for harmful speech will be monitored closely for possible violations of University policies and agreements, and repeated violations may result in loss of access to services in the University community. Complaints about alleged violations of policy and law will be investigated promptly by the administration.

Our specific practices in this area have been documented in several previous memoranda to principals, deans, academic directors and chairs:

PDAD&C #79, 2005-06 - Freedom of Speech and Events Organized by Campus Organizations:
<http://www.provost.utoronto.ca/English/79---Freedom->

[of-Speech-and-Events-Organized-by-Campus-Organizations.html](http://www.provost.utoronto.ca/English/46---Freedom-of-Speech-and-Events-Organized-by-Campus-Organizations.html)

PDAD&C #46, 2004-05 – Freedom of Speech and Campus Activities:

<http://www.provost.utoronto.ca/English/46---Freedom-of-Speech-and-Campus-Activities.html>

PDAD&C #48, 2004-05 – Statement on Events Organized by the Arab Students' Collective:

<http://www.provost.utoronto.ca/English/PDADC48-Statement-on-events-organized-by-Arab-Students--Collective.html>

The University's attention to these matters is coordinated through the office of the Deputy Provost & Vice-Provost, Students. If you have any questions or concerns related to freedom of speech and campus activities, please contact Jim Delaney, Associate Director & Senior Policy Advisor, Student Affairs at 416-978-4027 or jim.delaney@utoronto.ca.

SAFS RESPONSE TO PROVOST VIVEK GOEL

Letter to Editor

Re: Free Speech In Name Only, David Frum, Feb. 10.

As Mr. Frum points out, it is not clear that Canada's Charter of Rights and Freedoms provides enough protection for free speech. Unfortunately for free speech, the Charter is not the only one dropping the ball; universities are doing so as well. As part of their mission, universities have a special responsibility to be guardians of free speech. However, earlier this month, Vivek Goel, the vice president and provost of the University of Toronto, wrote: "[S]ome forms of expression fall short of the legal limits of hate speech, but nonetheless are harmful to identifiable members of our community. The university recognizes that harmful speech is a destructive force on our campuses and, though not prohibited by law, is repugnant to the administration." He goes on to say that harmful speech will be "monitored closely."

These assertions are deeply troubling. In going beyond the usual legal restrictions on defamation of character and incitement of violence, they introduce the nebulous and highly subjective notion of "harmful

speech." By what standards will such a notion be judged -- Orwellian? Worse still, Provost Goel proposes using campus police to identify allegedly likely candidates for harmful speech.

Is the trend now moving against the protection of free speech? If neither the Charter nor one of Canada's leading universities is a vigorous protector of free speech, do Canadians have, in fact, free speech?

Phil Sullivan, professor emeritus, University of Toronto;

Clive Seligman, president, Society for Academic Freedom and Scholarship, London, Ontario.

National Post, Wednesday, February 14, 2007.

COMMENTARY AT BLOGUT.CA

FREE SPEECH?

The National Post recently published a letter from our very own Professor Emeritus Phil Sullivan. Together with Clive Seligman from the Society for Academic Freedom and Scholarship in London, Professor Sullivan cited the University in no uncertain terms as "dropping the ball" when it comes to protecting your right to freedom of expression. The online version of the letter can be found here.

Whether or not the University is bound by the Charter of Rights entails a whole mess of jurisprudence that we won't get into here. What is clear is that we are a diverse, talented and driven university community - that we are, as the University says, great minds for a great future. Surely the University of Toronto, which houses some of the country's finest scholars and advocates for the protection of civil liberties, does not mean to deny us exposure to conflicting views, the exchange of ideas, the unpopular dissent that is at the heart of a free western democracy?

I invite your comments about Prof. Sullivan's letter, and especially welcome comments as to whether you, as a U of T student, feel free to voice your beliefs in our community without fear of reprisal.

1. *JP* Says: February 14th, 2007

They're talking about "forms of expression fall short

of the legal limits of hate speech, but nonetheless are harmful to identifiable members of our community..." I think we could use a little context here, i.e., examples? I think U of T is pretty good in terms of free speech. At least, they did pretty well in response to the criticism of this cartoon by The Strand. Read their news release here.

2. *P. A. Sullivan* Says: February 21st, 2007

To the commentator requesting a "little context" I would reply that any one aware of the history of assaults on free speech in the name of avoiding offense should be deeply concerned about the introduction of such nebulous terms "harmful speech."

Our original letter to the NP did, however, include a recent example which was the proximate cause of our decision to write. This example, omitted from the published version, stated as follows:

Almost one year ago, in response to some flyers being posted on the campus that depicted one of the Danish cartoons of Muhammad and some possibly offensive statements, the administration ordered the campus police to take down the posters and forward them to the police. According to the university's president the "Toronto Police advised U of T that these fliers did not constitute hate literature, but also advised that the fliers were a 'point of interest' for them."

3. *JP* Says: February 21st, 2007

Thank you Prof. Sullivan for taking the time to comment on this. Now I certainly see your cause for concern, and frankly, I share the same concern.

4. *P. A. Sullivan* Says: February 22nd, 2007

I discuss these issues in an essay entitled:

"Are Postmodernist Universities and Scholarship Undermining Modern Democracy", in "Scientific values and Civic Virtues," (Noretta Koertge, Editor, Oxford University Press, 2005, pp. 172-190, 2006).

I suggest that anyone aware of the issues I raise in that essay might have serious concerns about certain developments at the University of Toronto. Perhaps the most serious of these is that, despite a mania for planning in recent years, there has been little attempt by Simcoe Hall to examine the corrosive effects of mixing scholarship with advocacy in certain

disciplines, and the associated implications for censorship on contentious topics such as the “Nature/Nurture” controversy.

The censorship problem is nicely characterized by a US journalist. Cited by the free speech advocate Nat Hentoff in his “Free Speech for Me but Not For Thee” (cited in essay), this journalist commented on the pervasive tendency to censor in the name of avoiding offense by observing: “Censorship is the strongest drive in human nature; sex is a weak second.”

This quip is very perceptive. The urge to censor is just as strong today as it was in the past. Only the topics that are considered taboo have changed. □

SAFS LETTER TO PRESIDENT JUDITH WOODSWORTH, LAURENTIAN UNIVERSITY

December 12, 2006

Dr. Judith Woodsworth
President
Laurentian University
Sudbury, ON

Dear President Woodsworth:

I am writing to you on behalf of the Society for Academic Freedom and Scholarship. We are a national organization of scholars and interested others, whose goals are to promote academic freedom in teaching, research, and scholarship and to uphold the merit principle as the basis of academic decision-making regarding students and faculty. For further information, please visit our website at: www.safs.ca.

We understand from several sources that your administration has denied Professor Michael Persinger the opportunity to have the representatives from the Discovery Channel come to your campus to film a demonstration of his prior research. We have read about this episode in a statement by the Laurentian University Faculty Association (dated November 30), in a copy of a letter sent to you by the Canadian Association of University Teachers (dated November 29), and in an article in Northern Life (dated November 30).

Based on the information contained in these documents, we have reached the conclusion that your actions constitute a violation of Professor Persinger’s

academic freedom, specifically his academic freedom to disseminate the results of his research in a manner that he deems appropriate. Your stated objection to the filming is based apparently on the assumption that the procedure used in the demonstration must undergo a research ethics review. As Professor Persinger is not proposing at this time to actually conduct research using this procedure, but rather is merely planning to demonstrate a result that has already been reported in the scientific literature, your demand for a research ethics review is both misguided and an impediment to open communication of research results.

We call on you to reverse your directive and to invite the Discovery Channel to visit the campus to conduct its interview with Professor Persinger and to film the demonstration.

To do less would be a personal injustice to Professor Persinger, a violation of his academic freedom, and a counterproductive message to the public that the administrators at Laurentian University, and not the individual researcher, determine what research results are worthy of media coverage.

We look forward to your reply. We will post our letter to you and your response on our website.

Sincerely,

Clive Seligman, President □

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Clive Seligman, PhD (UWO) President
safs@safs.ca
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tflanaga@ucalgary.ca
Steve Lupker, PhD (UWO)
lupker@uwo.ca
John Mueller, PhD (U. Calgary)
mueller@ucalgary.ca
Peter Suedfeld, PhD FRSC (UBC)
psuedfeld@psych.ubc.ca
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wall@psych.utoronto.ca

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**SAFS LETTER TO MR. SHAWN MENARD,
PRESIDENT, CARLETON UNIVERSITY
STUDENTS ASSOCIATION**

December 11, 2006

Mr. Shawn Menard
President, Carleton University Students Association
(CUSA)
Members of Carleton University Student Council
401 Unicentre Bldg.
1125 Colonel By Drive
Carleton University
Ottawa, ON K1S 5B6

Dear Mr. Menard and Members of the Student Council:

I am writing to you as president of the Society for Academic Freedom and Scholarship. We are a national organization of university faculty members and interested others who are dedicated to the defense of academic freedom and reasoned debate. For further information, please visit our website at www.safs.ca.

According to an article in the National Post (December 7, 2006), the Carleton University Student Council recently passed a motion denying funding and space to any student groups "... that seek to limit or remove a woman's options in the event of pregnancy..." We are not familiar with the status of CUSA within Carleton University or with the constitution of your organization, so we will not comment on the procedural or legal legitimacy of your council's decision.

However, as an organization that believes in academic freedom for both faculty and students, we are opposed to your motion, because it contributes to a climate of intolerance to contrary ideas that is incompatible with the integrity and success of the Academy. The Academy is the one institution in society that is dedicated to the discovery and transmission of truth. Experience teaches us that the truth can not be found without unfettered debate over conflicting ideas. In order to accomplish this goal, advocates of opposing positions must be encouraged to challenge each other in vigorous and reasoned debate that will sharpen the issues and allow free individuals to choose among competing views.

What your motion has accomplished is not the

promotion of debate critical to a healthy university but instead the shortchanging of Carleton's students by restricting their exposure to an opposing point of view. That some may challenge and disagree with the opinion of the majority of Carleton students is not any reason to deny the other side a platform to voice their views. Today, you may feel you struck a blow for women's rights, but you have also laid the bases for some future council to deny support to other groups, including groups whose aims you personally agree with. Much better that all have their say and the winners of the argument be the ones with the best evidence, logic, and ideas rather than the ones with the biggest sticks.

We call on you to rescind the present motion, and show that you have confidence in the student body at Carleton University to sort these things out for themselves, without the heavy hand of the Student Council interfering with their ability to make an informed decision.

Sincerely,

Clive Seligman, President ☐

**VICTORY FOR FREE EXPRESSION AT SAN FRANCISCO STATE UNIVERSITY:
No Punishment for Stepping on Hamas, Hezbollah Flags**

In a crucial victory for free expression, San Francisco State University (SFSU) announced yesterday that its College Republicans will face no punishment for hosting an anti-terrorism rally at which participants stepped on makeshift Hezbollah and Hamas flags. SFSU's decision comes after months of pressure from the Foundation for Individual Rights in Education (FIRE), national and local media, and the public – all of which called on the school to uphold the students' constitutionally guaranteed right to free expression.

"We are relieved that SFSU has come to its senses and recognized that it cannot punish students for constitutionally protected expression," FIRE President Greg Lukianoff said. "But the fact remains that the university should never have investigated or tried them in the first place. This was a protected act of political protest and it is impossible to believe the university did

not know that from the start."

SFSU's shameful attack on free expression began after an October 17, 2006 anti-terrorism rally at which several members of the College Republicans stepped on pieces of paper they had painted to resemble Hamas and Hezbollah flags. Unbeknownst to the protestors, the flags they had copied contained the word "Allah" written in Arabic script. On October 26, a student filed a formal complaint with the university against the College Republicans, alleging "attempts to incite violence and create a hostile environment" and "actions of incivility." Although university administrators could have settled the matter informally or dismissed the charges outright, the university instead chose to press forward with a hearing on the charges.

FIRE wrote to SFSU President Robert A. Corrigan on January 23, 2007, to stress that no American public institution can lawfully prosecute students for engaging in political protest or for desecrating religious symbols. SFSU replied to FIRE's letter on January 29 by saying that the university would continue to investigate the complaint. When SFSU scheduled a hearing for March 9, FIRE immediately wrote to President Corrigan again to urge him to call off the hearing. Undeterred by clearly established constitutional jurisprudence, SFSU went forward with the hearing as scheduled. President Corrigan then responded to FIRE on March 13, once again standing by the university's disciplinary process.

Yesterday afternoon, President Corrigan wrote to FIRE with the welcome news that "the Student Organization Hearing Panel (SOHP) unanimously concluded that the College Republicans organization had not violated the Student Code of Conduct and that there were no grounds to support the student complaint lodged against them."

"SFSU has finally done what it should have done months ago," FIRE Director of Legal and Public Advocacy Samantha Harris said. "The College Republicans should never have been dragged through an investigation and hearing for their protected political expression, and it is an outrage that SFSU carried on with this for so long when it had the power to dismiss the charges informally. We hope that SFSU will make whatever policy changes are necessary to ensure that this does not happen again."

FIRE is a nonprofit educational foundation that unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of individual rights, due process, freedom of expression, academic freedom, and rights of conscience at our nation's colleges and universities. FIRE's efforts to preserve liberty on campuses across America can be viewed at www.thefire.org.

FIRE Press Release, March 20, 2007. □

'GENOCIDE DENIAL' BILL RAISES FREE-SPEECH FEARS EU LAW PROPOSAL

Bruno Waterfield

LONDON - People who question the official history of recent conflicts in Africa and the Balkans could be jailed for up to three years for "genocide denial" under new legislation proposed by the European Union.

Germany, current holder of the group's rotating presidency, will table new legislation to outlaw "racism and xenophobia" this spring. Included in the draft EU directive are plans to outlaw Holocaust denial.

But the proposals, as seen by The Daily Telegraph, go much further and would criminalize those who question the extent of war crimes that have taken place in the past 20 years.

The legislation is expected to trigger a major row across Europe over free speech and academic freedom.

Deborah Lipstadt, a professor of modern Jewish and Holocaust studies at Emory University in Atlanta, believes the German proposals are misplaced.

"I adhere to that pesky little thing called free speech, and I am very concerned when governments restrict it," she said.

"How will we determine precisely what is denial? Will history be decided by historians or in a courtroom?" Berlin's draft EU directive extends the idea of Holocaust denial to the "gross minimization of genocide out of racist and xenophobic motives" to

include crimes dealt with by the International Criminal Court.

The ICC was set up in 2002 after international outcry about war crimes and alleged genocides in the former Yugoslavia and Africa. It was felt that the courts in those countries were either unable or unwilling to ensure justice was done.

The draft text states: "Each member state shall take the measures necessary to ensure that the following intentional conduct is punishable: 'publicly condoning, denying or grossly trivializing of crimes of genocide, crimes against humanity and war crimes as defined in'... the Statute of the ICC."

Retired Major General Lewis MacKenzie, the former commander of UN peacekeepers in Bosnia, courted controversy two years ago by questioning the numbers killed at Srebrenica in 1995. He took issue with the official definition of the massacre as genocide and highlighted "serious doubt" over the estimate of 8,000 Bosnian fatalities and argued math did not support the figure.

"What happened in Srebrenica was definitely a war crime," he said from his home near Ottawa yesterday. "What we're doing is debating over the definition of genocide."

Balkans human rights activists have branded Gen. MacKenzie an "outspoken Srebrenica genocide denier." and, if approved, the EU legislation could see similar comments investigated by the police or prosecuted in the courts after complaints from war crimes investigators or campaigners.

Gen. MacKenzie said he would be surprised if the proposed legislation passed. The EU would also have a difficult time defining genocide, he said, adding it will be interesting to see whether the proposed law's reach extends outside Europe.

Let's face it: I'm more than happy to put my record of service and comments up for public scrutiny. There's nothing I'm going to hide," Gen. MacKenzie said.

A German government spokesman said: "Whether a specific historic crime falls within these definitions would be decided by a court in each case." If agreed by EU member states, the legislation is likely to declare

open season for human rights activists and organizations seeking to establish a body of genocide denial law in Europe's courts.

European Commission officials insist the legislation is necessary: "Racism and xenophobia can manifest themselves in the form of genocide denial, so it is very important to take strong action."

But the legislation faces stiff opposition from academics who fear it would stifle debate over some of the biggest issues in contemporary international relations.

Prof. Lipstadt has an international reputation for challenging Holocaust denial.

She was sued unsuccessfully for libel in 2000 by David Irving, the British historian, after exposing his misrepresentation of historical evidence and association with right-wing extremists. But she does not believe denying the Holocaust or genocide should be a crime.

"The Holocaust has the dubious distinction of being the best documented genocide in history," she said.

"When you pass these kinds of laws it suggests to the uninformed bystander that you don't have the evidence to prove your case."

The professor is also worried about broad-brush definitions of genocide denial, particularly when applied to recent conflicts that are still being researched and investigated.

Even without the threat of prosecution, there is concern that academics will try to avoid controversy by ignoring or even suppressing research that challenges genocide claims or numbers of those killed.

David Chandler, a professor of international relations at the University of Westminster's Centre for the Study of Democracy, fears the draft law could inhibit his work.

"My work teaching and training researchers, and academic work more broadly, is focused upon encouraging critical thinking. Measures like this make academic debate and discussion more difficult," he said.

Prof. Chandler also worries that the legislators will close down democratic debate on foreign policy. "Genocide claims and war-crimes tribunals are highly political and are often linked to controversial Western military interventions. Should this be unquestioned? Is it right for judges to settle such arguments?" he asked.

Norman Stone, a professor of history at Turkey's Koc University, argues that any attempt to legislate against genocide denial is "quite absurd.

"I am dead against this kind of thing," he said. "We cannot have EU or international legal bodies blundering in and telling us what we can and cannot say."

From the *Daily Telegraph*, and published in the *National Post*, Saturday, February 3, 2007, p. A17, with files from MaryVallis. □

EDITORIAL

Students' Right to Free Speech

The Supreme Court heard arguments yesterday in a case that has attracted attention mainly because of its eccentric story line: An Alaska student was suspended from high school in 2002 after he unfurled a banner reading "Bong Hits 4 Jesus" while the Olympic torch passed by. But the case raises important issues of freedom of expression and student censorship that go far beyond the words on that banner. The court should affirm the appeals court's well-reasoned decision that when the school punished the student it violated his First Amendment rights.

Joseph Frederick and his fellow students were allowed to leave the grounds of Juneau-Douglas High School so they could watch the Olympic torch pass nearby. When the cameras began to roll, he unfurled his banner, which he says was meant to be funny and get him on television. The principal took it from him, and suspended him for 10 days.

Mr. Frederick says the suspension violated his rights. The school board insists the principal had the right to confiscate the banner and punish the student because the language undermined its teachings about the dangers of illegal drugs. The San Francisco-based United States Court of Appeals for the Ninth Circuit

ruled for Mr. Frederick, citing the 1969 case *Tinker v. Des Moines Independent Community School District*, which held that students have the right to free speech, which can be suppressed only when the speech disrupts school activities.

The Bush administration joined the school district in arguing that schools have broad authority to limit talk about drugs because of the importance of keeping drugs away from young people. But if schools can limit speech on any subject deemed to be important, students could soon be punished for talking about the war on terror or the war in Iraq because the government also considers those subjects important.

Some school administrators would no doubt use their power to clamp down on conservative speech while others would clamp down on liberal speech. A school that values diversity could punish students who criticize affirmative action, while a more conservative school could ban students from taking outspoken positions about global warming. Religious groups have joined civil libertarians in backing Mr. Frederick because they fear schools will punish students who talk about their religious beliefs.

If the Supreme Court wants to dodge the free-speech-in-school issues, it could rule that the off-campus Olympic torch event was not a formal school activity — and that the principal had no right to limit anyone's free speech there. That would not harm students' free speech rights, but it would also do little to affirm them. The court should go further, and rule that Mr. Frederick's rights were infringed. Students do not have the right to interfere substantially with school activities, but Mr. Frederick did not do that. The court should use this case to reaffirm *Tinker's* famous pronouncement that students do not shed their right to free speech "at the schoolhouse gate."

New York Times, March 20, 2007. □

Bequest to SAFS

Please consider remembering the Society in your will. Even small bequests can help us greatly in carrying on SAFS' work. In most cases, a bequest does not require rewriting your entire will, but can be done simply by adding a codicil. So please do give this some thought.

Thank you.

Elvive Seligman, President

Letter to Editor

WHITE AND BLACK SEPARATISM IN HALIFAX

John E. Mackinnon

Re: How Not to Handle a Genteel Racist (January 27, 2007)

Joseph Brean describes how Jared Taylor's attempt to speak in Halifax was drowned out by protesters who banged on pots and ended up dragging Taylor himself bodily from the room he had rented at the Lord Nelson Hotel. What he doesn't mention is that, in comments on the regional evening news, two Dalhousie Black Studies professors, Dr. David Divine and Isaac Saney, appeared to excuse the thugs for their behaviour. In an age when Nova Scotia authors (John MacLachlan Gray and George Eliot Clarke, in May, 2002) applaud the banning of books from Nova Scotia high schools, it perhaps ought to come as no surprise when Nova Scotia academics express a preference for hooliganism over argument.

According to Karen Mock (former executive director of the Canadian Race Relations Foundation), since open debate makes us vulnerable, liberal confidence in it is simply naïve. But if our commitment to "the big law" of liberal tolerance flags, we are left with what G.K. Chesterton called "the small laws," the meddling of petty bureaucrats and the installation of regulators and their goon mascots to decide for us what we can stand, and what we can be trusted, to hear.

Which brings us to the Dalhousie Black Studies web site, where your readers will find an announcement for an upcoming conference on "the politics of inclusion." Sponsored by the race-exclusive James R. Johnson Chair in Black Canadian Studies, and scheduled for April 11-12, 2007 in Ottawa, the announcement urges participants to question the value of inclusion, to explore its "costs and alleged benefits," and to entertain the inviting prospects of black separatism. My guess is that the Canadian taxpayer will generously subsidize this bio-political frolic, and that professors Divine and Saney will utterly miss the irony. For their view, like Jared Taylor's, is a strange brew of self-pity and self-romance, an expression of misguided petulance that accentuates blood and belonging at the expense of individual character and achievement. In the chests of the white separatist and the black

separatist are two hearts, you might say, that bleat as one.

Dr. John E. MacKinnon is Associate Professor and Chair of the Department of Philosophy, Saint Mary's University.

National Post, January 30, 2007. □

Letter to Editor, SAFS Newsletter

CURING IGNORANCE AND PREJUDICE WITH CENSORSHIP

Stefan Braun

Re: Censorship Debate: Saint Mary's University (SAFS Newsletter, January, 2007)

Mr. Churchill has a rather poor opinion (and even poorer understanding) of *contemporary* Canadian society; its democratic institutions, its Judaic-Christian heritage, its system of social justice, and its diverse people. This country has not one officially correct religion but many diverse religions. It has not one officially correct culture, but many demanding cultures. It has not one officially correct political point of view but many contending political points of view. It has not one officially correct interpretation of history, society, and global tensions, but many competing understandings. Pluralistic societies have pluralistic views. If Mr. Churchill had his way, all Canadians would hear only one view; the politically correct one; his view. He seems not to understand what is fundamentally wrong with this.

Mr. Churchill has his reasons for censorship. He feels that Canadians are far too ignorant and prejudiced to be trusted to react responsibly to public depictions of Muslims as intolerant religious fanatics. Perhaps he's right. But if he is, aren't such hopelessly stupid and bigoted people even more likely to think that there is something to those stereotypes *precisely because* they are hidden from them; to be confirmed in their suspicions that all Muslims are indeed intolerant religious fanatics, who need hide behind censorship what they cannot defend with speech? If Mr. Churchill is wrong, then where's the "need" for censorship?

In fear societies what people *really* think means

nothing. In free societies it means everything. Ah, but there's the dilemma; which Mr. Churchill so conveniently ignores. How are an ignorant and prejudiced, but self-governing, people to *learn* to become more socially enlightened; to responsibly govern themselves? By publicly exposing, challenging, and correcting their ignorance and prejudices through frank discourse, dialogue, debate, and public education? Or by publicly denying, officially concealing, and politically repressing such thoughts with silencing, fiat, and indoctrination?

Right conduct, and the right quiet, can be commanded by official fiat from above. But right thinking and right feeling must be self-willed; it need come with independent thinking, from within. How, then, can Mr. Churchill put so much faith in censorship? Because he mistakes received, official, truth for true public understanding. He confuses enforced public quiet with real public acceptance. He conflates victory with voice. To be sure, censors may hide public prejudice; but they cannot cure it. They may mask social disagreement; but they cannot forever deny it. They may postpone political discord; but they cannot extinguish it. Censorship is a false promise. Right censors can no more succeed than wrong censors. True, and secure, freedom from ignorance and prejudice depends on understanding this.

The only reason Mr. Churchill can so freely, fearlessly, and fully say what he truly thinks of contemporary western democracies (bigoted, ignorant, intolerant, despotic), ironically enough, is because he does so in a free-thinking, pluralistic, polity that separates state from church (and from Synagogue, Mosque, or Temple). The only reason those who would disagree with Mr. Churchill cannot do the same in fear-thinking societies (which he dutifully omits in his letter to equally criticize, much less condemn) is because those societies are official-thinking, homogenous, polities that do not separate Church from State. The problem with fear-thinking societies, where religion and state are effectively one and the same, is that you cannot meaningfully criticize the politics without seriously blaspheming the religion. How politically convenient! Freedom of effective speech for me but not for thee.

Should free societies be more like fear societies; or should they be less so? Should Canadians prefer Mohammadism to pluralism? Should they replace disagreement with dogma? Should they value official

thinking more than independent thinking? Should they prefer obedience and faith to frank discourse and real debate? Do all Canadians have a right to seek truth, for themselves; or do only some, those who have already found it for them?

Mr. Churchill seems oblivious to such questions, much less to any need to grapple with and seriously address them. Then again, why should he? If he can club disagreement into submission with censorship why fight for freedom to speak?

Theocratic and authoritarian understandings of free speech may well be better for fear-thinking Muslims. But it is not better for free-thinking Muslims; that vast, great, and grand, population of unsung, enlightened, faithful who value not only their own rights to be heard but also those of women, gays, Jews and every other historically oppressed group in this vast country that so displeases Mr. Churchill. Mr. Churchill practices well, for himself, the voice he so parsimoniously fails to grant, to so many others. Freedom of frank discourse, dialogue, and debate on all the great and controversial issues of the day (what others are worth debating; those that none dispute?) is the freedom on which all the other freedoms we enjoy in a democracy ultimately depend. It is the mother of all freedoms. Freedom is most meaningful where it is best tested. Freedom to agree is no freedom. Mr. Churchill, it appears, would rather hear himself, and those who agree with him. He prefers freedom of (group) soliloquy to freedom of speech.

Sadly, Mr. Churchill is not alone in failing to appreciate all this. Indeed, it is a pervasive shortcoming, dominating institutions of higher learning across North America. Should we be surprised? Do a web search of university courses in Canada on diversity, equity, or equality. Be prepared to set aside most of the week. Do the same search for independent courses on freedom of speech and you won't even miss your morning coffee. You would do better to look for "free speech" courses tucked neatly into diversity and equity courses as "straw men," to be politically correctly demolished on the altar of mock debate. Law schools, perhaps the one place where one might expect freedom of debate to reign supreme, are no better in the dereliction of their pedagogical duty. Indeed, they are one of the worst. Small wonder that the universities are failing where they should be most succeeding.

Continued on page... 12

Please give notification of attendance by **MAY 3rd**, so that we can arrange appropriate catering.
 Contact Information given below.
 Thank you!

SAFS ANNUAL GENERAL MEETING

Saturday, May 12, 2007, 9:00 am – 3:30 pm

University of Western Ontario, Somerville House, Room 3317

| | |
|---------------------|---|
| 9:00 am – 9:30 am | Registration and refreshments, meet other members |
| 9:30 am – 9:45 am | President's introductory remarks (Clive Seligman) |
| 9:45 am – 11:50 am | “The Politicization of University.” |
| | <i>Chair:</i> Albert Katz , University of Western Ontario |
| | <i>Speakers:</i> Grant Brown , Lawyer, Edmonton, Alberta John Mueller , University of Calgary Clive Seligman , University of Western Ontario |
| 12:00 pm – 12:45 pm | Buffet lunch (in Somerville House, Rm. 3320) |
| 12:45 pm – 2:30 pm | KEYNOTE ADDRESS: (Chair: Clive Seligman, UWO) James Turk , Executive Director, Canadian Association of University Teachers |
| | Academic Freedom |
| 2:30 pm – 2:40 pm | Break |
| 2:40 pm – 3:30 pm | Annual Business Meeting (members only) (Somerville House, Rm. 3317) |

REGISTRATION FEE: \$30.00 per person, may pay at the door. Members must have paid their dues. (Registration includes coffee and lunch, but not parking).

GETTING THERE: From the 401, take Wellington Road North to end, then jog one block west to Richmond Street, go North to University gates (on your left), just North of Huron Street. On campus, follow this road over the bridge, turn left at the light and continue to traffic circle. Visitor parking is on your right next to Alumni Hall once you are almost around the circle. Rate: \$5.00 flat rate. From Highway 7, take Highway 4 South (it becomes Richmond Street) At the fork after Fanshawe, you can either stay left on Richmond to University gates (now on Richmond Street) as above, or stay right and go down Western Road, turn left at 3rd light (Lambton Drive). Visitor parking is on your right as you enter traffic circle. Somerville House is across the traffic circle, 2nd building on Oxford Drive [On Saturday there is usually no one at the Information booths, but check SAFS website: [www.safs.ca/annual meeting](http://www.safs.ca/annual%20meeting) for a campus map.]

ACCOMMODATION: On-campus rooms at Essex Hall are \$44.00 per night including breakfast. A modern, air-conditioned residence, situated at the corner of Western Road and Sarnia Road. (1-519-661-3476). The Station Park Inn on Richmond North at Pall Mall (1-800-561-4574) and Windermere Manor (1-519-858-1414), have UWO rates at under \$100.00 per night.

TO CONFIRM ATTENDANCE AND FOR FURTHER INFORMATION: E-mail: safs@safs.ca, or write to SAFS, 1673 Richmond Street, #344, London, ON, N6G 2N3. For further info contact: Daniella Chirila, e-mail: dchirila@uwo.ca, or (1-519-661-2111, ext. 84690).



See you at the SAFS Conference

Braun...continued from page 10

How can it be otherwise, where debate on freedom of debate turns on the political correctness of the content of the debate?

Stefan Braun, LLB, LL.M, MA, Ph.D. Barrister & Solicitor (of the Bar of Ontario). Dr. Braun has authored numerous scholarly articles on hate censorship and was a recent Finalist for the Harold Adams Innis Prize for best English-language book in the social sciences in Canada, for *Democracy Off: Freedom of Expression and Hate Propaganda Law in Canada* (University of Toronto Press, 2004). □

DO CAMPUS TRIBUNALS WIELD TOO MUCH POWER?

John Higgins

A Summit County, Ohio, jury found Charles Plinton not guilty of selling drugs to a confidential informant in 2004.

A few weeks later, a University of Akron disciplinary board found him "responsible" for "selling drugs to a confidential informant."

The difference between those two words, guilty and responsible, may not sound meaningful to the average person. But it's a distinction that begins to explain the secretive world of college justice in which campus committees may re-try the facts of serious crimes after criminal courts have already decided them.

Critics see the hearings as unaccountable. Star Chambers marshaled to advance political and ideological agendas. "Campus tribunals are the ultimate 'kangaroo court,' an affront to the rational thinking that is supposed to underlie the academic enterprise," said Boston-area attorney Harvey A. Silverglate.

He co-authored "The Shadow University" with Alan Charles Kors and helped found the Foundation for Individual Rights in Education. Disciplinary hearings are not trials; they are more akin to union grievance procedures and other types of administrative law hearings that have much looser rules.

Students usually aren't going to get a lawyer for one of these hearings. The university's representative may advise the panel on how to conduct the hearing; in criminal court, the prosecutor would never advise the judge on how the trial should proceed.

Criminal trials are open to the public and subject to public scrutiny. Student privacy laws keep most campus hearings closed to the public and the records confidential, known only to the student or perhaps a student's parents, depending on age.

To lower students' expectations of due process, universities are advised to use nonlegalistic language to describe their procedures. It's not defendants and trials; it's respondents and hearings. It's not evidence, it's information. Students are not found guilty; they're found responsible or in violation. They aren't sentenced, they're sanctioned.

Changing the word "evidence" to "information" is an attempt to avoid defamation lawsuits because hearing boards cannot accuse students of committing crimes, Silverglate said. "It's meant to keep people from expecting that the campus system is like the criminal justice system in the real world and from expecting a decent level of fairness," Silverglate said.

Universities once kept an even tighter leash on students, standing in place of the parent. That control loosened with the social revolutions of the 1960s, but made a comeback in the 1980s and 1990s as universities attracted more diverse student bodies and sought to provide an educational refuge from racism, sexism and other social evils.

What's changed, said Silverglate, is that campus hearing boards are now deciding serious criminal matters, especially hot-button issues such as date-rape, sexual harassment and hate speech.

"If the student is convicted in the criminal courts, the schools throw out the student, relying on the court's judgment," Silverglate said. "If the student is acquitted, most schools re-try the student, convict him, then punish or expel him. It is a completely loaded deck."

EVIDENCE STANDARDS ARE LOWER

The National Center for Higher Education Risk Management consults with universities throughout the

country on how to lower students' expectations of due process by removing words that evoke the criminal justice system.

Brett A. Sokolow, an attorney and president of the Pennsylvania-based nonprofit, said he hasn't worked with the University of Akron. But he's not surprised that a student found not guilty in a criminal court would still be found "responsible" at the university level.

"By definition, a college's lower evidence standard means that they will often find a student in violation of the conduct code for an offense that results in a not-guilty verdict in court," Sokolow said.

It may be legal, but is it fair? Sokolow thinks so. "I think many people realize we're not convicting students of crimes, and that colleges need more latitude to ensure safety within a closed, trusting community," Sokolow said.

The higher courts have given universities a wide berth in enforcing their own policies, but they do require some due process. Evidence against a student in an administrative hearing should at least be "substantial," he said.

That standard is considerably lower than "beyond a reasonable doubt," the highest level that criminal juries need before convicting someone. The "substantial" standard is even lower than "preponderance," which simply means that guilt is more likely than not 50 percent of the evidence plus a little. Sokolow figures that the substantial standard is satisfied if a third of the evidence points toward guilt. That's a very rough estimate, Sokolow said, but it's still less than half.

"Because no one goes to jail, the standards are more relaxed," Sokolow said. "The more serious the consequence, the more process is due. The courts do not consider suspension or expulsion as extreme deprivations of liberty or property, comparatively speaking."

Evidence standards alone are no guarantee of due process because they can mean different things to different jurors, but standards do provide a guide.

"More than half of colleges use preponderance," Sokolow said. "Many use clear and convincing. A

small number use substantial evidence, but it is the minimum standard required by law."

PROFESSOR CALLS HEARING 'ABERRATION'
Plinton's former department head, Professor Raymond Cox, said a higher standard of evidence probably wouldn't have helped Plinton. The panel that heard Plinton's case decided 3-2 that he was "responsible" for "dealing drugs to a confidential informant." "That's kind of scary, but that's the reality," said Cox, who has a background in administrative law. "Clearly you had three people who said 'I believe cops.' That's a 100-percent statement."

Cox said the university is "very, very sensitive" about drug use on campus. "They're going to bend over backwards to avoid making a mistake that permits people to stay," he said. "It does give you pause."

He said he generally supports the university's hearing process, and believes the Plinton case was an aberration. Cox sat on hearing boards during the 2004-05 school year and always thought of Plinton when he walked into the room. "The process is limited by the strengths and weaknesses of the people sitting in judgment," Cox said.

Knight Ridder Newspapers:

<http://www.southend.wayne.edu/modules/news/article.php?storyid=2348>. □

SUBMISSIONS TO THE SAFS NEWSLETTER

The acting editor welcomes articles, case studies, news items, comments, readings, local chapter news, etc. Please send your submission by e-mail attachment.

Mailing Address:

Dr. Clive Seligman
Psychology Department
University of Western Ontario
London, Ontario, N6A 5C2
Fax: (519) 661-3961
E-mail: safs@safs.ca
Web: www.safs.ca

THE NEW FORCED SEGREGATION

Aaron Hanscom

Celebrating diversity has become one of the main goals of American schools. Students are being taught to think of themselves primarily as members of different ethnic groups, while being discouraged from developing an American identity.

Consider the case of Mount Diablo High School in Concord, California. Mount Diablo's website states that students will "celebrate diversity by being respectful to all walks of life." In keeping with that ethos, last month the school divided students by ethnicity for separate assemblies.

School officials explained that the purpose of segregating the students was to talk about test scores, recognize achievements and celebrate different cultures. Spanish was presumably spoken at the Hispanic assembly because student Ronald Mares said, "When I went to the assembly, I'm Hispanic, but I don't know how to speak Spanish, so I couldn't connect." Freshman Jason Lockett was disappointed with the African-American assembly, at which the words "Black Power" were projected overhead. "It was to compare us and say how much dumber we were than everybody else," Lockett told the *Contra Costa Times*.

Mount Diablo is not the only Golden State school to experiment with this sort of segregation. California High School in San Ramon decided to hold pre-test assemblies for only the black and Hispanic students at his school last year. The school asked the students, whom they divided by the race marked in school records, to meet in separate locations during school hours.

The school's principal explained that the meetings were "much like a coach would talk to you before a game. It was all motivational." But the sports analogy is easily refuted by a simple question: Is there a coach alive who would ever dream of separating his players by race before a big game?

The stories listed above are the ones that make headlines, but the battle against assimilation is being waged in schools throughout the country every day and forced segregation is just one of the tactics. Schools in

California, Arizona and Colorado have banned the display of American flags and patriotic clothing. The Virginia Beach School Board has created a Diversity Task Force and included diversity as one of its seven strategic goals. (Teaching American values isn't one of the other six.) The Seattle Public Schools stated on its Equity and Race Relations Website that "emphasizing individualism as opposed to a more collective ideology [and] defining one form of English as standard" were all forms of racism.

Principal Hansen of Mount Diablo High says, "In this country, race is a very uncomfortable topic, and it's time we got over it." Until that day, apparently, she'll go right ahead making her students feel uncomfortable by reminding them of the color of their skin in segregated assemblies.

Aaron Hanscom, a freelance writer in Los Angeles, teaches elementary school for the Los Angeles Unified School District.

From *TCS_Daily* online, www.tcsdaily.com, March 6, 2007. □

DUBIOUS PARTNERSHIP: Equity and excellence are not equivalent

John Furedy

It is clear from pages 1 and 12-13 of the November 28 issue of the Bulletin that the university administration is not only proud of putting the university "at the vanguard of North American post-secondary institutions for the breadth and scope of its equity policies", but it is now excited about being "poised to take its commitment to practices significantly further through an emphasis on excellence" ("Linking Equity, Excellence").

News of this latest expansion of administrative commitment to equity led me to recall the times when the equity movement was in its infancy at this university, with the creation of one or two equity offices. The stated mission of these offices was to look after matters that the administration no longer felt could be done by the ombudsman's office. That office dealt with injustices against individual members of the academic community independently of those

individuals' skin melanin content, race, ethnicity, genitalia, or preferences in sexual partners.

If the aim of the administration has been to develop the emphasis on equity at this university from these small beginnings, then it has indeed succeeded. So I am impressed by the various "equity events" advertised on page 12, and even more by the number of equity offices and officers that were advertised on page 13. As I am no longer a member of the academic board, I cannot obtain the approximate annual budget for these offices and officers, but would guess that they significantly exceed the \$3.5 million per annum estimate that I obtained about 5 years ago, which itself exceeded the \$1.0 million estimate that I obtained about 10 years ago for the administration's expansion of the "breadth and scope of its equity policies."

A continuing source of logical embarrassment for the administration's equity efforts has been the discrepancy between two goals of the university. One goal is the maximizing of academic merit or excellence, while the other goal is the maximizing of so-called equity and diversity. The former goal requires that only academic merit counts in competitions such as tenure-stream faculty appointments, while the latter (social-engineering) goal requires that other non-merit-associated factors be taken into account. Depending on the weight assigned these other factors, the competitions are biased either in favor or against individuals as a function of whether they belong to "designated group".

This conflict between merit and equity was implicitly acknowledged by most university administrators, as they referred to the importance of "balancing" excellence and equity considerations. Only conflicting goals need balancing, and so the proponents of equity in universities were vulnerable to logical criticisms from such organizations as the Society for Academic Freedom and Scholarship (www.safs.ca) which argued that only merit should be used in the allocation of competitive academic positions, and that the criteria of "equity" were essentially sex- and race-preferential, and hence unfair in a university, even if they may justifiable in some circumstances in society (e.g., composition of police to reflect racial characteristics of the neighborhood).

My university's administration has recently dropped the concept of "balanced" and has shifted over to the

position that excellence and equity are equivalent. This move probably originated with former president Robert Birgeneau, a physicist, who asserted that "excellence and equity go hand in hand" (e.g., <http://www.news.utoronto.ca/bin6/040913-432>). He also added the term "equity" to the title of Angela Hildyard's provostial appointment. Consistent with the equivalence assumption is the vice-provost's current declaration that in the equity-vanguard administration, "we are talking about equity, diversity and excellence all at the same time, that's unique to us here at UofT" ("Linking Equity, Excellence", November 28).

Asserting the equivalence between excellence and equity may work as a slogan to eliminate the perceived conflict between these two goals, but if the equivalence assumption is considered as one that is open to empirical test, then there are two consequences that have recently been tested in research funded by two non-governmental agencies, the Donner Canadian Foundation and the Horowitz foundation. The research (summarized in the 2nd section of <http://www.psych.utoronto.ca/~furedy/equity.htm>) examines the impact of such factors as time, university status, discipline hardness, and locus in Canada on the phraseology of tenure-stream advertisements. The data are ratings provided by trained judges who are blind to those factors when rating the ads on their degrees of emphasis of merit and equity (or affirmative action for American universities). If the equivalence assumption is true, one consequence is that the examined factors should yield the same pattern of results for merit and equity. In fact, all studies, from the initial one (http://www.psych.utoronto.ca/~furedy/Papers/me/JU_DGM6.doc) to the most recent ones in California and Australia, have consistently yielded results where the factors impact quite differently on merit and equity emphases.

The second consequence of the equivalence assumption is that the correlation between merit and equity ratings should be as high as those among the judges for both merit and equity. In fact, the merit/equity ratings correlations range from 0 to 0.35 (the latter accounting for only about 10% of the variance), whereas the inter-judges correlations (a measure of rater reliability) range between 0.80 to 0.95 (these reliabilities have been going up with our later studies, as our methodology improves, and are very high by the standards of social science research).

So unless the equivalence assumption is merely a slogan to be enforced through power rather than truth (as was the case with the Orwellian slogans of “four legs good, two legs better” and “2+2=5”), I suggest that our administration abandon the idea of “talking about equity, diversity and excellence all at the same time”. We should be competing with York University not for Employment Equity Awards, but for genuine excellence in teaching and research.

John Furedy, professor emeritus, University of Toronto, and former president of SAFS.

University of Toronto Bulletin, 10, January 9, 2007. □

EXCELLENCE AND DIVERSITY IN FACULTY HIRING AT UofT

In your job search, you should be looking for the best possible candidate, whether they are Canadian or not. If you have two candidates of equal value, you must hire the Canadian. Sometimes the characteristics which determine the value of a candidate may go beyond their qualifications. In reflecting on proactive recruitment be sure to consider whether an individual's ability to add to the diversity of your department or faculty may increase their desirability and level of excellence. In aiming for excellence in recruitment, remember that this is a socially constructed concept; employing diverse academics may offer the University of Toronto the opportunity to include new knowledge and expertise in its teaching and research. For instance, the use of language such as 'demonstrable excellence' in teaching or research establishes the qualifications for the position and may assist in distinguishing between candidates.

Equity Statement The Employment Equity policy at the University of Toronto requires that advertisements include specific wording to ensure that members of designated groups are encouraged to apply. All advertisements must include the following statement:

The University of Toronto is strongly committed to diversity within its community and especially welcomes applications from visible minority group members, women, Aboriginal persons, persons with

disabilities, members of sexual minority groups, and others who may contribute to the further diversification of ideas.

Statements such as this are widely used in advertising for faculty positions in Canada, the US, the UK and Australia/New Zealand. As Furedy et al. (1999) note, equity statements are used to ensure equality of outcome in the recruitment process, not just equality of opportunity. The statement recognises that, as discussed in the PowerPoint presentations provided, evaluation on the basis of merit can unfairly discriminate. It also suggests a commitment by the institution to equity throughout an employee's tenure (Powney, 1994).

From section on Advertising and Searching.
http://www.provost.utoronto.ca/link/administrators/recruitmenttoolkit/Advertising_and_Searching.htm. □

COLLEGES REGROUP AFTER VOTERS BAN RACE PREFERENCES

Tamar Lewin

With Michigan's new ban on affirmative action going into effect, and similar ballot initiatives looming in other states, many public universities are scrambling to find race-blind ways to attract more blacks and Hispanics.

At Wayne State University Law School in Detroit, a new admissions policy, without mentioning race, allows officials to consider factors like living on an Indian reservation or in mostly black Detroit, or overcoming discrimination or prejudice.

Others are using many different approaches, like working with mostly minority high schools, using minority students as recruiters, and offering summer prep programs for promising students from struggling high schools. Ohio State University, for example, has started a magnet high school with a focus on math and science, to help prepare potential applicants, and sends educators into poor and low-performing middle and elementary schools to encourage children, and their parents, to start planning for college.

Officials across the country have a sense of urgency

about the issue in part because Ward Connerly, the black California businessman behind such initiatives in California and Michigan, is planning a kind of Super Tuesday next fall, with ballot initiatives against racial preferences in several states. He is researching possible campaigns in Arizona, Colorado, Missouri, Nebraska, Nevada, Oregon, South Dakota, Utah and Wyoming, and expects to announce next month which states he has chosen.

Ann Korschgen, vice provost at the University of Missouri, said in a recent interview, “Just this morning, we had a conversation along the line of how we would continue to ensure diversity at our campus if we could not consider race.”

The issue is already heating up in Colorado. This month, two Republican representatives in Colorado asked the state to examine the University of Colorado’s spending on diversity, after a libertarian group questioned the expenditures.

Mr. Connerly said that a decade ago, when California passed its ban, Proposition 209, he thought the state was ahead of its time, but that now, he believes “the country is poised to make a decision about race, about what its place in American life is going to be — and I really believe the popular vote may be the way to achieve that.”

Both defenders and opponents of affirmative action say the lesson of last fall’s campaign in Michigan — where Proposition 2, banning race and gender preferences in public education, employment and contracting, passed by 58 percent to 42 percent despite strong opposition from government, business, labor, education and religious leaders — is that such initiatives can succeed almost anywhere.

“Certain things become popular as state initiatives, like the ban on gay marriages, and restrictions on affirmative action could become one of those things,” said Terry Hartle, senior vice president for government and public affairs at the American Council on Education.

If so, he said, private universities, with their wide discretion in admissions and financial aid, could have a competitive advantage regarding diversity, reshaping the landscape of higher education.

“Private universities can do whatever they want, consistent with federal law and the Supreme Court,” Mr. Hartle said. “Where minority students have a choice between selective public universities that cannot use affirmative action, and selective private universities with strong affirmative action programs, the private universities may seem like the more hospitable places, which would give them an advantage in drawing a diverse student body.”

To many educators, that would be a troubling turnabout.

“You’d think public universities are charged with special responsibility for ensuring access, but it could come to be exactly the opposite, if there are a lot of these state initiatives,” said Evan Caminker, the dean of the University of Michigan Law School, adding, “in terms of public values, it’s a big step backward.”

Mr. Connerly is unbothered: If black and Hispanic students are rare at selective universities, the solution is better academic preparation, not special treatment in admissions. “Every individual should have the same opportunity to compete,” he said. “I don’t worry about the outcomes.”

Legally, affirmative action has been a moving target. In 2003, the Supreme Court ruled in cases involving the University of Michigan that race could be one of many factors in admissions, although admissions offices could not give extra points to minority candidates. Many colleges nationwide then moved to “holistic” review, considering applicants’ ethnicity, but not awarding a set number of points. In states that could face a ballot initiative campaign, though, that standard could fall.

Nationwide, after 30 years of debate, and litigation, over affirmative action, universities have made strikingly little progress toward racially representative student bodies. And recently, with growing awareness that affluent students are vastly overrepresented at selective colleges, the longstanding focus on racial diversity has been joined by a growing concern about economic diversity.

Currently, four states with highly ranked public universities — California, Florida, Michigan and Washington — forbid racial preferences, either because of ballot propositions or decisions by elected

officials.

Texas banned affirmative action for seven years. The University of Texas resumed consideration of race after the 2003 United States Supreme Court ruling. "We need every tool we can get," concluded Dr. Bruce Walker, the university's director of admissions.

In California and Texas, the first two states to ban racial preferences, underrepresented minorities at the flagship universities declined — even though both states, and Florida, adopted plans giving a percentage of top high school graduates guaranteed admission to state universities.

In Texas, students admitted through the Top 10 percent plan swamped the flagship Austin campus. But the plan, now being rethought by the Legislature, never brought in many minority students. Last fall, with both race-conscious admissions and the Top 10 plan, blacks made up an all-time high of 5 percent of the freshman class, and Hispanics 19 percent.

A decade after the California ban, only 2 percent of this year's freshmen at the University of California, Los Angeles, are black: a 30-year low. Hispanic representation at U.C.L.A. has dropped, too. At Berkeley, the number of blacks in the freshman class plunged by half the year after the ban, and the number of Hispanics nearly as much.

Systemwide, blacks make up only 3 percent of U.C. freshmen, although about 7 percent of the state's high school graduates are black. Most top black students choose private institutions over state campuses. Over all, of the top third of all students offered admission to the University of California class of 2005, most enrolled and only 19 percent went instead to selective private colleges. But among blacks in that group, 51 percent chose selective private colleges. Meanwhile, up the coast, Stanford University is enrolling more underrepresented minority students. Among this year's freshmen, 11 percent are African-American, up from 8 percent in 1995; Hispanic enrollment has risen, too.

"Folks look for a place that's comfortable," said Richard Shaw, Stanford's admissions dean. "They want a sense that there's kids like them at the institution."

The University of Michigan, with other state

institutions, tried to win a delay of the ban so it would not hit in the middle of this year's admissions cycle. But the courts rejected this effort, so officials have stopped considering race and gender as factors in admissions, and worry that next year's entering class will be less diverse. Many officials worry that they will lose top minority candidates to selective private universities.

"We know from colleagues in Texas and California that if we can't take race into account, we're at a competitive disadvantage," said Julie Peterson, a spokeswoman for the University of Michigan, where two-thirds of the applicants are from out of state.

Since most of Michigan is overwhelmingly white, said Mary Sue Coleman, the university's president, a plan guaranteeing admission to a percentage of top high school graduates would have little impact, and nothing short of affirmative action will maintain the university's racial diversity.

"Of course, you want to look at family income, and being the first in the family to attend college and those kinds of factors, of course we do that, but it doesn't get us to a racially diverse student body," Dr. Coleman said.

At the University of North Carolina, Chapel Hill, a program guaranteeing that low-income students can graduate debt-free helped to increase the percentage of blacks in the freshman class to 12 percent, and to increase both economic diversity and the enrollment of underrepresented minority students. Other states have started similar programs.

In Detroit, Wayne State University Law School recently adopted a new admissions policy. Jonathan Weinberg, the professor assigned last year to draft a contingency policy, looked at other states with race-blind admissions and found that instead of race, they look to "a set of broader diversity concerns that go to socioeconomic status."

Last month, the faculty adopted his policy, eliminating any mention of race, but broadening the factors the admissions office may consider. Those include being the first in the family to go to college or graduate school; having overcome substantial obstacles, including prejudice and discrimination; being multilingual; and residence abroad, in Detroit or on an

Indian reservation.

Frank Wu, the law school’s dean, said Wayne State’s effort to comply with the law could bring a legal challenge.

“There’s a new fight building,” Mr. Wu said, “and that’s going to be whether the mere fact that you’re striving for diversity means you’re somehow trying to get around the ban and find proxies, or pretexts, for ace, and that that’s impermissible. It’s ironic, but in some quarters our effort to adopt a new policy to comply with Prop 2 has been interpreted as an effort to circumvent it.”

Roger Clegg, president of the Council for Equal Opportunity, which opposes racial preferences, said policies like Wayne State’s do raise questions.

“I have a real problem when schools adopt what on their face are race-neutral criteria, if they are doing so to reach a predetermined racial and ethnic goal,” Mr. Clegg said. “Both in law and in common sense, the motivation matters.”

At Ohio State University, where admissions are increasingly selective, officials are looking for a long-term answer. “When we saw what was coming down the road, we started looking to other models, but no other model results in as much diversity,” said Mabel Freeman, assistant vice president at Ohio State. “The only long-term solution is to do better in the pipeline and make sure all kids get the best education possible, K-12.”

New York Times, January 26, 2007. □

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1673 Richmond Street, #344, London, Ontario, Canada, N6G 2N3, e-mail: safs@safs.ca
Secretary: Daniella Chirila, Department of Psychology, University of Western Ontario, e-mail: secretary@safs.ca

