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Keep Big Brother off UW campus

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The Dispatch, a new online magazine, ran an article this month exposing how campus citizens at UW-Madison have been using the university's new "Bias Response Team" to inform on people — including faculty, students and staff — who say things in class or elsewhere that the informers consider biased or insensitive.

For example, a sociology professor mentioned to his students that some theories in higher education are "sacred cows" — a term frequently used to describe something that is taboo to challenge. A student who grew up in India then filed a complaint asserting that the professor's use of the term was "condescending and racist."

Lovers of freedom quite properly castigate China for the way it has instituted a robotic and oppressive Orwellian state replete with massive surveillance and informants. But is higher education instituting its own "China-Lite" versions, causing Orwell to stir in his grave?

During the last academic year, 107 such bias reports were filed at UW-Madison. According to the Foundation for Individual Rights in Education, at least 232 institutions possess such programs. These programs often coexist with related programs or policies that list words and terms that constitute "microaggressions" and encourage faculty use of "trigger warnings" in class that alert students of course topics the students might find disturbing.

The problem is that microaggression lists and trigger warning policies are often very broad in application. Such terms as "equality of opportunity" have been considered microaggressions, while students have called for trigger warnings for such classic books as "The Great Gatsby" and Ovid's "Metamorphoses."

As reporter Christian Schneider tellingly pointed out in his Dispatch essay, "In some ways, Bias Response Teams are more stifling than the pernicious campus speech codes of the 1980s — they turn classrooms, dorms, and student unions into surveillance states" where even private conversations are reported to the nanny campus bureaucracy.

Schneider's claim that the new programs could be worse than the old discredited speech codes is especially relevant to UW-Madison. Back in the late 1980s, the university was a national leader in the speech code movement, passing both a student speech code and a faculty code.

But we reversed course in two ways. First, a federal court invalidated the student code in 1991, which also applied to all University of Wisconsin System schools, and no student code replaced it. Second, in 1999 a faculty and student free-speech movement that I helped to lead convinced the Faculty Senate to abolish the faculty code, which had been broadly written and misapplied in

practice, leading to some infamous improper investigations. This vote was the first known example in the nation of a speech code being voluntarily rescinded by a faculty vote.

Free speech prosperity generally prevailed over the course of the next decade, at least relatively so. But now Madison and other schools have instituted new programs that often constitute end runs around outright rule-based censorship.

As written, UW-Madison's bias response standard conforms to First Amendment doctrine regarding the line between free speech and illegal harassment. Accordingly, the program has received a "green light" from the Foundation for Individual Rights in Education (FIRE), which means it is First Amendment-friendly as written. In fact, the administration worked with FIRE's Azhar Majeed and me to achieve this standing, which now also applies to other UW-Madison-based harassment rules. And the administration has been clear about two things: The program has not sanctioned anyone, and administrators are trained to keep the program First Amendment-friendly.

All this redounds to UW-Madison's credit.

But have such assurances answered the Orwellian problem? When the proverbial rubber hits the road, what matters most is a policy's application and effect, not how it is written.

The mere fact that improper reports have been filed is hazardous for at least two reasons. First, the spread of improper accusations of racism and related offenses chills the intellectual incentives of many well-intentioned individuals to speak their minds. Second, in Wisconsin, reports in such programs are subject to open records requests, thereby placing every student and faculty member on notice that Big Brother is watching, and that his or her future prospects could be ruined or harmed.

Given the climate for free speech in higher education today, these harmful effects can readily take place, especially in institutions that lack UW-Madison's commitment to First Amendment principles. It is time to let Orwell rest in peace.

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