

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

Christine: You are listening to Higher Ed Now, ACTA's podcast on issues and higher education. I'm Christine Ravold, your host.

00:00:12

Christine: In the studio today, I have one of the nation's leading experts on civil liberties on campus. Greg Lukianoff is President and a CEO of FIRE, the Foundation for Individual Rights and Education, the author of *Freedom from Speech and Unlearning Liberty*, *Campus Censorship* and *the End of American Debate*, as well as numerous columns and articles about free speech. Greg, welcome to Higher Ed Now.

Greg Lukianoff: Thanks for having me.

Christine: So for those of us at home who aren't as closely attuned to the state of the First Amendment on campus, can you explain a little bit about what FIRE works on to further freedom in higher education?

Greg Lukianoff: Sure. FIRE, it stands for the Foundation of Individual Rights in Education. We were founded in 1999 by Harvey Silverglate and Alan Charles Kors. Alan is a Professor of the Enlightenment at Penn and Harvey's a civil liberties lawyer in Cambridge.

Christine: And good ACTA friends as well.

Greg Lukianoff: Oh, absolutely. Yeah. And we were founded because Harvey and Alan were both increasingly concerned that universities that once had been, you know, bastions of freedom of speech, increasingly seemed to be punishing students—not so much for what they did but rather for what they said. And they wrote a book called, *The Shadow University* in 1998. They had started becoming

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

concerned about this in the early 80's, so they watched this sort of deteriorate for long time and then in the late 80's you started having the rise of the first modern, politically correct free speech, the speech code movement. And universities across the country passed policies that banned offensive or hurtful speech. And all of these things, if they happened at public colleges, were defeated in a court of law. Even at my alma mater, Stanford, which is a private college, it was defeated under a state law that said universities couldn't have these kind of speech codes. So, that's where it came from initially, and I think Harvey and Alan.... Harvey sort of laughs at himself. He thought that we'd have this problem solved in 10 years. He thought this was so manifestly ridiculous that universities should be right at the front defending free speech and due process and it turns out it didn't quite work out that way.

00:02:14

Christine: No, but it was not a short-term project.

Greg Lukianoff: So, I started at FIRE when it was about a year-and-a-half old, back in 2001. And even though I specialized in First Amendment law, even though I worked for the ACLU of Northern California and even though I was very familiar with free speech controversies going back to, you know, before the founding of the Republic, I was not prepared for how easy was to get in trouble on a college campus, even back in 2001. We've involved pretty much—if listeners have heard about any free speech controversy over the last fifteen years, chances are—on-campus that is—we've been involved in it. And, in some cases, it's probably the case that we're the reason that they heard about it *[laughs]* because our primary weapon has always been publicity. We've been involved in fighting free speech zones on campus where they tell students that they have to get into tiny little areas if they want to protest. We fight other kinds of speech codes. Some of the classic FIRE cases include a student at Indiana University, Purdue University and Annapolis who was found guilty of racial

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

harassment just for publicly reading a book called *Notre Dame Versus the Klan*. It was about the defeat of the Klan when they marched on Notre Dame in 1924, I believe.

00:03:26

Christine: So we're judging books by their covers now?

Greg Lukianoff: Yes, literally judging books by its cover, and he was found guilty of racial harassment. It took the combined efforts of the local ACLU, FIRE and an article in the *Wall Street Journal* to get this university to fully back down. That's when I feel like a lot of people weren't even paying that much attention to this issue. The different phases I've seen in my career is that, for most of the time, the main censors on-campus were administrators. They were by far and away the people who understood free speech less, the least, and were the most aggressive about policing the speech of students and faculty members.

Christine Which brings us to probably this academic year. Can you tell us what's been happening? From where I'm sitting, it was an awful year for free speech.

Greg Lukianoff: Yes. Well, it's actually been a couple of years now. So the second phase that we entered was that the federal government got a lot more aggressive about its definition for harassment and that became much vaguer and much broader to the point at which it would really be laughed out of court if we could figure out a way to directly challenge it, which we think we have at a case at Louisiana State University.

Christine: Is the *2011 Dear Colleague Letter*?

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

00:04:36

Greg Lukianoff: It's not that. The *2011 Dear Colleague Letter* is more about due process. But that was the symbol of the Department of Education getting much more aggressive. It was about two years after that that the Department of Education reissued—and then the settlement of University of Montana—said that their new definitions of harassment, which would serve as a blueprint for every school around the country, now simply defined harassment as “unwelcomed verbal conduct,” also known as speech of a sexual nature. What people also need to understand is that any time the OCR makes pronouncements about what harassment means, most schools in most states automatically apply that to any number of additional categories that go well beyond sex. So that's why you end with the ridiculous policy at the University of Montana that included, in the predicted list of people, things that wouldn't surprise you so much like race or religion, but also things like political belief. So you're saying, “It's harassment if I hear unwelcomed political beliefs? How on earth can you function at a university or in a free society without facing unwelcomed political beliefs?”

Christine: You could ask Emory students.

Greg Lukianoff: Yes. Sure, that's a horrifying case. But at some point, I'd say, about two or three years ago, and I think I really first noticed it in, like, the fall of 2013, the saddest development we've seen, is that for the most part throughout my entire career, the best constituency for freedom of speech on a college campus were the students themselves. They got it better than other people. In the last two or three years, that's been flipped on its head. I don't know exactly why but increasingly we're seeing students not demanding free speech but demanding freedom from speech.

Christine: Which brings you to *Freedom From Speech*, which you wrote.

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

00:06:31

Greg Lukianoff: Right. That was a book that I wrote in the summer of 2014, about two years ago, and it's a very short book. It's only about nine-thousand words. It's the one I actually now bring if I'm meeting someone for a lunch, if they want to read something by me. I'm like, "I won't ask you to read ninety-five thousand words on *Learning Liberty*. How about the nine-thousand-word *Freedom From Speech?*" And in that, I talk about the shift that I've seen in my lifetime, and I also talk about how I see that we shouldn't be surprised that, as societies get more comfortable, as they get wealthier, as all of these advancements allow us surround ourselves with circles of people who agree with us and agree that we're going to seek that out. And this is a theory that Ronald Inglehart was talking about in the 1970s, which was called the *Post Materialist Society*, that he actually described as being very positive. That as a society's become less industrial and become otherwise more affluent, you can increasingly see people moving to communities that "reflect their values." And add to that that people can consume media all day long that reflect their existing point of view and you end up having this situation where people echo chambers were getting ever thicker and thicker. There are lots of problems with that, but not the least of which is the problem of runaway polarization effects, that essentially people become much more radical in what they believe and have a tendency to view people that don't agree with them as either evil or stupid. And we see this in our country right now and I think that this is something that's going on all over the world, frankly, largely for otherwise positive reasons. But that we shouldn't just think that this problem on campus is some kind of discrete little nonsense called political correctness.

Christine: No, because eventually they're going to graduate.

Greg Lukianoff: Eventually they're going to graduate. But I also think we should understand that it's almost being like an historical force, that essentially—when

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

I'm feeling less charitable, I sometimes talk about Maslow's pinnacle. That essentially, once you get to the top of Maslow's hierarchy, there's a little, sort of, antenna on the top of it where we start caring really, really trivial things. [Laughs.]

00:08:38

Christine: Oh dear. That's treating privileged theory on its own. [Laughter.] When you were talking about *Freedom From Speech* being the thing you give people, I give my colleagues and my interlocutors *The Coddling of the American Mind*, which is possibly my favorite explanation of free speech and why it's important on campus. But the element that's so beautiful about it is it's not just bad for learning, is that it's bad for mental health.

Greg Lukianoff: Yes. *Coddling of the American Mind*, the idea behind it was something I'd been thinking about for years and I'm personally a big fan—the FIRE's closely involved with a lot of famous psychologists, including people like Stephen Pinker, and Paul Bloom is a friend at Yale, but also Jonathan Haidt and I became friends a couple of years ago and I read this stuff voraciously. I'm fascinated about it. Not to be overly candid, I've personally benefitted from cognitive behavioral therapy myself. And the interesting thing about cognitive behavioral therapy is, all that it is, is looking at your automatic thoughts, writing them down, and asking yourself "Is this rational?" Now, you might wonder, "Well, how can this possibly help you?" It really dramatically can help you because a lot of times if you're anxious or depressed or feeling down, there's probably some amount of it, exaggerated discourse, going on in your head. So if someone gets really devastated by a date not working out, there's probably a little bit of dialogue in their head going, "Well, I'm going to die alone." Or, "This is the worst thing that ever happened to me." Or, "I'm never going to recover from this." All of these things, that once you write them down and ask yourself, "Is this a cognitive distortion?", you can actually say, "Oh, actually, that's an overgeneralization."

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

That's catastrophizing. That's mindreading." This entire list of things of different, sort of, lazy thinking that we engage in that is very harmful to us.

Christine: When you've got colleges reinforcing that, they're just reinforcing lazy thinking.

00:10:34

Greg Lukianoff: Well, they're reinforcing lazy thinking and they're also, I think, teaching to engage in cognitive distortions. Meanwhile, we see this big spike in depression and anxiety on college campuses. My and John's point in the article is, "Should we really be surprised that there's a big spike in anxiety and depression on campus when we know that these trends of mental habits cause anxiety and depression and we're teaching people to engage in catastrophizing all the time?" I mean, you look at the stuff that people are concerned about on campus and there's a reason why people off-campus tend to find this stuff so ludicrous. Before I talk about microaggressions, I do always feel like I have to give this caveat. As someone who studies cross-cultural communications, I think microaggressions are an amazingly interesting academic topic for study. As soon as you start policing them and telling students that they should be on the lookout for these things all the time because they are tiny forms of violent oppression against you, nothing could be more diametrically opposed to what they teach you if you want to be a happy person. It's literally like saying, "As we've all read, everyone should sweat the small stuff." There's a reason why you've never read that because everybody knows that that's a terrible way to live a life. But, meanwhile, getting students to be, like, "No, this is the really important stuff – these really small slights – and it doesn't matter what someone intended. It doesn't matter where they were coming from. Doesn't matter if it's the purity of their heart. If they say any of these unintentional slights, then that's a big deal." And it's a formula for creating people who are paranoid, people who are very nervous about the world in which they live. Part of the point of *The Coddling the*

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

American Mind was just saying that we have the ability to actually evaluate the way students are thinking about things in through the examples we give them and through the way they actually argue through things. And, meanwhile, I feel like we are teaching a generation of students the habits of the anxious and depressed.

00:12:36

Christine: Dr. Derald Wing Sue, who published the pinnacle article about microaggressions recently wrote—he didn’t write but he spoke to someone—published by the Chronicle of Higher Education, that he never meant microaggressions to be used as an item for censorship. It was more of a self-reflective idea and instead campuses and administrations have jumped on it, both feet in, to try and use that as a way to thought police speech and actions on campus. I think there’s an orthodoxy that’s possible of reinforce when you start from that point.

Greg Lukianoff: Absolutely. And Wing Sue, meanwhile, was definitely held up of a champion of fighting microaggressions. Even though it wasn’t his term, it was something that another scholar came up with in the 1970s, he’s become kind of the face of it. But to a degree, of course they weren’t meant to be enforced. They’re, for the most part, supposed to be unconscious slights. And the idea to improve the state of discourse, let alone psychological health, on a college campus by saying, “Walk on eggshells, by the way, around each other.” “Be very, very nervous about what you say.” It’s a completely asinine idea if you want genuine interaction across lines of actual difference.

Christine: We’re also interested, as we’re approaching this election season, in civic discourse and debate. Meanwhile, twenty-seven percent of college students, according to a recent Gallup poll, supported restricting the expression

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

of political views that upset or offend certain groups. I don't know how we're supposed to have the election.

00:14:10

Greg Lukianoff: Yes. You mentioned Emory and Emory made national news because some student, and I'm willing to bet the student probably didn't even support Trump but I suspect he was trying to get a rise out of students, wrote "Trump 2016" in chalk at Emory. People who may not know that at a lot of campuses, it's very popular and common to write messages to each other in chalk on the sidewalks. A lot of universities have chalking policies that even allow for that like Emory did. But students' reaction to it definitely reflected the catastrophizing John Haidt and I warned about. And you have students coming out saying that they felt physically threatened because people were supporting Trump on campus and they felt afraid for their physical safety and integrity because someone had chalked "Trump 2016." You can look at this from a bunch of different ways. On one level, it's kind of ridiculous. On another level, it's like, "Wow, are we really teaching students that someone supporting a candidate they really, really don't like is tantamount to them being in physical danger?" And, to be frank, with the response that we've gotten over the past year from student activists who don't like free speech, they really don't make a distinction between words and violence. We've had on Twitter people writing and saying, "How can you support the right to hate speech anywhere because that's ultimately a form of violence against people?" And you think, "Okay, where do we begin? First of all, what's the case you're talking about in which we're defending hates speech?" Because even though we do, we're first Amendment people, we'd absolutely defend someone engaging in even bigoted speech, if you look at the library of FIRE cases, most of them are ridiculously tame. We're dealing with things that you have to really do some mental gymnastics to interpret as anything close to hate speech, at least by any sensible legal definition.

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

Christine: But people are entitled to, they have the right to, answer that speech. Instead they just shut it down. I'm trying to figure out, because ACTA does lots of work on civic literacy and civic discourse, is the shutting down of speech a symptom of civic illiteracy or is a contributor to civic illiteracy, because you have this circle going where, if we're shutting it down, then we're not talking about it. Then people don't know about their rights, and it continues on and on.

00:16:33

Greg Lukianoff: I'm not totally sure. I never really know the "chicken and the egg" questions. [*Laughter.*] I definitely would like people to have better civic understanding of it but, more recently when I've been writing and the most recent book proposal I did, was very much about explaining freedom of speech from the most basic, philosophical level. It would be really nice if people had some civic understanding. The idea that you have to answer the question, you know, "Well, free speech ultimately favors the powerful." It's, like, "Um. No. Actually democracy...."

Christine: Yes, but it's the greatest weapon of the oppressed.

Greg Lukianoff: Yes, exactly. You don't need a special Amendment to protect the rights of the powerful majority. You need a free speech right to protect the rights of the minority. That's just Civics 101. And it's not a coincidence that the civil rights movement did not start until there was a strong interpretation of the first Amendment that activists could use to protect themselves with. It's one of the reasons why you started having the flowering of the civil rights movement in the 1950s because, in the late 1950s, you start having a particularly strong interpretation of the first Amendment, but students aren't taught that.

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

Christine: They're also cutting their nose off to spite their face, too, because empowering the administrators to police speech, who knows when they're going to be on the wrong side of the administration?

00:17:49

Greg Lukianoff: Yes. That's definitely an argument that you can make and we make often is that, essentially, you're asking power to do right by you. You're essentially – and that's one of the things that made the protest last fall so strange – is that you had students across the country and some of them weren't demanding speech codes, but some of them were, and they were sort more on the Black Lives Matter vein of a protest. They were talking about racial injustice on campus and that kind of stuff. But one of the things that a lot of them were doing, which we found very disturbing, was demanding new speech codes. To civil activists from a previous era, this just seemed nuts because it's, like, "No. You don't ask power to increase its own power because you assume that power will do right by you. Fundamentally, I thought you would at least kind of understand that power oftentimes is not on your side and that it could actually be used against you." And this has already happened in a couple of different cases with people making offensive speech and hate speech arguments against Black Lives Matter activists, quickly pointing out, whether it's their intention or not, that this is a double-edge sword, of course.

Christine: That's something that ACTA's dealt with too because we don't like to see students of faculty requesting speech codes. We also really didn't like to see professors, like Melissa Click, telling a student journalist that he couldn't film a protest on campus. But it's not the protest that's the problem. It's the question of what the students are demanding. It's the question of the rule of law, of universities giving in to students, and what it does to the civic discourse on campus.

ACTA
Higher Ed Now
The State of Free Speech on Campus Part I

00:19:22

Greg Lukianoff: Yes. I got to talk to FIRE's interns yesterday, or over the past couple of days, at length and I definitely heard some stories that would have sounded cartoonish if you told me them five years ago. You know, students reporting that students really do think that free speech is a conservative issue, that anyone bringing it up is being hostile or cruel. Someone who wrote for the University of Michigan newspaper was talking about how she was accused of being anti-kindness. The arguments end up being seen (as) thrown around, in some cases, about what you're actually "anti." I mean, it's kind of like advocates of due process, which FIRE also is. You see someone say, "Well, if you're pro-due-process, you're obviously pro rape?" And I'm, like, "Well, that's a convenient little argument to have there." So you're basically saying, "Nobody whose ever accuses is ever innocent." And then as soon as you put it like that, someone goes, "Well, you know, we don't want to go quite that far." So it's, like, "So why is this a bad value?" I'm a little distraught about what to do about the situation on campus and we're trying to reach students in every possible way. So with documentaries, with additional books, I'm even looking into writing graphic novels about this because I just feel like these principles have to get in front of students somehow. And if K through 12 isn't going to teach them, maybe it's up to us.

Christine: I can just see those cartoons. [*Laughter.*] All right, Greg. Thank you so much for joining Higher Ed Now and for all the work you and FIRE do to defend free speech on campus. For all of our listeners, thank you so much for tuning in. Greg is joining us for our next episode too, so make sure you check back in with us. As always, send questions and comments to info@goacta.org. Until next time, I'm Christine Ravold and this is Higher Ed Now.

[End]