

## A little less freedom of speech

By Jeff Jacoby, 1/25/2004

IT DOESN'T take much to get slammed as a racist these days. Just ask Jennifer Cundiff.

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Back in February 2001, the Southwest Airlines flight attendant was trying to coax passengers boarding a flight from Las Vegas to Kansas City to find their seats quickly so the plane could take off. "Eenie meenie minie moe," she said over the intercom, "pick a seat, we gotta go."

Cute and harmless, right? Not to two black passengers, it wasn't. Louise Sawyer and Grace Fuller, who are sisters, interpreted Cundiff's couplet as a racist insult and said they were sure it was meant to humiliate them. It was so upsetting, Fuller claimed, that it triggered a seizure and left her bedridden for days. Eventually the women sued, charging Southwest with violating their civil rights and inflicting physical and emotional distress.

If you're scratching your head in bewilderment, you aren't alone. Unless you're old enough to remember flappers and speakeasies, you probably don't know that the words that originally followed "eenie, meenie, minie moe" were "catch a nigger by the toe." Cundiff, who was 22, certainly didn't know. Like most of us, she grew up saying "catch a tiger by the toe" -- she says she had never heard the older, uglier version.

Ah, but innocence offers scant protection against contemporary racial victimology. Neither does common sense nor the right to free speech. Any of those should have been reason enough for US District Judge Kathryn Vratil to summarily bounce the lawsuit as frivolous. Instead, she ruled that Cundiff's little rhyme "could be reasonably viewed as objectively racist and offensive" and said a jury would have to decide "whether Cundiff's remark was racist, or simply a benign and innocent attempt at humor."

The trial took place last week. A jury of eight deliberated for less than an hour before finding Cundiff and Southwest innocent of racism. Of course, the stewardess and the airline will not be reimbursed for the lost hours and legal fees this preposterous lawsuit has cost them. And that isn't all that they lost.

Every time a case like this occurs -- every time someone is sued or punished or forced to hire a lawyer just for expressing an opinion or making a comment that someone of a different color finds offensive, all of us are left with a little less freedom of speech. Dismayingly, such cases seem to be occurring more frequently than ever. Now and then one of these incidents draws national scorn. A few years ago, a wave of ridicule forced the mayor of Washington, D.C., to rehire an aide who had been accused of racism and

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forced to resign for using the word "niggardly" -- a synonym for stingy.

But most of the time, these cases end with racial correctness trumping fairness and free speech.

Consider a story out of Omaha last week. According to the Omaha World-Herald, several students at Westside High School were punished after they "plastered the school on Monday" -- Martin Luther King Day -- "with posters advocating that a white student from South Africa receive the 'Distinguished African American Student Award' next year." The posters featured a picture of junior Trevor Richards, whose family moved to Omaha from Johannesburg in 1998, smiling and giving a thumbs-up.

School officials tore the posters down, apparently in response to complaints from a few black students, and denounced them as "inappropriate and insensitive." Trevor was suspended for two days, according to his mother, and two of his friends were also penalized for helping to put the posters up. A fourth student, the World-Herald reported, "was punished for circulating a petition Tuesday morning in support of the boys. The petition criticized the practice of recognizing only black student achievement with the award."

The students were punished, in other words, for expressing an opinion -- that it is wrong to create an award for which only black students can qualify. That is hardly an outlandish point of view. There are 1,843 students at Westside High, of whom fewer than 70 are black. Why should 96.2 percent of the student body be barred from a school honor on the basis of their race? Isn't that just the sort of offensive racial thinking that Dr. King condemned?

A message is not "inappropriate and insensitive" merely because some people complain about it -- not even if those people aren't white, and not even if the message is politically incorrect. The real outrage at Westside High last week was that four students were disciplined for exercising a freedom guaranteed by the Bill of Rights. Other students may not have liked what they had to say. That didn't entitle them to suppress their speech.

The First Amendment says nothing about a right not to be offended. The risk of finding someone else's speech offensive is the price each of us pays for our own free speech. Free people don't run to court -- or to the principal -- when they encounter a message they don't like. They answer it with one of their own.

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