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Free Speech and Campus Hate Speech Codes

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During the 1980s and 90s the issue of free speech and campus hate speech codes came to the forefront of the student affairs profession. Institutions went to battle in the courts over the issue especially as related to constitutionality. This paper revisits the controversy, the issues involved, and the results of the legal battle over the last few decades. The author asks student affairs professionals to look at their role as educators and use this as a tool to solve this continuing problem.

Campus racism posed another of the classic 'hard cases' where the free speech advocates are forced to defend the rights of some with utterly despicable points of view. As First Amendment authority Rodney Smolla put it, hate speech posed 'the hardest free speech question of all.' (Walker, 1994, p. 135-136)

The concern with a perceived resurgence of racism on college campuses across the nation has created one of the most highly contested free speech issues in modern society (Laramée, 1991; Walker, 1994). At the center of the debate are terms and concepts such as racism and sexism, hate speech codes, academic mission statements, freedom of speech and equality. Some argue this is the toughest free speech issue which American society has yet to resolve. Others arguing from a pro- (or con-) campus hate speech code stance can see no justification for the tolerance of (or attempts to silence) words that categorize, stereotype, and offend persons based solely on their membership in a certain segment of society.

In order to encourage a greater understanding of the controversy between campus hate speech codes and free speech, this paper examines the key areas of the debate. First, a general introduction to the recent phenomenon of campus hate speech codes is presented. This section includes the search for a common definition of hate speech, a look at what caused the proliferation of hate speech codes, and a discussion of what the codes are designed to do as well as how they have been judged in the courts. The second section explains the arguments of those who support

campus hate speech codes. In the third section, the arguments against the codes are presented. The final section provides discussion of the controversy, values and arguments involved and presents a recommendation for moving forward in finding some resolution amidst the controversy.

An Introduction to Campus Hate Speech Codes

It is important to first try to come to a common understanding of just what is meant by hate speech. While the definitions are multiple and varied, Kaplin (1992) gives a good summary of what constitutes a common definition. He writes:

The term 'hate speech,' as commonly understood, refers to verbal and written words, and to symbolic acts, that convey a grossly negative assessment of particular persons or groups based on their race, gender, ethnicity, religion, sexual orientation, or disability. Hate speech thus is highly derogatory and degrading, and the language is typically coarse. The purpose of hate speech is more to humiliate or wound than it is to communicate ideas or information. Epithets, slurs, insults, taunts, and threats are common labels used to describe hate speech. (Kaplin, 1992, p. 518)

Hate speech is not limited in its form, forum or function. It occurs daily. Often times it goes unrecognized. Furthermore, members of the majority class in the United States are often unaware of the many subtle forms of hate speech which have been institutionalized in American society (Matsuda, 1993).

In the mid-1980s incidents of hate speech and campus prejudice shook the foundations of colleges and universities across the nation. "The National Institute against Prejudice and Violence counted a total of 250 incidents of bigotry on campus from 1986 to 1989" (Walker, 1994, p. 130). This number includes only those cases reported to college officials. Walker (1994) explains the impact statistics like these had on college and university administration:

"It had always been an article of faith among the educated elite that education was the best antidote to prejudice...Consequently the

series of racist incidents among the most talented students in the nation was truly shocking" (p. 130).

In response, campus hate speech codes were born. "The campus hate speech codes were the product of a frightening rash of racist incidents on college and university campuses" (Walker, 1994, p. 129). The codes were created out of a concern for equality and human dignity and contain in them an appeal to reason, tolerance and moral treatment of fellow human beings (Smolla, 1993). Emphasizing the importance of these values, campus hate speech codes seek to discipline students who publicly participate in acts of hate speech (Jost, 1993).

At the heart of the campus hate speech code controversy is the balancing of the values of equality and free speech. Celis (1992) explains:

The institution of these codes has roiled many campuses, as students, administrators and faculty members have struggled to balance the need to counter growing racism and bias with the need to promote the free exchange of ideas necessary to the functioning of the university. (p. A11)

Campus hate speech codes seek to guarantee equal access in the marketplace of ideas and in the pursuit of education for all members of the university community.

At the peak of the campus hate speech code movement of the 1980s, between 200 and 300 colleges and universities instituted policies which attempted to deal with incidents of hate speech (Jost, 1993). These codes "generally forbid language that demeans individuals on the basis of race, national origin, religion, sex, sexual orientation, disability or age" (Bernstein, 1993, p. E3). However, these regulations "vary widely in the scope of what they prohibit" (Altman, 1993, p. 303).

The courts have given little legal support for policies at public universities. Three cases are of particular importance when discussing campus hate speech codes. In *Doe v. University of Michigan* (September 22, 1989), a federal court struck down a policy of discriminatory harassment which "permitted the disciplining of anyone found guilty of any

behavior, verbal or physical that stigmatized or victimized someone on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status" (Jost, 1993, p. 18) on the basis that "it was too broad because it applied to constitutionally protected speech and too vague because it was simply impossible to discern any limitation on its scope" (Jost, 1993, p. 18).

The second case came two years later. In *UWM v. Board of Regents* (October 1991) a federal court judge ruled that the policy against hate speech at the University of Wisconsin Madison was too vague and that "it went beyond the narrow category of 'fighting words'" (Jost, 1993, p. 18). The judge struck down the code which prohibited "discriminatory comments, epithets, and abusive language that demeaned someone on the basis of race, sex, religion, sexual orientation, national origin, or age" that were directed at a specific individual (Jost, 1993, p. 18).

Finally, the U.S. Supreme Court entered its verdict in *R.A.V. v. City of St. Paul* (June 1991). In this case, the Court "created a new free speech doctrine that appears to prohibit any governmental action that singles out a particular subject matter or particular viewpoint for punishment" (Jost, 1993, p. 18). While not dealing explicitly with the issue of campus hate speech codes, but rather with governmental agencies who impose speech codes, the case does affect colleges and universities in a broader sense. Given the Court's decision, public institutions of higher learning would no longer be able to legally uphold campus hate speech codes because of their affiliation with the government. Under the *R.A.V.* ruling, public or governmental offices and agencies (including institutions of higher education) are strictly forbidden from engaging in the content and viewpoint discrimination which hate speech codes bring to the table.

It is important to note that these cases apply solely to public institutions. Private colleges have the legal right to implement hate speech codes. While they are free to use these policies, many private colleges follow the lead of legal decisions regarding their public counterparts, because they want to be held to the same standards (Celis, 1992).

Arguments for Campus Hate Speech Codes

The starting point for a majority of supporters of hate speech codes lies in the history of American society. They argue that the traditional segregation and classification of individuals and groups of persons in American society gives a special power to hate speech. Furthermore, when contrasted with the Fourteenth Amendment (which extends the privilege of citizenship and guarantees equal protection of the law to all persons) and the principle of equality, an endorsement of hate speech can become antithetical to the very principles of the modern social contract. Sunstein (1993) explains:

In view of our history, invective directed against minority groups, and racist speech in general, create fears of physical violence, exclusion, and subordination that are not plausibly described as mere 'offense.' These harms are plausibly antithetical to the goal of political equality, a precondition for democracy and a goal that animates the First Amendment itself...In light of all this, there is nothing obvious or clear about the view that the First Amendment should ban laws prohibiting racial hate speech. (p. 186)

Lawrence (1993) makes a similar argument. He views the Constitution in a holistic manner calling for the recognition of the values inherent in its framing. He contends that the values of the First Amendment are frustrated when we fail to consider the circumstances in which they are enacted in modern society.

Proponents of campus hate speech codes argue that if we want to achieve equality we must make safeguards for the individuals who are not power-holders (Matsuda, 1993). While opponents argue this creates an infringement on First Amendment rights, the supporters of hate speech codes do not see this as a plausible argument. In fact, proponents of campus hate speech codes argue the First Amendment warrants protection of the victim of hate speech (Matsuda, 1993).

Justices of the U.S. Supreme Court have recognized this concern for the victims of hate speech. Justice White, writing the dissenting opinion of *R.A.V. v. City of St. Paul* (1991), recognized the reasonable and justifiable nature of the city's ordinance "in light of our nation's long and painful

experience with discrimination" (as cited. in Greenhouse, 1992, p. A11). Similar to those who argue for hate speech codes, Justice White takes a contextualized view of history and the law to render an opinion which favors the Fourteenth Amendment over the First.

The second major argument used to support campus hate speech codes centers around the idea of equal opportunity in education. Persons on both sides of the debate have long supported education as the solution to inequality (Forney, 1996). If this is the case then educational institutions need to be accepting and supportive of all persons. O'Neil (1992) explains, "Universities also have a special need to establish an environment hospitable to persons who have felt unwelcome there for far too long, and whose very ability to learn may depend on civility and respect" (p. A40). Campus hate speech codes are offered as the means to achieving this end. O'Neil (1992) continues, "many institutions rightly feel that they need to do more than simply make strong statements or even promote educational programs designed to increase sensitivity and enhance the campus climate" (p. A40).

A corollary argument extended from the right of educational pursuit is the argument against a hostile environment. Walker (1994) explains, "speech code advocates argued that maintaining a nonhostile campus environment was necessary to achieve the goal of equal educational opportunity: the victims of attack would tend to drop out of school or not enroll at all" (p. 141). The Department of Education seems to recognize this as a legitimate concern. Lewis (1995), who adamantly opposes campus hate speech codes, reports that "[the Federal Department of Education] threatens to withhold Federal aid from any university with a 'hostile environment' in terms of race — and similar gender rules are being prepared" (p. A15).

Closely tied to this idea, and a third main line of argumentation in favor of campus hate speech codes, is the appeal to a consideration of the victim, the victim's feelings, and the power s/he has to respond to hostile speech acts. Kaplin (1992) demonstrates the link between the victim's feeling and the ability to engage in an active pursuit of education:

The feelings of vulnerability, insecurity, and alienation that repeated incidents of hate speech engender in the victimized groups may undermine the conditions necessary to constructive dialogue on campus. Members of the victimized groups, moreover, may be unable to take full advantage of the educational opportunities available at the university. (p. 519)

Lawrence (1993) comments on the experience of African-American students and the psychic injury invoked by hate speech:

It is clear that racist speech causes tangible injury, and it is the kind of injury for which the law commonly provides, and even requires, redress. Psychic injury is no less an injury than being struck in the face, and it often is far more severe. *Brown [v. Board of Education]* speaks directly to the psychic injury inflicted by racist speech in noting that the symbolic message of segregation affected the "hearts and minds" of Negro children "in a way unlikely ever to be undone." Racial epithets and harassment often cause deep emotional scarring and feelings of anxiety and fear that pervade every aspect of a victim's life. (p. 74)

Moreover, Lawrence argues that the overwhelming emotional response combined with the institutionalization of hate speech effectively silences the targets of hate speech, leaving them with little or no defense. "When one is personally attacked with words that denote one's sub-human status and untouchability, there is little, if anything, that can be said to redress either the emotional or reputational injury" (Lawrence, 1993, p. 68).

A final means of supporting campus hate speech codes relies on the classification of hate speech as conduct. In fact, some proponents argue that the rules and regulations surrounding hate speech adopted by colleges and universities should not be viewed as speech codes at all. Iris Brest of Stanford argues, "We think about it as a policy about conduct and discrimination. We think that private schools have a right to adopt student conduct regulations, including ones like this" (as cited in Hanson, 1994, p. 15). While this distinction can be rather tricky, Lawrence (1993) argues it is not:

My suggestion that racist conduct amounts to speech is premised upon a characteristic of racism—namely its reliance upon the defamatory message of white supremacy to achieve its injurious purpose...Racism is both 100 percent speech and 100 percent conduct. (p. 60-62)

Again, this would appear to be an area where there is legal support for campus hate speech codes. Justice Stevens, writing in a dissenting opinion of *R.A.V.*, expressed his support for such a distinction when he contended that the nation must mature beyond the current state of tension regarding race relations before hate speech codes are deemed inappropriate. Until such maturation, Stevens argues, "...laws such as St. Paul's ordinance will remain reasonable and justifiable" (as cited in Greenhouse, 1992, p. A11).

Arguments against Campus Hate Speech Codes

If equality is the starting point for those who support campus hate speech codes, then freedom of speech is the starting point for those who oppose them. Those opposing speech codes argue that they strike a blow to the bedrock principle of freedom and democracy—the right to hold one's opinion and express it freely within the society. Dodge (1992) explains, "The codes...have been criticized by officials of the American Civil Liberties Union and others who believe they violate the free-speech rights of students and, in some cases, of faculty and staff members" (p. A35).

As evidenced in legal decisions surrounding the issue, those who stake their claims in the First Amendment have legal backing and precedent on their side. For example, in 1995 the Santa Clara Superior Court struck down the Stanford University speech code which "sought to shield students from bigotry by banning insults on race and sex" ("Court," 1995, p. B8). Robert Corry, one of the students suing the university, commented, "This is a victory for academic freedom and free speech" (as cited in "Court," 1995, p. B8).

The federal courts also struck down hate speech codes in *Doe* and *UWM* on the basis that they violated free speech principles of the First Amendment. The Supreme Court has also ruled against hate speech codes on the basis that they violate freedom of speech. In *Texas v. Johnson* (1989) the Court determined that "if there is a bedrock principle underlying

the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable" (Kaplin, 1992, p. 520). Legally, it appears as though those in opposition to hate speech codes have the upper hand.

Opponents are tying into the idea of academic freedom as well. Walker (1994) explains how "many saw the codes as the most serious threat to freedom of expression and to academic freedom since the worst years of the Cold War" (p. 143). Opponents of campus hate speech codes argue that, because the university is a place for growth and exchange of ideas, it is detrimental to the philosophy of higher education to allow speech to be banned or curbed from the marketplace even if it is speech the majority finds offensive. Altman (1993) explains the importance of free expression at the university in contrast to the larger society: "Freedom of expression is far more vital to the role of the university than it is to that of the typical workplace, and so it is reasonable to think that university rules should be less restrictive of free speech" (p. 308).

Arguing that hate speech contains ideas, opponents of hate speech codes claim that the mission of institutions of higher education compels tolerance of said ideas. They argue these ideas should not be summarily dismissed on a value judgement. Robert O'Neil explains, "As much as hateful speech represents an idea, however abhorrent, the university community is not a place where we should suppress ideas" (as cited in Jaschik, 1992, p. A22).

Others are more adamant about the threat hate speech codes pose to the spirit of academia. Accuracy in Academia, a Washington-D.C.-based group, recently stated, "academic freedom is threatened by a progressive ideological orthodoxy," namely, campus hate speech codes (as cited in Rabinovitz, 1996, p. A31). Additionally, Johnsen (1936) writes:

The responsibility of the university as a whole is to the community at large, and any restriction upon the freedom of the instructor is bound to react injuriously upon the efficiency and morale of the institution, and therefore ultimately upon the interests of the community. (p. 156)

According to this line of reasoning, the more ideas one has the better. Any limits placed on free speech cause the number of ideas in the marketplace to be limited and society suffers a detriment as a result.

Along these same lines, there are opponents who argue that not only do hate speech codes impinge on academic freedom and freedom of thought, but that they "create a totalitarian atmosphere in which everyone would have to guard his tongue all the time lest he say something that someone finds offensive" (Lewis, 1995, p. A15). Even administrators question the effectiveness of a rule-based approach towards dealing with hate speech. Sue Wasiolek, Dean for Student Life at Duke University, comments:

It bothers me about our society in general that the only way people think they can change behavior is to set up a rule. Our mission is to facilitate the exchange of differences and different opinions—not to brainwash people. (as cited in Dodge, 1992, p. A36)

Another main argument opponents have against campus hate speech codes is that they are ineffective. Those who favor an open atmosphere on college campuses feel that codes only detract from the problem and make no concerted effort to deal with the real issue. Mark Green, a New York Public Advocate, in an appearance on *The Firing Line* argued that codes and labels such as "politically correct" deter progress on the issues of equality and racism. Green urges university and college officials, "Let's eliminate the phrase and get on with the unfinished business of transforming our society and transforming our educational institutions" ("Speaking," 1995).

In light of such arguments, administrators themselves are beginning to recognize the ineffectiveness of speech codes. Victor DeJesus, co-president of the Wisconsin Student Association, had originally supported a hate speech code but "changed his mind because he felt the regents were using it as an excuse to avoid the real problems of minority students" ("U.," 1992, p. A10). Still other administrators say the codes are simply not needed. Dodge (1992) explains, "Officials on campuses that have not instituted hate-speech policies say that students do not have to be punished to understand the effect their remarks had on others. Those officials say

their experiences prove that hate speech codes aren't needed" (p. A36). "Moreover, some colleges, Tufts University and the University of Pennsylvania, for example, have voluntarily rescinded speech codes after concluding they were ineffectual, divisive or illegal" (Lubman, 1993, p. A1).

Conclusion

The issue of campus hate speech codes brings to the forefront a deep conflict between two of the most valued principles of American society. This controversy centers around equality and freedom of speech. Those who uphold campus hate speech codes contend they serve to further the principles of equality and equal opportunity guaranteed to each person under the Fourteenth Amendment. Those who oppose them cite the First Amendment and argue that the codes strike a blow to the bedrock principles of our society.

The arguments for both sides of the campus hate speech code debate are convincing and telling of the predicament of American society. They call on its spectators to make a decision about which rights are held necessary and vital to the functioning of society and question the notion of free speech in America. Perhaps most important of all, it questions whether values need to be adjusted in recognition of how notions of freedom and equality have been formed and influenced in the course of history.

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GROUPS 1996: Goals, Values, and Perceptions in Intentional Residence Life Interventions

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This paper presents the findings of a study of the goals, values, and perceptions of interventions that were presented by the residence life staff during the 1996 GROUPS summer bridge program at Indiana University - Bloomington. Data collected from documents, interviews, and survey responses are analyzed using the ecosystem design model and Stern's need-press theory.

Residence halls can be educationally powerful environments that enhance educational outcomes for college students by connecting classroom learning with out-of-class experiences (Keller, 1993; Miser, 1977; Schroeder & Mable, 1994; Stimpson, 1994). A comprehensive review of the literature conducted by Pascarella, Terenzini, and Blimling (1994) reveals that residence halls have a positive impact on all dimensions of student development with the possible exception of academic performance. Furthermore, residence halls that intentionally integrate their programs with the academic mission of their institutions have a more positive influence on student development, learning, and persistence than those which allow such connections to occur serendipitously or which operate on the periphery of institutional priorities (Kuh, 1994; Schroeder & Mable, 1994; Stimpson, 1994; Terenzini & Pascarella, 1994).

Intentional programming models begin with goal setting which specifies desired outcomes in terms of student learning and development (Benjamin, 1988; Leafgren, 1981; Miller, Carpenter, McCaffrey, & Thompson, 1980; Sargeant, 1977; Smith, 1977). However, evidence of the outcomes of intentionally planned interventions is minimal in the literature. Therefore, the purpose of this paper is to follow a specific set of intentional interventions from initial goal setting through the assessment of student perceptions and behaviors. This paper presents the findings of a study of the goals, values, and perceptions of interventions that were presented by the residence life staff during the 1996 GROUPS summer bridge program at Indiana University - Bloomington. First this paper reviews relevant literature and guiding environmental theories. Next, the methodologies used for the study are summarized. An overview and analysis of the data