Guidelines for Anti-Harassment Policies for Public Universities

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When Dixon v. Alabama Board of Education (1961) applied the United States Constitution to public university campuses, it brought with it the complexities associated with the First Amendment. Free expression of ideas is the cornerstone of the university's academic mission. Today institutions seek to find the tenuous balance between confronting harassing speech and acts and preventing unconstitutional restrictions on expression.

This challenge has risen in the context of a surge in racially motivated incidents at colleges and universities around the country (Pavela, 1989). Racial slurs shouted out car windows and swastikas painted in residence hall room windows suggest an upswing in openly racist behavior. Public universities are finding harassing acts exceedingly difficult to restrict. District Court Judge J. Cohn explained this essential conflict in Doe v. University of Michigan (1989):

It is an unfortunate fact of our constitutional system that the ideals of freedom and equality are often in conflict. The difficult and sometimes painful task of our political and legal institutions is to mediate the appropriate balance between these two competing values (p. 853).

The goal of this article is to identify policies by which the university administrator successfully balances the need to restrict offensive, destructive speech with the right of free expression. This article first examines the scope of racist incidents on campuses both in terms of quantifiable incidents and psychological harm to its victims. Next, it considers current policies used by various public universities and specifically articulates why policies such as those used at the University of Michigan are unconstitutional. Finally, it suggests guidelines by which an administrator might design an anti-harassment policy for a public university, with specific emphasis on policy in residence halls.

Scope of the Problem

Incidents of Harassment

Colleges and universities around the country report frequent incidents of racism. The Justice Department received thirty reports of racial incidents at colleges and universities in 1987, many involving racial epithets and offensive graffiti (Pavela, 1989). The Anti-Defamation League of B'hai B'rith reported 95 incidents in 1990 of anti-Semitism on campuses, opposed to 69 incidents in 1989 ("Anti-Semitic incidents," 1991). The media has offered many examples of harassing acts. At Yale University, a swastika and the phrase "White Power" were painted on the Afro-American Culture Center. At Temple University, a White Students Union has attracted over 130 members (Hentoff, 1989; Lawrence, 1990). At Stanford University, two students turned a music school poster of Beethoven into a black-face caricature and posted it near a black student's room (Barringer, 1989). At Indiana University, over 80 incidents of harassment have been reported to the Racial Incidents Team since 1988 (Racial Incidents Team, 1990).

Perhaps the most publicized incidents have been those at the University of Michigan which precipitated its now defunct anti-harassment policy. The University reported a rising sentiment of racism on campus. In 1987, a flier distributed on campus claimed "open season" on blacks and referred to them as "saucer lips," "porch monkeys," and "jigaboos." A few weeks later a student disc jockey broadcast racist jokes on the campus radio station. During a demonstration protesting these incidents, a student displayed a Ku Klux Klan uniform in a residence hall room window (Doe v. University of Michigan, 1989). The Michigan Board of Regents responded by implementing a strict policy that made discriminatory harassment a reason for university expulsion (Barringer, 1989). Though the policy was later declared unconstitutional, it set a precedent for addressing such incidents (Doe v. University of Michigan, 1989).

Harms of Racist Speech

Despite the severity of the incidents, it has sometimes been difficult to convince the non-victimized community of the real dangers harassing acts engender. Incidents are often dismissed as thoughtless pranks (Erickson, 1990). This attitude underestimates the impact of racist speech.

Kretzmer (1987) asserted that racist speech facilitates the spread of racial prejudice. This speech reinforces intolerant ideas among racists who already subscribe to prejudicial beliefs and may also induce non-racists to adopt such ideas. While such speech may not lead to racist actions, it perpetuates the pernicious system of beliefs and attitudes.

Racist speech also can affect the dignity of a person or group in the same manner as a libelous statement. The effect on a group's reputation or an individual's psyche is as injurious as a slap on the face. (Kretzmer, 1987; Lawrence, 1990). The psychological reactions caused by racial stigmatization can include self-hatred, nightmares, post-traumatic stress disorder, impairment of the capacity to form close interracial relationships, adverse effects on relationships within a harassed group, and even suicide. (Delgado, 1982; Kretzmer, 1987; Lawrence, 1990).

Universities may indeed be turning away potential students by ignoring such harmful acts. Erickson (1990) described the image of a campus community which overlooks intentionally hurtful acts towards its community members. Prospective students may stay away from a particular university because of its reputation for being unable or unwilling to protect its minority students.

In the face of these harms, universities are compelled to design policies to mitigate harassment. The next section examines the constitutionality of anti-harassment policies currently in place in public universities.
Existing Anti-Harassment Policies

"Fighting Words" Policies

Fighting words policies are meant to limit speech that by its "very utterance inflict[s] injury or tend[s] to incite an immediate breach of peace" (Chaplinsky v. New Hampshire, 1942, p. 572). The University of California System has expressly defined the use of fighting words as grounds for disciplinary action. The policy adopted by that university system carefully defines what constitutes fighting words and under what circumstances they may be limited:

'Fighting words'...include, but are not limited to, those terms widely recognized to be derogatory references to race, ethnicity, religion, sex, sexual orientation, disability, and other personal characteristics...[They] constitute 'harassment' when the circumstances of their utterance create a hostile and intimidating environment which the student uttering them should reasonably know will interfere with the victim's ability to pursue effectively his or her education or otherwise to participate fully in University programs and activities (University of California, 1989).

These policies restricting only fighting words are probably constitutional. The Supreme Court ruled in Chaplinsky v. New Hampshire (1942) that fighting words are not protected under the First Amendment because they advance no constructive ideas and are of no social value. To be termed fighting words, the uttered statement must be such that it would provoke an average person to fight. The statement must be directed face-to-face and not addressed as a general statement about a group of people. Because the University of California policy meets this criteria, it is considered a constitutional approach to restricting racist speech.

Policies to Prohibit Victimized or Stigmatizing Conduct

The second type of policy attempts to restrict a much broader range of speech. Many universities have abandoned this approach after the policy at the University of Michigan was successfully overturned (Erickson, 1990). The language of the now defunct Michigan policy offers an example of this approach. It makes violators subject to discipline for

[any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status...](Pavela, 1989, p.5)

The Michigan policy suffered from two fatal flaws. First, the Federal District Court declared that the terms stigmatizing and victimizing were too broad and included too much constitutionally protected speech under their purview (Doe v. University of Michigan, 1989). The courts have consistently ruled that speech, no matter how unseemly or offensive to good taste, may not be restricted.

The second reason the Court struck down the Michigan policy was that the operative language, stigmatize and victimize, was too vague and capricious. The policy would have permitted members of the University community to be disciplined at the discretion of the administration, risking that speech both racially offensive and offensive to the sensibilities of the administration might be censured with disregard for the First Amendment (Doe v. University of Michigan, 1989).

In Tinker v. Des Moines Independent Community School District (1969), the Supreme Court said that "neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (p.733). These First Amendment rights for members of the university community were reaffirmed in Doe v. University of Michigan. A judicious anti-harassment policy preserves free expression and includes the lessons from the University of Michigan experience.

Suggested Anti-Harassment Policy Guidelines

Policy Restrictions

There is little doubt that racist speech is undesirable, and there are methods through which universities can avoid unconstitutional censorship yet still prohibit students from flinging racial epithets at each other. Any restrictions on expression must be very specific. Policies must not limit the content of speech, no matter how offensive. They must not be vague or too broad; they must clearly define what will be deemed offensive and not restrict protected speech in the effort to eliminate offensive speech. Further, the policies must not inhibit the discussion of race or ethnicity in the classroom or criticism of university procedures (Rodriguez, 1989).

Policy Example

The University of Michigan has designed an interim anti-harassment policy to replace the one declared unconstitutional. The policy, essentially a fighting words statement, contains language narrowing the requirements of discriminatory intent, individually addressing racial epithets, and protecting any type of dialogue. It provides a likely model for constitutionally accepted anti-harassment policies:

Discrimination and discriminatory harassment have no place in this educational enterprise. Physical acts or threats or verbal slurs, invectives or epithets referring to an individual's race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age or handicap made with the purpose of injuring the person to whom the words or actions are directed and that are not made as part of a discussion or exchange of an idea, ideology, or philosophy are prohibited (University of Michigan Interim Policy, 2, 1990).
The legal precedent suggests that a policy designed with these restrictions may well survive a constitutional challenge (Chaplinsky v. New Hampshire, 1942; Lawrence, 1990). The provisions safeguard against harassing and offensive speech without creating undue shackles on the free expression of ideas.

The test of the constitutionality, however, may be imminent. Brown University, which recently adopted a similar policy, is the first university to expel a student under a fighting words policy ("Student at Brown," 1991). The Rhode Island affiliate of the American Civil Liberties Union has suggested the University acted improperly ("Brown U. expels student," 1991). This incident is the first challenge to this type of policy and may define the legal precedent for campus restrictions on hate speech.

Residence Hall Guidelines

Doe v. University of Michigan (1989) did not specifically address restrictions on speech in the residence halls, and there have been no other cases that have addressed this issue. There have, however, been numerous cases regarding freedom of speech in regards to solicitation in the residence halls which suggest guidelines applicable to the issue of racial harassment.

It is constitutionally acceptable to restrict time and location of speech. This gives the university some leverage to protect individuals from unwanted verbal intrusion into their residence hall rooms. The Supreme Court ruled in American Future Systems v. Pennsylvania State University (1984) and again in Board of Trustees of State University of New York v. Fox (1989) that the university has an interest in protecting students from commercial speech that disturbs the tranquility of their residence hall rooms.

Webb (1985) discussed the parameters for a residence hall policy. Hallways in the living areas of residence halls are not analogous to public streets, and the residents have certain privacy rights. The issue of freedom of speech demands that there be a balance, albeit tenuous, between the rights of the speakers and the rights of unwilling listeners (Cox Broadcasting Corporation v. Cohn, 1975; Lawrence, 1990; Webb, 1985). This gives residence hall staff the authority to restrict some speech in living areas of residence halls because there are likely to be many unwilling listeners. Further, the university has the authority to restrict speech in these areas because racial harassment, especially in the context of a person’s living environment, contradicts the university’s function to impart learning (Goldberg v. Regents of the University of California, 1967; Webb, 1985). Students should not be confined to their residence hall rooms to avoid harassing speech. The residence hall should form some haven as part of the student’s regular routine (Lawrence, 1990).

The legal precedent for restricting commercial speech in the residence halls provides a basis for a staff member to confront harassing behaviors, but as of yet the courts of have not specifically addressed the constitutionality of these measures. As such, a prudent residence hall administrator would also bear in mind the restrictions implied by the University of Michigan Interim Policy.

Summary

This article has examined harassing speech as a problem on college and university campuses, the current policies that have been implemented to restrict this speech, and possible criteria by which a constitutionally acceptable policy could be designed. Although it is deplorable that any student suffer harassment, the university must accept that some offensive speech is tolerable in the interest of protecting the First Amendment rights of the speaker. This does not, however, mean that all harassing speech must be tolerated. Instead, an effective policy strikes a balance on the one hand between [a] concern for the continued free expression of ideas and the democratic process dependent on that flow, and on the other, the desire to further the cause of equality...To engage in a debate about the First Amendment and racist speech without an understanding of the nature and extent that harm is to risk making the First Amendment an instrument of domination rather than a vehicle of liberation (Lawrence, 1989, B2).

The university is a unique educational environment. As legal precedent suggests, to stamp out all forms of harassment would unconstitutionally restrict the free expression of ideas. Anti-harassment policies that protect both students’ rights to free expression and students’ rights to be free from harassment must employ opportunities for education. Educational efforts on the part of student affairs administrators can work to raise the consciousness on campus of the harms of racist acts. Indeed, with education as a goal, a climate may be created among campus community members that does not allow for tolerance or even the existence of harassing acts.

References

Board of Trustees of the State University of New York v. Fox, 109 S. Ct. 3028 (1989).
Community Service on Campus

Diane L. Robinson

"Everyone can be great because everyone can serve."
Martin Luther King, Jr.

Introduction

As De Tocqueville observed in the nineteenth century, Americans are unique in that they rely on voluntary action to accomplish important tasks. The role of community service on university and college campuses has increased rapidly since the latter half of the 1980s (Theus, 1988). Students are demonstrating greater interest in volunteerism, and many administrators have responded through increased funding and advising.

Community service can be an integral, valuable portion of the campus community according to Boyer (Carnegie Foundation, 1990). This type of campus community helps to clarify academic as well as civic standards and defines the underlying values which support a community of learning. Such a community is described as purposeful, open, just, disciplined, caring, and celebrative. Students involved in community service may affirm these values in their volunteer activities and with linkages between these activities and their classroom experiences (Carnegie Foundation, 1990).

Unfortunately, on many campuses community service has been largely uncoordinated and unrecognized. By providing greater support, college and university administrators may improve services to students, enrich alumni relations by informing them about the activities and involving them as contacts in the community whenever possible, and enhance cooperation between the campus and the surrounding community. The establishment of a campus community service center is one way to achieve these goals. This article will review the current community service situation as it exists on many campuses, suggest advantages of a community service center, and make recommendations for the establishment of a campus community service center.

Current Situation

Resources

More resources have become available from nationwide service organizations such as Campus Compact and the Campus Outreach Opportunity League in the last few years than ever before. Campus Compact is an organization of over 200 university presidents across the country. The intent of this group is to increase the level of community service on college campuses nationwide using a top-down approach. Each involved president is attempting to create a campus environment

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