

# Hate Speech on the College Campus

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Bitch, nigger, cracker, spic, fag and fucking Jew are all epithets that can pollute the educational environment on any college campus. These words have their roots in a racist and prejudiced America. Yet some, if not all, fall under the Constitutional protection of the First Amendment. Four court cases from 1989 to 1995, *Doe v. Michigan*, 721 F. Supp 852 (E.D. Mich. 1989), *UWM Post v. Board of Regents of The University of Wisconsin*, 722 F. Supp 1163 (E.D. Wis. 1991), *Iota XI Chapter of Sigma Chi Fraternity v. George Mason University*, 773 F. Supp 792 (E.D. Va.1991) and *Dambrot v. Central Michigan State*, 55 F.3d 1177 (1995), explain why our system of jurisprudence has declared that “freedom of speech is almost absolute in our land” despite its debilitating effects on targeted victims.

The 1989 case, *Doe v. University of Michigan*, *supra*, is the first that confronted the validity of campus speech codes. In the wake of increasing tension in its educational environment, the University of Michigan enacted a speech policy to curb a plethora of racial and harassment tensions on campus. The speech policy targeted only educational and academic centers stating that individuals would be subject to discipline for:

1. 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, and that
  - a. Involves an express or implied threat to an individual’s academic efforts, employment, participation in University sponsored extra-curricular activities or personal safety; or
  - b. Has the purpose or reasonably foreseeable effect of interfering with an individual’s academic efforts, employment, participation in University sponsored extra-curricular activities or personal safety; or
  - c. Creates an intimidating, hostile, or demeaning environment for educational pursuits, employment or participation in University sponsored extra-curricular activities (later withdrawn)...

The plaintiff, under the pseudonym John Doe, claimed that the university's speech code "impermissibly chilled" the right to discuss his concentration of study, biopsychology. Doe maintained that several theories would be perceived as "sexist and racist" by his fellow students and that such theories would be a violation of the speech policy. He requested that the speech policy be declared unconstitutional and abrogated due to its vagueness and over breadth. The court ruled in his favor stating that due to the university's "obligation to ensure equal education opportunities for all its students, [sic] such efforts must not be at the expense of free speech" *Id.* at 868. I agreed with the court's decision because the code did not limit itself to speech made outside of class but also included class discussions. This greatly stifled class discussions that would have prompted the exchange of ideas between students.

A similar outcome to *Doe v. University of Michigan, supra*, was the 1991 case, *UWM Post v. Board of Regents of The University of Wisconsin, supra*. The University of Wisconsin also enacted a speech code in order to impede the incidents of racial harassment that were occurring on its various campuses. The University of Wisconsin rule stated that the university may discipline a student in non-academic matters for "racist or discriminatory comments, epithets or other expressive behavior directed at an individual or on separate occasions at different individuals, or for physical conduct, if such comments, epithets or other expressive behavior or physical conduct intentionally" do the following: "Demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry or age of the individual or individuals; and... Create an intimidating, hostile or demeaning environment for education, university related work, or other university authorized activity."

According to Timothy Sheill, Wisconsin's speech code was better than Michigan's because

First, it was both clearer and narrower in scope because it excluded comments made in classrooms to the group and required the behavior to create a hostile environment. Second, the justification for the hostile environment requirement was grounded in the belief that speech that created a hostile environment constituted fighting words and that it therefore constituted a narrow category of speech consistent with a court-defined category as common law interpretations of Title VII of the 1967 Civil Rights Act. Third, the interpretive guide issued to explain its scope was much more sophisticated, taking into account both the kind of speech involved and its context (Sheill, 1998, pp. 78-79).

Wisconsin's speech code was preferable because it refused to extend itself to the classroom hence allowing students to freely engage in classroom discussions.

The University of Wisconsin student newspaper, UWM Post Inc and another student filed suit against the university alleging that the speech code violated their First and Fourteenth Amendment rights. Despite its carefully drafted policy, the University of Wisconsin's speech code suffered the same fate as Michigan's speech code and was declared overbroad and unduly vague. Two additional reasons the court held the university's speech code as unconstitutional was that it did not meet the "fighting words" doctrine set out in the 1942 precedent *Chaplinsky v New Hampshire*, 315 U.S. 568 (1942) and the university regulated speech based on its content. The court stated that the UW rule "disciplines students whose comments, epithets or other expressive behavior demeans their addressees' race, sex, religion etc. However the rule leaves unregulated comments, epithets and other expressive behavior which affirms or does not address an individual's race, sex, religion etc" Id. at 1174.

The court's decision that the content of the speech code must be neutral seems suspect. It is no secret that minorities (and gays) more often than not are the intended targets of racial assault (physical and verbal). Yet adopting the court's rationale that any victim should also be allowed to respond in the same manner simply blinds both speakers. Philosopher Immanuel Kant explains this rationale stating that an action becomes wrong if its maxim cannot be universalized. That is, as Sheill explains, "to be morally right, an act must be universalizable, that is, be okay for anyone to do" Sheill supra at 33. In effect, do the Jews inflict the same atrocious acts that the Germans inflicted on them? Do the Africans turn and enslave those who enslaved them? This sounds more like a romantic version of the old maxim, an eye for an eye, which as we all know leaves both people blind. Such a rationale could make us a moribund society.

In contrast to the two cases above was *Iota XI Chapter of Sigma Chi Fraternity v. George Mason University*, supra. Its uniqueness arose from the fact that this university had no speech code. The suit was brought by members of the Sigma Chi Fraternity after the university disciplined them for a skit they performed in the "Dress a Sig contest (dress coaches like ugly women)." During the contest one of the participants dressed in black face, wore a black wig with curlers and used pillows to represent breasts and buttocks. After student leaders signed a letter to the Dean, sanctions were imposed on the fraternity because the skit perpetuated racial and sexual stereotypes. Despite the absence of a speech code, George Mason University's actions were still found to violate the First Amendment.

The university argued in court that the message sent by the skit was not in consonance with its mission of promoting learning through a polyglot student body, learning which would serve to desegregate its student body and eviscerate racist and sexist behavior.

However, the court ruled in favor of the fraternity because the student activity it was punished for was found to be "consistent with GMU's educational

mission in conveying ideas and promoting the free flow and expression of these ideas” Id. at 794. Furthermore, Judge Hilton disagreed with the university’s disciplinary action because its primary impetus was the signed letter from GMU student leaders to the Dean which he termed the “Heckler’s Veto.” The court enunciated its stand on free speech, citing *Texas v. Johnson*, 109 S. Ct at 2544, and explaining, “If there is a bedrock principal 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.” The court continued, “The First Amendment does not recognize exceptions for bigotry, racism and religious intolerance or ideas or matters some deem trivial, vulgar or profane” Id. 795.

The 1995 case *Dambrot v. Central Michigan University*, *supra*, also presented a unique perspective because it involved a faculty member, Keith Dambrot. Dambrot, Central Michigan University’s basketball coach, routinely used the word “Nigger” when addressing his players (both black and white) and the assistant coach. He asserted that he used the word in a “positive and reinforcing manner.” However, one of the players reported this to the Affirmative Action Officer who confronted Dambrot informing him that the use of the N-word was a violation of the university’s discriminatory harassment policy and recommended disciplinary action. Dambrot was suspended for five days without pay. CMU’s policy defined racial harassment as:

any intentional, unintentional, physical, verbal, or nonverbal behavior that subjects an individual to an intimidating, hostile or offensive educational, employment or living environment by . . . (c) demeaning or slurring individuals through . . . written literature because of their racial or ethnic affiliation; or (d) using symbols, [epithets] or slogans that infer negative connotations about the individual’s racial or ethnic affiliation.

Then, due to “public outcry” Dambrot lost his job. When he filed suit claiming he had been fired for using the N-word and that the termination violated his First Amendment right, the court affirmed the District court’s decision that CMU’s policy was overly broad and constitutionally void for vagueness. Citing *R.A.V. v St. Paul*, 112 S. Ct. 2538, (1992), Judge Damon stated that CMU’s policy “constitutes content discrimination because it necessarily requires the university to assess the racial or ethnic content of the speech” Dambrot, *Supra* at 1184.

Universities across the country find themselves in quite a predicament. In an attempt to promote an equal opportunity educational environment, their speech codes might never withstand constitutional scrutiny. Yet, despite the litany of precedent cases, universities across the country still maintain speech codes, Sheill *supra* at 49. The validity of speech codes has been passionately debated by advocates such as Richard Delgado and Jean Stefanic. In their article, “*Words That Wound*,” they maintain that minorities really do not benefit from free speech; they

counter Gwen Thomas's argument that minorities have a stronger interest in freedom of speech, for if the majority had the power to silence, it would silence those who dissent, Sheill *supra* at 70. Delgado goes on to say:

A free market of racial depiction resists change for two final reasons. First, the dominant pictures, images, narratives, plots, roles, and stories ascribed to, and constituting the public perception of minorities, are always dominantly negative. Through an unfortunate psychological mechanism, incessant bombardment by images of the sort described above (as well as today's versions) inscribes those negative images on the souls and minds of minority persons. . . The expense of speech also precludes the stigmatized from participating effectively in the marketplace of ideas (Adams, 2000, p. 239).

Critics on the other hand maintain that "The answer is more education not regulation" as the more appropriate way to deal with campus hate speech. Steven A. Smith recognizing the irreparable harm of hate speech argues that:

Hate speech is much like a canker sore on the body politic. Legal restrictions on hate speech only suppress the symptoms; they do not treat the underlying causes of the social disease. Applying the Band Aid of a speech code might keep it from the sight of those who would be repulsed, but the infection would remain and fester. A better prescription would be to expose it to the air of speech and the light of reason, the healing antibiotic of counterargument.

Furthermore, hate speech can serve an important social and political function. Irrational expressions of hate based on the status of the targets can alert us to the fact that something is wrong—in the body politic, in ourselves, or in the speakers. It might suggest that some change is necessary, or it might only warn us against the potential for demagogues. Speech codes, ordinances, and statutes would (if they could be enforced) blind us to the problems and deny us the opportunity to solve them before they break out into actions. (Whillock & Slayden, 1995, p. 261).

Critics and advocates agree that some type of speech limitation on campus is important. I must take my place with the speech code advocates. The university is more than a "marketplace of ideas." For many students, it also serves as a citadel

against the racism, bigotry, demagoguery, and the police brutality (the culmination of all three) that have become so pervasive in today's society. It is the one place where the expectation to stand on equal footing with students of all colors, nationalities, and from all walks of life can never be taken lightly. Perhaps the solution to the speech conundrum could be found in the majority making a greater effort to recognize minorities as fellow countrymen and treating them more humanely. In his Senate speech condemning Khalid Abdul Muhammad's hate filled speech at Keane College, Senator Frank Lautenberg eloquently stated:

We condemn Mr. Mohammed and his message. But we must also reach out to students who were moved by his rhetoric of hate and attracted by his words of violence.

Mr. President, we must figure out why those words fall on receptive ears. We have to come to grips with the fact that some of our students liked what they heard.

Why? Why did they like what they heard? The answer is they are like other people—capable of prejudice. The answer is that the poverty, the racism, the hopelessness they have witnessed in their communities has stoked anger—and it is a small step from anger to hatred. The answer is that many have been treated badly—and feel the system leaves them out. The answer is that they have seen racist statements made by whites—prominent whites in some cases—go unchallenged.

Mr. President, we have to condemn what was said in the strongest possible terms. But, in the end we must do more than condemn. We have to respond to it so that we prevent prejudice from taking seed and growing and bursting in deadly bloom.

We have not found a way to reach the students who cheered Mr. Mohammed's speech. We have not been successful in dealing with their pain and anger—which can easily spill over to violent episodes of rage and hatred.

That, Mr. President, is the hard part of what we have to do.

(Whillock & Slayden, 1995, pp. 260-61).

His speech is in perfect consonance with Molefi Kete Asante's statement: "Civility means that if you speak to or with someone in an effort to express your thoughts or articulate your feelings, you do so in a manner that recognizes the other person's humanity," Sheill *supra* at 35. The likelihood that speech codes will create a utopian campus environment would be a fantasy of self-deception. Nonetheless,

their implementation would go a long way toward ensuring that students and faculty alike enjoy stimulating discussions while still respecting each others' opinions.

#### References

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