

Primer on Hostile Environment

Workplace: Harassment means unwelcome conduct engaged in because of a person's Protected Status and the conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the individual, and is in fact considered by the individual, as intimidating, hostile or offensive.

Educational Setting: Harassment means unwelcome conduct, based on the person's Protected Status, that is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the individual, and is in fact considered by the individual, as limiting their ability to participate in or benefit from the services, activities or opportunities offered by the University.

Protected Status includes Age, Disability (physical or mental), Gender (or sex), Genetic Information, Gender Identity (including transgender), Gender Expression, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion or Religious Creed, Sexual Orientation, and Veteran or Military Status.

Severe or Pervasive: depends on context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationship of the person involved. Typically harassment must, in most cases, consist of more than casual or isolated incidents.

Notice: Actual or constructive Notice. So long as an agent or responsible employee of the [university] received notice, that notice is imputed to the [university]. Our policy makes all of us "responsible employees."

What should you do?

- Report situations of which you become aware as required by EO 1096 and 1097.
- Direct people to our policies (see handout).
- Know our Resources
 - o Counseling and Wellness (students)
 - o EAP (Staff & Faculty)
 - o SJA, Faculty Affairs, Human Resources – Reporting incidents
- Explore bringing a facilitated conversation to the classroom or Department meeting
- Supporting the person or group that has been targeted.

What should you not do.

- Do not tell someone that they should not have been offended. Accept that they were offended if they tell you they were. Clarify what your intent was.

Relevant Laws

- **Title VI of Civil Rights Act of 1964**
 - Prohibits discrimination on the basis of race, color, and national origin in programs that receive federal money (like colleges and Universities).
- **Title VII of Civil Rights Act of 1964**
 - Prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment.
- **Title IX of the Education Amendments of 1972**
 - Prohibits discrimination on the basis of sex in programs that receive federal money (like colleges and Universities).
- **Americans with Disabilities Act of 1990**
 - Prohibits discrimination on the basis of disability.
- **California Fair Employment and Housing Act**
 - Prohibits discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in employment.
- 2015? ■ **California Unruh Civil Rights Act**
 - (b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.



AMERICAN BAR ASSOCIATION

Division for Public Education Students in Action

Debating the “Mighty Constitutional Opposites”

Debating Hate Speech

Hate speech is speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits. Should hate speech be discouraged? The answer is easy—of course! However, developing such policies runs the risk of limiting an individual's ability to exercise free speech. When a conflict arises about which is more important—protecting community interests or safeguarding the rights of the individual—a balance must be found that protects the civil rights of all without limiting the civil liberties of the speaker.

In this country there is no right to speak *fighting words*—those words without social value, directed to a specific individual, that would provoke a reasonable member of the group about whom the words are spoken. For example, a person cannot utter a racial or ethnic epithet to another if those words are likely to cause the listener to react violently. However, under the First Amendment, individuals do have a right to speech that the listener disagrees with and to speech that is offensive and hateful.

Think about it. It's always easier to defend someone's right to say something with which you agree. But in a free society, you also have a duty to defend speech to which you may strongly object.

Acts Speak Louder than Words

One way to deal effectively with hate speech is to create laws and policies that discourage bad behavior but do not punish bad beliefs. Another way of saying this is to create laws and policies that do not attempt to define hate speech as hate crimes, or “acts.” In two recent hate crime cases, the U.S. Supreme Court concluded that acts, but not speech, may be regulated by law.

R.A.V. v. City of St. Paul, 505 U.S. 377 (1992), involved the juvenile court proceeding of a white 14-year-old who burned a cross on the front lawn of the only black family in a St. Paul, Minn., neighborhood. Burning a cross is a very hateful thing to do: it is one of the symbols of the Ku Klux Klan, an organization that has spread hatred and harm throughout this country. The burning cross clearly demonstrated to this family that at least this youth did not welcome them in the neighborhood. The family brought charges, and the boy was prosecuted under a Minnesota criminal law that made it illegal to place, on public or private property, a burning cross, swastika, or other symbol likely to arouse “anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender.” The case went all the way to the Supreme Court, which ruled that the Minnesota law was unconstitutional because it violated the youth's First Amendment free speech rights.

Note that the Court did not rule that the act itself—burning a cross on the family's front lawn—was legal. In fact, the youth could have been held criminally responsible for damaging property or for threatening or intimidating the family. Instead, the law was defective because it improperly focused on the motivation

for—the thinking that results in—criminal behavior rather than on criminal behavior itself. It attempted to punish the youth for the content of his message, not for his actions.

In the second case, *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), Mitchell and several black youth were outside a movie theater after viewing *Mississippi Burning*, in which several blacks are beaten. A white youth happened to walk by, and Mitchell yelled, "There goes a white boy; go get him!" Mitchell and the others attacked and beat the boy.

In criminal law, penalties are usually based on factors such as the seriousness of the act, whether it was accidental or intentional, and the harm it caused to the victim. It is also not unusual to have crimes treated more harshly depending upon who the victim is. For example, in most states battery (beating someone) is punished more harshly if the victim is a senior citizen, a young child, a police officer, or a teacher.

Under Wisconsin law, the penalty for battery is increased if the offender intentionally selects the victim "because of the race, religion, color, disability, sexual orientation and national origin or ancestry of that person." The Supreme Court ruled in *Wisconsin v. Mitchell* that this increased penalty did not violate the free speech rights of the accused. The Court reasoned that the penalty was increased because the act itself was directed at a particular victim, not because of Mitchell's thoughts.

Libertarian and Communitarian Perspectives

There is a range of approaches to when hate speech might be regulated. On one end is the libertarian perspective; on the other, the communitarian. In both *R.A.V.* and *Mitchell*, the Supreme Court took the libertarian approach.

Libertarians believe that individuals have the right to free speech and that government should be able to limit it only for the most compelling reasons. Most libertarians recognize fighting words as an example of a sufficiently compelling reason to limit free speech. Notwithstanding the libertarian viewpoint, the courts have been careful to interpret this exception narrowly.

Communitarians take a different approach. They believe that the community's well-being is society's most important goal and that an individual's right to free speech may be limited in the interests of community harmony. They believe that treating people with fairness and dignity justifies at least some free-speech restrictions—that eliminating or reducing hate speech is a sufficiently compelling goal to justify government regulation. Communitarians would expand the fighting words doctrine to allow for increased government regulation.

Can a middle ground be found—a way to accommodate both the communitarian and libertarian perspectives? Perhaps so. Government has the obligation to protect speech by disallowing laws that are too restrictive, yet it can also encourage individuals to respect each other.

Success on Campus

Here's how one community recently approached an incidence of hate speech by calling attention to it rather than attempting to suppress it—by encouraging speech that pointed out how out of place the hate speech was in a community that values the dignity of all.

Matt Hale, a notorious racist, was recently asked to speak at the University of Illinois at Springfield. Hale is the leader of the World of the Creator, a white supremacist group. His presence on campus was controversial. Several students, faculty, and community members thought that the university should cancel his appearance. Instead, he was allowed to speak. Hale's audience was not impressed. He came across as having a confusing set of beliefs that were out of place in a democratic, multicultural society. Several faculty and students spoke out against his message of hatred.

By allowing Hale to speak, the university recognized free speech rights but also provided a means for community members to respond. Communitarian and libertarian goals were both met.



CALIFORNIA STATE UNIVERSITY CHICO

NOTICE OF NON-DISCRIMINATION & SEXUAL MISCONDUCT POLICY

The California State University (CSU) is committed to maintaining an inclusive community that values diversity and fosters tolerance and mutual respect. **We embrace and encourage our community differences in Age, Disability (physical and mental), Gender (or sex), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion (or Religious Creed), Sexual Orientation, and Veteran or Military Status, and other characteristics that make our community unique.** All individuals have the right to participate fully in CSU programs and activities free from Discrimination, Harassment, and Retaliation. The CSU prohibits Harassment of any kind, including Sexual Harassment, as well as Sexual Misconduct, Dating and Domestic Violence, and Stalking. Such misconduct violates University policy and may also violate state or federal law.

All sexual activity between members of the CSU community must be based on Affirmative Consent. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific sexual activity is Sexual Misconduct and constitutes a violation of this policy, whether or not the sexual activity violates any civil or criminal law.

The University shall respond promptly and effectively to all complaints of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking, and shall take appropriate action to prevent, correct, and discipline conduct that violates this policy. Executive Orders [1096](#) and [1097](#) are intended to protect the rights and privacy of both the Complainant and the Respondent, as well as other involved individuals.

For more information about these policies please see [Executive Order 1096 \(for Employees\)](#), [1097 \(for Students\)](#), and [EM 07-009 \(for Accessibility concerns\)](#) or contact the offices indicated below:

Human Resources
Dylan Saake
Kendall Hall, 220
530-898-4949
dsaake@csuchico.edu

Faculty Affairs
Evanne O'Donnell
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530-898-5690
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Student Judicial Affairs
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Accessibility Resource Center: <http://www.csuchico.edu/arc/index.shtml>
Equal Opportunity/HR: <http://www.csuchico.edu/hr/eodr/index.shtml>
Faculty Affairs: <http://www.csuchico.edu/faaf/>
Student Judicial Affairs: <http://www.csuchico.edu/sjd/index.shtml>
Title IX: <http://www.csuchico.edu/title-ix/>