Dissertations   Theses and Dissertations

1998

A Content Analytic Investigation of Hate Speech Codes on the Public University Campus

Sue A. Haldemann
Loyola University Chicago

Follow this and additional works at: https://ecommons.luc.edu/luc_diss

Part of the Education Commons

Recommended Citation

LOYOLA UNIVERSITY CHICAGO

A CONTENT ANALYTIC INVESTIGATION OF

HATE SPEECH CODES ON THE PUBLIC UNIVERSITY CAMPUS

A DISSERTATION SUBMITTED TO

THE FACULTY OF THE GRADUATE SCHOOL

IN CANDIDACY FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATIONAL LEADERSHIP & POLICY STUDIES

BY

SUE A. HALDEMANN

CHICAGO, ILLINOIS

JANUARY, 1998

DEDICATION

To my family for their unending love, support and understanding:
Mom, Dad, Mark, Shelley, Jerry, Chad, Jared, J. J. and Auntie Merle .

To my extended family for keeping me focused and in good spirits:
Katie, Roesia, Maria, the Terebessys, J.J., Brian, Harold, Marvin, Patti, Mehdi,
Peggy, Francis, Fran, Pam, Carleen, Joyce, Jeff, Pat, Joe, the Voigts, the Kobiskes,
the Spiegels, the Webers and the Parks.

To my ABD support team:
Dr. Mary K. McLaughlin, Dr. Richard J. Iuli and Jeff Morzinski.

To my gracious colleagues at the Medical College of Wisconsin for their input,
patience and support:
Dr. Richard L. Holloway, Dr. Kenneth B. Simons, Dr. Dawn St. A. Bragg,
Dr. Rebecca Burke, Dr. Lauree Tyler, the Academic Affairs staff and
those incredible medical students.

To a wonderful Senior Administrative Assistant, Debbie Rosner, who
volunteered to type the dissertation with such enthusiasm, I simply could not
say "no".

TABLE OF CONTENTS

Chapter

        Background

        Statement of the Problem

        Research Questions

        The Significance of the Study

        The Definition of Terms

        Limitations

        Overview of the Study

        Academic Freedom

        Cultural Pluralism in Higher Education

        Fighting Words

        Intentional Infliction of Emotional Stress

        Speech Code Case Law

        Related Studies

Appendix

LIST OF TABLES

ABSTRACT

Designing and implementing codes of conduct that restrict expressional activity on college and university campuses have brought about one of the most ethically sensitive, legally taxing and emotionally wrenching controversies in the recent history of higher education. Speech codes, as these codes of conduct have become known, were designed to underscore institutions' commitments to minority students and combat increasing incidents of racially-motivated hate crimes. Almost immediately after their adoption, the policies came in conflict with the time-honored traditions of academic freedom and freedom of expression. Several instances resulted in legal action.

In light of the controversies surrounding the constitutionality of university speech codes, the purpose of this investigation was to determine, through a qualitative analysis of selected, public research university conduct codes, the types of expressional activity which these universities believed was not protected by First Amendment guarantees. A secondary purpose of the study was to use the analysis to develop a schematic profile of the policies noting contents, similarities, differences and unique characteristics. Survey data were collected to provide contextual background for the systematic analysis of institutional policies by answering questions regarding development,

dissemination, coverage, incidents, enforcement, legal challenges and current status of the policies.

In July, 1993 surveys and requests for speech code policies were sent to senior student affairs officers at those 71 institutions classified as Carnegie I and II public research universities. The institutions were chosen because published reports indicated that they had experienced speech-related incidents on their campuses. After collecting the data, quantitative analysis was used to analyze the survey and qualitative data analysis was used to interpret the speech code documents.

Highlights of the survey results indicated that 47% of the respondents never wrote speech policies while 27% did develop codes. Co-authorship was equally shared among students, faculty and staff. Approval of the policies was left to chancellors and presidents. Incidents on campus were the catalyst for development of the policies in nearly half the cases. Among the most common incidents were racial incidents, followed by slurs and name calling.

The content analytic segment of the study focused on the individual components of the policies. The study identified over 70 goals and values represented by the codes. It went on to analyze the importance of several different factors in designing the codes including campus members covered by the codes, types of expression and prohibited behaviors identified in the policies, the role of location in policy enforcement, services for victims, sanctions for

perpetrators, identification of persons or offices responsible for enforcement, campus notification procedures and alternative means of addressing speech code incidents. The findings of the survey and document analysis resulted in recommendations for future policies and research. Hopefully, the study will provide a base-line for future research on university speech codes.

CHAPTER I

Introduction

Background

Designing and implementing codes of conduct that restrict expressional

activity on college and university campuses have brought about one of the most

ethically sensitive, legally taxing and emotionally wrenching controversies in the

recent history of American higher education. One legacy of the civil rights

movement of the 1960s was a commitment by American higher education to

increase not only the number of minority students on campus but also to enhance

the campus climate for these students. Increased efforts were made to recruit

minority faculty, staff and students; to develop ethnic studies programs and co-

curricular activities; and to provide appropriate support services for students

(Levine, 1991). However, the reception received by minority students on campus

has typically not been a positive one. Racially degrading epithets, posters and

other forms of expression continue to appear and complaints about preferential

treatment of minority students are not uncommon. Racial jokes and stereotypes

are increasingly promoted by campus radio disc jockeys and fraternal groups

(D'Souza, 1991).

In an effort to combat increasing incidents of racially-motivated hate crime

on the campus and to create a welcoming learning environment for the increasing

number of minorities on campus, institutions across the country have turned to

strengthening student conduct codes on their respective campuses. Originally designed to articulate the institutions' commitments to promoting diversity, supporting the educational needs of minority students, and communicating behavioral norms and expectations to all students, the scope of coverage of the conduct codes has been expanded to limit a broad range of expressional activity based on references to ethnicity, religion, gender, sexual orientation, creed, national origin, ancestry, age, marital status, disability or Vietnam-era veteran status.

Almost immediately, these codes, which came to be viewed by opponents as "speech codes or policies" because of their restrictions on speech, came in direct conflict with two of the academy's most respected and interrelated tenets, freedom of expression and academic freedom. Incidents at the University of Michigan and the University of Wisconsin exemplify the conflict.

Campus racial incidents in the 1980s inspired the development of speech codes at several institutions. Among the first was at the University of Michigan (Weeks & Cheek, 1991). The code received national attention when an undergraduate radio disc jockey solicited racial jokes from his audience. Although the offending student apologized, the damage had already been done. Black students were outraged and expressed their disgust to the university administration. The students also noted a previous incident in which an announcement calling for an "open hunting season" on "porch monkeys" was

distributed to Black women (Wilkerson, 1987, p. A-12). Unfortunately, the

incidents did not stop there. The following year a Black student was greeted in his

French class by a poster announcing: "Support the K.K.K. College Fund. A mind is

a terrible thing to waste -- especially on a nigger" (Collison, 1988, p. A-29). By 1989,

posters promoting a white pride week could be found throughout the University

of Michigan campus (D'Souza, 1991).

An outraged administration's response to these incidents was the

promulgation of a speech code clearly prohibiting verbal or physical abuse based

on race or which created a hostile or demeaning environment:

> Because there is tension between freedom of speech, the right of individuals
> to be free from injury caused by discrimination, and the University's duty to
> protect the educational process, the enforcement procedures assume that it
> may be necessary to have varying standards depending upon the locus of
> the regulated conduct. Thus a distinction is drawn among public forums,
> educational and academic centers and housing units.
>> In dedicated public forums, such as the Diag and Regents' Plaza, as
> well as mass media such as the <u>Michigan Review</u> and the <u>Michigan Daily</u>,
> individuals are entitled to engage in the most wide-ranging freedom of
> speech.
>> In academic and educational centers where the University's
> educational mission is focused, such as classroom buildings, libraries,
> recreation or study centers, discriminatory conduct which materially
> impedes the educational process is an object of concern and may be
> proscribed.
>> The following types of behavior are discrimination or discriminatory
> harassment and are subject to discipline if they occur in educational or
> academic centers:
>>> 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 extracurricular activities or personal safety; or
b. Has the purpose of a reasonably foreseeable effect of interfering with an individual's academic efforts, employment, participation in University sponsored extracurricular activities or personal safety; or
c. Creates an intimidating, hostile, or demeaning environment for educational pursuits, employment or participation in University sponsored extracurricular activities. (Pavela, 1989, p. 5)

When the University of Michigan's speech code was challenged in federal court on First Amendment Constitutional grounds, the code was ruled unconstitutional for being overbroad because its enforcement would include action against constitutionally protected speech. It was also deemed too vague:

        This fatal flaw arose primarily from the words "stigmatize" and "victimize" and the phrases "threat to" or "interfering with", as applied to an individual's academic pursuits -- language which was so vague that students would not be able to discern what speech would be protected and what would be prohibited. (Kaplin & Lee, 1995, p. 511)

Concurrent with the events in Michigan in the late 1980s were similar activities at the University of Wisconsin at Madison. Racist fliers were distributed and a mock slave auction was held featuring fraternity pledges in black face wearing Afro-wigs. The fraternity was eventually suspended for five years by the university fraternity council (D'Souza, 1991).

The University of Wisconsin, keeping a close legal watch on the proceedings in Michigan, decided to follow suit and developed its own speech code in 1989. According to the Wisconsin policy, students could be disciplined 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, other expressive behavior, or physical conduct intentionally:

  1. Demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry, or age of the individual or individuals; and

  2. Create an intimidating, hostile, or demeaning environment for education, university-related work, or other university-authorized activity. (Weinstein, 1990, p. 9)

This code, too, was eventually declared unconstitutional by a federal court in 1991 (Young & Gehring, 1992).

   The cases against the University of Michigan and the University of Wisconsin are indicative of the unique nature of policy development at public colleges and universities. Unlike their private counterparts, public institutions are subject to the full extent of the United States Constitution because of their public incorporation and public control. Policies, such as conduct codes which may restrict constitutional rights, are subject to extensive legal scrutiny under both federal and state constitutional law (Kaplin & Lee, 1995).

   The University of Michigan and the University of Wisconsin were working on revisions of their codes when the U.S. Supreme Court reversed, in 1992, a lower court conviction of a St. Paul, Minnesota, man charged with burning a cross on the private property of a Black family. The cross burning was in violation of a St. Paul city ordinance which "... made it a misdemeanor to place on public or private property any symbol or graffiti that one reasonably knew would 'arouse anger,

alarm or resentment in others on the basis of race, color, creed, religion or gender'"
(Kaplin & Lee, 1995, p. 510). A lower court upheld the conviction. However, the
U.S. Supreme Court overturned the decision, not on the basis of it being
overbroad, but because it placed restrictions on speech content which were too
narrow. Since it applied only to "'fighting words' that insult or promote violence,
'on the basis of race, color, creed, religion or gender'" [112 S. Ct. at 2547] (Kaplin &
Lee, 1995, p. 510) and not to all fighting words, the ordinance was considered
unconstitutional. The Minnesota Civil Liberties Union (MCLU), in successfully
defending the premise that such action was protected symbolic speech, cited the
growth of campus speech codes as an important reason for throwing out the St.
Paul law. Following the Supreme Court decision, the MCLU noted that the
decision would provide it with the opportunity to review and challenge campus
speech codes all across the country (Jaschik, 1992). Thus, attention from the ACLU
and the issues raised in high profile court cases have laid the foundation for new
debates within the academy regarding freedom of expression.

The topic of speech codes has become the focus of several authors. Chief
among these is Dinesh D'Souza (1991). His book, entitled Illiberal Education: The
Politics of Race and Sex On Campus, explores a variety of controversial issues
impacting American institutions of higher education. In the chapter "The New
Censorship--Racial Incidents at Michigan", he describes the atmosphere of the
campus and the incidents that fostered the development of the University of

Michigan's speech code. He concludes that, rather than creating a non-hostile educational environment open to discourse and debate, the code resulted in the promotion of rebellion, the exacerbation of bigotry and the undermining of "the norms of fairness and exchange which are central both to the university and to minority hopes for racial understanding and social justice" (D'Souza, 1991, p. 156).

Not everyone, of course, agrees with D'Souza. When D'Souza characterizes the racial incidents leading up to the adoption of the University of Michigan's harassment policy as a reaction to affirmative action and suggests that speech codes only encourage such action, Olivas states that racist jokes and comments on a campus radio station do not exemplify the types of "true and open discourse" that is sought on college campuses (Olivas, 1991, p. 59). He does agree that implementation of some codes, such as the one at the University of Michigan, may be poorly administered. However, he does think that institutions have a right to try to prevent race-baiting through the use of narrow restrictions on racist speech (Olivas, 1991).

The impact of speech codes on the sacred confines of the university classroom has led to a torrent of debate. The American Association of University Professors (AAUP) found the issue so compelling that it directed a subcommittee of its Committee A on Academic Freedom and Tenure to publish a report on the topic for the purpose of soliciting commentary and debate from its membership. In "A Preliminary Report On Freedom of Expression and Campus Harassment

Codes" (Sandalow, Allen, Neuborne, Post & Thomson, 1991) published in

Academe, AAUP attempted to condemn injustice while at the same time to

maintain the profession's commitment to freedom of expression and inquiry.

Whether or not it succeeded is open to question. A later article, comprised of

responses from the academy (Wagner, et al, 1991), gives the preliminary report

anywhere from an "A" ("With sensitivity and wisdom, the report strikes the

appropriate balance", p. 33) to a "C-" ("Surely, Committee A can do better than

this", p.33).

In summary, the controversy over speech code policies on American college

and university campuses represents a clash of values. The most noteworthy are

freedom of expression and academic freedom v. civility, equality and equal access.

The controversy has been fueled by activities in classrooms, fraternity houses and

courtrooms. It has brought faculty members, students, administrators and lawyers

together to discuss the philosophical and the practical concerns of freedom of

expression on American college and university campuses. The complex issues

raised by the controversy raise many important questions for the researcher in the

field of higher education.

<center>Statement of the Problem</center>

The controversies surrounding the constitutionality of university speech

codes have been well documented. Given these circumstances, the primary

purpose of this investigation was to determine, through a qualitative analysis of

selected public research university conduct codes, the types of expressional activity which these universities believe is not protected by First Amendment guarantees. A secondary purpose of the study was to use the analysis to develop a schematic profile of the policies noting contents, similarities, differences and unique characteristics. Survey data were collected to provide contextual background for the systematic analysis of institutional policies by answering questions regarding development, dissemination, coverage, incidents, enforcement, legal challenges and current status of the policies.

<u>Research Questions</u>

Specifically, this research study was designed to address the following questions:

1. What are major institutional goals and/or purposes underlying the codes?

a) What specific institutional goals are identified?

b) What institutional values are identified?

- tolerance   - mutual respect

- human dignity   - justice

- ideals of scholarly community   - caring

- equality   - social awareness

- civility   - freedom of inquiry

- right to dissent	- academic freedom
	- other

c) What specific class-based issues are addressed?

- gender	- race
- ethnicity	- religion
- sexual orientation	- disability
- age	- other

2. Which members of the academic community are covered by the policy?

- faculty	- staff
- students	- visitors
	- other

3. What categories of expression are addressed?

- oral expression	- symbolic expression
- written expression	- physical behavior

4. What specific types of behavior are prohibited?

- threats	- coercion
- psychological harm	- obstruction
- defacing or destroying property	- intimidation
- safety endangerment	- epithets
- obscenity	- slurs
- vulgarity	- invectives

- insults	- jokes
- harassment	- hazing
- fighting words	- defamation
- discrimination	- disrupting education
	- other

5. Are terms or behaviors defined in the codes?

    a) If yes, were legal definitions used?

    b) Were specific examples given?

6. Does the policy address expression differently by location?

- classroom	- residence hall
- quad	- off-campus

7. What provisions or procedures are identified for victims?

- counseling	- confidentiality
- peer support	- other

8. What due process is provided for persons charged with violating the code?

- notice	- required documentation
- hearing	- time frame

9. What office(s)/persons are responsible for mediating/resolving complaints?

    - college dean, department chair, etc.

- student affairs staff

- ombudsperson

- other

10. What institutional sanctions are placed on someone found in violation of the code?

11. Does the victim receive notice of the outcome?

12. Is the campus community notified of the frequency of charges and the outcomes?

This research investigation was also designed to collect information about the developmental history and current status of each institution's policy. More specifically, the study also addressed the following questions:

1. Which campus groups are primarily involved with developing, reviewing and/or approving the code?

2. How recent was the policy, in effect at the time of the survey, reviewed?

- current year   - 1-2 years

- 3-5 years   - 6 or more years

3. Is the institution in the process of drafting a revision of the policy?

4. To what extent was the current policy violated on campus in 1992-93? (What are the types of violations: gender-based, race-based, etc.?)

5. Has the policy been challenged in court?

a) When?

b) What was the outcome?

6. How is the policy disseminated?

Significance of the Study

The intensity of the speech code debate and the attention given this controversy underscore the importance of the speech code issue to the academy and the far reaching impact that these codes have on individuals, institutions and the values and ethics of American higher education. Despite the legal demise of some overly restrictive codes in the courts, these codes have had an impact on the campus. Reports indicate that courses have been canceled because faculty members thought that sections of their lectures or discussions might be interpreted as being in violation of the institution's speech code. A case in point is University of Michigan Sociology professor Reynolds Farley. A leading demographer in the field of race relations, he decided to suspend his course on race relations indefinitely after comments he made in his class were labeled as racist and led to a faculty executive committee meeting designed to address student grievances (D'Souza, 1991). Faculty, students and staff have expressed less certainty about expressing their ideas without offending individuals or groups. Minority student applicants are also carefully examining their choices of institutions based upon campus climates. While many campuses have become more sensitized to conditions creating hostile learning environments for minority students, a chill in the campus climate for minorities remains. Moreover, many of the problems

which prompted the development of these codes still persist as speech-related campus incidents continue to make headlines: "Flash Point at Rutgers University -- Despite president's apologies, outrage over racial comment may force him out" (Wilson, 1995, p. A21) and "Sore Relations Again at Penn -- Students tiptoe through a new minefield of 'political correctness' incidents" (Shea, 1995, A39).

Even if codes which restrict speech are eliminated, the issues which have led to these codes still exist and continue to raise important fundamental questions:

1) How can a supportive, non-hostile learning environment be created while promoting a campus environment which fosters open and free debate?

2) What restrictions, if any, can be placed on expressional activity on a public college or university campus? Should these restrictions vary according to the location of the conversation or comment (i.e., a classroom, a residence hall or a designated campus public forum)?

3) How will curriculum be impacted as institutions attempt to create non-hostile learning environments for an increasingly pluralistic student population?

While overly broad and restrictive speech codes at public institutions will not pass legal review in the 1990s, the problems which prompted the formation of the codes still persist. Institutions must continue to find ways to deal with these

problems. It is this researcher's premise that a critical analysis of speech codes may assist campuses in their responses to these problems and concerns in the future. For campuses which desire and need to maintain their codes, this means trying to distinguish between protected and unprotected speech. In instances where public institutions want to avoid the complications of speech code policies, this may mean identifying alternative responses to such incidents.

Another important purpose of this research is to develop a collective body of knowledge which will assist policy makers in maintaining the integrity of freedom of speech on campus, in creating a less hostile environment for members of protected groups, in avoiding future litigation, and in designing policies and regulations which are in the best interests of students, faculty, and the institution.

Definition of Terms

The following terms are used extensively throughout the study. Definitions of these terms are provided to assist the reader in understanding the researcher's interpretation and use of these terms in this study.

Speech Codes

Speech codes are policies developed by higher education institutions that are designed to limit expressional activity based on references to ethnicity, religion, gender, sexual orientation, creed, national origin, ancestry, age, marital status, disability or Vietnam veteran status. These policies vary in length from one paragraph to several pages. They may be presented as a specific policy statement

in an individual document or they may be listed as one of many institutional policies incorporated into traditional student conduct codes found in student handbooks. They may also be presented in conjunction with related institutional documents such as copies of state laws, letters from the university president or vice president, etc.

Conduct Codes

Conduct codes are collections of policies developed by higher education institutions to identify and explain acceptable and unacceptable student behavior. Generally speaking, these policies are published in a student handbook along with other institutional policies.

First Amendment

The First Amendment is that part of the federal Constitution which protects, in part, an individual's right to freely express his/her thoughts, ideas, beliefs, and opinions without government control. It reads:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. (Kaplin, 1985, p. 583)

Expressional Activity

Expressional activity encompasses a wide range of behavior in which people transmit their thoughts and ideas. This may include verbal interactions,

written transmissions or symbolic speech such as the wearing of a black armband to silently protest a policy.

Academic Freedom

Academic freedom is a core value of American higher education which prohibits restrictions placed on the free exchange of ideas and the pursuit of knowledge in the college/university setting.

Overbreadth and Vagueness Doctrines

The overbreadth legal doctrine provides that regulations of speech by government bodies must be "narrowly tailored" to avoid sweeping within their coverage speech activities that would be constitutionally protected under the First Amendment. The vagueness legal doctrine provides that regulations of conduct by government must be sufficiently clear so that the persons to be regulated can understand what is required or prohibited and conform their conduct accordingly. Vagueness principles apply more stringently when the regulations deal with speech-related activity: "Stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the dissemination of ideas may be the loser" [Hynes v. Mayor and Council of Oradell, 425 U.S. 610, 620 (1976), quoting Smith v. California, 361 U.S. 147, 151 (1959)]. (Kaplin & Lee, 1995, p. 505)

Carnegie Research I and II Institutions

The Carnegie Foundation for the Advancement of Teaching classifies

American colleges and universities into several categories based, in part, on the

level of degrees offered and the comprehensiveness of their missions.

> Research Universities I: These institutions offer a full range of baccalaureate
> programs, are committed to graduate education through the doctorate
> degree, and give high priority to research. They receive annually at least
> $33.5 million in federal support and award at least 50 Ph.D. degrees each
> year.
> Research Universities II: These institutions offer a full range of
> baccalaureate programs, are committed to graduate education through the
> doctorate and give high priority to research. They receive annually
> between $12.5 million and $33.5 million in federal support for research and
> development and award at least 50 Ph.D. degrees each year. (Carnegie
> Foundation, 1987, p. 7)

The Carnegie Foundation classifications were revised in 1994 resulting in an

increase in the number of institutions classified as public research I and II

universities (Carnegie Foundation, 1994). To maintain the integrity of the study,

the 1987 classifications, in place at the time of data collection, were used.

Institutional Values

Institutional values are ideas, concepts, attitudes, behaviors and beliefs

which institutions use to define their mission, purposes and goals. They are also

used to outline expectations of personal and professional behavior and

performance and to describe aspects of the culture of the campus.

AAUP

The American Association of University Professors (AAUP) is a national, professional organization for college and university faculty and academic administrators. It oversees issues of importance to its membership and issues sanctions against institutions that violate its policies, especially in the areas of tenure and academic freedom.

Class-based Issues

Class-based issues address concerns based on references to individual or group characteristics of ethnicity, religion, gender, sexual orientation, creed, national origin, ancestry, age, marital status, disability or Vietnam veteran status.

Protected Classes

Protected classes are groups of individuals who, because of historical patterns of discrimination, harassment, mistreatment or abuse, have received redress through the courts and legislation, especially civil rights laws. Classes are characterized by race, gender, religion, sexual orientation, etc.

Minority Students

Minority students are those individuals enrolled in American higher education who have typically been members of protected classes.

Hate Crimes

Hate crimes are illegal actions taken against an individual or group because of the victim(s) membership in a "protected class".

Due Process

Based on the Fourteenth Amendment of the federal Constitution, due

process is a legal concept requiring a public university to provide, at minimum,

proper notice of charges and a hearing prior to sanctioning a student for

misconduct (Kaplin & Lee, 1995).

Institutional Sanctions

These sanctions are actions taken by an institution against a student after

the student is found guilty of an infraction of institutional policy. Sanctions

typically may range from verbal reprimands to expulsion.

Limitations

This study is not designed be a longitudinal analysis of how speech code

policies have changed over the years. Nor is it an attempt to determine whether or

not speech codes are constitutionally valid. Rather, it is a "snapshot" of policies in

existence at public Research I and II universities in August, 1993. Analyses of the

codes are conducted, not to determine the constitutional validity of the codes, but

to reveal where these institutions believe they can and must draw the line between

protected and unprotected speech. Because this study is limited to Carnegie I and

II public research universities, it is not meant to reflect the status of speech codes at

all public universities in America. The breadth and scope of the data are limited by

the degree to which respondents participated in the study and by the complexity

and quantity of the institutional policies made available to the researcher. In some

cases the individual policies are clearly identifiable, self-contained statements. In other cases, they are stated and implied in a variety of institutional documents. In the latter, the researcher has summarized the data, whenever appropriate, to give an institutional "profile".

In addition to the aforementioned restrictions, this study also has a number of limitations arising from research which uses qualitative data analysis and survey questionnaire methods. The nature of qualitative data analysis is one of subjective interpretation on the part of the researcher. Although definitions of terms are provided, as well as a significant document trail, studies using qualitative data analysis methods may not always be viewed as having the same research impact as those using quantitative research methods. While the researcher does not accept this premise, she must acknowledge that the study may be read and judged by those who do. Finally, regardless of the method used, qualitative or quantitative, the researcher can only analyze data that are provided. One cannot speculate on how a study was limited or affected by data that were overlooked or intentionally withheld by a respondent.

Overview of the Study

The foregoing discussion of the problem and its background has clearly identified the complex nature of the research involving speech codes and First Amendment rights. On one side there is the American research institution

founded on the traditions of academic freedom and the quest for knowledge. Equally compelling are the First Amendment proponents who quote America's founders and fight for clarification of Constitutional rights. The review of the related literature in Chapter II examines both of these interest groups. It begins with a review and discussion of landmark cases regarding academic rights in higher education and the First Amendment. After a brief discussion of important legal terms and definitions, the focus turns to speech code case law.

Chapter III provides a comprehensive description of the methodology used in this study. After describing the population of institutions and the data collection procedures, it focuses on the development of the survey and qualitative analysis procedures. The combined results of the analysis of the survey and the results of the qualitative data analyses are displayed and discussed in Chapter IV. A summary of the entire study is presented in Chapter V along with conclusions drawn from the research and recommendations for future policy and research initiatives.

CHAPTER II

Review of the Related Literature

Chapter I described the development of speech codes as a response to negative incidents involving minority students on American college campuses. It noted that the codes were seen as an affront to the cherished tenets of academic freedom and freedom of expression. The controversy brought educators into conflict over where to draw the line between protected speech and unprotected speech on campus. Several law cases were cited as examples. In preparation for the analysis of several speech codes, this chapter provides an overview of pertinent literature.

To give the reader an appropriate understanding of key issues underlying the study, the review of the related literature will focus on four major areas. First, it will discuss the university setting in terms of the role and importance of academic freedom and the rise of cultural pluralism. The second segment will examine two concepts which affect the interpretation of speech - related legal cases. Third, the review will give an overview of several legal cases which have had an impact on the speech code debate. Finally, two other studies of speech code policies will be reviewed. Combined, these four areas will set the stage for identifying key issues in the controversy, understanding the study's methodology and interpreting the research results.

<div align="center">Academic Freedom</div>

The concept of academic freedom is a core value of American higher education and one of the feared causalities identified in the speech code debates (D'Souza, 1991; Wagner, et al, 1991; Sandalow, Allison, Neuborne, Post & Thomson, 1991). It has evolved from a political and academic environment which places a high value on the unfettered search for truth. As a democracy, America has cherished and tolerated individual freedom of expression. In order for a democracy to function, its citizenry must be able to freely discuss the issues of the day without fear of censorship or physical retaliation. This same concept has been transferred, through custom and use, to the public university classroom. Two court cases underscore the importance of this tradition and show how the U.S. Supreme Court has extended constitutional status to academic freedom (Kaplin, 1985).

The reversal of a contempt decision against a professor who refused to answer questions about his lecture at a state university in Sweezy v. New Hampshire (1957) expresses this concept clearly:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose a straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation.... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die [354 U.S. at 250]. (Kaplin, 1985, p. 181)

In a second case, <u>Keyishian v. Board of Regents</u> (1967), state university

faculty members appealed their dismissal for refusal to sign certificates stating that

they were not Communists. Although this was a freedom of association issue, the

court stated:

> Our nation is deeply committed to safeguarding academic freedom, which
> is of transcendent value to all of us and not merely to the teachers
> concerned. That freedom is therefore a special concern of the First
> Amendment, which does not tolerate laws that cast a pall of orthodoxy over
> the classroom . . . The classroom is peculiarly the "marketplace of ideas."
> The nation's future depends upon leaders trained through wide exposure to
> that robust exchange of ideas which discovers truth "out of a multitude of
> tongues, [rather] than through any kind of authoritative selection. (<u>United
> States v. Associated Press</u>, 52 F. Supp. 362, 372) [385 U.S. at 603]." (Kaplin &
> Lee, 1995, p. 301)

The tradition of academic freedom was transformed into a professional

statement of practice when the American Association of University Professors

(AAUP) and the Association of American Colleges (AAC) published the "1940

Statement of Principles on Academic Freedom and Tenure." The statement

promotes the concept that institutions of higher education exist to promote the

common good of society. Essential to this promotion is the unencumbered search

for truth. Thus, academic freedom fosters this search in teaching and in

scholarship. It allows the teacher extensive latitude in exploring the breadth of a

chosen topic without fear of retribution for unpopular views. This freedom covers

only the discipline of the class and does not necessarily extend to controversial

issues outside the subject area (cited in School of the Art Institute of Chicago, 1987).

While the AAUP Statement on academic freedom is not a federally mandated law, the statement has been incorporated into faculty handbooks and adopted by national professional organizations to the extent that it is a recognized norm within the higher education community. In instances where the statement has been incorporated into faculty handbooks, violations of the concept have led to litigation under contract law (Kaplin, 1986).

AAUP's support for academic freedom is not limited exclusively to faculty. Its "Joint Statement on Rights and Freedoms of Students" (1967) extends to students the rights of academic freedom and inquiry:

> Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals. As members of the academic community, students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Institutional procedures for achieving these purposes may vary from campus to campus, but the minimal standards of academic freedom of students outlined below are essential to any community of scholars.
>
> Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on campus, and in the larger community. Students should exercise their freedom with responsibility.
>
> The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community. Each college and university has a duty to develop policies and procedures which provide and safeguard this freedom. Such policies and procedures should be developed at each institution within the framework of general standards and with the broadest possible participation of the members of the academic community.

The professor in the classroom and in conference should encourage free discussion, inquiry, and expression. Student performance should be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.
A. Protection of Freedom of Expression
Students should be free to take reasoned exception to the data or views offered in any course of study to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.
B. Protection Against Improper Academic Evaluation
Students should have protection through orderly procedures against prejudice or capricious academic evaluation. (AAUP, 1990, p. 411-412)

The values of the academy are clearly evident in this document. The search for truth and the transmission of knowledge are primary goals. Freedom of inquiry and expression are prerequisites to reaching these goals. All members of the academic community are responsible for creating an environment which is conducive to reaching these goals. Last of all, the concept of academic freedom is extended to students. These values are critical to the understanding of the speech code controversy for they may be compromised, as critics of speech codes claim, when codes are enacted. As mentioned in Chapter I, courses may be canceled by faculty members if they feel their institutions will not support their academic freedom when they examine controversial topics in the classroom (D'Souza, 1991). Later in this chapter the case of Doe v. University of Michigan (1989) will be discussed in which a psychology student charged that the university's speech code prevented him from fully and openly discussing theories on biologically-based differences between the sexes and races (Weeks & Cheek, 1991). These cases

demonstrate the importance of academic freedom in the speech code controversy and provide examples of how it can be compromised.

<u>Cultural Pluralism in Higher Education</u>

Cultural diversity is closely tied to the speech code controversy. As stated in the opening of Chapter I, one of the legacies of the civil rights movement of the 19960s was a commitment by American higher education to increase the number of minority students on campus. Not everyone agreed with this objective and racial incidents ensued such as those described at the University of Michigan. Since many of the codes were developed in response to racial incidents on campus, issues involving the changing racial and cultural makeup of the American university have been incorporated into speech policy discussions.

Levine (1991) outlined the historical transformation of cultural diversity in higher education from the 1960s to the present. He noted four different concepts, each having its own focus and related outcomes. The first, **representation**, sought to increase the number of underrepresented students on campus. This concept was expanded to include faculty, staff and trustees. Today, representation means increasing numbers in proportion to societal populations. By 1970, the focus had switched to providing **support** for students on campus. Responses included competency education, ethnic studies and diversity counseling. The focus of the 1980s was the **integration** of the new populations into the campus community through the use of special orientations, residence programs and co-curricular

activities. By 1990, **multiculturalism** was the focus. General education diversity

requirements and orientation programs for majority students were instituted in an

effort to foster appreciation for the concept of group integrity within a shared

community. In summary, each decade according to Levine (1991), has witnessed a

new set of priorities, language and outcomes to address the ongoing concerns

regarding diversity.

Whether or not higher education appropriately addresses diversity issues

will continue to be evaluated on a campus-by-campus basis. However, the

demographic data indicate that the racial makeup of the United States will

continue to become much more diverse (Sue, 1992). Two factors are changing the

racial composition of American society. First, current immigration rates are at an

all-time high. Latino and Asian groups each represent 34 percent of new arrivals.

Second, the white American population is aging and experiencing declines in

fertility and birth rates (1.7 children per mother). Birthrates for minority groups

are much higher: African Americans (2.4), Mexican Americans (2.9), Vietnamese

(3.4) and Hmong (11.9) (Sue, 1992).

How do these data translate into future population figures? "The

Population Reference Bureau has projected that, by the year 2080, the United States

of America may well be 24 percent Latino, 15 percent African-American, and 12

percent Asian-American -- more than half of the nation's population" (Cortes, 1991,

p.8).

The change in society's demographics will continue to alter the complexion of the American university. Increased numbers of minorities on campuses will provide greater opportunities for interaction and conversation between students, many of whom may have never lived with or interacted with members of minority groups before. For many students, it will be an opportunity to learn about, appreciate and celebrate other cultures. For other individuals, it will provide an opportunity to exercise their prejudices and vent their fears and frustrations. While many members of the academic community will support and encourage the influx of underrepresented groups on campus, history indicates that there will continue to be incidents of racial confrontation. Some institutions will respond to these circumstances with the enactment of clearer speech codes while others may seek alternative means. Regardless of the type of response, cultural pluralism will be an underlying influence in making policy decisions.

The next section of this chapter focuses on two terms that often are mentioned in discussions of speech codes: fighting words and intentional infliction of emotional stress. These terms are discussed to give the reader a better understanding of their meanings and their relationship to the speech code debate.

Fighting Words

One of the most prominent legal tenets discussed in the speech code debate is the concept of "fighting words". In the 1942 U. S. Supreme Court case Chaplinsky v. New Hampshire, the fighting words doctrine was defined as words

"which by their very utterance inflict injury or tend to incite an immediate breach

of the peace" (Young & Gehring, 1992, p. 961). The case stemmed from an incident

in which Chaplinsky was cited for calling a city Marshall "a God damned

racketeer" and "a damned Fascist" (Strossen, 1990, p. 509). The Court felt that these

words could be classified as fighting words and, therefore, were deemed

unprotected by the First Amendment.

Since the 1942 decision, the fighting words doctrine has been weakened

almost to the point of extinction, at least at the Supreme Court level. "Infliction of

injury" is no longer considered a valid reason to regulate speech (Page, 1993). In

the 1972 case of Gooding v. Wilson, the U.S. Court focused on the second half of

the definition ("words that tend to incite an immediate breach of the peace") and

noted that no specific words were prohibited, but that each comment needed to be

evaluated within the context of the situation (Strossen, 1990). The Georgia statute

in question made it a misdemeanor for "[a]ny person [to], without provocation,

use to or of another, and in his presence . . . opprobrious words or abusive

language, tending to cause a breach of the peace" (Gooding v. Wilson, 1972, p.

519). The court did not think that "opprobrious" and "abusive" speech rose to the

level of "fighting words" as defined by Chaplinsky and, therefore, struck the

statute down for being overbroad and overturned the defendant's conviction

(Page, 1993). Like the Chaplinsky case, Gooding involved comments made to

police officers: "White son of a bitch, I'll kill you", "you son of a bitch, I'll choke you

to death" and "You son of a bitch, if you ever put your hands on me again, I'll cut you to pieces" (Strossen, 1990, p. 509).

R.A.V. v. City of St. Paul (1992), discussed earlier, further defined the "fighting words doctrine." It indicated that laws and regulations that are constitutionally sound must apply to all fighting words which provoke violence, not just those words that provoke violence on the basis of race, color, creed, religion or gender.

In summary, it is not unusual to find references to "fighting words" in speech code policies. Since the "fighting words doctrine" has been used and modified over five decades, users should be familiar with the use and misuse of the doctrine.

Intentional Infliction of Emotional Stress

American educators are extremely concerned with the emotional damage done to students who are accosted with hate speech and other forms of harmful expressive conduct. The emotional damage can inhibit students' participation in class, alienate them from enriching personal and professional friendships and disrupt the supportive academic environment necessary for the fulfillment of their academic goals.

In reviewing a number of First Amendment doctrines that protect hate speech, Smolla addresses the issue of harm caused by such speech (1990). He notes that the government is allowed to penalize speech when it causes harm. However,

some categories of harm may afford greater liability for censure than others.

Smolla has developed a Taxonomy of Harms that both illustrates the categories of

harmful behaviors and gives examples. While the taxonomy is neither a legal

document nor a framework sanctioned by a court, it is a useful tool to illustrate the

range of harms which may be inflicted.

The taxonomy is hierarchical and reflects the fact that the government has

the greatest legal support for regulating speech in <u>Category I: Physical Harms</u>.

The Government's justification for regulation in <u>Category II: Relational Harms</u> is

significant, but not as much as in <u>Category I</u>. According to Smolla, regulation of

speech <u>in Category III: Reactive Harms</u> is justifiable <u>only</u> when the speech also

encompasses the harms listed in <u>Category I or II</u>. Subsequently, racist or sexist

speech, according to the taxonomy, is only reprimandable when it includes harm

from one of the preceding categories (Smolla, 1990). Smolla's Taxonomy is as

follows (1990, p. 204):

CATEGORY 1: PHYSICAL HARMS

INJURIES TO PERSONS

Examples:

- Solicitation of murder

- Incitement to riot on behalf of the speaker's cause

- Reactive violence against the speaker in response to the message

INJURIES TO PROPERTY

Examples:

- Solicitation of arson

- Incitement to destroy property

- Reactive violence against the property of the speaker in response to

the message

CATEGORY II: RELATIONAL HARMS

INJURIES TO SOCIAL RELATIONSHIPS

Examples:

- Libel and slander

- Alienation of affections

INJURIES TO TRANSACTIONS OR BUSINESS RELATIONSHIPS

Examples:

- Fraud and misrepresentation

- False advertising

- Interference with contractual relations

- Interference with prospective economic advantage

- Insider trading

INJURIES TO INFORMATION OWNERSHIP INTERESTS

Examples:

- Copyright, trademark, or patent infringement

- Appropriation of name or likeness for commercial purposes

INJURIES TO INTERESTS IN CONFIDENTIALITY

Examples:

- Disclosure of national security secrets

- Unauthorized revelation of private personal information

CATEGORY III: REACTIVE HARMS

INJURIES TO INDIVIDUAL EMOTIONAL TRANQUILLITY

Examples:

- Infliction of emotional distress

- Invasion of privacy caused by placing the individual in a false light

   in the public eye

- Invasion of privacy involving intrusion upon seclusion

- Invasion of privacy involving publication of embarrassing facts

- Distress caused by intellectual disagreement with the content of the

   speech

INJURIES TO INDIVIDUAL EMOTIONAL SENSIBILITIES

Examples:

- Insults to human dignity, such as racist or sexist speech

- Vulgarity

- Obscenity

- Interference with political or social cohesiveness or harmony arising

from collective disagreement with the content of speech

The common law tort of intentional infliction of emotional distress as a basis

for regulating campus hate speech has been discussed on some campuses. The

University of Texas explored the concept in developing a definition for racial

harassment:

> . . . extreme or outrageous acts or communications that are intended to
> harass, intimidate, or humiliate a student or students on account of race,
> color, or national origin and that reasonably causes them to suffer severe
> emotional distress (cited in Strossen, 1990, p. 514).

However, many scholars point to the subjective nature of defining and evaluating

the level and intensity of emotional pain. The "Report of Workshop on Racist and

Sexist Speech on College and University Campuses", published by the Annenberg

Washington Program of Northwestern University, in April, 1990, arrived at this

conclusion. While it acknowledged the pain caused by hate speech, it could not

find any objective means of measuring the pain according to any rules restricting

speech (cited in Strossen, 1990).

<u>Speech Code Case Law</u>

Case law involving campus-based speech codes is a vital segment of the

legal literature and should be incorporated into student affairs literature reviews

on the subject for several important reasons. First, depending upon court

jurisdictions, case law may establish the legal standards to which colleges and

universities will be held accountable. These standards may include legal

precedence based on previous court cases and new "landmark" rulings. Second,

and, for the purpose of this study, more importantly, these writings establish legal

definitions of words and phrases which are used to interpret the merits of speech

codes. The attempt to find common or shared definitions of critical terms, such as

"fighting words", has been a major frustration in this controversy. As will be

discussed later, the problem of finding shared definitions of terms was a major

reason for selecting qualitative data analyses in this study.

Among the first institutions to establish a speech code was the University of

Michigan (Weeks & Cheek, 1991). Implemented in 1987, the Michigan plan

regulated discriminatory speech in three distinct areas of the campus: public

spaces; university housing; and classroom buildings, libraries, research labs and

recreation and study centers. Discriminatory speech was most severely regulated

in the third area. It included:

> 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 involves an express or implied threat to an individual,
> or interferes with or creates an intimidating, hostile or demeaning
> environment for the individual's university activities. (Weeks & Cheek,
> 1991, p. 3)

In Michigan's Eastern District federal court case, <u>Doe v. University of</u>

<u>Michigan,</u> (1989), an unnamed psychology graduate instructor charged that the

University's speech code infringed on his constitutional right to freely and openly

discuss theories on biologically-based differences between the sexes and races. The federal district judge agreed citing the language of the policy as too vague to be enforced (Weeks & Cheek, 1991). Specifically, the court took issue with the words "stigmatize" and "victimize" as well as the phrases "threat to" or "interfering with" in relation to students' academic pursuits. The court felt these terms were so vague that students would be unable to distinguish between protected speech and unprotected speech (Kaplin & Lee, 1995).

Observing what happened in Michigan, the University of Wisconsin tried to narrow the definition of prohibited acts while designing its code. Specifically, the Wisconsin policy described such acts as:

> . . . 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:
> 1. Demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry of the individual or individuals; and
> 2. Create an intimidating, hostile or demeaning environment for education, university-related work, or other university-authorized activity. (Young & Gehring, 1992, p. 961)

Nine students were sanctioned under the rule before the university was taken to court in UWM Post v. Board of Regents of the University of Wisconsin (1991). The University defended itself against claims of First Amendment infringement by using the "fighting words" defense. In the 1942 U.S. Supreme Court case Chaplinsky v. New Hampshire, the fighting words doctrine was

defined as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace" (Young & Gehring, 1992, p. 961). Fighting words, so defined, were deemed unprotected by the First Amendment.

The district court did not accept the University's argument on several counts and it decided in favor of the plaintiffs. The court limited the scope of the fighting words doctrine to include only the second half of the definition: "tends to incite an immediate breach of the peace" (Young & Gehring, 1992, p. 961). In addition, the words had to "naturally tend to provide violent resentment" (p. 961) and be directed at a specific individual. Since the policy went beyond the legal limits of the fighting words doctrine by regulating discriminatory speech whether or not the speech was likely to provoke a violent reaction, the court determined that the policy was overbroad. The Wisconsin policy was also considered vague, the court noted, because it failed to indicate "whether the speaker must actually create a hostile educational environment or if he must merely intend to do so" (Young & Gehring, 1992, p. 962). Undaunted by the respective district court decisions, administrators of both the University of Michigan and University of Wisconsin decided to revise their speech codes (Jaschik, 1992, p. A19).

These activities however, ceased after the R.A.V. v. City of St. Paul U. S. Supreme Court decision. In 1990, Robert A. Viktora was accused of violating a St. Paul city "ordinance which made it a misdemeanor to place on public or private property any symbol or graffiti that one reasonably knew would 'arouse anger,

alarm or resentment in others on the basis of race, color, creed, religion or gender.'" (Kaplin & Lee, 1995, p. 510) Police indicated he had participated in such an act at the home of a Black family when he burned a cross on their property. Although the state district court dismissed the case on the grounds of infringement of First Amendment rights, the Minnesota Supreme Court reversed the decision, and sided with the city ". . . calling a cross burning 'an unmistakable symbol of violence and hatred. . .'" (Jaschik, 1992, p. A 19) and invoking the fighting words doctrine (Kaplin & Lee, 1995).

In its appeal of the case to the U.S. Supreme Court, the Minnesota Civil Liberties Union (MCLU) called such trends of suppressing speech "reverse intolerance against unpopular opinion" (Jaschik, 1992, p. A 19). It used the growth of college speech codes as a reason for throwing out the St. Paul law. The U.S. Supreme Court unanimously agreed with the MCLU and struck down the law.

> Although the phrase in the ordinance, "arouses anger, alarm or resentment in others" has been limited by the Minnesota Supreme Court's construction to reach only those symbols or displays that amount to "fighting words," the remaining, unmodified terms make clear that the ordinance applies only to "fighting words" that insult, or provoke violence, "on the basis of race, color, creed, religion or gender." Displays containing abusive invectives, no matter how vicious or severe, are permissible unless they are addressed to one of the specified disfavored topics. Those who wish to use "fighting words" in connection with other ideas--to express hostility, for example, on the basis of political affiliation, union membership, or homosexuality--are not covered. The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects [112 S. Ct. at 2547]. (Kaplin & Lee, 1995, p. 510)

In his remarks following the pronouncement of the court, Mark R. Anfinson, an MCLU lawyer, said, "Civil-liberties groups ... now have a powerful tool to go onto campus and examine the language of these codes and to demand changes if they violate the First Amendment" (Jaschik, 1992, p. A 19).

Following the R.A.V. v. City of St. Paul decision, another case involving freedom of expression concerns on a university campus was heard. In Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University (1993) the court found that sanctions taken against a fraternity for holding an "ugly women" contest as part of a social event and charity fund raiser, were unjustified. The fraternity had sought and received approval for its program from the appropriate campus officials. A week after the event, which had included a participant in black face, with padding, women's clothing and a black wig with curlers, several students requested that the fraternity be sanctioned because of the offensive, racist and sexist display. In the ensuing case, the court determined that the sanctions against the fraternity were unconstitutional because the institution sought to punish the content of the fraternity members' speech. (Kaplin & Lee, 1995)

Another Wisconsin case which has influenced the hate speech controversy is Wisconsin v. Mitchell (1993). The Supreme Court decided that a state law which enhanced penalties for criminals who intentionally selected their victims because of their "race, religion, color, disability, sexual orientation, natural origin or ancestry (Wis. Stat. §939.645 (1) (b))" (Kaplin & Lee, 1995, p. 510) was

constitutionally legal. The case involved a white male who was severely beaten by several black males after the black males had seen and discussed a film which featured a racially motivated beating. The defendant had specifically identified the victim as a white boy and told his friends to get him. The penalty for the aggravated battery was enhanced by the court because the act was racially motivated. The fact that the defendant had made reference to the victim's race just prior to the assault convinced the court that the criminal act was racially motivated. Since sentencing considerations usually take into account the defendant's motive, the state law was considered constitutional and not an infringement upon the defendant's First Amendment rights to free speech (Kaplin & Lee, 1995).

<div align="center">Related Studies</div>

Two studies have addressed the issue of speech codes on American colleges campuses: "War of Words -- Speech Codes at Public Colleges and Universities" by Arati R. Korwar (1994) and "Freedom from the Thought We Hate: A Policy Analysis of Student Speech Regulations at America's Twenty Largest Public Universities" by Richard K. Page (1993). While the topics of the studies are comparable to this study, the samples are very different as are the methodologies. A description of each study follows.

The Korwar study (1994) reviewed student handbooks, including student conduct codes and other policies affecting students, from 384 public colleges and

universities. The majority of the materials were from the 1992-93 and 1993-94

academic years. The review resulted in the development of a list of 14 speech rules

"in order of their progressive offensiveness to the First Amendment" (1994, p. 22).

The report also indicated the percentage of institutions which used the individual

speech rules. Table 1 displays the results. The rules are arranged from least

offensive to the First Amendment to the most offensive.

Table 1. Speech rules for analysis of campus speech regulations in order of

progressive offensiveness to the First Amendment

Speech rule	Percentage of universities
Threats of violence	54
Breach of peace	15
Disruption of teaching research, etc.	80
Hazing	70
Obscenity	39
Intentional infliction of emotional distress	14
Sexual harassment	78
General catchall (rules vague and general enough to cover speech)	31
Libel and slander	6
Fighting words	8
Loud, indecent and/or profane language	47
Verbal abuse or verbal harassment	60
Verbal abuse or verbal harassment directed at members of specific groups	36
Advocacy of offensive or outrageous viewpoint	28

The importance of the Korwar study is that it provides data from a large segment

of the public college and university population. The 384 institutions participating

in the study represented a 72% response rate. The study, however, did not include

any historical data on the development, implementation or use of the policies.

The Page study (1993) also attempted to find the line between protected and

unprotected speech. Page designed a telephone survey to elicit information from

the legal counsels of the twenty largest American public universities. The survey

provided historical information on the development of the policies and their

implementation. It also asked questions regarding the institutions' main objectives

in regulating offensive speech and availability of programs to address cultural

understanding, tolerance and acceptance. (Page, 1993)

Concurrently, Page conducted extensive legal research to identify 30

"Salient Constitutional Principles Covering the Regulation of 'Hate Speech'" (p.

62). Page identifies "elements of speech which can be regulated." These include:

1) lewd, obscene, profane, libelous and "fighting words," 2) reasonable time,

place and manner restrictions; 3) actions which "materially and substantially

interfere with the requirements of appropriate discipline in the operation of the

school (Tinker v. Des Moines Independent School District, 393 US 503, 505

{1969}), 4) intrusion into the privacy of one's home, 5) intimidation through

threats of physical violence and 6) "discriminating comments, epithets or other

expressive behavior" if the meanings of these terms are clear and definite in the

policy and if they apply only to words which naturally provoke violent

resentment (Page, 1993).

Page also identified "Elements of Speech Which Cannot be Regulated" 1) content-based ordinances; 2) expression of a speaker's feelings and emotions; 3) speech found offensive by large numbers of people; 4) speech which "stigmatizes" and "victimizes" others; and 5) words governed by the phrases "intimidating, hostile or demeaning environment," "extremely mentally or emotionally disturbing" or "tends to disturb" (Page, 1993).

Page used the principles to analyze the student conduct codes for ten of the participating public universities. He determined that eight out of the ten codes analyzed were found to violate some portion of the thirty "Salient Constitutional Principles " (Page, 1993).

The Korwar and Page studies confirm the ongoing interest in the speech code topic. Together with the current research, hopefully they will provide a base-line for future studies on the subject.

<div align="center">Chapter Summary</div>

The review of the related literature provided the conceptual foundation for understanding the issues germane to the speech code study. The review looked at the development of the concept of academic freedom, especially as it was expressed through landmark legal cases and certified in the AAUP statement on academic freedom. Equally important was the description of the evolution of cultural pluralism on U.S. campuses and the explanation of the impact that changing demographics have on university enrollment profiles.

After identifying the issues and the players in the speech code controversy, the review of the literature focused on legal issues and court cases which have affected the development and use of college speech codes. Last of all, the reviewer highlighted the works of Page and Korwar in speech code research. Having reviewed the history, players, and issues of the controversy, the focus of the research turns to the methodology of the investigation in Chapter III followed by a report of the results in Chapter IV and a review of conclusions and recommendations in Chapter V.

CHAPTER III

Methodology

Introduction

This chapter provides a comprehensive description of the research methodologies used in this study. A discussion of the study design and the rationale used in selecting the design begins this chapter. After addressing the selection of the population, the details of the instrumentation used, data collection procedures and data analyses follow.

Since this chapter discusses speech codes and the qualitative analysis encoding process which result in identifying key information with "codes," the terminology needs to be clarified. In this chapter, "policy" refers to the individual speech codes and their related policies. The term "code" refers to a coding label designed to identify a key term, idea, action, individual, etc. during the encoding process of speech policies.

Study Design

In order to address the research questions outlined in Chapter 1 of the study, the research design involved collecting data by means of a survey and from speech code documents. The research methodology included a mix of traditional quantitative analyses to analyze the survey data and qualitative analyses to interpret the data from the speech codes and documents. Qualitative analyses were used because the research objectives of the study required a

method which enabled the analysis of language on both qualitative and quantitative levels. Together, the data from the survey and from the codes were combined to provide information about the historical development of the codes, their use and their current status, as well as an analysis of their structure and content.

Population and Selection of Sample

The focus of this research study was a group of 71 institutions which comprise the Carnegie classification of public Research I and II universities (Carnegie Foundation, 1987). These public research universities were selected because, according to Campus Trends, 1991, a Higher Education Panel Report published by the American Council on Education (El-Khawas, 1991), a majority of racial incidents have occurred on these campuses and, thus, they have been at the center of the speech code controversy from the very beginning. In addition, these institutions are legally bound, by their status as public agencies, to uphold the Constitutional First Amendment rights of their students, faculty and staff.

Instrumentation

Survey Questionnaire

A questionnaire, designed by the researcher, collected background information about the development, implementation and current status of each institution's speech code policy (See Appendix A).

The questionnaire was designed with several purposes in mind. First, the researcher wanted to know if the institution had discussed and/or approved a speech code policy within the last ten years just prior to receiving the survey (the academic years of 1983-1993) and, if so, whether or not the adoption of a speech code policy was in response to incidents on the campus. Institutions were also asked whether or not their policies were still in effect and, if they were no longer enforcing the policy, to indicate the reason for this action. This information would determine the prevalence of speech codes at the population of institutions and give a sense of the national scope of this practice. It would also explain whether or not public Research I and II institutions felt the need to develop such policies given the activities reported on various campuses at that time. In other words, were speech codes a "hot topic" or had the controversy over these policies begun to subside?

Second, the researcher wanted to determine who was involved in the development, review and approval of speech policies. With this information the researcher wanted to ascertain whether the policies resulted from administrative mandates reflecting the views and values of a particular group of individuals on campus or whether there had been input from a broad range of campus and, in some cases, community individuals.

Additional questions were designed to determine how frequently violations of the policy occurred, especially during the 1992-93 academic year,

and to identify the types of incidents which had occurred. This information addressed the frequency with which institutions had to deal with these problems and gave the researcher a sense of the national scope of activity and enforcement.

Participants were also asked if their policies had been challenged in court and, if so, to describe the outcome. Responses were analyzed to determine to what extent students and/or other interested parties would challenge the policy. This information was also compared with the data from questions addressing the number of incidents during the academic year and the current status of the policy to see if any conclusions could be drawn.

Lastly, the researcher wanted to know how institutions disseminated the policy information. The researcher wanted to know whether the policy was published in the student conduct code and/or if special attention was given to relaying this information to students. The answers to these questions would give the researcher a sense of how important this policy was to the institution.

Together, the answers to these survey questions would give the researcher and readers of the study an historical and "environmental" context in which to ground the findings of the qualitative analysis. To ensure that the survey was complete and easy to understand, it was pilot tested.

Pilot Test

The cover letter and survey were critiqued by three vice presidents for student affairs at non-participating public universities. A Pilot Survey Critique

form (see Appendix B) was sent to each one asking him or her to comment on the cover letter's clarity, purpose and instructions. It also solicited feedback on the clarity of the questionnaire as well as the appropriateness of its printed format. Upon receipt of the vice presidents' suggestions, minor wording changes were made in the cover letter and an additional question was added to the survey asking respondents to indicate if they would like a copy of the abstract of the research results.

<center>Data Collection Procedures</center>

The cover letter outlining the purpose of the study and requesting copies of institutional speech codes was prepared by the researcher (see Appendix C) and sent in July, 1993, accompanied by the speech code survey, to the highest ranking student affairs officer at each of the 71 institutions classified as public Research I and II universities on that date by the Carnegie Foundation for the Advancement of Teaching (see Appendix D) (Carnegie Foundation, 1987). The student affairs officers were contacted because , as was demonstrated in the University of Wisconsin case (Berg, 1991), student affairs officers are responsible for developing and enforcing student conduct codes including speech policies. Specific names and titles were secured through the National Association of Student Personnel Administrators 1992-1993 Member Handbook (National Association of Student Personnel Administrators, 1992).

D.A. Dillman, in his book, <u>Mail and Telephone Surveys: The Total Design</u> <u>Method</u> (1978), recommends increasing survey response rates by following the initial survey mailing with a postcard ten days later (see Appendix E). The card alerts recipients to the importance of responding to the first mailing, thanks those who have already mailed materials and notes that a second mailing will be sent to non-responders (see Appendix F). The researcher used Dillman's method and with great success. Ultimately, 69 of the 71 institutions (97%) responded in some format, either through sending materials, returning the survey and/or sending a letter regarding their level of participation.

Table 2. Responses to survey

Type of response	N	% of those surveyed
Returned survey	66	93.0
Sent policies	37	52.1
Sent letters	18	25.4
Sent additional materials	8	11.3
Sent state laws	2	2.8

<u>Data Analysis Procedures</u>

The procedures for each of the three phases of analysis were as follows.

<u>Survey Analysis</u>

A code book was designed to translate responses from the survey into data for analysis using the SPSSX statistical method (SPSS, Inc., 1986). The researcher used frequencies and cross tabs from the statistical analysis to

generate answers to each of the research subquestions. The research subquestions addressed the historical development of the codes, their use and their current status. The results of this information were compiled and presented in a narrative format to provide an "environmental" context in which to ground the findings of the qualitative analysis.

Qualitative Data Analysis

In response to the request for copies of speech policies, administrators sent speech policies/harassment policies, general student conduct policies, letters of explanation, supplementary articles and/or copies of state laws. As these materials were analyzed (Miles & Huberman, 1984), efforts were made to distinguish between the sources of information. This was initially done simply because it was not known at the time whether or not such information would be important at some point in the future.

The initial phase of the analysis involved "dissecting" the policies for the purpose of identifying and labeling definitions of key terms, intentions, values, behaviors and legal jargon. This provided an opportunity to note common themes and distinct differences. It aided in identifying anomalies or unique characteristics worthy of further investigation.

Legal terminology was of special interest in this research. When a policy is reviewed by the courts, the words themselves often must stand trial. Put under the legal microscope, words and phrases are dissected, analyzed and

reinterpreted in the language of judicial review and practice. Legal definitions, interpretations and precedents supersede campus meanings, values, practices and traditions. The power of the written word, thus, is analyzed and judged. The research was designed to identify the prevalence and use of legal terms to see if such language were evident in the policies and was helpful in drawing a line between protected and unprotected speech.

The qualitative analysis of the policies' contents resulted in the identification of eleven variables that were related to the first 10 research questions:

1. Institutional Goals and Purposes

2. Focus of Policy

3. Categories of Expression

4. Specific Types of Prohibitive Behavior

5. Definition of Terms and Behaviors

6. Location

7. Provisions for Victims

8. Due Process

9. Office/Persons Responsible for Mediation/Resolution

10. Sanctions

11. Notification

As the qualitative analysis continued, a twelfth category was developed, "Alternative Responses to Prohibited Behavior". Here, the researcher placed different approaches for addressing negative incidents when an allegation of a speech policy infraction was not invoked by an institution.

For each variable, specific codes were initially developed to identify concepts, activities, individuals, behaviors, etc. that had been identified by the researcher as important for each category (Miles & Huberman, 1984). For example, under the category of "Institutional Goals and Purposes" a code was developed to identify materials which specifically mentioned the mission of the university or alluded to it in reference to its student conduct policy. As each group of materials in the study was "dissected" into codes or "encoded," some initial codes were split into two codes for better understanding or, in some cases, new codes evolved as more information became available. The initial analysis included 94 codes covering 11 categories. The final total included 242 codes extended across all 12 categories (See Appendix G).

Since codes were added as the encoding process progressed and once the initial round of encoding was finished, each group of materials was reviewed a second time. The second round of encoding began with the last institution encoded and ended with the first institution studied to ensure that every set of materials was analyzed with all of the codes.

After the encoding process was completed for this first phase, the codes were transferred to coding sheets that also identified the sources of information (speech policy, student conduct code, supporting letter and state law). Upon completion of the recording process, further analysis began. Within each category, patterns and themes, or the lack thereof, were identified and noted for further investigation (Miles & Huberman, 1984).

During the encoding process, reflective remarks made by the researcher regarding ideas, trends, surprises, omissions, etc. were maintained to act as a guide in the analysis of coding patterns. For example, the University of California at Berkeley noted that a student's civil and civic responsibilities were equally important as his or her responsibility to perform well academically and to practice academic honesty (University of California at Berkeley, 1992). This represented a clearly stated institutional value and expectation. By highlighting it in the notes and giving it a code of its own (IGP: V-Civic), this value could be traced throughout other policies to determine if this were unique to the UC-Berkeley policy or if this were a value shared and articulated by other speech policies. The data generated by this code provide a profile of institutional commitments to community and civic values and expectations. This process was used for the remaining codes, including those generated for the Taxonomy of Harms (Miles & Huberman, 1984).

Taxonomy of Harms. During the second stage of the qualitative analysis, the Taxonomy of Harms (Smolla, 1990) was incorporated into the analysis as a template for determining the extent to which court challenges to speech policy might meet Constitutional First Amendment standards given their breadth and scope. To implement this phase of the analysis, the variables of the taxonomy were given codes responding as closely as possible to those codes established for the initial qualitative analysis phase of the research (see Appendix H). By comparing the codes from the initial analysis phase with those of the taxonomy phase, it was possible to determine whether the materials for each institution addressed Smolla's **Physical Harms** (Category I), **Relational Harms** (Category II) or **Reactive Harms** (Category III). This comparison was used to approximate the potential liability for censure for each act or behavior. This information was then used to develop a continuum to determine where First Amendment rights ended and expression not protected by the First Amendment began at the responding institutions.

Comparison Between Smolla, Page and Korwar. The results obtained from using Smolla's Taxonomy of Harms (1990) were then compared with the results of studies conducted by Page (1993) and Korwar (1994). The comparison was used to further assess where institutions participating in the study appeared to draw the line between protected and unprotected speech. Details of the Page and Korwar studies are discussed in the next section.

Trustworthiness

Lincoln and Guba (1985) addressed the issue of trustworthiness in qualitative research. Based upon their writings, the trustworthiness of this study was established by triangulation, thick description and confirmability. An explanation of each of these areas follows.

Triangulation was accomplished through the comparison of research results with results reported in two other research studies. At the same time that data were collected for this study, two other studies of speech codes were in progress. The first, entitled "Freedom from the Thought We Hate: A Policy Analysis of Student Speech Regulation at America's Twenty Largest Public Universities" by R. K. Page (1993), consisted of phone interviews with university legal counsels at the 20 largest public U.S. universities. The phone interviews were supplemented by a legal review of a series of speech-related court cases. The review of the court cases resulted in the identification of "30 Salient Constitutional Points". These points were then used to conduct a legal review of speech policies at 10 institutions to determine if the codes were in violation of any First Amendment rights. The second study, entitled "War of Words: Speech Codes at Public Colleges and Universities" by A. R. Korwar (1994) analyzed policies from student handbooks submitted by 384 public American colleges and universities. The study identified 14 categories of expression and conduct which ranged from protected to unprotected speech.

All three studies were conducted independently of each other. Out of the 20 institutions investigated in the Page study, four of the institutions and three of the policies were cited in the current study. The Korwar study utilized 15 institutions which also appeared in this study. Neither the Page study nor the Korwar study was read by the researcher until after the encoding process was completed so that the researcher would not be influenced by either of the two studies. The Page and Korwar studies were cited wherever the studies overlapped.

In addition to triangulation, the study used thick description to provide a contextual basis for data analysis. Numerous quotes were taken from the policies to provide examples of the variables being analyzed. Direct quotes helped readers identify specific sections of the policies being analyzed.

Last of all, the trustworthiness of the study was established by its confirmability. Since the policies analyzed in this study were published by public universities and readily accessible, and since the codes used in this study were published as part of this research, it was assumed that future researchers could use these sources to replicate the study and confirm the findings.

In conclusion, triangulation, thick description and confirmability were used to establish the trustworthiness of the study.

Chapter Summary

This chapter provided a comprehensive description of the research methodologies used in this study. It discussed the importance of using a mix of traditional quantitative analyses to analyze the survey data and qualitative analyses to interpret the data from speech codes and documents. In the description of instrumentation, the chapter described how research questions were integrated into the development of the survey and how the pilot survey was tested. The data collection procedures were described, including the use of Dillman's suggestion for increasing responses to mail surveys (1978). Data analyses focused on the use of the SPSS statistical method to analyze the survey results and described the steps taken in the qualitative data analysis process. The role of the Taxonomy of Harms (Smolla, 1990) in establishing the line between protected and unprotected speech was discussed and compared with the results of the Page (1993) and Korwar (1994) studies. Finally, the chapter addressed the trustworthiness of the study through the use of triangulation, thick description and confirmability (Lincoln & Guba, 1985).

Chapter IV will present and discuss the results of the study followed by a summary, conclusions and recommendations in Chapter V.

CHAPTER IV

Results and Discussion

The study was comprised of two sections: administration of a survey questionnaire and the qualitative analysis of specific speech-related documents. The survey results provided descriptive data focusing on the historical development of the codes, their use and their current status. This provided a description of the environmental setting in which the speech code phenomenon evolved. The qualitative analysis examined the structure of these codes individually and as a group to answer a series of research questions and to ultimately see if the codes delineated between protected and unprotected speech. The results of these analyses follow.

Survey Questionnaire Results

Survey Returns

The survey questionnaire was returned by 66 public institutions representing a survey return rate of 93%. Twenty-four questionnaires were completed by Vice Presidents of Student Affairs (36%) and 19 by Deans and Directors of Student Affairs (29%) the target recipients of the survey. Directors and Coordinators for Judicial Affairs submitted 11 surveys (17%) while Vice Presidents/Directors of Housing and Residence Life completed four (6%). Only two surveys were completed by Governance Coordinators or Administrative Assistants (3%). Six respondents failed to identify their titles (9%). The high

response rate and the titles of those individuals who completed

the survey indicate that issue of speech codes is one that is taken very seriously

at these universities.

Speech Code Policy Development and Dissemination

During the ten years prior to the survey (1983-1993), 18 institutions

(27.2%) indicated that they had established formal speech codes. In addition,

nine institutions (13.6%) had drafted proposals, but never had approved them.

The development of speech codes was discussed at another four institutions

(6%), but never reached the drafting stage. An additional four universities (6%)

noted that they developed documents related to harassment, racial harassment

or intolerance policies during this time, but these were not called "speech codes".

Nearly 47% of the institutions surveyed indicated that they did not develop any

speech codes during that time.

According to respondents, 1989 and 1990 were the most prolific years for

the development of speech codes. A total of nine became effective in 1989,

followed by eight in 1990. The numbers drop dramatically after that with two

approved in 1991 and one each in 1992 and 1993. These figures correspond with

those presented in the Page study (1993).

Respondents who indicated that their institutions had either discussed a

code or had approved a code were asked to identify the individuals and/or

groups responsible for the writing, reviewing and approving of speech codes on

their respective campuses. Fifty percent of the institutions (33) responded to this

question. Table 3 lists the results.

Table 3. Individuals or groups responsible for writing, reviewing and approving speech codes

Individuals/Group	Writing		Reviewing		Approving	
	N	%	N	%	N	%
Faculty	22	66.7%	25	75.8%	10	30.3%
Students	22	66.7%	24	72.7%	8	24.2%
Staff	22	66.7%	19	57.6%	5	15.2%
President/Chancellor	4	12.1%	24	72.7%	23	69.7%
V.P. Student Affairs	10	30.3%	22	66.7%	12	36.4%
V.P. Academic Affairs	1	3.0%	14	42.4%	5	15.2%
V.P. Development	1	3.0%	5	15.2%	2	6.1%
Student Government	9	27.3%	18	54.5%	6	18.2%
Public Affairs Staff	1	3.0%	3	9.1%	2	6.1%
Corporate Counsel	22	66.7%	23	69.7%	10	30.3%
Provost	2	6.1%	10	30.3%	4	12.1%
AA Officer	6	18.2%	9	27.3%	2	6.1%
Trustees	2	6.1%	8	24.2%	12	36.4%
State Government Representative	--	--	4	12.1%	3	9.1%
ACLU Representative	1	3.0%	4	12.1%	--	--
Other: Special Task Force	1	3.0%	2	6.1%	1	3.1%

Note: N=33.

Faculty members, students, staff members and attorneys led the list in co-

authorship of speech codes in equal proportions at 22 institutions (66.7%). Vice

presidents for student affairs and student government bodies were actively

involved on approximately one-third of the campuses. The faculty, students,

staffs and corporate counsels remained very active during the policy review

stage. However, the presidents/chancellors, vice presidents for student affairs

and student government bodies were equally as active in this stage, with greater

involvement than in the writing stage of policy development. The presidents/chancellors were most often mentioned at the approval stage (23 institutions/69.7%). The trustees also made their strongest showing with 12 institutions (36.4%). However, faculties and corporate counsels decreased their activities by 50% at the approval stage. It should be noted that students were involved in the approval process at nearly one-fourth of the institutions responding to this part of the survey (n=33). Affirmative action officers and community members, such as state government representatives and ACLU members, played limited roles, if any, in the speech policy development and approval process. A review of those responsible for writing, reviewing and approving speech codes shows that speech codes went through an extensive developmental process involving a cross-section of the campus community.

Survey participants were asked how their policies were distributed to students, faculty and staff. The results appear in Table 4. The most popular sources included handbooks (24), orientation meetings (17) and student newspaper articles (15). The preferred type of communication was printed material (11 references) followed by meetings (6) and contact with specific offices (3). A total of 27 institutions (40.9% of the respondents) answered this question.

Table 4. Policy distribution sources

Sources	Total
Student handbooks	24
Orientation meetings	17
Student newspaper articles	15
Staff handbooks	5
Classroom discussions	4
Staff senate meetings	3
Class schedules/directories	3
Student regulations/directories	3
Faculty senate meetings	2
University publications	2
Affirmative action office	1
Brochures available upon request	1
General Counsel's office	1
Library	1
Meetings with academic deans	1
Official notices	1
Policies handbook	1
Student workshops	1
Student life office	1
University bulletins to faculty and staff	1

(N=33)

Campus Profiles

Survey results showed that 16 out of 27 institutions had policies which covered only their campuses. Seven respondents noted that they had policies which also covered branch campuses. Only five of 27 respondents indicated that their policies covered all campuses in their respective state university systems.

Institutions were asked if their campuses included law schools and medical centers/hospitals. Respondents indicated that 28 had law schools and 24 had medical centers/hospitals. Only 19 institutions reported that their speech

codes applied to their law schools while 13 applied their policies to their medical centers/hospitals. When asked, only one institution noted that it had a school, college or program exempt from the policy. It indicated its medical and dental programs were exempt.

Incidents

Questions regarding incidents on campus revealed that 15 out of 33 respondents had written their policies in response to incidents on their own campuses. One institution indicated it had modified its policy after a campus incident. Table 5 details the types and frequencies of incidents which occurred on respondents' campuses. Racial incidents were most common (14) followed by slurs/name calling (7), harassment (4) and notices, flyers and written comments (4).

Court Challenges

Four institutions out of 30 responding noted that their speech codes had been challenged in court (Oklahoma State University, Oregon State University, University of Michigan and the University of Wisconsin). Only the University of Oklahoma reported winning its case.

Enforcement and Incidents

When asked if their institutions were still enforcing their policies, 19 out of 28 respondents answered affirmatively. Out of the five institutions which noted that they were no longer using their policies, two indicated it was because the

policies had been declared unconstitutional, another two cited other law cases

and the fifth institution explained that its policy was never finalized.

Table 5.   Types of campus incidents

Type of incident	Total	Percentage
Racial	14	21.2
Slurs/name calling	7	10.6
Harassment	4	6.1
Notices, flyers, written comments	4	6.1
Hate speech	2	3.0
Threats	2	3.0
Physical assault	2	3.0
Sexist incidents	2	3.0
Fighting words	1	1.5
Denial to show film	1	1.5
Hazing	1	1.5
Religious incidents	1	1.5
Homophobic incidents	1	1.5
Spitting	1	1.5
Verbal abuse	1	1.5
Graffiti	1	1.5
Apartheid activities and protests	1	1.5
Other misconduct	1	1.5

Note: N= 66.

Institutions still enforcing their policies were asked how many infractions

occurred during the most recent academic year (1992-93). The results are in

Table 6.

The survey results underscore several important points. The fact that 53%

(35) of 66 respondents indicated that they had developed, drafted or at least

Table 6. Speech code infractions, 1992-1993

	Number	Percent
0	16	72.7
1-3	2	9.1
4-10	2	9.1
11-15	1	4.5
16-20	1	4.5

Note: N=22

discussed speech codes or related policies confirms what the literature has

reflected: this is an extremely important issue in higher education. This is

supported by the high response rate to the questionnaire (93%) and an equally

strong request for copies of the research abstract (93.5%).

Survey results indicate that 46% of the speech codes were written in

response to incidents on the authors' campuses. Conversely, more than 50% of

the codes were developed at institutions where no incidents had taken place.

Whether the development of the codes was seen as a preemptive measure

anticipating future problems or as a proactive move to show support for

different groups by establishing community standards is not revealed by the

survey. However, the numbers indicate that, despite a lack of incidents on their

individual campuses, many institutions felt the need to design and implement

speech codes. This compulsion peaked in 1989 and 1990 and then dramatically

leveled off. As the review of the literature confirms, these data coincide with

legal decisions against the speech codes at the University of Michigan and the

University of Wisconsin. While the court decisions appeared to affect the

development of new speech codes, 19 out of 28 respondents indicated they were still enforcing their policies at the time of the survey. Only four of 30 respondents had their policies challenged in court. Finally, the survey mirrors the literature in identifying race-related altercations, as the most prevalent type of incident involved in this debate. This is followed by slurs, name calling and general harassment.

An examination of those persons responsible for writing, reviewing and approving the speech policies revealed an almost equally shared involvement between faculty, staff, students and corporate counsel at the writing and reviewing stage. In short, there appeared to be broad-based campus involvement in the process. However, despite widespread public debate over the policies, there appeared to be little if any active involvement in the writing and reviewing stages from individuals or groups outside the academy. The ACLU, an active player in several of the court cases, was listed as being involved in the writing stage of only one policy and the reviewing stage of four policies.

Document Analysis Results

Selection of Policies to be Analyzed

Responses from the Speech Code Survey were used to identify individual speech codes for content analysis. Eighteen institutions indicated they had developed or discussed the development of speech codes during the last ten years. Three additional institutions which noted that they had harassment

policies indicated that these were not defined as speech codes and, therefore, did not fall within the parameters of the study.

The core group of 18 institutions was reduced to 14 when four institutions were eliminated from the study because they failed to submit their policies (West Virginia University, Purdue University, University of Wisconsin-Madison and the University of Delaware). Of these four institutions, only West Virginia was still enforcing its policy at the time of the survey. The policy from the University of Connecticut was added to the document analysis phase of the study when it submitted a policy, but failed to return the survey. The University of Michigan submitted a policy indicating that its old speech policy was no longer used. The new policy, however, was not to be classified as a speech policy. Therefore, the University of Michigan policy was analyzed with the rest of the policies in all areas except that of "Prohibited Behaviors". Finally, only two institutions in the final sixteen universities in the study indicated that their policies were no longer being enforced at the time of the study (University of Michigan and Rutgers University).

Selection of Materials to be Analyzed

In response to the cover letter, participants forwarded to the researcher a combination of speech codes, student conduct codes or policies, copies of state laws, copies of institutional announcements and personal correspondence discussing the materials. All of these materials were initially analyzed to

determine which documents would be utilized in the study. Since the study

focused specifically on the content of speech codes, an initial concern was that

utilization of data from student conduct codes might skew the results. This was

complicated by the fact that some speech codes were free-standing policies while

others were scattered throughout student conduct codes. Since students were

held accountable for speech-related regulations whether the regulations were

free-standing policies or imbedded within all encompassing student conduct

codes, it did not seem necessary to differentiate between the two sources in

reporting results unless such differentiation was significant regarding the topic

being discussed.

Research Question 1

**What major institutional goals and/or purposes underlying the codes
were identified?**

   a. **What specific goals were identified?**

   b. **What institutional values were identified?**

   c. **What specific class-based issues were addressed?**

The qualitative analysis of the materials submitted by the sixteen

institutions in the study identified 74 different goals, purposes and values (see

Appendix G). Further analysis resulted in the development of seven categories

into which these goals, purposes and values could be divided. Some items could

be listed in several different categories. However, the seven categories help to

differentiate the areas of emphasis in analyzing the materials.

The categories include:

1. Concept of a Scholarly Community

2. Legal and Judicial References

3. Institutional and Administrative Issues

4. Focus on the Individual

5. Institutional Identity

6. Community Issues

7. Distinctive Policy Attributes

The categories are presented and discussed in the following sections.

Concept of a scholarly community. The traditions of American colleges

and universities are based on the tenets of the search for truth in an unfettered

atmosphere of open debate. Honesty, integrity, freedom of dissent and freedom

of expression are the cornerstones of American higher education. As stated in

the University of Utah student handbook:

> The primary function of a University is to discover and disseminate
> knowledge by means of research and teaching. To fulfill these functions a
> free interchange of ideas is necessary. It follows that the University must
> insure within it the fullest degree of intellectual freedom and protect the
> opportunity of all members of the University community and their guests
> to exercise their intellectual freedom and protect their right to
> communicate with others in the University community. (1987, p.1)

The literature review in Chapter II noted the debates over speech codes'

influences on academic freedom and the functioning of the academy. This segment of the present research study was designed to determine if values and goals related to the concepts of a scholarly community were evident in the policies.

The most noted value in this section was that of "Freedom of Speech and Expression" with references by 14 institutions. It was followed closely by "Freedom of Inquiry" and "Capstone Statement" with 11 references each. The capstone statement is defined as opening remarks, often a paragraph, summarizing specific institutional goals, values and purposes. Occasionally, it is a reiteration of an institution's mission statement. Less than half of the institutions mentioned "The Right to Dissent" (7), "A Variety of Viewpoints" (7), "Academic Freedom" (6), "Intellectual Freedom" (5), or specifically discussed the "Ideals of a Scholarly Community" (5). Seldom mentioned were "Teaching, Research and Public Service" (4), "Consensus Concerning Acceptable Standards of Conduct" (4), "The Right to Hear" (2), "Truthfulness" (1), "The Unique Mission of Universities in Democracies" (1) or the compelling argument that "Campuses Must Possess the Highest Standards of Ethical, Educational and Social Integrity" (1).

The results of the analysis regarding the "Concepts of a Scholarly Community" suggest that institutions emphasize the rights of studying within an academic community, with less emphasis placed on the related student

responsibilities. Hence, there is greater reference to freedom of speech and expression than to truthfulness or the campuses' commitments to the highest standards of ethical, educational and social integrity.

Legal and judicial references. References to legal and judicial issues were also significantly prevalent. Fourteen institutions made references to "Freedom of Speech and Expression" followed by 12 universities citing "Constitution/First Amendment" or "State Laws". "Local Laws" were mentioned by only five institutions. Broader concepts, such as "Equality" (3), "Justice" (2), "Civil Rights" (2), "Social Justice" (1) and "Restraint Based on the Common Purpose of Higher Education, Not Coercive Law" (1) were seldom mentioned.

The significant number of references to "Freedom of Speech and Expression", as well as to state and Constitutional law, is not surprising. As public institutions, the universities in the study are held fully accountable to state and federal laws, rulings, etc. The State University of New York-Buffalo (SUNY-Buffalo) policy provides a good example of the incorporation of local, state and federal laws into student policies:

> All rules of the Board of Trustees of SUNY, and all the laws of the City of Buffalo, the Town of Amhurst, the State of New York, and the United States of America apply on campus and are considered part of the Student Rules and Regulations. The State of New York laws include, but are not limited to, the New York State Penal Law, the New York State Vehicle and Traffic Law, the New York State Education Law, and the Alcoholic Beverage Control Law.
>
> All the rules and regulations in these chapters shall be considered as supplementing and implementing the appropriate rules of the Board of Trustees, city, state, and federal laws, and shall apply to all students.

(SUNY-Buffalo, 1993, p. 2)

The more interesting revelation in this analysis is the lack of reference to "Equality", "Justice" and "Civil Rights". It may be that other terms, such as "diversity", "multiculturalism", "tolerance" and "inclusive community" are being substituted for these words.

Institutional and administrative issues. One of the clearest messages apparent in many policies was that the host institution had both the responsibility and the authority to enforce its policies (13). Occasionally, this was underscored by references to state laws and/or state authorized actions such as those listed in the previous quote from SUNY-Buffalo.

The second most popular reference in this section was to the "Function of an Educational Institution" (11). This was a collective phrase used to describe the general activities of a university. It was often used in reference to demonstrations on campus indicating that demonstrations and other forms of freedom of expression were acceptable as long as they did not disrupt the function of the university. Subsequently, references to "Time, Place and Manner" regulations (8) followed a close third. Half of the institutions in the study noted their authority to establish rules regarding the time, place and manner in which expression could take place on campus. Only two institutions mentioned the concept of remaining content neutral (a requirement of the federal courts) in making time, place and manner decisions.

The remaining administrative and institutional issues in this category received limited support from the respondents: five institutions made reference to "Specific Institutional Goals" ; "Teaching, Research and Public Service", "Mission" and "Security" were noted by four and "Campus Order" was cited by three. Only one university expressed an institutional commitment to eliminate discrimination and harassment.

This analysis reflects the administrative nature of most universities. It identifies the institutions' authority and responsibility for establishing and enforcing policies. It ties these actions to the general activities of being an educational institution designed for teaching, research and public service. It focuses its attention on the practical nature of time, place and manner considerations in regard to safety and order concerns. This approach to policy enforcement is very practical, non-political and non-partisan. It's very pragmatic and very generic.

Focus on individual rights and responsibilities. "Personal Responsibility" for one's actions was the most noted element in this category with 12 institutions citing it in their materials. Eight references to "Tolerance," "Expression of Personal Freedoms without Trampling Others" and general references to "Rights and Privileges of the Individual" followed. "A Student's Right to Pursue an Education" was noted by seven institutions followed by "Human Dignity" (7), "Civility" (6) and "Freedom from Harassment" (5). Among the rights and

responsibilities that received little attention were "Institutional and Student

Responsibility for Creating a Supportive Learning Environment" (3), "Self

Discipline" (2), "A Right to Hear" (2), "Student Responsibility for Perpetuating the

Values of the Community" (2) "Student Responsibility for Creating an

Intellectually Stimulating Environment" (1) and "Promoting Personal

Maturation" (1).

Institutional expectations that students accept personal responsibility for

their actions were well documented among the speech codes. This is typical

language for most student conduct codes. However, such references, in addition

to being vague, may have an authoritarian or reactive sound to them. They do

not explain what types of behavior institutions would like to see their students

exhibit and promote. The policies that refer to tolerance, civility, human dignity,

self discipline, freedom from harassment and promoting personal maturation, on

the other hand, appear more proactive and give the reader of the policy a sense

of personal direction and insight into the institutions' priorities and value

systems. The institutions that cite students' responsibilities for creating

intellectually stimulating environments and perpetuating the values of the

community are putting their students on notice that they are expected to be

active participants and contributors to the quality and enhancement of the

university community, not just passive players. Examples include:

> Harassment and intimidation can impede an individual's ability to
> participate fully in the educational process. Acts of discrimination,
> harassment and insensitivity hurt and degrade all members of the campus

community whether victim, perpetrator, or observer. Every member of the University community is responsible for creating and maintaining a climate free of discriminatory harassment. (Oregon State University [OSU], 1993, p. 101)

Beyond our expectations of academic honesty -- and of equal importance - - is the assumption that the Berkeley student will accept his or her civil and civic responsibilities. What are these responsibilities? Simply put, they are the courtesies, considerations, and gestures of respect towards other members of the campus community that allow us all to express our personal freedoms without trampling on those of others. (University of California at Berkeley [UC-Berkeley], 1992, p. 2)

Promoting dignity and respect among all members of the university community is a responsibility each of us must share. Acts of racial and ethnic harassment are repugnant to the University's commitments and will not be tolerated. (University of Oklahoma [UOK], 1990, p. 1)

This is a very important and revealing section of the study because it exemplifies how institutions can develop either reactive or proactive relationships with their students. It also demonstrates how the nature of these relationships can be subtly expressed in the policies' use of language. Policy writers need to be cognizant of this and respond accordingly.

In summary, policy areas which focus on individual rights and responsibilities can be used as opportunities to make general comments regarding proscribed or expected behavior or they can be used to educate students about specific attitudes, ideas and activities which reflect the values of the institution. This, in turn, will reflect the type of relationship between the institution and the student.

Institutional identity. Institutional policies are often written to reflect or

meet a perceived institutional value or need. The study was designed to identify

institutional goals and values contained within the policies. Eleven out of the 16

institutions in the study had policies containing "capstone statements." These

statements were broad references to the institutions' views of themselves and

their expectations regarding their students. For example:

> Intolerance and bigotry are antithetical to the values of the
> university and unacceptable within the Rutgers community. One of the
> ways the university seeks to effect this value is through a policy of
> nondiscrimination . . . In order to reinforce institutional goals of
> nondiscrimination, tolerance, and civility, the following policy against
> verbal assault, defamation, and harassment is intended to inform students
> that the verbal assault, defamation, or harassment of others violates
> acceptable standards of conduct within the university.

> Verbal assault, defamation, or harassment interferes with the
> mission of the university. Each member of this community is expected to
> be sufficiently tolerant of others so that all students are free to pursue
> their goals in an open environment, able to participate in the free
> exchange of ideas, and able to share equally in the benefits of our
> educational opportunities. Beyond that, each member of the community
> is encouraged to do all that he or she can do to ensure that the university
> is fair, humane, and responsible to all students.

> A community establishes standards in order to be able to fulfill its
> mission. The policy against verbal assault, defamation, and harassment
> seeks to guarantee certain minimum standards. Free speech and the open
> discussion of ideas are an integral part of the university community and
> are fully encouraged, but acts that restrict the rights and opportunities of
> others through violence, intimidation, the destruction of property, or
> verbal assault, even if communicative in nature, are not protected speech
> and are to be condemned. (Rutgers, 1993, p. 1)

> "UCLA Regulations on Activities, Registered Organizations and
> Use Of Properties"

> Free and open association, discussion and debate are important
> aspects of the educational environment of the University, and should be
> actively protected and encouraged, even where the positions advocated

are controversial and unpopular. These regulations are formulated to provide for the greatest possible free and open association, discussion and debate while at the same time protecting individual privacy and the functioning of the University.

In order to carry on its work of teaching, research and public service, the University has an obligation to maintain conditions under which the work of the University can go forward freely, in accordance with the highest standards of quality, institutional integrity, and freedom of expression, with full recognition by all concerned of the rights and privileges, as well as the responsibilities, of those who comprise the University community.

Each member of the University shares the responsibility of maintaining conditions conducive to the achievement of the University's purposes. (University of California, Los Angeles [UCLA], 1993, p. 7)

Oregon State University, as an institution of higher education and as a community of scholars, affirms its commitment to the elimination of discrimination and harassment, and the provision of equal opportunity for all. An objective of Oregon State University is the creation and maintenance of a positive atmosphere of nondiscrimination in every phase and activity of University operations. Harassment and intimidation can impede an individual's ability to participate fully in the educational process. Acts of discrimination, harassment and insensitivity hurt and degrade all members of the campus community whether victim, perpetrator, or observer. Every member of the University community is responsible for creating and maintaining a climate free of discriminatory harassment. (OSU, 1993, p. 101)

After the capstone statements, "values" were mentioned by six

institutions, "specific institutional goals" by five and "mission" by four. Only

one institution made reference to the "unique mission of universities in

democracies:"

In fulfilling this mission, the University must recognize and protect free inquiry and free expression as indispensable components of the critical examination of philosophies and ideas. Given the unique mission of educational institutions in a democratic society, this inquiry should be more open and vigorous, and should consequently have greater

protection than in society at large, provided that such inquiry does not infringe upon the rights of others. Commitment to free inquiry and expression creates a strong presumption against prohibition of expression based upon its content. (Oklahoma State University, 1993a, p. 1)

Together these elements -- capstone statements, values, specific institutional goals and mission statements -- define each institution's identity. They explain what an institution values and why. They represent the core values of the institution's existence.

The capstone statement is important because it "sets the tone" or provides a context within which members of the campus community can define and understand their roles and behaviors. It provides a solid foundation on which to build a community value system. The importance of having a capstone statement is demonstrated by the fact that ten institutions have them. This number might have been higher if participating institutions had sent complete copies of their disciplinary policies.

It seemed surprising to the researcher that the terms "values," "goals" and "mission" did not appear more often in the policies. Goal setting and values clarification exercises are popular techniques taught on most university campuses. Incorporating the institution's goals and values into the student conduct code would be an appropriate way to explain an institution's mission and value system. Mission statements may be more formal, but they represent long term goals and are less subject to trendy changes. Since they represent or

explain the reasons for the institution's existence, any policies flowing directly from the mission statement or representing the values expressed in the mission statement would seem to have a greater impact or influence on the campus community.

Community issues. This section is very similar to that of "Concept of a Scholarly Community". There is definitely overlap. However, this section is developed as a separate category because its focus is less directed toward a student's interaction with academic and scholarly principles and more toward the student's personal and professional relationships with members of the campus. It also addresses the concept of community.

Since speech code violations were considered an offense against members of the university community, as well as an administrative infraction, it seemed appropriate to see how policy makers addressed issues related to community. Slightly more than half the policies addressed the issue of "Mutual Respect" (10), closely followed by the concept of "Tolerance" (8). "Human Dignity" was addressed by seven of the institutions while "Civility" was noted by six . "Freedom from Harassment" was identified by five, as was the reference to institutions as "Academic or University Communities". Only one-fourth of the institutions noted "Diversity", "Freedom from Discrimination" and "Consensus Concerning Acceptable Standards of Conduct". Even less noticeable were references to "Promoting Positive and Pluralistic Educational Communities" and

"Social Awareness" (3 each). Single references were made to "The Community

Must Possess the Highest Standards of Ethical, Educational and Social Integrity",

"Acts of Discrimination, Harassment and Insensitivity Hurt and Degrade All

Members of the Campus Community: Victim, Perpetrator, Observer", "Offense to

the Community for Restricting the Right to an Education", "Celebrate

Community Diversity", "Support and Stimulate Individual Ethical Integrity",

"Social Justice" and "Civic Responsibility".

In looking at the most often mentioned values in this section -- mutual

respect, tolerance and human dignity -- a sense of positive interaction among

community members based on common goals and values prevails:

> The university is a fragile organism, requiring for its vitality consensus
> among its members concerning acceptable standards of conduct. These
> standards must both underlie and promote a degree of tolerance far
> greater than that which is exhibited in society at large. For it is not
> coercive law which restrains our actions, but a common purpose. (UCBE,
> 1992, p. 2)

The UC-Berkeley quote shows how institutional values are linked to each

other and how they act as social catalysts for each other. To restate the quote,

campus consensus regarding acceptable conduct becomes the basis for

promoting a level of tolerance exceeding that which is found in society. These

actions are taken, not because of legal inspirations, but because of the

community's commitment to creating a productive academic environment. This

environment is impossible, or at least impaired, if acceptable conduct and

tolerance are not present. Thus, the values interact with each other in an

unending cycle.

When interpreting values, caution is necessary. Discrepancies between the intended institutional meaning of the word and its use in practice may result in counterproductive situations. A good example is the value of tolerance. Words like "tolerance" can even have negative connotations. Tolerance may translate into ignoring or avoiding that which one does not like. For example, students may think they are tolerant of others because they attend institutions with multi-cultural and multi-racial student bodies. However, if students don't make attempts to engage classmates whom they "tolerate" in discussions and activities, it is questionable whether or not their tolerance encourages or enhances a sense of community. A passive commitment to tolerance and community may actually create an intimidating if not a hostile learning environment.

The more proactive language used to bond the individual with the community is found in only a few of the policies. "Promoting a Positive and Pluralistic Educational Community" and "Consensus Concerning Acceptable Standards of Conduct" suggest an interaction among community members resulting in shared values and beliefs. "Acts of Discrimination, Harassment and Insensitivity Hurt and Degrade All Members of the Campus Community" and "Offense to Community for Restricting Right to an Education" indicate or suggest a oneness, an identification or bonding between community members. To attack

one is to attack all regardless of the circumstances. There is a cohesiveness which transcends the individual parts. The call to "Celebrate Community Diversity" and "Support and Stimulate Individual Ethical Integrity" go far beyond tolerance. They encourage students to become proactive members in forming and maintaining a larger campus community.

Distinctive policy attributes. In relation to speech issues, several distinctive policy attributes stood apart from the general values, purposes and goals previously discussed. All expressed an underlying concept that universities were separate entities from society and, therefore, required special rules.

The first two distinctive attributes are "Tolerance Greater than that in Society" (1) and "Greater Protection of Speech than in Society" (1). Both express strong commitments to freedom of expression and form a secure foundation for academic freedom in the market place of ideas.

> A goal of the faculty, students, administration, staff, and Board of Regents, is for Oklahoma State University to be a superior educational center for the preservation, transmission, and discovery of knowledge. The wide variety of extracurricular activities at Oklahoma State University represent one way this goal is achieved. Therefore, these activities are an integral part of the total educational mission of the University.

> In fulfilling this mission, the University must recognize and protect free inquiry and free expression as indispensable components of the critical examination of philosophies and ideas. Given the unique mission of educational institutions in a democratic society, this inquiry should be more open and vigorous, and should consequently have greater protection than in society at large, provided that such inquiry does not infringe upon the rights of others. Commitment to free inquiry and expression creates a strong presumption against prohibition of

expression based upon its content. This philosophy is intended to apply to all forms of expression occurring at the University and any uncertainty regarding the application or operation of this policy statement shall be resolved in a manner consistent with this philosophy. (Oklahoma State University, 1993a, p. 1)

The university is a fragile organism, requiring for its vitality consensus among its members concerning acceptable standards of conduct. These standards must both underlie and promote a degree of tolerance far greater than that which is exhibited in society at large. For it is not coercive law which restrains our actions, but a common purpose. (UC-Berkeley, 1992, p. 2)

The Oklahoma policy refers to "the unique mission of educational institutions in a democratic society..." (Oklahoma State University, 1993a, p. 1). While it does not define this statement within the policy, it uses it as a justification for greater tolerance on campus, again supporting the concept of academic freedom. Berkeley's statement, however, moves from the discussion of student rights to that of student responsibilities based on community affiliation. The call for a greater degree of tolerance than in society is underscored by a commitment to the common educational objectives for campus community members: "For it is not coercive law which restrains our actions, but a common purpose" (UC-Berkeley, 1992, p. 1). What is unusual about combining the term "tolerance" with the concept of restraining one's actions is that the concepts become content neutral. A question one may ask, for example, is: Is Berkeley telling minority students to ignore racist comments and ideas or is it asking racist students to be more tolerant of students who do not meet their skin color preference? Regardless of the fact that this passage is open to several different

interpretations, it still highlights tolerance as a key institutional value.

Both of these policies reflect the philosophies and values of institutions which perceive American university campuses as distinctively different locations than the rest of society, especially when it comes to the concepts of academic freedom and freedom of expression.

Class-based issues. In addition to the identification of goals and values of the institution, Research Question 1 was also designed to identify specific class-based issues addressed by the policies. The results of this analysis are presented in Table 7.

Table 7. Class-based issues

Issue	Policy	Code	Letter	Law	Total
Disability/handicap	10	4	3	1	12
Religion	10	4	3	2	12
Race	9	4	4	2	11
Sexual orientation	10	3	3	1	11
Sex/gender	10	3	3		11
Ethnicity	5	3	4		8
National origin	6	2	1	2	7
Age	6	2	1		7
Color	4	2	1	2	6
Veteran status (includes Vietnam and disabled)	5	2	1		6
Marital status	4	1			5
Other personal characteristics	4	1	1		4
Ancestry	2			1	2
Culture and heritage		2			2
Mental disabilities	1				1
Any other group protected by civil rights law	1				1
Creed	1				1
Criminal records that are not job related	1				1

Note: Total equals the number of institutions whose policies contained the variable.

"Religion" and "Disability/handicap" were the most noted categories appearing in policies from three-quarters of the institutions. These were followed by "Race", "Sexual Orientation" and "Sex/gender" tied with 11 each. Racial and cultural categories were defined in a number of ways other than simply "race". These included references to "Ethnicity" (8), "National origin" (7), "Color"(6), "Ancestry" (2) and "Cultural and heritage" (2). Thus, diversity classifications may be expressed in many different ways.

Other categories with limited representation but an unusual focus were: "Other personal characteristics" (4), "Any other group protected by civil rights law" (1), "Criminal records that were not job related" (1), and "Mental disabilities including learning disabilities, mental retardation, and past/present listing of a mental disorder" (1). "Other personal characteristics" seems to be extremely vague and this would be difficult to define. The other three categories correspond to established legal practices related to civil rights, employment and the American with Disabilities Act (ADA).

The class-based categories seemed standard. The only categories that were somewhat out of the mainstream were marital status and criminal records that are not job related. These issues are not the focus of hate speech incidents and, therefore, are not pertinent to this study.

<u>Research Question 2</u>

Which members of the academic community were covered by the

policy?

The members of the academic community covered by the policies are

identified in Table 8.

Table 8.   Members of the academic community covered by the policies

Campus community members	Policy	Code	Letter	Law	Total
Students	13	8	3		16
All members of the university community	5	5		1	9
Visitors	4	4			8
Administrators/staff	3	5	1		7
Faculty	3	5	1		7
Student organizations	5	2			7
Licensees, invitees and all other persons authorized or not	1				1
Outside contractors and/or vendors	1				1
Trustees, directors, regents					0

Note: Total equals the number of institutions whose policies contained the variable, not the sum of the policies, codes, letters and laws which contained the variable.

All sixteen participating institutions indicated that their policies were

directed at students. At least nine noted that their polices applied to all members

of the campus community. Visitors were covered in eight instances. Least often

cited were outside vendors and unauthorized persons.

The fact that students are identified as the focus of these policies is not

surprising. After all, these are official university policies designed to address

student speech and conduct. What is noteworthy is that more than half the

institutions expanded coverage to include all members of the university community and seven respondents specifically identified faculty, staff, administrators and student organizations as being covered by the policy. Add to these, eight institutions that included visitors in their coverage and it appears to indicate the importance of the policies to the institutions involved and their insistence on community-wide coverage and support.

Research Question 3

What categories of expression were addressed?

The different categories of expression identified and addressed in the policies are reported in Table 9.

Table 9. Categories of expression identified in policies

Expression	Policy	Code	Letter	Law	Total
Oral expression	10	8	1	1	14
Physical Behavior	6	1		2	7
Written expression	5	3		1	7
Symbolic expression	1	2			3
All forms of expressions		2			2
Various media	1	1			2
Hostile speech		1			1
Protected expression		1			1

Note: Total equals the number of institutions whose policies contained the variable, not the sum of the policies, codes, letters and laws which contained the variable.

Most institutions made references to oral expression (14). However, less than half of the policies made references to written expression or physical behavior (7). Symbolic expression, often mentioned during discussions of hate speech incidents, appeared in only three of the policies. The concepts of hostile speech and protected expression were mentioned in only one policy.

The results of this section of the study identify the different types of expression which need to be clearly indicated whenever discussions of freedom of expression occur. Without knowing which type of expression is being referred to, it is difficult to determine whether it is protected or unprotected speech. Likewise, the type of expression should also be defined. Definitions for "Expression" and "Symbolic Expression" will be discussed in regard to Research Question 5. It should be noted at this point that, other than the reference to "Various media," only one of the policies made reference to expression transmitted via computer. Following the collection of data for this research, the controversy over First Amendment rights regarding computer transmittals has become more common in the literature (DeLoughry, 1993; Lemisch, 1995). Insufficient data were available to draw any conclusions regarding this particular issue from this study.

Research Question 4

What specific types of behavior were prohibited?

The answer to this question is divided into three sections. The first section provides a review of the three studies which were used to analyze the data. The second section presents the findings for Research Question 4 and compares the results with Smolla's Taxonomy of Harms. The final section provides a comparison of selected prohibited behaviors to policy components identified in studies by Smolla, Page and Korwar.

Review of studies. One of the objectives of this study was to analyze prohibited expressional activities in order to examine where participating institutions thought they could delineate between protected and unprotected speech. Smolla's Taxonomy of Harms (1990) was selected as a "template" to aid in the process of identifying both protected and unprotected speech. In addition, the researcher consulted Page's "Salient Constitutional Principles Covering the Regulation of 'Hate Speech'" (1993) and Korwar's research on speech codes (1994) to determine if these studies could help identify the line between protected and unprotected speech. Before presenting the results, a brief review of each researcher's work is presented.

Smolla notes that speech may be penalized when it causes harm. In designing his Taxonomy of Harms, he identified three categories of harm: I.) **Physical Harms** (injuries to persons and property), II.) **Relational Harms** (injuries to social, transactions or business relationships; information ownership interests and/or interests in confidentiality), and III.) **Reactive Harms** (injury to

individual emotional tranquillity and/or communal sensibilities). Smolla reports

that government bodies have the greatest interest in regulating speech which

falls into Category I (Physical Harms). Government also has an interest in

regulating speech in Category II (Relational Harms), but this interest is not as

pronounced as in Category I. In Category III (Reactive Harms), government is

unable to regulate speech because negative intellectual and emotional reactions

to speech are insufficient justification for such restrictions. Smolla goes on to

note that these categories are not mutually exclusive. An act can result in harm

found within two or three different categories (Smolla, 1990). For example, a

breach of confidentiality might affect a student's relationship with a professor

(Relational Harm) and cause the student significant emotional anguish (Reactive

Harm).

In his dissertation "Salient Constitutional Principles Covering the

Regulation of 'Hate Speech,'" Page identifies "elements of speech which can be

regulated" (1993, p. 64-70). These elements include: 1) words that are lewd,

obscene, profane, libelous including "fighting words," 2) reasonable time, place

and manner restrictions for expressional activities as long as they are content

neutral; 3) actions which "materially and substantially interfere with the

requirements of appropriate discipline in the operation of the school" (Tinker v.

Des Moines Independent School District, 393 U.S. 503, 505 {1969}), 4) intrusion

into the privacy of one's home, 5) intimidation through threats of physical

violence, and 6) "discriminating comments, epithets or other expressive behavior" (p. 67) if the meanings of these terms are clear and definite in the policy and if they apply only to words which naturally provoke violent resentment and speech identified in criminal regulations covering disturbing the peace, defamation, vandalism, harassment and destruction of property (Page, 1993).

Page also identified "Elements of Speech Which Cannot be Regulated" (1993, p. 70-75). These elements include: 1) content-based ordinances; 2) symbolic speech; 3) expression of a speaker's feelings and emotions; 4) speech found offensive by large numbers of people; 5) speech which "stigmatizes" and "victimizes" others; and 6) words governed by the phrases "intimidating, hostile or demeaning environment," "extremely mentally or emotionally disturbing" or "tends to disturb" (Page, 1993, p. 70-75).

The Freedom Forum First Amendment Center at Vanderbuilt University funded a study to review student handbooks from 384 public higher education institutions (Korwar, 1994). In analyzing the student conduct codes contained in the student handbooks, the study identified 14 speech rules. Arranged in order from most offensive to least offensive to the First Amendment, the list of rules included: threats of violence; breach of peace; disruption of teaching, research, etc.; hazing; obscenity; intentional infliction of emotional distress; libel and slander; fighting words; lewd, indecent and/or profane language; verbal abuse

or verbal harassment; verbal abuse or verbal harassment directed at members of specific groups; and advocacy of offensive or outrageous viewpoints (Korwar, 1994). This list did not draw any lines between protected and unprotected speech, but represented a series of categories along a continuum from least protected to most protected speech. The results of the Korwar study, along with those of Smolla and Page, will be used in the next section for discussion of the research findings of this study.

Research findings. The document analysis phase of this study identified 49 specific types of prohibited behaviors. The behaviors are listed in Table 10. The list was sorted according to Smolla's "Taxonomy of Harms". This was not always an easy task as some behaviors fell into more than one category and, because the behaviors were not identified in detail, the researcher had to presume what the policy makers meant when they identified a behavior. A good example was the term "Threats." If one were threatening to disrupt a speaker's presentation by inciting an angry mob, that would fall under Category I. However, if one were threatening a student by divulging private, personal information to his/her work study supervisor, that would be a Category II harm. Given these circumstances, the researcher decided to 1) list behaviors only once and 2) list the behavior as close to the top of the list (Category I) as possible.

The two most common prohibited behaviors found in the policies were "Interfere with individual pursuit of education or participation in university activities" and "Disrupting the educational process" (14 each). The fact that both

Table 10. Prohibited university behaviors sorted according to Smolla's "Taxonomy of Harms"

	INSTITUTIONS[a]														
	UCBE	UCLA	UCSB	UCSD	ASU	IU	OKSU	UOK	UNC	UU	ORSU	UOR	BUF	RU	UCON
Category I: Physical Harms[b]															
Safety endangerment	P[c]		P		P	P	P C P	C[d]	P		P C	P C	P	C	P
Hazing				P			P	P	P		P C	P	P		P
Interfere with rights of invited speaker				P											
Destroying property	P						P	P C	C P	P	P	P	P	C	P
Defacing property							P	P			C	P C	P	C	P
Incites or is likely to incite lawless action (breach of peace)							C	C P						P	
Disturbance of peace	P	P	P												
Direct personal abuse (physical or verbal)												P	P	C	P
Disrupting educational process	C P	C P	P	P		P	P	P	P	C C	P	P	P C	C C	P
Intimidation							C	C	P		P C		P	C	P
Fighting words	C P	C P	P	P		P	C	C							
Unprotected expression								C							
Sounds like fighting words													P		P

Table 10 -- *Continued*

	U C B E	U C L A	U C S B	U C S D	A S U	I U	O K S U	U O K	U N C	U U	O R S U	U O R	B U F	R U	U C O N
Threats	P		P			P		C	P C		P	P	P	C	P
Physical harassment									P		C	P	P		P
Category II: Relational Harms															
Harassment/racial								C				P			P
Harassment based on ethnicity								C							
Harassment/sexual	P		P	P				P		P			P	P	P
Slander and libel based on race, religion, ethnic or national origin								C							
Harassment	C P	P C	P	P	P		P				P C			C	
Defamation										C				C	
Harassment/verbal								C					P		P
Interfere with individual pursuit of education or participation	C P	C P	P	P	P	P	P C		P	C	P	P	P	C	P
Obstruction									P C	P	P		P	P	P
Creating intimidating, hostile or offensive environment	C P	C P	P	P					P		P C		P		
Discourage reporting							C								
Disruptive or annoying computer behavior															P
Violations of any federal, state, local or university laws, ordinances or policies						P									
Discrimination									P		P C		P	C	P

Table 10 -- *Continued*

	UCBE	UCLA	UCSB	UCSD	ASU	IU	OKSU	UOKC	UNC	UU	ORSU	UOR	BUF	RU	UCON
Coercion							C							P	
Category III: Reactive Harms															
Epithets	C P	P C	P	P			C								
Demean/humiliate/denigrate												C			
Bigotry														C	
Stereotyping (promoting degrading or demeaning social stereotyping					P										
Mock or degrading groups					P										
Insults						P	P C	C			P				
Psychological harm							P	C	P		P	P			
Mental harassment							P								
Verbal assault														C	
Undermine self-esteem															
Jokes											P				
Slurs									C		P C				
Stalking															
Offensive speech											C				
Obscenities							C	C	P	C					
Organized recruitment or proselytizing inside dining facilities		P													
Discriminatory harrassment				P								P C			

98

Table 10 -- *Continued*

Sources: Rodney A. Smolla, "Academic freedom, hate speech, and the idea of a university," Law and Contemporary Problems (1990): 204.

Note: Data from the The University of Michigan is not included in this table.

[a] UCBE-University of California, Berkeley
UCLA-University of California, Los Angeles
UCSB-University of California, Santa Barbara
UCSD-University of California, San Deigo
ASU-Arizona State University
IU-Indiana University
OKSU-Oklahoma State University
UOK-University of Oklahoma
UNC-University of North Caroline
UU -University of Utah
ORSU-Oregon State University
UOR-University of Oregon
BUF-State Univeristy of New York at Buffalo
RU-Rutgers University
UCON-University of Connecticut

[b] Taxonomy categories listed are researcher's interpretation of Smolla's Taxonomy of Harms

[c] P-Student conduct codes

[d] C-Speech codes

of these behaviors were identified in 14 of the policies makes sense as both behaviors markedly affect an institution's ability to function according to its mission and to prevent students from obtaining their education. The next prohibited behaviors most often mentioned focused on conduct-related behaviors and physical actions against persons or property: "Safety endangerment" (12), "Threats" (10), "Destroying property" (10), "Hazing" (8) and "Sexual harassment "(8). Such actions reflect inappropriate behaviors on all campuses. The next most often cited behaviors, "Harassment" (9) and "Creating an intimidating, hostile and offensive environment" (8) were identified in at least half of the policies. The use of the phrase "intimidating, hostile and demeaning environment" is an area where policy makers have to be careful to use very clear definitions. The phrase was cited as overbroad in the <u>UWM Post, Inc. v. Board of Regents</u> (1991) because the phrase would include words that would not necessarily result in a violent reaction. Such wording resulted in the University of Wisconsin policy being dismissed as unconstitutional.

As stated earlier, Smolla's Taxonomy of Harms (1990) was selected as a "template" to aid in the process of identifying protected and unprotected speech. Prohibited behaviors listed under Category I: Physical harms would receive less First Amendment protection than those listed in succeeding categories. A review of Table 10 does in fact show that more policies prohibit behaviors listed in Category I and that prohibitions taper off under Categories II and III. The use of

the Taxonomy confirms the frustration of many policy makers. It is easy to identify prohibited behaviors involving physical harms. It is much more difficult to sort out protected versus unprotected activities in Categories II and III. While Smolla's Taxonomy provides some clarity and organization to the dilemma, it does not render the clear cut answers that most policy makers would like to have at their disposal.

Page, Korwar, Smolla and study comparison. As cited previously, two other studies also attempted to classify speech and speech-related activities into protected and unprotected groups. Page (1993) identified 30 salient constitutional principles while Korwar (1994) developed a list of 14 speech rules. In Table 11, Korwar's speech rules are listed from least protected speech to most protected speech. Speech rules which correlate with one of Page's salient constitutional principles or one of Smolla's Taxonomy Categories (as determined by the researcher) are so noted. This information is then compared to the policy components identified in this study.

A comparison of the three studies indicates that they are in relative agreement when the issue is regulating speech related to threats of violence, breach of peace, and disruption of teaching or research. Page and Korwar also agree on regulating obscenity, while Page and Smolla are in close agreement regarding regulating fighting words. The issue is less clear when restrictions pertain to sexual harassment, infliction of emotional distress and verbal abuse.

Table 11. Identification of policy components of target policies and three policy studies

			INSTITUTIONS[a]															
Smolla's Taxonomy Category[b] (1990)	Page Study (1993)	Policy Components in Korwar Study (1994)	UCBE	UCLA	UCSB	UCSD	ASU	IU	OKSU	UONK	UNC	UUR	ORSU	UOUR	BUF	RU	UCO	TOTAL
I	UPS[c]	Threats of violence	P[d]		P			P	C[e]	P			P C	P	P	C	P	10
I	UPS	Breach of peace	P	P	P				C	C P					P			6
I	UPS	Disruption of teaching or research	C P	C P	P	P		P	C P	P	P	C	P C	P C	P	C	P	14
I		Hazing				P			P	P	P		P C	P	P		P	8
III	UPS	Obscenity							C	C	P	C						4
III		Infliction of emotional distress							P	C	P				P	P		5
II		Sexual harassment	P		P	P			P		P				P	P	P	8
II	UPS	Libel and slander							C									1
I	UPS	Fighting words	C P	C P		P		P	C	C								7
III	UPS	Lewd, indecent or profane																0
III		Verbal abuse												P	P	C	P	4
III		Verbal abuse at groups		P														1
III		Advocacy of offensive viewpoint																0

Table 11. - *Continued*

Sources: Rodney A. Smolla, "Academic freedom, hate speech, and the idea of a university," Law and Contemporary Problems (1990): 204.

Richard K. Page, "Freedom from the thought we hate: A policy analysis of student speech regulation at America's twenty largest public universities" (Ph.D. diss., Arizona State University, 1993)

Arati R. Korwar, "War of words-- Speech codes at public colleges and universities," (Nashville, TN: Freedom Forum First Amendment Center, 1994), 22-25.

Note: Data from The University of Michigan is not included in this table.

―――――――――――――――

[a] UCBE-University of California, Berkeley
  UCLA-University of California, Los Angeles
  UCSB-University of California, Santa Barbara
  UCSD-University of California, San Deigo
  ASU-Arizona State University
  IU-Indiana University
  OKSU-Oklahoma State University
  UOK-University of Oklahoma
  UNC-University of North Caroline
  UU-University of Utah
  ORSU-Oregon State University
  UOR-University of Oregon
  BUF-State Univeristy of New York at Buffalo
  RU-Rutgers University
  UCON-University of Connecticut
  TOT.-Total number of institutions reporting the policy component

[b] Taxonomy categories listed are researcher's interpretation of Smolla's Taxonomy of Harms

[c] UPS indicates component is not protected speech

[d] P-Student conduct codes

[e] C-Speech codes

A review of the institutional responses indicates that universities also feel it appropriate to write policies regulating threats, breach of peace, and disruption of teaching or research. They also are in agreement on regulating speech related to hazing and sexual harassment. Conversely, they shy away from blanket policies regarding verbal abuse and advocacy of offensive viewpoints.

In summary, Table 11 provides a template for showing where institutions participating in the study appear to draw the line between protected and unprotected speech.

Research Question 5

Were terms or behaviors defined?

    a) If yes, were legal definitions used?

    b) Were specific examples given?

Seven out of the 16 institutions in the study provided documents which defined terms or behaviors related to speech and expression and fighting words and/or harassment, including discrimination and mental harassment.

Four institutions defined terms and behaviors related to speech and expression (Oregon State University, Indiana University, University of Utah and Oklahoma State University). These terms were usually found under time, place and manner regulations and often addressed speaker/demonstrator situations.

Some examples include:

> Speech activities mean leafleting, picketing, speech-making, demonstration, petition circulation, and similar speech-related activities. (OSU, 1993, p. 105)

> "Symbolic speech" shall include structures, actions and any other thing or activity for the purpose of expressing views or opinions that is not otherwise included in the concepts of oral or written speech, signs, handbills, posters or other methods of communication. (University of Utah [UU], 1987,p. 3)

Oklahoma State University offered the most extensive definition of

"expression" in its policy for extracurricular use of university facilities:

> B. Expression

>> Any communication, discussion, acquisition, manifestation, representation or indication, whether clear or unclear, ambiguous or unambiguous, of attitudes, information, ideals, beliefs, opinions or ideas on any subject by any student, faculty or other member of the academic community, outside speaker or act, process or instance of representation in any media. The media of expression may include, but shall not be limited to speech, publications, literature or documents, art, cinema, theater or music, electronic emissions, audio or visual recording in any media that combine audible, visible or other sensory expression, whether expressed, transmitted, presented or sponsored individually or by a group. (Oklahoma State University, 1993a, p. 7)

It then went on to identify unprotected speech:

> E. Unprotected speech

>> The following are currently recognized by the United States Supreme Court as categories of speech or expression which are unprotected and can be barred or limited:

>>> 1. Clear and Present Danger - Preparing a group for imminent lawless action, and steeling to such action, as opposed to the abstract teaching of the moral propriety or even moral necessity for a resort to force and violence; and there must not only be

advocacy to action, but also a reasonable apprehension of imminent danger to the essential functions and purposes of the University. Such imminent lawless action shall include the following:
i. The violent overthrow of the government of the United Sates, the State of Oklahoma, or any political subdivision thereof;
ii. The willful damage or destruction, or seizure and subversion, of the institution's buildings or other property;
iii. The forcible disruption of, or interference with, the institution's regularly scheduled classes or other educational functions;
iv. The physical harm, coercion, intimidation, or other invasion of lawful rights of the Board of Regents, institutional officials, faculty members, staff members or students; or
v. Other campus disorder of violent nature.
2. Fighting Words - Words which by their very utterance inflict injury or are likely to incite an immediate breach of the peace. Personally abusive words that, when spoken to ordinary persons, are inherently likely to incite immediate physical retaliation.
3. Obscenity - A description of depiction of sexual conduct that, taken as a whole, by the average person, applying contemporary community standards (the 'community' shall be comprised of the faculty, staff and students of Oklahoma State University):
i. appeals to the prurient interest;
ii. portrays sex in a clearly offensive way; and
iii. using a reasonable person standard rather than the contemporary community standard, does not have serious literary, artistic, political or scientific value. (Oklahoma State University, 1993a, p. 8-9)

The concepts of "clear and present danger" and "obscenity" are familiar terms. Discussions regarding these issues often take place in the general press. Less familiar, however, is the concept of "fighting words". As discussed in Chapter II, "fighting words" is a legal doctrine which was first cited in the 1942 U.S. Supreme Court case Chaplinsky v. New Hampshire (1942). "Fighting words" or references to actions which sounded like the fighting words concept were noted in seven policies, including all four of the University of California

codes:

> 'Fighting Words' are those personally abusive epithets which, when directly addressed to any ordinary person, are, in the context used and as a matter of common knowledge, inherently likely to provoke a violent reaction whether or not they actually do. Such 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. 'Fighting words' 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. (UC-Berkeley, 1992, p. 15)

This definition of "fighting words" describes when fighting words constitute harassment. The concept of harassment is very important. As the results of the survey indicated, many institutions have designed harassment policies. In some cases, institutions have used this terminology instead of calling their policies speech codes. In other instances, institutions clearly indicated that their harassment policies are not viewed as speech codes.

The concept of harassment, including discriminating harassment, was addressed by seven institutions, as well as the University of Michigan, which stated that it does not have a speech code and the harassment policy it sent does not cover speech protected by the First Amendment (University of Michigan [UM], 1993). Examples from other institutions include:

> Harassment on University property or at University-sponsored or supervised activities, because of another person's race, color, gender, national origin, age, religion, marital status, disability, veteran status, or sexual orientation, or for other reasons accomplished by:
> a.) intentionally subjecting another person to offensive physical contact other than self-defense; or,

b.) specifically insulting another person in his or her immediate presence with abusive words or gestures when a reasonable person would expect that such an act would cause emotional distress or provoke a violent response. (University of Oregon, 1992, p. 1)

Racial and ethnic harassment is defined as :

1. Behavior or conduct addressed directly to individual(s) related to the victim's race, religion, ethnicity, or national origin that threatens violence, or property damage, or that incites or is likely to incite lawless action; or
2. Fighting words such as racial and ethnic epithets, slurs, and insults directed at an individual(s) with the intent to inflict harm or injury or that would reasonably tend to incite an immediate breach of the peace; or
3. Slander, libel or obscene speech based on race, religion, ethnicity, or national origin. (UO, 1990b, p. 1)

Mental harassment, being intentional conduct extreme or outrageous, or calculated to cause severe embarrassment, humiliation, shame, fright, grief or intimidation. To constitute mental harassment, the conduct must be of such a nature that a reasonable person would not tolerate it. (UOK Harris/Letter, 1993, p. 1)

Actions constitute harassment if:
1. they substantially interfere with another's educational or employment opportunities, peaceful enjoyment or residence, or physical security, and
2. they are taken with a general intent to engage in the actions and with the knowledge that the actions are likely to substantially interfere with a protected interest identified in subsection (1) above. Such intent and knowledge may be inferred from all circumstances." (Arizona State University [ASU], 1992, p. 31)

Harassment is discriminatory if taken with the purpose or effect of differentiating on the basis of another person's race, sex, color, national origin, religion, age, sexual orientation, disability, or Vietnam-era veteran status. (ASU, 1992, p. 32)

Oregon State University provides both a definition of discriminatory

harassment and examples:

OSU policy prohibits behavior based on another's status that has the purpose or effect of creating an intimidating, hostile, or offensive working or educational environment. Status refers to race, color, national origin,

religion, sex, sexual orientation, age, disability, or veteran status. This policy is not intended to and will not be applied in a way that would violate rights to academic freedom and freedom of expression. Behaviors that may constitute discriminatory harassment include:

1. Racial, ethnic, or other slurs;
2. Malicious name calling;
3. Anonymous notes or phone calls;
4. Derogatory graffiti;
5. Stereotyping the experiences, background, and skills of individuals or groups;
6. Threatening members of diverse groups;
7. Making inconsiderate or mean-spirited jokes;
8. Imitating stereotypes in speech or mannerisms;
9. Preventing access to any University resource or activity;
10. Attributing objections to any of the above to "hypersensitivity" of the targeted individual or group. (OSU, 1993, p. 101)

This definition is a good example of why it is so difficult to write harassment policies. References to "creating an intimidating, hostile or offensive working or educational environment" (OSU, 1993, p. 101), as discussed earlier, are too vague to be enforceable. On the other hand, identifying specific behaviors, as this definition does, helps students understand the types of behaviors the university wants them to avoid. Behaviors like anonymous phone calls, derogatory graffiti and threats are reasonable, sanctionable offenses. However, other behaviors given as examples, such as stereotyping, name calling and jokes, may, in fact, be protected speech. Thus, institutions must be very careful in selecting examples for their policies.

In conclusion, the analysis addresses the intentions of institutions by identifying key terms, defining them and giving examples. The analysis is very helpful in identifying the line between protected and unprotected speech on the

university campus.

<u>Research Question 6</u>

Did the policy address expression differently by location?

The range of locations identified in the policies are listed in Table 12.

Table 12. Locations cited in policies

	Policy	Code	Letter	Law	Total
University property	13	4	1		15
Leased/off-campus activity sites	7	1	1		9
Off-campus	5				5
Classroom	4	1	1		5
Public space	3	1			4
Specific free speech area	2	2			4
Residence hall	2	1	1		4
Quad	1	1			2
Research and lab facilities	1				1
Authorized access area only	1				1
Library	1				1
Student health center	1				1
Dining area	1				1
Areas adjacent to campus	1				1
Office/work space		1			1

Note: Total equals the number of institutions whose policies contained the variable, not the sum of the policies, codes, letters and laws which contained the variable.

An overwhelming majority of the institutions (15) used the collective term "university property" to indicate where their policies were to be enforced. Despite the all-inclusive nature of this term, nine institutions noted that leased and/or off-campus activity sites were also covered by their policies and five

specifically identified classrooms as falling under this jurisdiction. Four

institutions specifically identified public space. In addition, it is important to

note that four institutions had specific locations on their campuses that were

designated as free speech areas, thus providing specific open forum areas for

students, faculty and staff to express their ideas.

One of the best examples of speech regulations with regard to location

was in an Oregon State University publication, "Sticks and Stones Can Break My

Bones But Words Can Never Hurt Me" (OSU, 1991). The brochure gave specific

examples of protected speech activities and discriminatory harassment according

to locations:

Protected Activity: "In the *classroom*: an American, an Iraqi, and an Israeli

student accuse each other's people of committing genocide in the Middle

East" (p. 4).

Discriminatory Harassment: "In the *residence hall*: some residents think it's

funny to spray paint swastikas on the doors of Jewish residents. (This

constitutes harassment because it goes beyond speech and involves

defacing property" (p. 5).

Other examples included locations in the office setting, daily

conversations outside the workplace and in the quad. The policy was helpful in

explaining to all members of the campus community that location played a vital

role in determining appropriate and inappropriate communication.

Two other institutions also highlighted location in their policies. UC-Berkeley specifically noted:

> Unless otherwise indicated, these regulations govern student conduct on university property, at official university functions and university-sponsored programs away from campus, and in the following areas immediately adjacent to the campuses. . . (UC-Berkeley, 1992, p. 2).

The policy then goes on to list the parameters of the area according to specific streets. This example is the most detailed policy in terms of specific locations that was analyzed.

The University of Connecticut is distinctive in two respects regarding location. First, under its "Student Bill of Rights," it clearly addresses classroom expression:

> Freedom in the Classroom. Freedom of discussion and expression of views are encouraged and protected. It is the responsibility of the faculty in the classroom and in conference to ensure the realization not only of the fact but of the spirit of free inquiry. . . Faculty have the responsibility to maintain order. Part of this instructional function includes allowing appropriate time for the statement of views which may be different from those professed. (University of Connecticut [UCONN], 1993, p. 2)

Second, a section of the 1993-94 student handbook, entitled "Protection of Students and Staff from Discrimination and Harassment During Off-campus Experiences," indicates that the president's policy on discriminatory harassment be made part of contracts or agreements with external agencies. It goes on to say that ground rules for handling complaints of discrimination and harassment should also be made part of these agreements and that students should be

advised of this information. (UCONN, 1993)

This segment of the research underscored the importance of location in the speech code debate. Although most institutions took the generic route and used an all-inclusive identifier such as "university property", several institutions thought it important enough to specifically identify where policies would be enforced. Policies such as the one at Oregon State University (OSU, 1991) that gave location-based examples, helped readers understand that location played an important role in determining what was acceptable and unacceptable communication. The pamphlet format developed by OSU also served as an educational tool. By using an example-based pamphlet, the institution was able to educate the campus instead of simply reiterating the policy in a "thou shalt not," restrictive fashion.

The discussion of location also gave institutions an opportunity to reiterate their commitment to freedom of expression in the classroom. As noted in the previous discussions regarding institutional values, this is a cornerstone of American higher education. Any opportunity to underscore an institution's commitment to this goal is one that should be taken very seriously.

The University of Connecticut's detailed description of the inclusion of its harassment policy in the development of outside contracts was noteworthy. The statement of this practice in the student handbook notified students that their well-being off campus was as important to the university as their experience on

campus. It underscored the university's commitment to maintaining the quality

of students' academic experiences, regardless of their location.

Research Question 7

What provision or procedures were identified for victims?

A systematic review of the policies indicated that there was very little

information presented that outlined procedures or provisions for victims.

Table 13. Procedures and provisions identified for victims

	Policies	Codes	Letters	Totals
Confidentiality	3	2		5
Protection from retaliation	3			3
Expressed concern for interest of victim	1			1
Provide staff with information regarding sources of support and information for victims	1			1
Right to appeal dismissal of case after initial investigation		1		1

Note: Total equals the number of institutions whose policies contained the
variable, not the sum of the policies, codes, letters and laws which contained the
variable.

Confidentiality was the most often mentioned provision. However, this

was referenced in only five of the policies. Three institutions noted that victims

would be protected from retaliation. Only one institution expressed concern for

the interests of persons complaining of inappropriate behavior, but the

university did not elaborate on this statement. Another institution noted that an

alleged victim would have a right to appeal the dismissal of the case after an initial investigation.

Although institutions want students to understand that they are committed to preventing hate speech and related incidents, few acknowledge the type of support that may be necessary for a student who has been victimized. None of the universities listed the availability of counseling or peer support groups. Due to the controversial nature of hate speech cases, pursuing such a matter can be emotionally overwhelming and can seriously affect a student's relationships on professional and academic, as well as, personal levels. Educating students about the services and support available to them during and after the event should not be overlooked.

Research Question 8

What due process or procedures were identified for persons violating the code?

Table 14 presents data on references to due process found in the policies.

Generally speaking, data for this segment of the research were gleaned from the student conduct codes' general statements of due process for violations of institutional policies. Subsequently, these represent standard due process procedures. What is of significance, however, is that informal resolution is mentioned in only four of the policies. Granted, some institutions sent only their

Table 14. Policy references to due process procedures

Type	Policy	Code	Letter	Law	Total
Documentation required	4	1			5
Hearing	6	2			8
Notice	3	1			4
Time frame	3	1			4
Mentions due process	3	2			5
Report incident; preliminary investigation	4	3	1		7
Informal resolution	2	3			4
Standard due process provisions	1				1

Note: Total equals the number of institutions whose policies contained the variable, not the sum of the policies, codes, letters and laws which contained the variable.

speech policies and not their entire conduct codes that list their due process provisions. However, one would still think that as educators university officials would like to promote informal resolutions to such incidents rather than formal proceedings. Informal resolutions to these conflicts have several benefits. First, informal resolutions have the advantage of getting students to talk *with* each other as opposed to *at* each other. This approach personalizes the process and helps students get to know each other as individuals instead of as stereotypes. Second, informal proceedings can help shift the burden of responsibility back to students. It is much more productive in the long run to have students learn how to resolve their difficulties among themselves. They develop a greater commitment to resolution when they become part of the process. In addition, they can improve their communication skills and conflict resolution skills.

Finally, informal regulations can possibly eliminate some of the pressure caused by media interest surrounding formal proceedings and legal cases.

This section of the research shows that informal resolutions to the conflicts may not be as prevalent as other methods of due process. Given the benefits of informal resolutions, this is an area worthy of further investigation.

Research Question 9

Which offices and/or persons are responsible for mediating or resolving complaints.

The offices and/or persons responsible for mediating or resolving the complaints on campus are listed in Table 15.

Three-fourths of the institutions relied on their student affairs staff to mediate or resolve complaints. This is indicative of most campuses given that student conduct policies are usually generated and enforced within the student affairs office.

Half of the participating institutions called on students and faculty or academic staff to resolve disputes. Given the researcher's background in student affairs, this number seems low. If a case involved comments made in a classroom setting, it would seem reasonable to expect a hearing committee to be comprised of both students and faculty, as well as student affairs staff members.

Six institutions did indicate that they had campus review committees, hearing boards or a campus environmental team. In many instances, the members of these groups also included faculty and students.

Table 15. Offices and/or persons responsible for complaint resolution

Office and/or person	Policy	Code	Letter	Law	Total
Student Affairs staff (Dean of Student Affairs, housing staff, etc.)	7	5	1		12
Students	5	3			8
Academic Dean/department chair, faculty, academic staff	4	5			8
Campus review committee., hearing board, campus environmental team	4	2			6
Affirmative Action office	3	2	1		5
Administration (President, V.P.)	2	1			3
Security	1	2			3
Legal counsel	1	2			3
Presentation in the courts by appropriate government officials		2			2
Multicultural Affairs staff	1	1			1
Managers at any level	1				1
Civil rights agencies	1				1
Office of Labor Relations if accused is part of bargaining unit	1				1
Appropriate individual at off-site locations	1				1
V.P. for Finance and Administration	1				1

Note: Total equals the number of institutions whose policies contained the variable, not the sum of the policies, codes, letters and laws which contained the variable.

Affirmative action officers were utilized at only five of the institutions and only one university tapped its multicultural affairs office for service. None of the participants indicated the use of an ombudsperson in mediating or resolving conflicts. Given the size of the enrollments at these institutions, one would think

there would be greater involvement of affirmative action officers and multi-

cultural affairs staff. One would also expect to see an ombudsperson's office

involved. Given the data available, the analysis was unable to identify reasons

for the low level of participation of these individuals in the mediation/resolution

process.

Research Question 10

What institutional sanctions would be placed on someone found in

violation of the code?

Many policies which were reviewed did not report any specific sanctions.

Therefore, following standard due process protocols, students violating the

speech code policy could face any of the sanctions listed in their institution's

student conduct code. Table 16 shows the sanctions identified by the responding

institutions.

Not surprisingly, suspension and expulsion top the list with reports from

ten institutions each. Since these are among the most severe actions which can be

taken against a student, it seems logical that they would appear on a list of

standard sanctions. What is noticeable is that "Reprimand/censure" (6) and

"Loss of privileges and exclusion from activities /courses" (5) were not listed

more often. The same seems true for "Group sanctions" (2). Since a reprimand is

a less severe sanction than expulsion, it would seem to be a more useful sanction

to list. In regard to the loss of privileges and group sanctions, one would expect that, with the number of fraternities and sororities on campus, such sanctions would be more prevalent. This is, according to this group of institutions, not the case.

Table 16. Sanctions listed by responding universities

Sanctions	Policy	Code	Letter	Law	Total
Suspension (includes interim suspension and/or emergency suspension)	9	3			10
Expulsion	9	3			10
Reprimand/censure	6	2			6
Loss of privileges and exclusion from activities/courses	5	1			5
Warning	4	1			4
Probation (including disciplinary probation)	4				4
Community service	3				3
Restitution	3				3
Counseling/professional assistance	2	1			2
Exclusion from areas of campus	2				2
Fines	1			1	2
Admonishment (non-disciplinary communication)	2				2
Group sanctions: revocation or restriction of charter, probationary suspension, social probation, or lesser sanctions	2				2
Termination of employment	2	1			2
Academic assignments	1				1
Dismissal from class		1			1
Attendance at special classes	1				1
Housing transfer or removal	1				1
Suspension without pay or censure (faculty and staff)	1				1
Negative notation on transcript	1				1
Imprisonment				1	1

Note: Total equals the number of institutions whose policies contained the variable, not the sum of the policies, codes, letters and laws which contained the variable.

Two of the policies have sections worth noting in regard to discussing sanctions. The SUNY-Buffalo policy addresses the role of bias in the sanctioning process:

> Finally, it is the policy of the University of Buffalo to prohibit invidious categorical discrimination based on such characteristics as race, sex, sexual orientation, age, national origin, religion, veteran or marital status or disability in all matters affecting employment or educational opportunities within the University itself. It is the firm belief of the Council, the faculty, and the administration that judgments about persons within the University should be based on their individual merits, accomplishments, aptitudes, and behavior, and that invidious categorical discrimination is wholly inappropriate to the University's mission and values. Students who violate this policy shall be subject to sanctions within the University, up to and including expulsion. Any violation of the rules which is motivated by bias may be prosecuted and/or sanctioned as a more serious offense. (SUNY-Buffalo, 1990, p. 3)

The concept of increasing the punishment for an infraction because the perpetrator was motivated by bias, is parallel to the rationale used by the courts in <u>Wisconsin v. Mitchell,</u> (1993). In that case, described in detail earlier in this study, the defendant received an increased sentence because his actions were motivated by race. The SUNY-Buffalo policy was the only institution that noted an increase in sanctions for bias-motivated infractions.

The second policy, submitted by Oregon State University, notes that there may be instances where sanctions are unacceptable, but alternative actions may be warranted:

> Sanction Limitations. Some forms of offensive language and behavior

may not be subject to sanction; the University is bound to respect and protect the rights secured by the Oregon and United States constitutions and principles of academic freedom. To the extent that discriminatory behavior is offensive but not subject to sanction, the University will attempt to use the educational process and the actions listed below to address the issue or incident. (OSU, 1993. p. 102)

The additional actions mentioned in the quote included preventative measures (policies; statements; addressing incidents publicly and promptly; modeling civilized and respectful behavior; resolution through discourse, mediation and education; publication of reported incidents within confidentiality limits; and utilization of both formal and informal affirmative action grievance procedures (OSU, 1993, p. 102)). This is an important quote because it explains to students that the institution realizes that there may be language and/or behaviors which are offensive to others which may not be sanctionable. Although the University is prohibited from sanctioning such speech and/or behavior, it still has many other means at its disposal to address the offense. Such alternative responses will be discussed in the section for Research Question 13.

Two sanctions, which the researcher expected to see on the list but did not find in any of the policies, were "apology" and "avoid the victim". The process of having a perpetrator formulate an apology can be an educationally profitable one. It can help a student gain a better understanding of why s/he did what s/he did. It can also help a student develop better communication and interpersonal skills. In regard to the sanction of avoiding the victim, it would

seem to be the easiest way of preventing a repeat of the initial incident. This option is often left to the victim and to the courts by means of a restraining order.

In conclusion, the analysis of sanctions serves to identify the options which universities use in addressing speech and conduct issues. The analysis also identifies punitive versus educational approaches to conflict prevention and resolution.

Research Questions 11 and 12

Did the victim receive notification of the outcome of the case? Was the campus community notified of the frequency of charges and the outcomes of the cases?

Only one institutional policy indicated that victims were notified of the outcome of a case. Since it is usually the policy of institutions to let students know how a situation was handled, it may be that the policy writers felt no need to put this practice in writing.

Two institutions indicated that they notified campus community members about the frequencies of complaints and their outcomes. Although these numbers are comparable to the results for Question 11, the reason for the lower figures may be different than that for Question 11. An administration's desire to keep the campus notified about the frequency and resolution of incidents on campus may be tempered by the a professional obligation to maintain

confidentiality both for the sake of the accused as well as that of the accuser. Regardless of the circumstances leading to these figures, it is apparent that notification of the victim and the campus community was not a customary practice in these institutional policies.

Research Question 13

What alternative responses are available to campus community members who want to prevent or react to hate speech incidents?

Institutions may elect to use means other than speech codes to prevent or react to hate speech incidents. Such alternative responses are listed in Table 17.

Table 17. Alternative responses for the prevention of or reaction to hate speech incidents

	Policy	Code	Letter	Law	Total
Awareness, education and training programs	2	1	2		4
Policies/statements	2		2		3
Promote welcoming climate	2	1	2		3
Notify campus of incidents and outcomes	2				2
Speak out against prohibited behaviors	2	1			2
Mediation	1	1			1
Publish information on policies, support systems and resources	1				1
Explore alternative behaviors	1				1
Counsel people on self-resolution techniques	1				1
Report acts of physical intimidation to proper authorities			1		1
Model good behavior	1	1			1

Note: Total equals the number of institutions whose policies contained the variable, not the sum of the policies, codes, letters and laws which contained the variable.

Only four institutions presented alternative responses for preventing or responding to hate speech incidents. The only response mentioned by all four was "Awareness, Education and Training Programs." "Policies/Statements" and "Promoting a Welcoming Climate" were advocated by three of the institutions.

This section is very revealing about institutions' perceptions of the alternatives available to them for preventing or responding to hate speech incidents. First, the answers indicate that awareness education and training programs are recommended. Yet, only four out of 16 institutions included a list of alternative responses in their student conduct policies. An educational opportunity may have been missed by most of the institutions because this alternative could have been an appropriate place to make students aware of alternative strategies and behaviors in dealing with this problem.

Second, out of the 11 suggestions for alternative responses for preventing or responding to hate speech incidents listed in Table 17, ten focused on institutional actions while seven addressed student actions. These results suggest that the majority of the burden of response and resolution is put on the institution instead of on students. Since these incidents often involve communication altercations between students, it would make more sense to facilitate students talking with each other and working on solutions together. Only one institution in the study reports on alternatives that get students to talk

with each other and develop solutions themselves. "Mediation", "Exploring Alternative Behaviors" and "Counseling People on Self-Resolution Techniques" put the responsibility for resolving these issues back on the shoulders of students. These alternative responses also help students develop communication and conflict resolution skills and techniques that they can utilize when they are confronted with actual situations in their careers. The identification of alternative responses which encourage students to engage in constructive conversations and help students improve their communication skills is one of the most significant benefits that can come out of the speech code debates.

The Korwar (1994) and Page (1993) studies also identify educational programs as an alternative means of addressing hate speech incidents. Korwar suggests presenting programs that teach tolerance: coordinating discussions about bias, race and race relations and conducting workshops that develop understanding among groups. She also recommends multi-ethnic, multicultural university task forces to develop human relations training workshops. Beyond educational interventions, Page (1993) cautions policy writers to adopt speech regulations compatible with constitutional parameters and avoid problems which have been identified in other codes such as "...the use of inappropriate definitions of 'fighting words', limitations on speech which do not rise to the 'fighting words' standard, bans on categories of speech which are disfavored by the university and the use of overbroad or vague rules..." (Page, 1993, p. 130).

He encourages institutions to take legal action against students who commit crimes under the guise of freedom of speech and to "deny the abusive or intolerant acts of students which may fall under protection of the First Amendment" (Page, 1993, p. 130).

These recommendations indicate that institutions have many different options open to them in responding to and preventing these incidents. Hence, each institution ought to be creative and innovative in its response. As the University of Wisconsin Dean of Students, Mary Rouse, said after the University's hate speech code (UW S 17) was declared unconstitutional, "UW S 17 was just two percent of our strategy . . . the rule was never a lynch pin in our strategy. Our major strategy is education and prevention" (Berg, 1991, p.1). By examining education and prevention programs at other universities and combining that information with the resources and expertise available on their own campuses, individual universities have an opportunity to create new alternatives for addressing the problems related to speech codes and hate speech incidents on campus.

<u>Chapter Summary</u>

This study was designed to compile information about the historical development and current status of each research institution's speech-related policies and to examine the content of specific policies.

The research revealed that nearly 47% of the respondent institutions never

developed speech codes while nearly 27.2% of the institutions did write policies.

Another 25.6% discussed the possibility of a code, but never approved a policy.

The development of policies peaked in 1989 and 1990 and then ceased

dramatically. Faculty, students and staff were the primary authors of these

documents while approval was left to presidents and chancellors. Student

handbooks, orientation meetings and articles in the student newspapers were the

most common means of disseminating the policies. Campus profiles indicated

that the majority of policies covered just the campus in question and only a few

covered branch campuses or were state-wide policies covering all state campuses

in the system. Of the 28 institutions with law schools and the 24 with medical

centers/hospitals, only 19 institutions also applied their codes to their law

schools and 13 also applied them to their medical centers/hospitals.

Survey results indicated that incidents on campus initiated the

development of codes in 15 out of 33 cases. Among the most common incidents

were racial incidents followed by the use of slurs and name calling. Policies at

four of the 30 institutions had been challenged in court and only one institution

won its case. Despite these results, 19 out of 28 respondents were still enforcing

their policies. Sixteen of 22 institutions responding did not have any incidents on

their campuses during the 1992-93 academic year, while another four institutions

reported ten or fewer incidents.

The content analytic segment of the study focused on the individual components of 16 institutional policies to determine their structure, similarities and differences and addressed thirteen research questions. The study identified over 70 different goals, purposes and values in the policies which were then grouped into seven categories representing major themes: Concept of a Scholarly Community, Legal and Judicial References, Institutional and Administrative Issues, Focus on the Individual, Institutional Identity, Community Issues and Distinctive Policy Attributes.

All 16 policies revealed they were applicable to students; however, nine institutions indicated that all members of the campus community were covered by their policies. Most of the policies addressed oral expression (14 out of 16), and at least half made reference to physical behavior and written expression. The two most common prohibited behaviors included interference with an individual's pursuit of education or participation in university activities and disruption of the educational process.

The analysis was also instrumental in underscoring the fact that location plays an important role regarding when and if speech may be regulated. In addition to the 15 policies that referenced university property, nine included leased or off-campus activity sites and four noted specific free speech areas on campus.

While the policies provided little information on procedures or provisions

for victims of hate speech, they did outline due process requirements for anyone accused of an infraction. These appeared to be standard provisions. Sanctions were also standard, with suspension and expulsion mentioned most often (10 out of 16 times).

Three-quarters of the institutions in the study reported that student affairs staffs were the persons responsible for resolving disputes. Half the universities also included faculty and students in the process. Notification of the victim and the campus community regarding the frequency of complaints and their outcomes was not a customary practice among institutions.

Only one-fourth of the institutions in the analysis suggested alternative responses to hate speech incidents. The only one that was mentioned by all four institutions was "awareness, education and training programs."

While several studies have addressed the structure of speech codes (Korwar, 1994 ; Page, 1993), few have focused on the development of the policies, as well as their structure. Hopefully this study will provide a base line for future research in this area.

The next and final chapter of this study summarizes the study, draws conclusions and provides policy and future research recommendations.

CHAPTER V

Summary, Conclusions and Recommendations

The focus of this study was an analysis of university speech codes at Carnegie I and II research institutions. Policy documents and survey responses were analyzed to determine policy structure, unique characteristics, historical development, dissemination, enforcement and the current status of policies. In addition, the study examined the types of expressional activities which these universities believed were not protected by First Amendment guarantees.

The following chapter provides a summary of the research followed by conclusions and recommendations for future speech policies and research initiatives.

<u>Summary</u>

Designing and implementing codes of conduct that restrict expressional activity on college and university campuses have brought about one of the most ethically sensitive, legally taxing and emotionally wrenching controversies in the recent history of American higher education. One legacy of the civil rights movement of the 1960s was a commitment by American higher education to increase not only the number of minority students on campus, but also to enhance the campus climate for these students. Speech codes, as these codes of conduct have become known, were designed to underscore institutions'

commitments to minority students and combat increasing incidents of racially-motivated hate crimes.

Almost immediately after their adoption, the policies came in conflict with the time-honored traditions of academic freedom and freedom of expression. A graduate student at the University of Michigan complained that compliance with the University's policy would prevent him from discussing research theories on biologically-based differences between the sexes and races. The courts agreed stating that the University of Michigan policy was so vague that students would be unable to distinguish between protected speech and unprotected speech. The policy was declared unconstitutional. The University of Wisconsin's speech code met a similar fate in the courts (Kaplin & Lee, 1995).

In addition to university speech code cases, non-university cases also affected the controversy. In the R.A.V. v. City of St. Paul (1992) U.S. Supreme Court decision, the conviction of a man accused of violating a city ordinance for having burned a cross in the yard of an African-American family was overturned because the ordinance restricted "fighting words" to those based on race, color, creed, religion or gender. Such a narrow interpretation of the "fighting words doctrine" was declared unconstitutional because it did not include all types of fighting words. Legal cases such as these only fueled the debate back on campus. Authors like D'Souza chastised universities for giving in to the politics

of gender and race and bemoaned the loss of academic freedom and freedom of expression in the academy (D'Souza, 1991).

In light of the controversies surrounding the constitutionality of university speech codes, the purpose of this investigation was to determine, through a qualitative analysis of selected, public research university conduct codes, the types of expressional activity which these universities believed were not protected by First Amendment guarantees. A secondary purpose of the study was to use the analysis to develop a schematic profile of the policies noting contents, similarities, differences and unique characteristics. Survey data were collected to provide contextual background for the systematic analysis of institutional policies by answering questions regarding development, dissemination, coverage, incidents, enforcement, legal challenges and current status of the policies.

Specifically, this research study was designed to address the following questions:

1. What are major institutional goals and/or purposes underlying the codes?

   a) What specific institutional goals are identified?

   b) What institutional values are identified?

   c) What specific class-based issues such as race and gender are addressed?

2. Which members of the academic community are covered by the policy?

3. What categories of expression are addressed?

4. What specific types of behavior are prohibited?

5. Are terms or behaviors defined in the codes?

    a) If yes, were legal definitions used?

    b) Were specific examples given?

6. Does the policy address expression differently by location?

7. What provisions or procedures are identified for victims?

8. What due process is provided for persons charged with violating the code?

9. What office(s)/persons are responsible for mediating/resolving complaints?

10. What institutional sanctions are placed on someone found in violation of the code?

11. Does the victim receive notice of the outcome?

12. Is the campus community notified of the frequency of charges and the outcomes?

This research investigation was also designed to collect information about the developmental history and current status of each institution's policy. More specifically, the study also addressed the following questions:

1. Which campus groups are primarily involved with developing, reviewing and/or approving the code?

2. How recent was the policy, in effect at the time of the survey, reviewed?

3. Is the institution in the process of drafting a revision of the policy?

4. To what extent was the current policy violated on campus in 1992-93?

   (What are the types of violations: gender-based, race-based, etc.?)

5. Has the policy been challenged in court?

   a) When?

   b) What was the outcome?

6. How is the policy disseminated?

To answer the research questions a methodology which included a mix of traditional quantitative analysis of survey data with qualitative analysis of speech codes and documents was chosen. A survey questionnaire designed to collect background information about the development, implementation and current status of each institution's speech code policy was sent to the target research universities. In addition to returning the survey, respondents were asked to enclose copies of their speech codes.

Upon receipt, the survey data were analyzed using SPSSX statistical analysis software. The speech codes and the related documents which were returned to the researcher (general student conduct codes, state laws, letters and supplementary articles) were initially "encoded" for the purpose of identifying and labeling definitions of key terms, intentions, values, behaviors, legal jargon and other variables which corresponded to the research questions. In the second

phase of the research the identified prohibited behaviors were analyzed using

Smolla's Taxonomy of Harms (1990), as well as studies by Page (1993) and

Korwar (1994) to determine where the respondent group of institutions thought

it could draw the line between protected and unprotected speech. The results of

the research are incorporated in the conclusions section of this chapter.

<div align="center">Conclusions</div>

Multiple conclusions resulted from the study. The first set of conclusions,

obtained from the survey, is presented to provide a profile of the development,

dissemination, coverage, incidents, enforcement, legal challenges and current

status of the policies. The remaining conclusions are the result of the qualitative

analysis of the speech code documents and address issues raised by the research

questions. It should be understood that the following conclusions are based

upon the results of the research and are made regarding the respondent

universities. They cannot be generalized to all public colleges and universities in

America.

Survey Conclusions

The debate over the development of speech codes on university campuses

resulted in institutions selecting one of three speech code options: a) close to 50%

of the institutions never developed policies, b) 27.2% of the group decided to

adopt policies, c) almost 20% of the institutions considered establishing policies,

but never approved one and the remaining institutions developed policies

related to harassment and intolerance but did not think that their policies were "speech codes". The flurry of speech code development in these institutions peaked in 1989 and 1990 and then ceased dramatically. Faculty, students, staff and attorneys shared responsibilities for writing the policies, while presidents and chancellors assumed the majority of the responsibility for final approval. Distribution of the policies occurred most often through the use of student handbooks, new student orientation meetings and articles in student newspapers. The majority of policies covered only the main campuses, while some policies covered branch campuses or state-wide systems. Survey results indicated that 19 out of 28 law schools were covered by policies while only 13 out of 24 medical centers/hospitals had policies.

Survey results indicated that controversial campus incidents led to the development of codes at nearly half of the institutions responding. Racial altercations were the incidents most often cited, followed by incidents involving slurs/name calling and harassment.

While court challenges have had a direct impact on some institutions -- only one university speech code out of four that experienced legal challenge survived legal scrutiny -- the fact that 19 out of 28 responding institutions were still enforcing their policies demonstrated a continued interest in the topic and a continued commitment to addressing the difficult issues raised in the speech code debate.

General Institutional Values and Goals

The qualitative analyses of the policies identified 74 different institutional values and goals contained within the policies. Those referred to most often were: freedom of speech and expression; authority and responsibility to enforce policies; personal responsibility for one's actions; and acknowledgment of the Constitution, the First Amendment and state laws. Policy writers need to understand that policies are value laden documents which reflect upon the character and mission of the institution. Subsequently, authors of institutional policies need to be cognizant of the multiple messages that are sent when they design policies. They need to determine whether or not the multiple messages are the ones they actually want to send.

Concept of Scholarly Community

The capstone statements cited in 11 of the 16 policies in the study were the best examples of identifying institutional roles and goals and relating them to the ultimate mission of the university as a scholarly entity. The sentiments expressed in the following quote reflects the fact that the freedoms of speech, expression and inquiry were the most noted values identified when the study addressed institutions' concepts of a scholarly community. "The primary function of a University is to discover and disseminate knowledge by means of research and teaching. To fulfill these functions a free interchange of ideas is necessary" (UU, 1987, p. 1).

In the process of exploring prohibited behaviors, institutional goals and

values were clearly identified and synthesized:

> Intolerance and bigotry are antithetical to the values of the Rutgers'
> community. . . In order to reinforce institutional goals of non-
> discrimination, tolerance, and civility, the following policy against verbal
> assault, defamation, and harassment is intended to inform students that
> the verbal assault, defamation, or harassment of others violates acceptable
> standards of conduct within the university. . .[and]. . . interferes with the
> mission of the university. (Rutgers, 1993, p. 1)

The correlation between institutional goals/values and expected behaviors not

only explained to new students the extent of expected conduct, but it also

reconfirmed to the university community the institution's understanding of and

commitment to its goals and values and how these were translated into policy.

Institutional and Administrative Issues

The policies reflected the limitations of the institutions. Oregon State

University acknowledged that there might be times when discriminating

behavior was offensive, but not sanctionable. In these instances the University

would use alternative educational means to address the behavior (OSU, 1993).

This instance exemplified the willingness of institutions to admit that they cannot

always address issues in the way that other members of the academic

community would like them to react. This example underscored the importance

of institutions realizing their limitations, especially in the area of hate speech and

related behaviors.

Focus on the Individual

Institutional expectations that students accept personal responsibility for their actions were well-documented among the speech codes. Some policies made general comments regarding individual responsibility. However, those that addressed tolerance, civility, human dignity, self discipline, freedom from harassment and promoting personal maturation provided a sense of personal direction and also insight into the institutions' priorities and value systems. This phase of the research demonstrated how policies may be constructed to identify expected or proscribed behaviors; educate students about specific attitudes, ideas or activities which reflect the values of the institution; and reflect the type of relationship (reactive or proactive) between the institution and the student.

Institutional Identity

While speech codes and their related documents were designed to address speech issues and related conduct, they also revealed extensive information about the university and helped define the university on many different levels. Analysis of the policies reflected 1) institutions' views on what their roles and goals as educational institutions should be; 2) what other values systems encompassed; 3) how they viewed themselves differently from the rest of society; and 4) what their roles and limitations were in addressing societal ills. Each of

these areas provided insights into defining the American public research university.

Community Issues

Community issues received less attention than those related to individual rights and responsibilities. The most noted community value, mutual respect, was addressed in less than three-quarters of the policies; tolerance was noted in only half of the documents. The word "community" was used in a variety of references --"academic community," "celebrate community diversity," but it was never identified as an entity unto itself or defined. The concept of students being obligated to developing, fostering or promoting a community was seldom mentioned. The lack of emphasis placed on the development and maintenance of a community was a significant finding of the research because it points to an area that needs greater attention by policy writers.

Distinctive Policy Attributes

The section of research which examined "Distinctive Policy Attributes" identified only two policies in this category, but both underscored the important concept that universities are significantly different locations than the rest of society and, therefore, the rules and attitudes that govern universities should reflect this difference. While the courts do not necessarily share this opinion, given the decisions rendered in various speech code cases such as in the University of Michigan and University of Wisconsin decisions (Kaplin & Lee,

1995), this is an important concept identified by the research. In the following instance, the institution in question promotes the idea that "...inquiry should be more open and vigorous, and should consequently have greater protection than in society at large, provided that such inquiry does not infringe upon the rights of others" (Oklahoma State University, 1993, p. 1). The University of California at Berkeley policy calls for "a degree of tolerance far greater than that which is exhibited in society at large" (1992, p. 2). Both policies promote the concept that universities are special places requiring special rules. Underlying these rules is a call for greater tolerance on the part of all concerned parties. This concept provides a different perspective for evaluating public university rules and regulations. This concept needs additional analysis.

Class-based Issues

The class-based issues identified in the study provided a descriptive list of the different constituencies which comprise the university community. The research showed that the traditional areas of concern --religion, race and sex-- have been joined by disability/handicap status, sexual orientation and gender issues. The addition of these new categories and fewer archaic references, such as to the term "color," suggest that universities are responding to the changing ways in which American society defines itself and identifies different segments of society.

Policy Coverage

Slightly more than half of the policies were designed to apply to everyone on campus: students, faculty, staff and visitors. Those policies which included everyone on campus seemed to present a stronger case for having such policies because they indicated that it was everyone's responsibility to maintain a civil academic atmosphere, not just students and faculty. This comprehensive approach moved the focus of the policy from that of a restrictive student speech code to that of an institution-wide policy based on reinforcing community responsibility and respect. By eliminating what could be perceived as a double standard, these policies were able to address hate speech at every level throughout their respective institutions and to provide comprehensive approaches to addressing the problem.

Types of Expression

While the research confirmed that oral expression was the type of expression most often noted in the policies, this segment of the research was most helpful in identifying references to other types of expression including symbolic expression and hostile speech. In so doing, it identified the different types of expression with which administrators must be familiar to understand the complexities of speech and expression issues. The fact that only two of the policies made reference to "various media" indicates that discussions regarding expression via computers had not become prevalent at the time of this study.

Prohibited Behaviors

A review of the institutional responses indicated that universities thought it appropriate to write policies regulating threats, breach of peace, and disruption of teaching or research. Institutions were also in agreement about regulating speech related to hazing and sexual harassment. Conversely, universities shied away from blanket policies which addressed verbal abuse and advocacy of offensive viewpoints.

Definition of Terms

While many of the policies made references to different types of expression, less than half the documents defined speech-related terms. Those that did define terms were influenced, in many instances, by legal definitions. Given the influence of university attorneys, this is not an unexpected observation.

Location Enforcement

The majority of institutions noted that their policies covered all university property. However, one-fourth of the policies made a point of differentiating between speech locations, including identifying specific speech areas. Subsequently, educating students about the role that location played in their speech rights did not seem to be a priority for most institutions.

Provisions for Victims

Equally low on institutional priority lists were identifying and explaining victims' rights and services. Only five out of the 16 institutions in the study addressed this issue. Confidentiality was the most often mentioned provision. Counseling and peer support groups were not addressed at all. This finding can be used to alert institutions to opportunities for addressing the needs of victims and promoting services which are available.

Due Process

Policy references to due process procedures appeared in fifty percent or fewer of the documents. Providing a hearing for the alleged perpetrator was the most common procedure identified. The most noteworthy observation in this part of the study was that informal resolution was listed by only one-fourth of the respondents. Subsequently, formal means of addressing and resolving speech-related issues seemed to take precedence over informal mechanisms.

Resolution Sources

The list of persons responsible for resolving incidents also followed traditional due process practices with student affairs staff members taking a leading role, followed by students and then faculty members. Affirmative action officers and multicultural affairs staffs played limited roles.

Sanctions

The list of sanctions represented standard university actions with the most severe sanctions, suspension and expulsion, mentioned most often. The most important points revealed by the research were that institutions were prepared to increase the severity of a sanction if they could prove that the infraction was motivated by bias; and institutions acknowledged that sanctions would be unacceptable if offensive language or behavior was protected, but alternative actions on the part of the institution could be appropriate. Increasing penalties for infractions motivated by bias send a strong message to the campus community that the institution takes such incidents very seriously. It also reflects the rationale used by the courts in Wisconsin v. Mitchell (1993) in which the defendant received an increased sentence because his actions were motivated by racism.. In the case of acknowledging protected speech, institutions are helping students to understand the limits of sanctions as well as the wealth of alternative means open to institutions in addressing speech-related issues. Helping students understand the range of alternative conflict resolution techniques and response options available to them moves students away from a "conflict equals litigation" mentality. This is an educationally sound outcome of the speech code controversy.

Notification

Notifying victims and the campus community of the frequency of incidents or the final resolution of a conflict was not prevalent among this group of institutions. The researcher was unable to determine why this was the case.

Alternative Responses

The final conclusion to be drawn from the research is that institutions have a variety of alternative measures at their disposal for addressing speech-related incidents. While many of the alternative responses focus on university actions, it is ultimately in the best interest of the students and society to focus on alternatives which encourage students to develop better communication and conflict resolution skills. This is one of the most significant benefits that could result from the speech code debates.

The conclusions drawn from the study resulted in recommendations regarding speech policies and future research initiatives. The next section will present these recommendations.

<center>Policy Recommendations</center>

Analyses of the policies in the study resulted in the development of several recommendations for public Research I and II universities.

1. Given the legal complications of writing a speech code policy, it is strongly suggested that institutions avoid writing speech policies

whenever possible. In a memo from Carol A. Wiggins, Vice President for

Student Affairs at the University of Connecticut, to the Board of Trustees

at the University, she outlines the reasons why the "fighting words"

policy in the student conduct code is being deleted:

> ...The "fighting words" paragraph of the *Code*, in addition to being
> operationally difficult to define, created a false expectation that the
> threat of disciplinary sanctions could prevent incidents of racism,
> sexism and other forms of hate and discrimination. Staff were also
> concerned that the inclusion of the "fighting words" paragraph
> created an environment which focused on regulations to prevent
> acts of incivility rather than existent educational programs. (1993,
> p.1)

As Wiggins so succinctly puts it, speech codes are operationally difficult

to define, they can create false expectations that sanctions can prevent hate

and discrimination, and they switch the focus from education to

regulation (1993). These are all good reasons for trying to avoid having a

speech code. As the survey results indicate, many institutions do not have

such codes.

2. If an institution chooses to develop or revise a speech code, the authors

should consider the following recommendations:

> a. Community expectations regarding behaviors should be based,
>
> in part, on mission statements and clearly presented through the
>
> use of capstone statements. A good example is the Rutgers
>
> University reference quoted earlier in this chapter:
>
> > Intolerance and bigotry are antithetical to the values of the
> > Rutgers community. . . In order to reinforce institutional

goals of non-discrimination, tolerance, and civility, the
following policy against verbal assault, defamation, and
harassment is intended to inform students that the verbal
assault, defamation, or harassment of others violates
acceptable standards of conduct within the university. .
.[and]. . . interferes with the mission of the university.
(Rutgers, 1993, p. 1)

b. Policies should clearly define critical terms and behaviors,
especially those related to expression and harassment, so that all
members of the university community have a shared
understanding of institutional expectations.

c. Class-based references in speech codes should be reviewed by
legal counsel in light of the R. A. V. v. City of St. Paul (1992)
decision to make sure that the policy is not violating the law. In
R.A.V. v. City of St. Paul (1992), a city ordinance was declared
unconstitutional because it prohibited fighting words based on
race, but not all fighting words. The fighting words doctrine does
not make any distinctions between the types of fighting words
covered in the measure.

d. Policies should clearly indicate where on-campus and where off-
campus locations the policy will be enforced. Designated free
speech areas are encouraged and should be so identified in the
policies.

e. The resolution process should clearly be divided into two sections: informal and formal resolutions. Informal resolutions may include mediation, restitution, written and verbal apologies or participation in educational programming. Institutions should encourage the use of the informal resolution process and explain why this is an important way of addressing disputes. Students, faculty and staff should be given opportunities to enhance their mediation skills.

f. A broad range of individuals should be included in the resolution process. The more community members in addition to those in the student affairs area are involved, the greater the institutional and community commitment towards finding solutions and the greater the ownership in the final outcome.

g. Policies should clearly outline the resources available for victims of hate crimes. These might include counseling, legal services and alternate housing options.

3. Alternate options to speech policies should be identified or developed and widely publicized. Participants in the study suggested the following: awareness, education and training programs; institutional statements of support; promoting a welcoming campus climate; notifying the campus of incidents and outcomes; speaking out against prohibited behaviors;

mediation; publishing information about policies, support systems and resources; exploring alternative behaviors; counseling people about self-resolution techniques; reporting acts of physical intimidation to proper authorities and modeling good behavior.

In addition, Korwar suggests programs that teach tolerance (coordinating discussions on bias, race and race relations and conducting workshops that develop understanding among groups) and convening multi-ethnic, multicultural university task forces to develop human relations training workshops (1994). Page encourages institutions to take legal action against students who commit crimes under the guise of freedom of speech and deny those acts which are protected but equally repugnant (1993).

<p style="text-align:center">Research Recommendations</p>

In chapter I the researcher noted that this study was a "snapshot" of the speech code controversy as of the summer of 1993. It was not designed to be a longitudinal study. Given this limitation, future research could focus on the changes which have occurred since 1993. Specific questions center on four areas of inquiry: prevalence and structure of codes; alternatives to codes; legal issues; and incidents on campus. Questions of interest include:

Prevalence and Structure of Codes

1. How many public colleges and universities still have speech codes?

2. If institutions have codes, how are they now structured?

3. If institutions have eliminated their codes since 1993, why did they abandon them and what are they doing to address the negative activities originally targeted by the codes?

Alternatives to Codes

1. If an institution did not have a speech code, what alternative methods did it use to address speech controversies?

2. How have institutions evaluated the effectiveness of the alternative means they use to address hate speech issues?

3. What types of new and improved alternatives have institutions developed to address the hate speech issue?

Incidents on Campus

1. What is the current frequency of speech-related incidents on U.S. campuses?

2. Have these incidents increased or decreased since 1993?

3. If institutions have never promulgated codes, how have the incident rates on their campuses compared to those institutions that had codes?

4. Have the recent debates over affirmative action resulted in increased hate speech incidents on campus?

Legal Issues

1. Have there been court cases which have affected the speech code debate since 1993? If so, which ones are they and how have they influenced policy and practice on American campuses?

2. How have the affirmative action debates affected the use of hate speech codes?

3. Has the case of Wisconsin v. Mitchell (1993) affected the types or severity of sanctions used on college campuses?

In addition, two important areas of questions remain. The first addresses the development of a "hate index" and the second focuses on the concept of integrity:

1. Has any institution in America, public or private, designed a cost analysis or developed a "hate index" to quantify the high cost of hate speech and hate activities on campus?

Such an index might include lost career earnings for students who do not receive a degree; a formula for calculating the net result of recruitment, retention and lost tuition revenues for students who leave; vandalism costs; legal fees; counseling costs and the cost of other victim services; administrative costs; student time; and anti-hate program charges. Less tangible, but equally

important, would be the loss of cultural and ethnic enrichment on campus and the loss of reputation to an institution.

In addition, such an index would help to put the problem in perspective and identify areas for future research and intervention. For example, would such a study find that an educational program designed to reduce the number of hate crimes on campus is considered a retention investment strategy with long-term economic implications?

2. One of the policies in the study made reference to "ethical, educational and social integrity" (UCONN, 1993, p. 2). How do educators differentiate between the three types of integrity? What happens when conflict occurs between these areas? Is it important to discuss the issue of integrity as it relates to speech code issues? Are there programs available to address this topic?

The hate speech code controversy has been a very painful one because it has brought the academy's time-honored traditions of academic freedom and freedom of expression into conflict with an institution's desire to create a welcoming and supportive academic atmosphere for all students. Although this controversy has been very painful, it has given institutions an opportunity for serious self-examination and evaluation. Studies, such as this one, are an integral part of that evaluation and should be continued.

APPENDIX A

SPEECH CODE SURVEY QUESTIONNAIRE

Appendix A
SPEECH CODE SURVEY

1. Within the last ten years, has your university established a formal speech code?
        O Yes   If yes, go to Q. 2   O No
    If your institution worked on a code, but did not formally institute the code, go to Q. 3.
    If your institution did not discuss a formal speech code, go to Q. 16.
2. In which academic year did your policy become effective? _____
3. Please check the individuals or groups below who were responsible for writing, reviewing
    and/or finally approving of the speech policy:

Individuals/Groups	Writing	Reviewing	Approving
a. Faculty			
b. Students			
c. Staff			
d. President/Chancellor			
e. V.P. Student Affairs			
f. V.P. Academic Affairs			
g. V.P. Development			
h. Student Government			
i. Public Affairs Staff			
j. Corporate Counsel			
k. Provost			
l. AA Officer			
m. Trustees			
m. State Government Representatives			
o. ACLU Representative			
p. Other:			

4. Does your institution include a:

        Law School?   0 Yes   If yes, go to Q. 5   0 No   If no, go to Q.6

        Medical Center/Hospital?   0 Yes   If yes, go to Q. 5   0 No   If no, go to Q.6

5. Does the speech code apply to students at the:

        Law School?   0 Yes   0 No

        Medical Center/Hospital?   0 Yes   0 No

6. Are there any schools, colleges or programs within your institution which are exempt from the

    policy?   0 Yes   0 No

    If yes, please list them:_____

7. Was your policy written in response to incidents on your campus?

        0 Yes   0 No

        If yes, go to Q. 8   If no, go to Q. 9

8. What types of incidents have occurred on your campus?:

    _____

    _____

    _____

9. Has your policy ever been challenged in court?

        0 Yes   0 No

        If yes, go to Q. 10   If no, go to Q. 11

10. What was the outcome of the court case?

_____

_____

11. Is your policy still being enforced?

     0 Yes   0 No

     If yes, go to Q.12   If no, go to Q.13

12. How many infractions of your policy have there been during the most recent academic year?_____

13. If you are no longer enforcing your policy, briefly explain why:

_____

_____

14. Check the ways in which you disseminate the policy to students, faculty and staff:

     0 Student Handbook   0 Faculty Handbook   0 Other_____

     0 Staff Handbook   0 Orientation Meetings   0 Other_____

     0 Classroom Discussions   0 Student Newspaper Articles

     0 Faculty Senate Meetings   0 Staff Senate Meetings

15. How many campuses does your code cover?

     O   Just this campus

     O   This campus and _____ number of branch campuses

     O   All of the campuses in the entire state university system (Please indicate approximate

           total number of campuses) ____

16. Name of Institution: _____

17. Name and Title of Person Responding to Survey:

_____

18. If you would be available to discuss your responses, please include your office phone number

     here: _____

19. Please indicate if you would like a copy of the abstract.

     O Yes   O No

APPENDIX B

PILOT SURVEY CRITIQUE FORM

Appendix B

Pilot Survey Critique

Cover Letter

1. Does the cover letter clearly state the purpose of the study?
    0 YES   0 NO

    Comments: _____

    _____

2. Are the instructions adequate for:
    a. completing and returning the survey? 0 YES 0 NO
    b. sending additional information such
       as student handbooks, etc.?   0 YES 0 NO

    Comments: _____

    _____

Survey

1. Are the instructions for completing the survey clear and concise?
    0   YES   0 NO

2. Are there any ambiguous questions or wording which need attention?
    0   YES - Please list question #'s _____
    0   NO

3. Is there sufficient response space?
    0   YES   0 NO

4. Is the size of the type appropriate?
    0   OK   0   TOO SMALL

5. Additional Comments:

_____

_____

_____

Thank you for your assistance

APPENDIX C

SPEECH CODE SOLICITATION LETTER

Appendix C

SPEECH CODE SOLICITATION LETTER

Sue A. Haldemann
1225 East Gunn Street
Apt. #2
Appleton, Wisconsin 54915
July, 1993

Dr. Joan Doe
Vice President of Student Affairs
Freedom of Expression University
Responsibility Hall
First Amendment, USA

Dear Colleague:

The increase of reported hate crimes on American campuses is both alarming and frustrating. In response to these incidents, many institutions have developed policies, often called "speech codes", to monitor expressive behaviors and provide guidelines for addressing unacceptable activity. These codes have increased the debate and confusion over what is acceptable expressive conduct. As dedicated professionals, we are faced with the ethical dilemma of balancing diversity and community development with freedom of expression issues.

In an effort to gain a better understanding of speech codes and the ramifications of such codes, I have chosen the regulation of hate speech on public university campuses as my dissertation topic. The first research phase involves conducting a content analysis of public research university speech codes to determine the types of expressional activities which these institutions believe is not protected by First Amendment guarantees. The second phase of the research includes collecting background information on the development, implementation and status of the codes at participating institutions. The final goal of the research is to develop a collective body of knowledge that will assist colleges and universities in maintaining the integrity of freedom of speech on campus, creating a less hostile environment for members of protected groups, avoiding future litigation and designing policies and regulations that are in the best interest of the students, the faculty, the institution and the academy.

I am writing to request your participation in this research. In the few minutes it will take you to send a copy of your policy and complete the enclosed

questionnaire, you will be helping to provide important information about this complex problem. By virtue of your position and your expertise, you are well qualified to respond to this inquiry. Your assistance is greatly appreciated.

My request is twofold:

     1. Please send me a copy of your institution's current speech code and any other documents which you use to regulate expressive conduct on your campus (i.e. student handbooks, policy brochures or statements). If your code has been modified during the last six years or is no longer in use, I would also appreciate receiving copies of the previous code(s). Please indicate the academic year(s) during which the code was in effect.

     2. Please fill out the enclosed questionnaire and return it in the enclosed, self-addressed, stamped envelope. If you would like to receive an abstract of the research results, be sure to indicate your interest in question #19.

Please send the materials by **July 31** to:

                Sue A. Haldemann
                1225 East Gunn Street
                Apt. #2
                Appleton, Wisconsin 54915

Your support of this project is appreciated. If you have any questions or if I may be of assistance to you, please feel free to contact me at (414) 954-8828. Thank you for your help.

Sincerely,

Sue A. Haldemann
Ph.D. Candidate
Higher Education Program
Loyola University Chicago

APPENDIX D

THE 1987 CARNEGIE CLASSIFICATION OF

PUBLIC AMERICAN UNIVERITIES

Appendix D

THE 1987 CARNEGIE CLASSIFICATION OF PUBLIC AMERICAN UNIVERSITIES

Research I

Arizona
University of Arizona

California
University of California at Berkeley
University of California at Davis
University of California at Irvine
University of California at Los
  Angeles
University of California at San Diego
University of California at San
  Francisco

Colorado
Colorado State University
University of Colorado at Boulder

Connecticut
University of Connecticut

Florida
University of Florida

Georgia
Georgia Institute of Technology
University of Georgia

Hawaii
University of Hawaii at Manoa

Illinois
University of Illinois at Chicago
University of Illinois at Urbana-
  Champaign

Indiana
Indiana University at Bloomington
Purdue University, Main Campus

Iowa
University of Iowa

Kentucky
University of Kentucky

Louisiana
Louisiana State University and
  Agricultural and Mechanical
  College

Maryland
University of Maryland at College
  Park

Michigan
Michigan State University
University of Michigan at Ann Arbor

Minnesota
University of Minnesota at Twin
  Cities

Missouri
University of Missouri at Columbia

New Jersey
Rutgers, The State University of
  New Jersey at New Brunswick

New Mexico
New Mexico State University, Main
  Campus
University of New Mexico, Main
  Campus

New York
State University of New York at
  Stony Brook, Main Campus

North Carolina
North Carolina State University
University of North Carolina at
  Chapel Hill

Ohio
Ohio State University, Main Campus
University of Cincinnati, Main
  Campus

Oregon
Oregon State University

Pennsylvania
Pennsylvania State University, Main
  Campus
University of Pittsburgh, Main
  Campus

Tennessee
University of Tennessee at Knoxville

Texas
Texas A & M University, Main
  Campus
University of Texas at Austin

Utah
University of Utah

Virginia
University of Virginia, Main Campus
Virginia Polytechnic Institute and
  State University

Washington
University of Washington

Wisconsin
University of Wisconsin at Madison

Research II

Alabama
Auburn University, Main Campus

Arizona
Arizona State University

California
University of California at Santa
  Barbara

Delaware
University of Delaware

Florida
Florida State University

Illinois
Southern Illinois University at
  Carbondale

Iowa
Iowa State University of Science and
  Technology

Kansas
Kansas State University of
  Agricultureand Applied Science
University of Kansas, Main Campus

Massachusetts
University of Massachusetts at
  Amherst

Michigan
Wayne State University

Mississippi
Mississippi State University

Nebraska
University of Nebraska at Lincoln

New York
State University of New York at
  Albany
State University of New York at
  Buffalo, Main Campus

Oklahoma
Oklahoma State University, Main
  Campus
University of Oklahoma, Norman
  Campus

Oregon
University of Oregon, Main Campus

Pennsylvania
Temple University

Rhode Island
University of Rhode Island

South Carolina
University of South Carolina at
  Columbia

Utah
Utah State University

Virginia
Virginia Commonwealth University

Washington
Washington State University

West Virginia
West Virginia University

Wyoming
University of Wyoming

Source: A Classification of
Institutions of Higher Education,
Carnegie Foundation, Princeton
University Press, 1987.

APPENDIX E

POSTCARD

Appendix E

Postcard Follow-up

August 4, 1993

Last week a letter and questionnaire requesting copies of your speech code and information regarding the status of speech codes on your campus were mailed to you. If you have already sent a copy of your speech code and/or the questionnaire to me, please accept my sincere thanks. If not, please do so today. Because the issue of First Amendment rights and speech codes has affected many campuses throughout the U.S., it is extremely important that information from your campus be included in the study if the results are to accurately reflect the status of speech codes on U.S. campuses today.

If by some chance you did not receive the questionnaire, or if it got misplaced, please call me (414-954-8828) and I will get another one in the mail to you today.

Sincerely,

Sue A. Haldemann
Ph.D. Candidate

APPENDIX F

SECOND SOLICITATION LETTER

Sue A. Haldemann
P.O. Box 684
Neenah, Wisconsin 54956
October, 1993

Dear Colleague,

In July I wrote to you requesting your participation in a research project designed to examine the regulation of hate speech on public research I and II university campuses. As of today, I have not received your completed questionnaire or policy.

Judging from the number of questionnaires returned and the phone calls received, there is great interest in this issue on campuses across the country. But whether or not this study will accurately reflect the national stance on this subject will depend on you. Only through your participation will we be able to share this important information with our colleagues. Your insights are invaluable and are the key to the success of this project.

It is for this reason that I am sending you a copy of the original letter and questionnaire outlining the details of the research. Directions for completing the questionnaire may be found on page two of the letter. Please complete and return the questionnaire, along with a copy of your speech code policy (if your institution has one), as quickly as possible.

Your timely response to this letter is greatly appreciated. If you have any questions or if I may be of assistance to you, please feel free to contct me at (414) 832-6530 or by FAX (414) 739-7837. Thank you.

Sincerely,

Sue A. Haldemann
Doctoral Student
Higher Education Program
Loyola University Chicago

APPENDIX G

CODES

Appendix G

CODES

Institutional Goals and Purposes	IGP	1. *
IGP: Specific Institutional Goals	IGP	1.a.
IGP: Values	IGP---V	1.b.
IGP: Values--Academic Freedom	IGP--V/AcFree	1.b.
IGP: Values--Caring	IGP--V/Car	1.b.
IGP: Values--Civility	IGP--V/Civ	1.b.
IGP: Values--Constitution/First Amendment	IGP--V/Const	1.b
IGP: Values--Human Dignity	IGP--V/Dig	1.b.
IGP: Values--Right to Dissent	IGP--V/Dissent	1.b.
IGP: Values--Equality	IGP--V//Equal	1.b.
IGP: Values--Freedom of Inquiry	IGP--V/Inquir	1.b.
IGP: Values--Personal Responsibility	IGP--PersResp	1.b.
IGP: Values--Freedom of Speech/ Expression	IGP--V/Speech	1.b.
IGP: Values--Justice	IGP--V/Just	1.b.
IGP: Values--Mutual Respect	IGP--V/Resp	1.b.
IGP: Values--Ideals of Scholarly Community	IGP--V/ScholCom	1.b.
IGP: Values--Responsibility/Authority for Enforcement	IGP--V/ResAuth	1.b.
IGP: Values--Social Awareness	IGP--V/SocAware	1.b.
IGP: Values--Tolerance	IGP--V/Tol	1.b.
IGP: Values--Others	IGP--V/Oth	1.b.
IGP: Class Based Issues--Age	IGP--Cl/Age	1.c.
IGP: Class Based Issues--Disability	IGP--CL/Dis	1.c.
IGP: Class Based Issues--Ethnicity	IGP--Cl/Eth	1.c.
IGP: Class Based Issues--Gender	IGP--Cl/Gen	1.c.
IGP: Class Based Issues--Marital Status	IGP--Cl/MaritalSta	1.c.
IGP: Class Based Issues--Race	IGP--Cl/Race	1.c.
IGP: Class Based Issues--Religion	IGP--Cl/Rel	1.c.
IGP: Class Based Issues--Sexual Orientation	IGP--Cl/SexO	1.c.
IGP: Class Based Issues--Veteran Status	IGP--Cl/Vet	1.c.
IGP: Class Based Issues--Other	IGP--Cl/Oth	1.c
Who is Focus of Policy	**WF**	**2.**
WF: All Members of Community	WF	2.
WF: Administrators/Staff	WF--AdmSt	2.
WF: Faculty	WF--Fas	2.
WF: Students	WF--Stu	2.
WF: Visitors	WF--Vis	2.
WF: Others	WF--Oth	2.

Categories of Expression	CE	3.

CE: Oral Expression	CE--Oral	3.
CE: Physical Behavior	CE--PhysBeh	3.
CE: Symbolic Expression	CE--SymEx	3.
CE: Written Expression	CE--Written	3.
CE: Other	CE--Oth	3.

Specific Types of Prohibited Behavior	PB	4.

PB: Coercion	PB--Coerc	4.
PB: Defamation	PB--Defame	4.
PB: Defacing or Destroying Property	PB--Deface	4.
PB: Discrimination	PB--Discrim	4.
PB: Disrupting Educational Process	PB--Disrupt	4.
PB: Epithets	PB--Epith	4.
PB: Fighting Words	PB--FW	4.
PB: Sounds Like Fighting Words	(PB--FW)	4.
PB: Harassment/Physical	PB--Haras/Phys	4.
PB: Harassment/Racial	PB--Haras/Race	4.
PB: Harassment/Sexual	PB--Haras/Sex	4.
PB: Harassment/Verbal	PB--Haras/Verb	4.
PB: Hazing	PB--Haze	4.
PB: Insults	PB--Insult	4.
PB: Intimidation	PB--Intim	4.
PB: Invectives	PB--Invect	4.
PB: Jokes	PB--Joke	4.
PB: Obscenities	PB--Obscene	4.
PB: Obstruction	PB--Obstruct	4.
PB: Psychological Harm	PB--PsychHarm	4.
PB: Safety Endangerment	PB--Safety	4.
PB: Slurs	PB--Slur	4.
PB: Threats	PB--Threats	4.
PB: Vulgarity	PB--Vulgar	4.
PB: Other	PB--Oth	4.

Definitions of Terms and Behaviors	Def	5.

Def: Terms	Def--Term	5.
Def: Terms/Legal	Def--Term/Leg	5.
Def: Terms/Examples	Def--Term/Ex	5.
Def: Behaviors	Def--Beh	5.
Def: Behaviors/Legal	Def--Beh/Leg	5.
Def: Behaviors/Examples	Def--Beh/Ex	5.
Def: Other	Def--Other	5.

Location	Loc	6.

Loc: Classroom	Loc--Class	6.
Loc: Off-Campus	Loc--OffCamp	6.
Loc: Public Space	Loc--Pub	6.
Loc: Quad	Loc--Quad	6.
Loc: Residence Hall	Loc--ResHall	6.

Loc: Specific Free Speech Area	Loc--FSA	6.
Loc: University Property	Loc--UProp	6.
Loc: Other	Loc--Oth	6.
Procedures and Provisions for Victims	**Vic**	**7.**
VIC: Confidentiality	Vic--Conf	7.
Vic: Counseling	Vic--Couns	7.
Vic: Peer Support	Vic--Peer	7.
Vic: Other	Vic--Other	7.
Due Process	**DP**	**8.**
DP: Documentation Required	DP--Doc	8.
DP: Hearing	DP--Hear	8.
DP: Notice	DP--Notice	8.
DP: Time Frame	DP--Time	8.
DP: Other	DP--Oth	8.
Office/Persons Responsible for Mediation/Resolution	**OPR**	**9.**
OPR: Academic Dean/Department Chair	OPR--ACA	9.
OPR: Student Affairs Staff	OPR--Staff	9.
OPR: Ombudsperson	OPR--OMB	9.
OPR: Other	OPR--OTH	9.
Sanctions	**S**	**10.**
S: Sanctions--Reprimand	S--Rep	10.
S: Sanctions--Community Service	S--ComServ	10.
S: Sanctions--Restitution	S--Rest	10.
S: Sanctions--Apology	S--Apol	10.
S: Sanctions--Avoid Victim	S--Avoid	10.
S: Sanctions--Probation	S--Prob	10.
S: Sanctions--Suspension	S--Susp	10.
S: Sanctions--Expulsion	S--Expul	10.
S: Sanctions--Other	S--Oth	10.
Notification	**N**	**11. & 12.**
N: Notification--Victim/Outcome	N--Vic/Out	11.
N: Notification--Campus Community/ Frequency	N--Com/Freq	12.a.
N: Notification--Campus Community/ Outcomes	N--Com/Out	12.b.
Alternative Responses	**AR**	**13.**
AR: Mediation	AR--Med	13.

AR: Model Good Behavior	AR--GoodB	13.
AR: Notify Campus of Incidents/Outcomes	AR--Camp/Out	13.
AR: Policies/Statements	AR--Pol/Stat	13.
AR: Promote Welcoming Climates	AR--Welcome	13.
AR: Speak Out Against Prohibited Behaviors	AR--Speak Out	13.
AR: Publish Information on Policies, Support Systems and Resources	AR--Publish	13.
AR: Explore Alternative Behaviors	AR--AltBehv	13.
AR: Counsel People on Self-Resolution Techniques	AR--Self-Res	13.
AR: Report Acts of Physical Intimidation to Proper Authorities	AR--Report	13.

* Number corresponds to the number of the research question being addressed

APPENDIX H

CODES FOR TAXONOMY OF HARMS

Appendix H

CODES FOR TAXONOMY OF HARMS

Physical Harm	PH	1
PH: Injuries to Persons	PH--InPer	1.A.
PH: Injuries to Persons--Solicitation of Murder	PH--InPer/SolMur	1.A.
PH: Injuries to Persons--Incite Riot on Behalf of Speaker's Cause	PH--InPer/InciteRiotSpeak	1.A.
PH: Injuries to Persons--Reactive Violence Against Speaker in Response to Message	PH--InPer/ReactVioSpeakMess	1.A.
PH: Injuries to Property	PH--InProp	1.B.
PH: Injuries to Property--Solicitation of Arson	PH--InProp/SolArson	1.B.
PH: Injuries to Property--Incitement to Destroy Property	PH--InProp/InciteDestroy	1.B.
PH: Injuries to Property--Reactive Violence Against Property of Speaker in Response to Message	PH--InProp/ReactVioPropSpeakMess	1.B.
Relational Harms	RH	2
RH: Injuries to Social Relationships	RH--SocR	2.A.
RH: Injuries to Social Relationships--Libel & Slander	RH--SocR/SlanLib	2.A.
RH: Injuries to Social Relationships--Alienation of Affections	RH--SocR/AlieAff	2.A.
RH: Injuries to Transactions or Business Relationships	RH--BusR	2.B.
RH: Injuries to Transactions or Business Relationships--Fraud and Misrepresentation	RH--BusR/FraudMisr	2.B.

RH: Injuries to Transactions or Business Relationships-- False Advertising	RH--BusR/FalseAd	2.B.
RH: Injuries to Transactions or Business Relationships-- Interference with Contractual Relations	RH--BusR/ConRel	2.B.
RH: Injuries to Transactions or Business Relations-- Interference with Prospective Economic Advantage	RH-- BusR/ProsEconAdv	2.B.
RH: Injuries to Transactions or Business Relations--Insider Trading	RH-- BusR/InsideTrade	2.B.
RH: Injury to Information Ownership Interests	RH--InfoOwn	2.C.
RH: Injury to Information Ownership Interests-- Copyright, Trademark or Patent Infringement	RH--InfoOwn/Copy TradePat	2.C.
RH: Injury to Information Ownership Interests-- Appropriation of Name or Likeness for Commercial Gain	RH--InfoOwn/Name Likeness	2.C.
RH: Injuries to Interests in Confidentiality	RH--Confid	2.D.
RH: Injuries to Interests in Confidentiality--Disclose National Security Secrets	RH--Confid/Nat Security	2.D.
RH: Injuries to Interests in Confidentiality-- Unauthorized Revelation of Private Personal Information	RH-- Confid/Personal Info	2.D.
Reactive Harms	RAH	3
RAH: Injuries to Individual Emotional Tranquility	RAH--IET	3.A.
RAH: Injuries to Individual Emotional Tranquility-- Infliction of Emotional Distress	RAH-- IET/InflictEmot Distress	3.A.

RAH: Injuries to Individual Emotional Tranquility-- Invasion of Privacy by Placing Individual in False Light in Public Light   RAH-- IET/InvadePriv -- FalseLight   3.A.

RAH: Injuries to Individual Emotional Tranquility-- Invasion of Privacy by Intrusion upon Seclusion   RAH-- IET/InvadePriv --IntruSeclu   3.A.

RAH: Injuries to Individual Emotional Tranquility-- Invasion of Privacy by Publication of Embarrassing Facts   RAH-- IET/InvadePriv --PubEmbarFacts   3.A.

RAH: Injuries to Individual Emotional Tranquility-- Distress Caused by Intellectual Disagreement With Content of the Speech   RAH-- IET/Distress-- DisagreeSpeech Content   3.A.

RAH: Injuries to Individual Emotional Sensibilities   RAH--IES   3.B.

RAH: Injuries to Individual Emotional Sensibilities-- Insults to Human Dignity Like Racist/Sexist Speech   RAH-- IES/InsultHuman Dignity   3.B.

RAH: Injuries to Individual Emotional Sensibilities-- Vulgarity   RAH--IES/Vulgar   3.B.

RAH: Injuries to Individual Emotional Sensibilities-- Obscenity   RAH--IES/Obscene   3.B.

RAH: Injuries to Individual Emotional Sensibilities-- Interference with Political or Social Cohesiveness or Harmony Arising from Collective Disagreement with Content of Speech   RAH-- IES/PolSocCoh --Speech   3.B.

REFERENCES

American Association of University Professors. (1990). Joint statement on rights and freedoms of students (1967). <u>Law and Contemporary Problems, 53</u>(3), 411- 418.

Arizona State University (1989). <u>Campus environment team (CET) referral guidebook.</u> Tempe: Author.

Arizona State University (1990). <u>Campus environment team (CET) referral guidebook.</u> Tempe: Author.

Arizona State University (1992). <u>Campus environment team (CET) referral guidebook.</u> Tempe: Author.

Balkin, J. M. (1990). Some realism about pluralism: Legal realist approaches to the First Amendment. <u>Duke Law Journal, 1990</u>(3), 375-429.

Bartlett, K. T., & O'Barr, J. (1990). The chilly climate on college campuses: An expansion of the "hate speech" debate. <u>Duke Law Journal, 1990</u>(3), 574-586.

Berg, R. (1991, October 14). UWS 17 ruled unconstitutional. <u>Badger Herald,</u> pp. 1-2.

Blum, D. E. (1991, January 16). Critics of 'racist' course spark debate over academic freedom at U. of Denver. <u>The Chronicle of Higher Education,</u> p. A22.

Brownstein, A.E. (1991). Regulating hate speech at public universities: Are First Amendment values functionally incompatible with equal protection principles? Buffalo Law Review, 39(1), 1-52.

Bulbin, J. B. (1990, January). Freedom of expression under First Amendment and racial harassment on campus. Paper presented at Eleventh Annual Conference of Law and Higher Education, Clearwater Beach, FL.

Carnegie Foundation (1987). A classification of institutions of higher education. Princeton, NJ: Princeton University Press.

Carnegie Foundation (1994). A classification of institutions of higher education. Princeton, NJ: Princeton University Press.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

Chew, J. (1990). Dodging temptation at Furman University. Academe, 76 (4), 36-39.

Cohen, R. S. (1990). "Viewer discretion" at Montgomery College. Academe, 76 (4), 40-42.

Collison, M. (1988, September 7). For many freshmen, orientation now includes efforts to promote racial understanding. Chronicle of Higher Education, p. A-29.

Cortes, C. (1991). Pluribus & Unum -- the quest for community amid diversity. Change, 23(5), 8-13.

D'Amato, A. (1991). Harmful speech and the culture of indeterminacy. William and Mary Law Review, 32(2), 329-351.

DeLoughry, T. J. (1993, January 27). Colleges try to devise policies on obscenity on campus networks. The Chronicle of Higher Education, pp. A27-A29.

Dillman, D. A. (1978). Mail and telephone surveys: The total design method. NY: John Wiley & Sons.

Doe v. University of Michigan, 721 F. Supp. 852 (E.D. Mich. 1989).

Dow, R. (1990). Tax dollars and the responsibility of trusteeship. Academe 76 (4), 28-29.

Dozier, J. (1990). Codes designed to combat racism might trip over the First Amendment. The Journal of the Association of Governing Boards of Universities and Colleges, 32 (1), 8-9.

D'Souza, D. (1991). Illiberal education: The politics of race and sex on campus. New York: Free Press.

El-Khawas, E. (1991). Campus trends, 1991 (Higher Education Panel Report No. 81). Washington, DC: American Council on Education.

Fanelli, S. A. (1990). Drawing lines at Nassau Community College. Academe, 76 (4), 24-26.

Fanelli, S. A. (1990). Tax dollars do not lessen our responsibility . . . they increase it. Academe, 76 (4), 27.

Gooding v. Wilson, 405 U.S. 518, 92 S. Ct. 1103, 31 L. Ed. 2d 408 (1972).

Hackney, S. (1990). The NEA under attack: Restricting the big chill. Academe, 76 (4), 14-17.

Hartley, H. J. (1991). President's policy on harassment. Storrs, CT: The University of Connecticut, Office of the President.

Hodulik, P. B. (1990). Prohibiting discriminatory harassment by regulating student speech: A balancing of First Amendment and university interests. Journal of College and University Law, 16(4), 573-587.

Indiana University (1993). Indiana University code of student ethics. Bloomington: Author.

Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 773 F. Supp. 792 (E.D. Va. 1991), aff'd, 993 F. 2d 386 (4th Cir. 1993).

Jaschik, S. (1990, December 12). Supreme Court action seen as strengthening professors' First Amendment rights. The Chronicle of Higher Education, p. 1, A21.

Jaschik, S. (1992, July 1). Campus `hate speech' codes in doubt after high court rejects a city ordinance. The Chronicle of Higher Education, p. A19, A22.

Kaplin, W.A. (1985). The law of higher education (2nd ed.). San Francisco: Jossey-Bass.

Kaplin, W.A., & Lee, B. A. (1995). The law of higher education (3rd ed.). San Francisco: Jossey-Bass.

Keyishian v. Board of Regents, 385 U.S. 589 (1967).

Korwar, A. (1994). War of words: Speech codes at public colleges and universities. Nashville, TN: Vanderbilt University, The Freedom Forum First Amendment Center.

Krippendorf, K. (1980). Content analysis: An introduction to its methodology. Newbury Park, CA: Sage.

Lawrence, C. R. (1990). If he hollers let him go: regulating racist speech on Campus. Duke Law Journal, 1990(3), 431-483.

Leedy, P. D. (1980). Practical research -- Planning and design. New York: Macmillan.

Lemisch, J. (1995, January 20). The First Amendment is under attach in cyberspace. The Chronicle of Higher Education, p. A56.

Levine, A. (1991). The meaning of diversity. Change, 23(5), 4-5.

Lincoln, Y. S., & Guba, E. G. (1985). Naturalistic inquiry. Newbury Park, CA: Sage.

Loyola University Chicago. (1992). A student handbook of services, policies and information for every Loyola student. Chicago: Author.

Massaro, T.M. (1991). Equality and freedom of expression: The hate speech dilemma. William and Mary Law Review, 32(2), 211-265.

McMasters, P. (1990). Free discourse vs. civil discourse. The Quill, 78 (3), 7, 26.

Miles, M. B., & Huberman, A. M. (1984). Qualitative data analysis. Newbury Park, CA: Sage.

National Association of Student Personnel Administrators. (1992). National Association of Student Personnel Administrators 1992-1993 Member Handbook. Washington, DC: Author.

Oklahoma State University (1993a). Extra curricular use of university facilities, areas or media for the purpose of expression. Stillwater: Author.

Oklahoma State University (1993b). Oklahoma State University student rights and responsibilities governing student behavior. Stillwater: Author.

Olivas, M. A. (1991). A sulphury vision of higher education Hell [Review of the book Illiberal Education]. Change, 23(5), 58-60.

O'Neil, R. M. (1990). The pitfalls of stifling campus speech. The Journal of the Association of Governing Boards of Universities and Colleges, 32(1), 12-14.

Oregon State University. (1991). Sticks and stones can break my bones but words can never hurt me. [Brochure] Corvallis: Author

Oregon State University. (1993). Oregon State University schedule of classes --Fall, 1993. Corvallis: Author.

Page, R. K. (1993). Freedom from the thought we hate: A policy analysis of student speech regulation at America's twenty largest public universities. Doctoral dissertation, Arizona State University.

Smolla, R. A. (1991). Introduction: Exercises in the regulation of hate speech. William and Mary Law Review, 32(2), 207-210.

SPSS. (1986). SPSSX user's guide (2nd ed.). Chicago: Author.

Staff. (1989). Punishing racist speech. SYNTHESIS: Law and Policy in Higher Education, January, 3.

State University of New York , Buffalo. (1993). Student conduct rules, university standards & administrative regulations. Buffalo: Author.

Strossen, N. (1990). Regulating racist speech on campus: A modest proposal. Duke Law Journal, 1990(3), 484-573.

Sue, D. W. (1992). The challenge of multiculturalism: The road less traveled. American Counselor, 1(1), 6-14.

Sweezy v. New Hampshire, 354 U.S. 234 (1957).

Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).

The University of California at Berkeley. (1989) Universitywide student conduct: harassment policy. Berkeley: Author

The University of California at Berkeley. (1992). The University of California at Berkeley code of student conduct. Berkeley: Author.

The University of California, Los Angeles. (1989). Universitywide student conduct: harassment policy. Los Angeles: Author.

The University of California, Los Angeles. (1993). UCLA regulations on activities, registered organizations and use of properties. Los Angeles: Author.

The University of California, Santa Barbara. (1992). The University of California policies applying to campus activities, organizations, and students. Santa Barbara: Author.

The University of Connecticut. (1993). University of Connecticut student conduct code. Storrs: Author.

The University of North Carolina, Chapel Hill. (1993). Instrument of student judicial governance. Chapel Hill :Author.

The University of Oklahoma. (1990a). Procedure for racial and ethnic harassment complaints against students. Norman: Author.

The University of Oklahoma. (1990b). Racial and ethnic harassment policy. Norman: Author.

The University of Oklahoma. (1993). Oklahoma University student handbook. Norman: Author.

The University of Oregon. (1990). Code of student conduct. Eugene: Author.

The University of Oregon. (1992). Speaking out at the University of Oregon. [Brochure]. Eugene: Author.

University of Utah. (1987). University of Utah policy and procedure manual --University regulations, University speech policies. Salt Lake City: Author.

UWM Post v. Board of Regents of the University of Wisconsin, 774 F. Supp. 1163 (E.D. Wis. 1991).

Van Alstyne, W. W. (1990). Academic freedom and the First Amendment in the Supreme Court of the United States: an unhurried historical review. Law and Contemporary Problems, 53(3), 115-154.

Wagner, D., Smolla, R., White, L., Wiener, J., Penner, J., Benjamin, E., & Sandalow, T. (1991). Controversy: More on campus harassment codes. Academe, 77(6), 32-41.

Weeks, K., & Cheek, W. (Winter, 1991). Hate speech on the college campus. Lex Collegii, 14(3), 1-6.

Weinstein, L. A. (1990). Policing prejudice. The Journal of the Association of Governing Boards of Universities and Colleges, 32(1), 6-11.

White, L. (1990, January). The constitutional status of expressive conduct after the flag-burning decision. Paper presented at the Eleventh Annual Conference of Law and Higher Education, Clearwater Beach, FL.

Wilkerson, I. (1987, March 9). Campus race incident disquiets University of Michigan. New York Times, p. A-12.

Wilson, Robin (1995, February 24). Flash point at Rutgers U. Despite president's apologies, outrage over racial comment may force him out. The Chronicle of Higher Education, pp. A21-A23.

Wisconsin v. Mitchell, 473 N. W. 2nd 1 (Wis. Ct. App. 1991), *rev'd* 485 N. W. 2d 807 (Wis . 1992); *rev'd,* 113 S. Ct. 2194 (1993).

Young, D. P., & Gehring, D. D. (March 1992). First Amendment/rules and regulations -- hate speech. <u>The College Student and the Courts, 19</u> (2), 961-963.

VITA

Sue Haldemann has worked in the field of higher education since 1976, primarily in the area of student affairs. Since completing a master's degree in College Student Personnel from Western Illinois University, she has been the director of auxiliary services, the assistant director of residence life and director of Hefner Hall for the School of the Art Institute of Chicago. As an acting assistant dean of students she was responsible for academic advising at Lawrence University in Appleton, Wisconsin. She is currently on staff at the Medical College of Wisconsin in Milwaukee, Wisconsin, as the coordinator for student support services.

DISSERTATION APPROVAL SHEET

The dissertation submitted by Sue A. Haldemann has been read and approved by the following committee:

Terry E. Williams, Ph.D., Director
Associate Professor, Educational Leadership & Policy Studies
Loyola University Chicago

Marti Tomas Izral, Ph.D.
Associate Professor, Department of Communications
Loyola University Chicago

Joan K. Smith, Ph.D.
Dean, College of Education
University of Oklahoma

The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the committee with reference to content and form.

The dissertation is, therefore, accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

November 11, 1997
Date

Terry E. Williams
Director's Signature