

*Assembly Higher Education Committee
Oversight Hearing*

**HATE, VIOLENCE, AND BIGOTRY ON
PUBLIC COLLEGE AND UNIVERSITY CAMPUSES**

*Tuesday, June 22, 2010
State Capitol, Room 437*

Introduction

According to the California Department of Justice, statewide in 2008, just over 10% of reported hate crimes took place on school and college campuses. The Federal Bureau of Investigation's 2008 Hate Crime Report found that, nationwide, approximately 12% of reported hate crimes occurred at educational institutions. There are numerous laws governing hate motivated criminal acts, and there is clear authority provided to California colleges and universities to establish rules and regulations designed to prevent discrimination against students. However, not all hateful incidents rise to the level of hate crimes. When even hateful words can make their mark and leave targeted students feeling fearful, what is the appropriate role of state policy makers and campus leaders to address hate speech?

Data on hate crimes is fairly readily available. Less well quantified, however, is the extent to which campuses experience hate incidents that don't rise to the level of a crime. In 1986, the California Department of Justice (DOJ) first recognized the importance of hate crime statistics in California in a report submitted to the Legislature, in response to Senate Bill 2080 (Watson), which provided recommendations for preliminary steps to establish a statewide hate crime database. These efforts lead to the enactment of California law requiring the Attorney General to submit an annual report to the Legislature regarding crimes motivated by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability as reported by law enforcement agencies. The federal Clery Act (1992) requires colleges and universities in the U.S. to report campus crimes and security policies to both the campus community and the U.S. Department of Education. In addition to policy and reporting requirements, it specifies that schools must report separately those crimes that appear to have been motivated by prejudice.

The recent incidents of hate crimes and hate speech on California campuses has led students, campus leaders, and policy makers to question the appropriate role of colleges and universities in ensuring the safety and well-being of the campus community, as well as creating an environment that is free of hate and bigotry. This oversight hearing of the Assembly Higher Education Committee will examine the recent hate crimes and incidents of prejudice and bigotry on California's public college and university campuses, the adequacy of campus responses to the occurrences, and potential improvements in system and campus policies governing hate, violence, and bigotry.

Recent Hate Crimes and Incidents

In the last year, campus officials have seen a rise in hate crimes and acts of bigotry on public college campuses throughout the state, including:

- During Black History Month in February, a University of California, San Diego fraternity organized a "ghetto-themed 'Compton Cookout'." Within days of the controversy, a student-run TV station came out in support of the party organizers, calling black students ungrateful and using racial language. Within weeks, a noose was found hanging from a light fixture in the campus library, and just days later, a white pillowcase that had been fashioned into a KKK-style hood was placed on a statute outside the campus library.

- Three swastikas were found spray painted on the UC Davis campus in March. The incident occurred a week after two other inflammatory events on the UC Davis campus: A swastika was carved into the dormitory door of a Jewish student, and the campus center for lesbian and gay students was vandalized with offensive graffiti. The swastikas were investigated as vandalism, not hate crimes, because they were in public locations. The earlier incidents were investigated as hate crimes because they happened at places that target specific individuals.
- In April, a transgender graduate student at California State University, Long Beach was attacked in a campus bathroom. According to news reports the attacker pulled the student's shirt over his shoulders and head and used a sharp object to slash his chest.
- Three swastikas were found on walls at UC Berkeley's Clark Kerr campus residence hall in late April. Vandals used a ballpoint pen and pencils to etch swastikas outside a restroom. This marked the third time an incident of this type had been reported on the UC Berkeley campus since last October.
- At UC Irvine, positional differences on the politics of the Middle-East have led to a rise in hate-speech. Several students were arrested for repeatedly interrupting Israeli Ambassador Michael Oren's speech on February 8th, marking just one in a series of incidents dating back nearly a decade between pro-Palistenian and pro-Israeli groups on the UC Irvine campus.
- In April, the Chico State student body president was stabbed walking home from a party near campus. According to reports, two men used racial epithets and then pulled out a knife and stabbed the student five times.
- According to UC campus police department records on recent incidents of vandalism involving hate speech, UC Berkeley experienced 16 incidents, UC Davis and UCLA experienced 19, UC Merced and UCSF each saw one incident, UC Riverside and UC Santa Cruz each experienced 13, there have been 10 incidents at UC San Diego, and UC Santa Barbara has seen nine incidences of vandalism involving hate speech.

California Hate Crime Laws

California law has made clear that cross-burnings, the desecration of places of worship, gay-bashings, and other such hateful criminal activities have no place in our society. To eliminate such violence, California has specific laws, both civil and criminal, which are designed to protect people from this type of violence and to punish severely those who engage in such offensive behavior.

While some hate-motivated offenses do not rise to the level of a crime that can be charged in court, hate incidents leave individuals feeling victimized and can escalate into criminal behavior. Free speech is protected by the United States Constitution and is not a hate crime. However, speech that carries a credible threat of violence against an individual or group of people is criminal.

The Ralph Civil Rights Act addresses racial, ethnic, religious, gender, age, disability, sexual orientation, and political violence in California by providing civil and administrative remedies for those who are victims of this type of violence or of violence directed against any particular class of persons. Persons who are successful in enforcing their Ralph Act rights in court are entitled to awards for money lost and emotional distress, as well as a civil penalty of \$25,000, and reasonable attorney fees.

In California, "Hate crime" means a criminal act committed, in whole or in part, because one or more of the following actual or perceived characteristics of the victim:

- 1) Disability.
- 2) Gender.
- 3) Nationality.
- 4) Race or ethnicity.
- 5) Religion.
- 6) Sexual orientation.
- 7) Association with a person or group with one or more of these actual or perceived characteristics.

The Bane Civil Rights Act prohibits violence or the threat of violence based on grounds such as race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability or position in a labor dispute. The Act provides that if a person interferes with one's rights under this law the victim may be able to get a court order banning this behavior and be awarded for money lost and emotional distress, as well as a \$25,000 civil penalty and attorney's fees. Additionally, the Act provides that misdemeanors committed because of the victim's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation may, under certain circumstances, may be punishable as felonies.

Sentencing enhancements of one to three years are available for certain bias-motivated felonies against defined groups, or against persons perceived to belong to one or more of these groups. Additionally, heightened penalties of one to four years are applicable if more than one felony hate crime was committed at the same time, the offender had a prior hate crime conviction, a firearm was used, or if the hate crime was committed on certain types of public or private property (i.e., schools, libraries, community centers, meeting halls, places of worship, offices of advocacy groups, etc.). California law also provides special circumstances imposing the Death Penalty or Life Without Possibility of Parole if the victim was intentionally killed because of race, color, religion, nationality, sexual orientation, gender, disability, or country of origin.

Hate Crimes vs. Hate Speech

Freedom of speech is a fundamental American freedom, and arguably nowhere should it be more valued and protected than at our institutions of higher learning. Valid concerns have been raised that the intellectual vitality of campuses is threatened when students and faculty fear punishment for expressing unpopular views. Recognizing the importance of protecting freedom of speech on college campuses, the state and federal government have enacted a series of laws ensuring campus policies do not infringe on a student's First Amendment right.

Hate Violence:

"Any act of physical intimidation or physical harassment, physical force or physical violence, or the threat of physical force or physical violence that is directed against any person or group of persons, or the property of any person or group of persons because of the ethnicity, race, national origin, religion, sex, sexual orientation, disability, or political or religious beliefs of that person or group."

* Section 4 of Chapter 1363 of the Statutes of 1992

In 1969, the United States Supreme Court recognized students' free speech rights for the first time in its landmark ruling, *Tinker v. Des Moines School Dist.* (1969) 393 U.S. 503. In the years following this decision, California became the first state in the nation to enact a statutory scheme that protected the free speech rights of students. In 1992, the Legislature enacted AB 1115 (Leonard), Chapter 1363, Statutes of 1992, which further strengthened the free speech rights of students of the state's high schools, and public colleges and universities. Relying on this statutory authority, California courts have repeatedly found that students in California's schools enjoy broader free speech protection than is generally provided under the First Amendment of the United States Constitution.

Hate Speech:

Acts shall not be considered "hate violence" based on speech alone, except upon a showing that the speech itself threatens violence...or reasonable fear of violence and the person threatening the violence had the apparent ability to carry out the threat.

* Section 4 of Chapter 1363 of the Statutes of 1992

that prevent "hate violence" directed at students that denies them their full participation in the educational process, so long as the rules and regulations conform to the standards established by the First Amendment of the U.S. Constitution and the California Constitution. Additionally, Legislative intent declares that the use of fighting words or epithets is not protected by the Constitution where the speech is considered abusive and insulting rather than a communication of ideas and is actually used in an abusive manner in a situation that presents an actual danger that it will cause a breach of the peace.

Hate Crime Policies at Colleges and Universities

All members of campus communities are covered by California laws governing hate crimes. Additionally, California law establishes that it is the responsibility of the governing boards of institutions of higher education to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, in accordance with state and federal law, and that no person be subject to discrimination in programs or activities conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid. Further, existing law requires the higher education segments to establish procedures for reporting hate violence, to maintain campus safety plans, and to report hate violence data. There are numerous California regulations and systemwide and campus based policies designed to implement policies to carry out the aforementioned intent.

Purpose of this Hearing

This hearing of the Assembly Higher Education Committee will examine the recent acts of hate and violence that have occurred on California's public college and university campuses, the campus and system responses to those incidents, and how well those affected communities feel the systems and campuses responded to the incidents. The Committee will hear comments and recommendations from community college, California State University, and University of California representatives, and various organizations that have worked with campus communities to minimize violence and hate speech on campuses. It is the goal of this hearing to determine the degree to which existing state law and campus and system policies appropriately balance freedom of speech with the need for safe, secure, and civil places of higher learning.