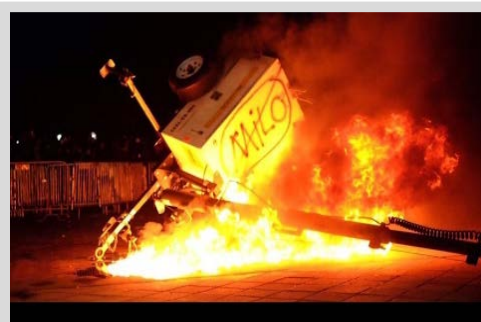




— 2018 UT SYSTEM — LEGAL CONFERENCE

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THE UNIVERSITY of TEXAS SYSTEM | FOURTEEN INSTITUTIONS, UNLIMITED POSSIBILITIES.



THE FIRST AMENDMENT AND CAMPUS UNREST

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September 20, 2018

ROADMAP FOR TODAY

- **Setting the Stage – What Happened at UCB and A&M?**
- **Legal Framework and Recent Developments Influencing Campus Policies**
- **Operational Lessons Learned**
 - Planning the Event
 - Security/Risk Assessments
 - Communications Issues
 - During/After the Event
- **Questions/Answers**

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A HISTORICAL PERSPECTIVE



- In October 2014, UC Berkeley celebrated the 50th anniversary of the Free Speech Movement

“ The Free Speech Movement was the first revolt of the 1960s to bring to a college campus the mass civil disobedience tactics pioneered in the civil rights movement. Those tactics, most notably the sit-in, would give students unprecedented leverage to make demands on university administrators, setting the stage for mass student protests against the Vietnam War. ”

– Robert Cohen, author of *Freedom's Orator*

A HISTORICAL PERSPECTIVE

On Oct 1, 1964, the Free Speech Movement began...



THE NEW REALITY OF PROTESTS



THE NEW REALITY OF PROTESTS



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THE NEW REALITY OF PROTESTS



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THE NEW REALITY OF PROTESTS

- Protesting Richard Spencer in College Station



NEW REALITY OF PROTESTS



Photo: Houston Chronicle



Photo: The Eagle

THE NEW REALITY OF PROTESTS

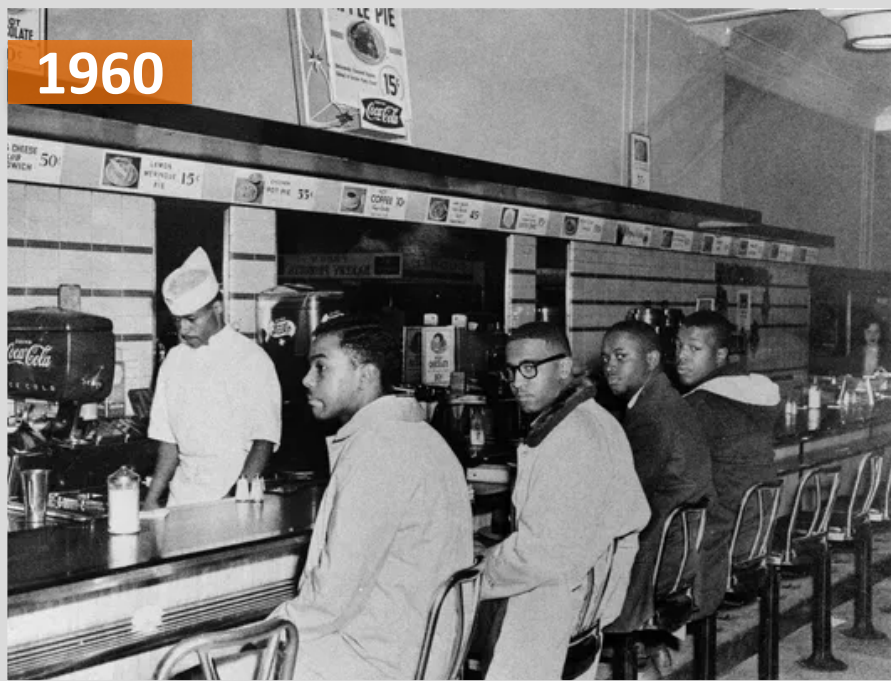


THE NEW REALITY OF PROTESTS



FREE SPEECH THEN AND NOW: FROM CIVIL RIGHTS TO THE ALT-RIGHT

1960



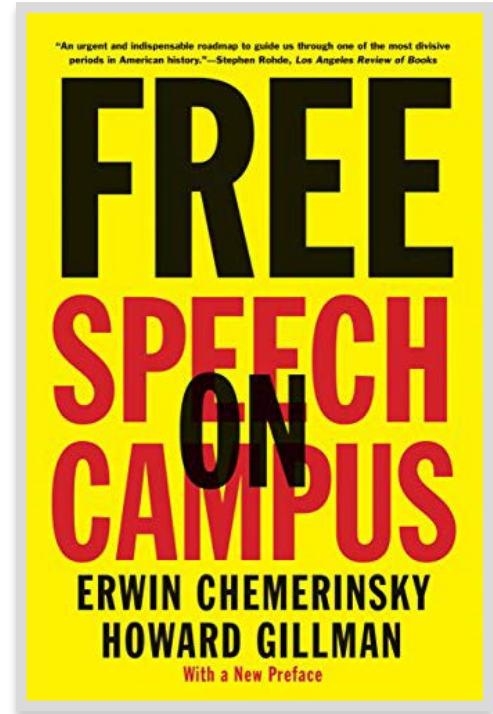
2016



Photo: Scott Strazzante, *The Chronicle*

TODAY'S COLLEGE STUDENT

- Lessons from “*Free Speech on Campus*”
 - Raised in “anti-bully” environment
 - Want to create inclusive environment and protect against hate speech
 - But the law is clear – hate speech is protected speech
 - Campus administration can engage in its own speech, and denounce hate speech



TODAY'S COLLEGE STUDENT



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ANTIFA

- Group's primary goal is to stop neo-Nazis and white supremacists from gaining a platform, frequently through the use of physical force, rather than promoting a specific agenda.



Photo: *Houston Chronicle*

UC BERKELEY BACKGROUND

- First Milo Yiannopoulos event (cancelled)
- Ann Coulter's no-show
- Violent altercations in the City of Berkeley
- Charlottesville

TEXAS A&M BACKGROUND

- Richard Spencer event on A&M Campus announced on Nov. 16, 2016
- Scheduled for Dec. 7, 2016
- Less than 3 weeks to prepare, including Thanksgiving holiday
- Message from President Young
- Counter-event put into motion

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FIRST AMENDMENT CONCEPTS

- Content Neutrality
 - University's actions have nothing to do with who the speaker is or what the speaker says
- Viewpoint Neutrality
 - University's actions do not favor or disfavor one view on a subject
- Whether Content Neutrality and/or Viewpoint Neutrality is Required Depends on the Type of "Forum"

FORUM ANALYSIS

- Traditional Public Forum – Content neutrality required
- Designated Public Forum – Content neutrality required
- Limited Public Forum– Viewpoint neutrality required
- Nonpublic Forum – Viewpoint neutrality required
- Not a forum at all – Neither required

FORUM ANALYSIS

- A campus can have multiple different types of forums
- Nature of each forum usually depends on University's intent
- University should be deliberate about forum choice and document/announce its choice of forum

FIRST AMENDMENT CONCEPTS

- Heckler's veto
 - No regulation based on opposition to speaker or message
 - Key legal question: what about regulating based on *violent* protest?
- Security fees
 - Charging security fees to speaker because of opposition to speech is considered a heckler's veto
- Unbridled discretion
 - The law considers a policy giving too much discretion on fees or other regulations just as bad as a policy discriminating based on viewpoint

RECENT CASES: RICHARD SPENCER

- Auburn University (declined to allow event)
 - Judge issues TRO requiring Auburn to allow Spencer to speak
- Michigan State (declined to allow event)
 - Settlement: speech proceeds, MSU pays \$27K in attorneys fees
- University of Cincinnati (charged \$10K security fee)
 - Spencer cancels event, case voluntarily dismissed
- Ohio State, Penn State (declined to allow event, suits dropped)

RECENT CASE: UNIVERSITY OF WASHINGTON

- UW College Republicans invite Patriot Prayer for rally in campus plaza, administration charges \$17,000 security fee
- One day before the event, judge grants TRO against fee:
 - Security fee policy gives too much discretion
 - Considering past violence surrounding a speaker unconstitutionally penalizes unpopular speech
- Settlement: UW rescinds fee policy and pays \$123K

RECENT CASE: UC BERKELEY

- College Republicans and Young America's Foundation filed lawsuit after failed Ann Coulter event
- Allege (1) viewpoint discrimination against conservative speakers and (2) events policy gives too much discretion
- Court held that events policy is constitutional but allowed lawsuit to proceed in certain respects about past events where:
 - No policy existed at the time of the event OR
 - Allegations about amount of security fee charged compared to other events with non-conservative speaker

DEVELOPING A POLICY

- Decide who the policy will apply to
 - Student organizations? Campus departments? Outsiders?
- Decide what types of forums and who may access them
 - What are the designated public forums (“free speech zones”)?
 - May outsiders reserve venues? Do they need a sponsor?

DEVELOPING A POLICY

- Include a security cost provision that is as specific and neutral as possible
 - Consider varying fee based only on venue and # of attendees
 - Make clear that opposition/protest costs will never be charged
- Viewpoint neutrality (or content neutrality as appropriate)
 - State that University will make decisions on viewpoint neutral basis
 - Lay out the security/disruption criteria that will be used

DEVELOPING A POLICY

- Other Policy Suggestions:
 - Provide for a prompt appeal to administrator for denial of requests for use of campus property
 - Require campus entity (not outsiders) to be responsible for all planning requirements
 - Deadlines tied to legitimate operational requirements
 - Train staff person with role in reviewing event requests
 - Educate media and PR staff

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OPERATIONAL AND STRATEGIC PLANNING

- Cross-functional campus strategic team
- Ensure effective communication with operational staff and the campus community
- Anticipate operational impact of strategic decision-making

OPERATIONAL AND STRATEGIC PLANNING

- Prepare for counter-protests:
 - UC Robinson-Edley Report
 - Protest Response Team
 - Coordinate with local law enforcement
 - Security cameras



SAFETY AND SECURITY CONCERNS



SECURITY – CROWD CONTROL



SAFETY AND SECURITY CONCERNS

- Security on campus:
 - Will you need to close buildings?
 - Does your state allow guns on campus?
 - Will you establish a perimeter?
 - How will you set up safe passage across campus?
 - What about displaced student groups, events, etc.?

SAFETY AND SECURITY CONCERNS

- Security on campus:
 - What happens if event is cancelled?
 - Support services for impacted community members
- Prohibited items list:
 - For secure areas
 - Viewpoint neutral

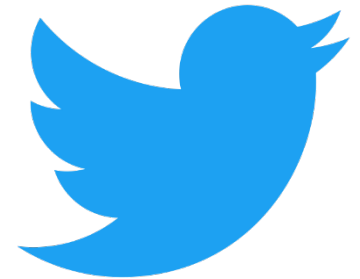


COMMUNICATION STRATEGIES

- Messaging to campus community during planning
- Balance transparency with security
- Communication with law enforcement

COMMUNICATION STRATEGIES

- Consider multiple methods of commonly used communication on campus
 - Twitter
 - Nixle
 - Facebook, etc.
- Consider a campus website with updated information



COMMUNICATION STRATEGIES

- UC Berkeley Campus Website: <http://freespeech.berkeley.edu/>

“Berkeley, as you know, is the home of the Free Speech Movement, where students on the right and students on the left united to fight for the right to advocate political views on campus. Particularly now, it is critical that the Berkeley community come together once again to protect this right. It is who we are.

Nonetheless, defending the right of free speech for those whose ideas we find offensive is not easy. It often conflicts with the values we hold as a community — tolerance, inclusion, reason and diversity. Some constitutionally protected speech attacks the very identity of particular groups of individuals in ways that are deeply hurtful.”



– UC Berkeley
Chancellor Carol Christ

COMMUNICATION STRATEGIES

“I find the views of the organizer – and the speaker he is apparently sponsoring – **abhorrent and profoundly antithetical to everything I believe**. In my judgment, those views simply have no place in civilized dialogue and conversation.”

...

“**At the same time**, regarding the essence of an academic enterprise such as ours – especially a state institution governed not only by our core academic principles but also by the U.S. Constitution – **private citizens have a right to free speech on and off this campus...**”

President Michael K. Young

COMMUNICATION STRATEGIES

- Talking to the media
 - Controlling the narrative – press statements?
 - Who will be your designated point of contact?
 - Press conferences post event
- Conversations with the speaker
 - Assign a sophisticated point person
 - Walk through with the speaker
 - Understand their needs

COMMUNICATION STRATEGIES

- Communicating during the event
 - Command post(s)/unified command
 - Audio/video feeds (drones?)
 - Administrator on the PRT



COMMUNICATION STRATEGIES

- Post-event communication with the community
 - Conversations with impacted community members & groups
 - Ongoing discussions regarding policy/procedures





Questions & Answers

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RESOURCES:

- NACUA NOTE: Key Considerations in Safely Managing Campus Events in 2018.
 - https://www.nacua.org/docs/default-source/legacy-doc/nacuanotes/campusevents.pdf?sfvrsn=c35c75be_8
- AGB Free Speech Guidelines.
- UC Toolkit for Managing Major Campus Events/Incidents.

Thank You

