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Counter-Demonstrations and Opposition Speech on Campus: What the Heck is the 'Heckler's Veto'?

Freedom Of Speech

SUNY



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First Amendment

Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or the press; or the right of the people to peaceably assemble and petition the government for a redress of grievances.



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Heckler's Veto



- The Government is prohibited from placing unreasonable restrictions on speech
- Public expression of ideas may not be prohibited merely because the ideas themselves are offensive to some or simply because bystanders object
- Punishing, removing or otherwise silencing a speaker due to crowd hostility will seldom, if ever, be the least restrictive means available to serve a legitimate government purpose



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Legal and Common Sense

Legal

Situations where the government attempts to ban protected speech because it might provoke a violent response; the mere possibility of a violent reaction to protected speech is **NOT** a constitutional basis to restrict the right to speak (liability)

Non-legal

Heckler himself/herself carries out the veto and suppresses speech by drowning out the speaker or otherwise not allowing the speech (possibility of liability)



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Campuses

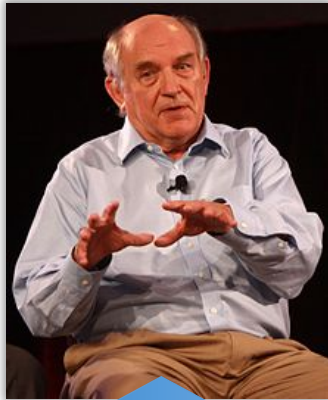
- Middlebury College
- University of California – UC Berkeley
- Auburn University
- University of Virginia
- University of Florida – Gainesville



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Timeline of Events

2017



MARCH



AUGUST

FEBRUARY



APRIL



SEPTEMBER





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Middlebury College

- Liberal Arts Private College - Champlain Valley of central Vermont
- ~2500 Undergraduate Students
- 8:1 Student-Faculty Ratio



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Middlebury College

March 2, 2017

- Charles Murray: Fellow at the American Enterprise Institute
- Event drew 400 people
- College created an alternate location for Murray
- Demonstrations turned violent which resulted in physical confrontations





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UC Berkeley

Public Research University in Berkeley, CA

Fall 2017:

- Total Undergraduates Enrolled: **30,574**
- Total Graduates Enrolled: **11,336**
- 17.8:1 Student-Faculty Ratio

“Free speech is one of UC Berkeley’s most cherished values...”





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UC Berkeley

2017 Incidents

- **February 1:** Milo Yiannopoulos
- **March 4:** "March 4 Trump" Event
- **April 15:** Pro-Trump Event
- **April 27:** Ann Coulter
- **August 27:** "Rally against Hate"
- **September 14:** Ben Shapiro
- **September 24 – 27:** Free Speech Week





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UC Berkeley & Middlebury

ARTICLE: Violent Protests at Middlebury and Berkeley are a Warning for Other Schools

In the future, it will be important to carefully consider details like the venue and timing of a given event. And the university has an obligation to be better prepared. You can only have something unprecedented happen once because the next time, it's preceded. We won't have any ability to say we didn't see it coming next time.

-Berkeley spokesperson, Dan Mogulof

TIME – March 13, 2017



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UC Berkeley & Middlebury

ARTICLE: Violent Protests at Middlebury and Berkeley are a Warning for Other Schools

Every college or university in the country right now needs to step back and consider the extent to which we're in a different political environment

Whether it's at U.C. Berkeley or Middlebury, we need to recognize the internal and external forces that come into play and plan accordingly.

TIME – March 13, 2017



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Auburn University

Public University in Auburn, Alabama

2018 Academic Year

Total Undergraduates: 23,964

Total Graduate: 4,707

Student/faculty ratio: 19:1



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Auburn University

April 18, 2017

- Richard Spencer (Self-proclaimed White Nationalist)
- U.S. District Judge W. Keith Watkins overturned school's ruling
- 400 People attended the event





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University of Virginia

August 11, 2017

- Unique situation – violent and aggressive protests began near the campus around the city of Charlottesville
- As the action erupted on the campus, University Police Department (UPD) was called





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University of Virginia

THE UNIVERSITY'S RESPONSE TO AUGUST 11, 2017: OBSERVATIONS AND IMPROVEMENTS

University officials' frame of mind was shaped by a decades-long history of non-violent protests on Grounds that led them to approach the march with the assumption that it was constitutionally protected and should be accommodated with minimal police intrusion. On a number of levels—intelligence evaluation, policy backdrop, and police response—this mindset led the University to make judgments that were misaligned to the context and left UPD insufficiently equipped to respond.

- September 11, 2017

<https://response.virginia.edu/system/files/public/observations-improvements-uva-response.pdf>



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University of Florida

Timeline of Statements Released by College President W. Kent Fuchs in 2017

- **August 12th** – Campus was contacted by “The National Policy Institute” to host Richard Spencer on September 12th
- **August 16th** – College makes decision to not host the event citing potential risks
- **August 30th** – While requests were denied, the National Policy Institute retained counsel to pursue hosting the event
- **October 10th** – Campus required by law to host event



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University of Florida

PERSONAL MESSAGE FROM PRESIDENT FUCHS

No one at our university invited Mr. Spencer, nor is anyone at UF sponsoring this event. UF has been clear and consistent in its denunciation of all hate speech and racism, and in particular the racist speech and white-nationalist values of Mr. Spencer. I personally find the doctrine of white supremacy abhorrent and denounce all forms of racism and hate.

If you are like me, I expect you are surprised and even shocked to learn that UF is required by law to allow Mr. Spencer to speak his racist views on our campus, and that we are not allowed by law to bill him for the full costs of keeping our campus safe, which exceed more than a half million dollars.

- October 11, 2017

<https://freespeech.ufl.edu/news-opinion/statements/2017/october/personal-message-from-president-fuchs.html>



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University of Florida

October 19, 2017

- Prior to event – information regarding road closures, prohibited items and security measures was sent out to the entire Campus community
- Ticketing system in place for event (700 total)
- Protests turned violent – reports stating three people charged for shooting at protestors outside of event





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University of Florida

ARTICLE: “Lessons From Spencer's Florida Speech - *What other institutions can learn from the way the university prepared for the event, avoided violence and offered support to students.*”

In addition to behind-the-scenes planning, the University of Florida clearly communicated everything to the public, creating a question-and-answer webpage that meticulously addressed every aspect of the event -- who Richard Spencer was and why he would be allowed to speak, the university's views on his message and everything else down to road and bus stop closures.

In part, UF found some success because it started planning weeks ahead of the event, and it bought a little time because it denied Spencer's first request after the events of Charlottesville, citing safety concerns...

INSIDE HIGHER ED - October 23, 2017

<https://www.insidehighered.com/news/2017/10/23/nine-lessons-learned-after-richard-spencers-talk-university-florida>



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Managing Counterdemonstrations





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Balancing Interests

“[T]he University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.”

University of Chicago Statement
on Freedom of Expression,
January 2015



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Attitudes Toward Free Speech

- Majority of college students say protecting free speech rights (56%) and promoting a diverse and inclusive society (52%) are important
- However, promoting diversity and inclusion is more important than free speech (53% to 46%)
- 90% of college students say it is never acceptable to use violence to prevent someone from speaking; 10% say it is sometimes acceptable
- 63% say shouting down speakers is never acceptable; 37% believe it is sometimes acceptable

Gallup/Knight Foundation/American Council on
Education (ACE) survey, 2017



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What Speech is Protected?

Protected

- Hateful and hurtful speech

Not Protected

- Harassment
 - Must be *“so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit”*
- True threats
- “Fighting words”
- Criminal conduct



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Time, Place and Manner

- Reasonable time, place and manner restrictions are permissible
- Can use to prevent disruption of another's message and to protect university operations
- **MUST BE CONTENT-NEUTRAL**



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Permissible Restrictions - During

Buffer zones

- May keep groups separated but must allow effective communication of message
- Tensabarriers, bicycle racks, designated areas

Enforcement of content-neutral policies

- Rules for the Maintenance of Public Order
- Posting rules
- Room capacities
- Safety regulations



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Permissible Restrictions - Planning

- Permit requirements
- Notice periods
- Sponsor requirements for outside speakers
- Free speech zones
- Limits on duration and frequency
- Bans during examination periods



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Safety Concerns

University of Florida and Texas A&M recently canceled appearances by Richard Spencer following Charlottesville

Auburn attempted to cancel Spencer but overturned by federal court

First Amendment does not require university to risk imminent violence to students and others
but must be “clear and present danger”



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Planning

- Event management team
 - o Student affairs, student conduct, campus events, UPD, counsel, communications director
 - o Briefings for key leaders
- Institutional statements
- Adequate security
- Dialogue with sponsors
- Analyze forum/location, foreseeable developments
- Messaging to demonstrators on-site
- Revise policies with content-based restrictions or that leave too much discretion to administrators



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Promoting a Free Speech Culture

- Communication to the campus
 - o Principles of community
 - o Freedom of expression statement
 - o Celebrations of diversity
- Effective policies and complaint procedures
- May condemn speech that is not consistent with university values, but may not censor speech unless it is unprotected
- Communicate that hurtful speech is protected, even if inconsistent with values of inclusion



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