

CURRENT FREE SPEECH ISSUES: ACTIVITY

Free Speech Scenarios

These are examples of actual free speech scenarios on college campuses. Some are dilemmas to ponder, without clear-cut final outcomes. Share selected situations with students, and have them discuss what they think should happen in each case. Be sure to address whether or not students think the Constitution or First Amendment is being violated.

Then, take a look at "How it turned out" to see the current status of each situation

The Situation: A professor at the University of Tampa, in the midst of the devastation of Hurricane Harvey, tweeted: "I don't believe in instant karma, but this kinda feels like it for Texas. Hopefully this will help them realize the GOP doesn't care about them." Upon receiving criticism, he added: "'the good people there need to do more to stop the evil their state pushes. I'm only blaming those who support the GOP there.'" Of Florida, he added, "those who voted for him here deserve it as well." In response, the University of Tampa tweeted, "Tweets on Storey's private account do 'not reflect [Tampa's] community views or values. We condemn the comments and the sentiment behind them, and understand the pain this irresponsible act has caused," the statement reads. "As Floridians, we are well aware of the destruction and suffering associated with tropical weather. Our thoughts and prayers are with all impacted" by Harvey. Under pressure and criticism, the professor apologized via Twitter: "I deeply regret a statement I posted yesterday. I never meant to wish ill will upon any group. I hope all affected by Harvey recover quickly."

How it turned out: The professor was fired. Tampa released a statement he "has been relieved of his duties, and that his classes will be covered by other sociology professors." FIRE lawyers are looking into the case. FIRE statement: "We are concerned by this [potential threat to freedom of expression](#) and are investigating this dismissal. While the University of Tampa is a private institution, it promises its faculty freedom of expression. Private institutions cannot make promises to students and faculty only to abandon them when convenient."

The Situation : A newly-hired adjunct professor at Montclair State University tweeted that "Trump is a ***ing joke. "I wish someone would just shoot him outright." This prompted outrage, to which he responded, "saying you wish donald trump was dead is different than making a direct threat against him. just saying..." When this professor previously taught at Rutgers University, campus police sent him to Manhattan, N.Y. for a psychiatric evaluation after students "felt threatened" by him following Trump's election.

How it turned out: The professor claimed publicly that he was fired by Montclair State, but the university claims that he was never formally hired. Either way, he is not teaching there.



Statement from FIRE lawyer: “This statement is not specific or detailed enough to constitute a call to action, although it is possible that it would provoke an investigation by the Secret Service to determine if a true threat exists.”

The Situation: A professor at Trinity College in Connecticut posted a series of inflammatory messages on Facebook following the shooting of Republican congressmen in Washington, DC, including: “It is past time for the racially oppressed to do what people who believe themselves to be ‘white’ will not do, put an end to the vectors of their destructive mythology of whiteness and their white supremacy system.” He argued that first responders should not try to save the injured, stating: “#LetThemF—ingDie” and, “The time is now to confront these inhuman ^%\$holes and end this now.” His messages prompted national outrage.

How it turned out: Trinity College President Joanne Berger-Sweeney said in a prepared statement that she does not “condone hate speech or calls to incite violence.” She said: “I told Professor Williams that in my opinion his use of the hashtag was reprehensible and, at the very least, in poor judgment.”

Professor Johnny Eric Williams Thursday issued a public apology and said he was in hiding far from Connecticut as the campus reopened amid a furor over his recent controversial Facebook posts. The college closed for a day “out of an abundance of caution” in collaboration with the Hartford Police Department due to threats.

Williams said his posts were not a call for violence against white people, as some claimed when the posts spread across social media. He said the firestorm over his Facebook posts was caused by misinterpretations of them and emailed an apology Thursday to the campus for the uproar that ensued. He hired an attorney and stated, “I never intended to invite or incite violence.” He was cleared of wrongdoing by the College, but remains on paid voluntary leave through the fall.

Statement from FIRE lawyer: “With regards to incitement, the speech must be directed to inciting imminent lawless action. Like true threats, this is a high bar and a narrow area of unprotected speech. The biggest distinction between protected speech and incitement is the imminence requirement -- even calls for Trump's death would generally be protected speech because they are not calling for immediate action. For example, the statement does not call for an unlawful act letting someone die is not the same thing as murder.”



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The Situation: A professor at Fresno State University tweeted “To save American democracy, Trump must hang. The sooner and the higher, the better.” He also tweeted that “Justice = The execution of two Republicans for each deported immigrant.” These tweets were picked up and highlighted by right-wing websites such as Breitbart, sparking angry calls on social media for the professor to be fired.

How it turned out: Fresno State University announced they were reviewing the statements for potential violation of the law. “Professor Maischak’s personal views and commentary, with its inclusion of violent and threatening language, is obviously inconsistent with the core values of our University,” read a statement from the President.

In response, the professor said, “I am appalled that the president of the university is allowing himself to be instrumentalized for a right-wing smear campaign. Maischak argued that it was “far-fetched” to assume his “Trump must hang” tweet represented an invitation to murder the president. Ultimately, the professor apologized for the tweets and took a voluntary leave of absence from teaching.

Statement from a FIRE lawyer on true threats and incitement: “The bar for what speech counts as a true threat is very high, meaning that it is a very narrow category of unprotected speech. Generally, a statement is only a true threat if 1) the speaker intends to communicate a threat and 2) a reasonable person would see the statement as a threat. This usually requires the threat to be specific, targeted, realistic, and imminent, which is enough to distinguish true threats from political hyperbole.”

Links to articles defining what constitutes a “true threat: <https://www.thefire.org/threats-intimidation-and-free-speech>

<https://www.thefire.org/first-amendment-center-on-true-threats-jurisprudence>

Stating you “wish someone was dead” are different from saying you intend to kill that person. Many statements that sound like threats are considered “hyperbolic and hypothetical.”

The Situation : In 2016, Harvard’s President announced a plan to blacklist members of off-campus single-gender organizations, including fraternities, sororities, and Harvard-only “Final Clubs” (these are like secret societies.) Students determined to be members of these organizations would be banned from leadership positions on sports teams and official student organizations, and barred from receiving recommendations from the Dean’s Office for prestigious graduate scholarships, like the Rhodes.



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How it turned out: Hundreds of Harvard students pushed back against this threat to Freedom of Assembly. The backlash prompted the administration to announce that female clubs (only) would be allowed to continue as single-gender organizations for the next 3-5 years, at which time they would be reviewed. This situation is still pending.

The Situation: 2 student groups at the University of South Carolina planned an event to draw attention to threats to free speech on campus. The event involved poster displays featuring examples of campus censorship across the country. Given that some of the posters included provocative words and symbols, the group obtained approval ahead of time from the director of campus life. Despite these precautions, they received a "Notice of Charges" the day after the event, demanding that they meet with the Office of Equal Opportunity Programs to respond to student complaints.

How it turned out: The students representing the groups sued the university challenging this investigation of their pre-approved event and also challenging USC's requirements that expressive activity be pre-approved and limited to small, designated "free speech zones" on campus. The situation is pending.

The Situation: As the presidential primary season got underway, Georgetown University Law School informed a group of Bernie Sanders supporters that campus was no place for talking to fellow students about their chosen candidate. The students were informed that, because Georgetown is a tax-exempt institution, the law school could not allow any campaigning or partisan political speech on campus.

How it turned out: Lawyers wrote to Georgetown Law asking it to revisit its policy on student political speech. [Each campaign season, some public and private colleges suppress student political speech because they erroneously believe it will jeopardize their federal tax-exempt status.] Georgetown released a revised policy.

The Situation: In September 2014, political strategist Karl Rove spoke at the University of Toledo. The event was open to the public and the tickets were free, with UT students having first priority. Before the lecture started, a group of UT students and community members sought to peacefully protest Rove's appearance by distributing literature to attendees and displaying posters criticizing Rove's involvement in President George Bush's foreign policy. Two campus police officers, however, prevented the protesters from entering the event carrying their posters, despite their explanation that they would not disrupt the lecture or block the views of other attendees. Despite preventing the protesters from entering the lecture with their posters and even implying that they could be arrested for doing so, the officers failed to cite any UT policy justifying their action when asked, even



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after a student provided them with a copy of UT's Student Code of Conduct.

How it turned out: Lawyers wrote to warn the university that enforcing unwritten policies that violate students' First Amendment rights was unconstitutional. In response to these legal concerns, UT worked to craft a new statement of principles regarding on-campus expression, prompting lawyers to state: "We applaud the University of Toledo for putting together a campus-wide policy that reiterates students' constitutional right to freedom of expression and assembly."

The Situation: : On November 10, 2016, the University of Missouri Police Department issued a campus-wide email asking "individuals who witness incidents of hateful and/or hurtful speech" to take a series of actions in response. These actions include calling the police "immediately" and providing "detailed description[s]" and photographs of the actors in question. The statement further added, "While cases of hateful and hurtful speech are not crimes, if the individual(s) identified are students, MU's Office of Student Conduct can take disciplinary action."

How it turned out: First Amendment lawyers sent Mizzou a letter on November 11 reminding the university that the majority of speech considered subjectively "hateful" or "hurtful" is protected by the First Amendment and asked Mizzou to clarify that it will not discipline students on these unconstitutionally broad and vague grounds.

The Situation: In 2016, a student group at the University of Delaware set up a table on campus to promote a screening of the free speech movie *Can we Take a Joke?*, a film that explores what happens when comedy and censorship collide. While students Jason Stewart and Aaron Cooper manned the table and invited passing students to write on a plastic beach ball they called the "free speech ball," a uniformed UD Department of Public Safety officer approached them. The officer pointed out a crude drawing and offensive word on the ball and told Stewart and Cooper that the drawing and word were in possible violation of UD's sexual misconduct policy. Slater told Cooper and Stewart to scribble out the offensive references or turn them into something else. Slater then contacted a second officer, believed to be his superior, to confirm that his censorship was appropriate.

In a later exchange captured on video, the officer cited several categories of speech that he insisted the students monitor when other students added messages to the ball. He claimed UD police "have to investigate" incidents of "derogatory" writings, which he classified as potential "hate crimes." The officer also warned about written "rumor[s]," which might be "harassing" or "libel." He told the students, "we also gotta, you know, keep in the back of our mind that everything that people say may be, you know, offensive to other people." Stewart and Cooper eventually agreed to cover up the offensive scribbles, prompting the officer to leave. The two students tabled for several more hours but



declined to censor the free speech ball.

How it turned out: First Amendment lawyers sent a letter to the University of Delaware (UD) voicing concerns about expressive rights on campus. The letter urged UD to ensure its police understand and respect the First Amendment rights of its students, and to reform policies that threaten student expression. “A campus police officer should never ask students to self-censor their constitutionally protected speech,” said one of the lawyers. “As a public university, UD must abide by the First Amendment, which has very few exceptions—and subjectively offensive words or images are not one of them. Here we have yet another case of students’ constitutionally guaranteed right to Free Speech being attacked. There’s a fundamental misunderstanding on college campuses, where even the faculty believe in freedom *from* speech instead of freedom *of* speech.”

The Situation: In April 2014, Loyola University Chicago informed the Loyola Students for Liberty student organization that it would be required to censor its “free speech wall” and remove any messages that were “grossly offensive.”

How it turned out: Days later, First Amendment lawyers wrote a letter to Loyola reminding the university of its obligation to honor its promises of broad expressive rights on campus, as expressed in its own written materials. Despite its earlier demands against the group, the university ultimately backed down, and the event transpired as planned, with no censorship of any material on the free speech wall.

The Situation: On August 30, 2015, law student Anthony Palumbo attempted to sign up new members for a prospective campus organization outside University of Akron’s Student Union. An administrator ordered Palumbo to cease this activity, informing Palumbo that he was required to obtain a permit. UA associate general counsel Scott Campbell confirmed this requirement during a meeting with Palumbo a few days later.

How it turned out: Lawyers wrote to UA on September 18, informing the university that its permitting restrictions unconstitutionally burdened student expression. Lawyers also highlighted inconsistencies in its speech and assembly policies, noting that the broad language of its policies subjected potentially all student expression to the requirement that speakers obtain permits for their expression. UA responded on October 2, informing the lawyers that it was working to amend its speech and assembly policies to remove unconstitutional permitting requirements and that it would suspend its existing requirements while reforming its policies.



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The Situation: In 2013, the Kansas Board of Regents enacted a broad and vague system-side speech code restricting "improper use of social media" by faculty and staff, which included a provision authorizing punishment for expression considered "contrary to the best interest of the university" or that may "impair harmony among coworkers."

How it turned out: Lawyers wrote to the Board to express concerns with this new policy. A faculty group proposed revisions that would have protected faculty speech rights while allowing universities to punish unprotected speech. The Board rejected this revision and continues to endanger faculty's academic freedom and expressive rights.

The Situation: After a shooting, University of Kansas David Guth posted a tweet to his personal Twitter account condemning the National Rifle Association, saying, "Next time, let it be YOUR sons and daughters. Shame on you."

How it turned out: Following substantial public pressure and criticism, including from Kansas state legislators, KU placed Guth on administrative leave. Lawyers contacted the university to point out that Guth's expression was protected speech and that a university investigation was not acceptable. The university released a statement saying that Guth's suspension was not related to the content of his expression, but defended his suspension by claiming it was necessary to prevent further "disruption."

The Situation: Two professors at Mount St. Mary's University were fired after criticizing the president's plan to dismiss low-performing freshmen in order to improve the university's overall retention rate. Several faculty members and administrators had expressed misgivings about the program.

How it turned out: This issue centers on the right to dissent and to speak freely. One critic of these firings said: "Speaking freely is a dangerous proposition at the Mount if it is willing to go this far to silence its critics." Ultimately, following a petition by faculty and input from advocacy groups, the professors were reinstated by the university, but both said that they did not plan to return.

The Situation: Students at the University of Wisconsin-Superior produced a satirical April Fools' Day edition of the student newspaper that at least one graduate student complained was "offensive" and not clearly labeled as satirical. The university condemned the paper in a lengthy Facebook post and announced that it was investigating the paper.

How it turned out: After lawyers contacted university administrators about the free speech rights of the student writers, the administrators quickly closed the investigation.



The Situation: In February, 2016, three editors of a student newspaper at Brandeis University—Abby Patkin, Max Moran, and Avi Gold—were informed that a student had filed a complaint against them with the university over an article they published the previous year about the 2015 "Take Back the Night" march. The complaint alleged Patkin recorded stories shared by students at the march and published an article containing anonymous quotes from students without first obtaining their consent.

The complaint against the students alleged a violation of Brandeis' Electronic Device and Privacy policy, which prohibits invasions of privacy via surreptitious audio or visual recordings. The students received formal disciplinary charges from the university and demands from students and administrators that the newspaper's coverage of the event be removed from the paper's website.

How it turned out: Lawyers contacted Brandeis and urged administrators to respect freedom of the press and not to punish the three student journalists. In March 2016, Brandeis dropped the charges against the three student journalists. According to lawyers involved: "If student reporters can be punished for accurately and sensitively reporting on a public event held on campus, freedom of the press does not exist."

The Situation: In 2008, with the presidential race between John McCain and Barack Obama the focus of national attention, political speech on our nation's campuses came under sharp attack. At the University of Oklahoma, students and faculty were notified that "the forwarding of political humor/commentary" using their university e-mail accounts was prohibited.

How it turned out: In response to a letter from First Amendment attorneys, the university modified its stance, stating that the prohibition is only applicable "to the extent discussions are attributable to the University as endorsing or opposing a political candidate." However, the university did not communicate this change to the community at large, leaving many under the impression that such private e-mail forwards are forbidden.

The Situation: In 2008, with the presidential race between John McCain and Barack Obama the focus of national attention, political speech on our nation's campuses came under sharp attack. At the University of Illinois, the university Ethics Office issued a newsletter warning faculty against engaging in political expression on campus, including attending political rallies, wearing buttons, and even placing bumper stickers on cars.

How it turned out: After widespread criticism and a letter from lawyers, the President of the University of Illinois issued a clarification, assuring faculty members that the uni-



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versity would allow them to engage in such expression. According to a First Amendment lawyer, “Political expression is exactly the speech the First Amendment was designed to protect. Our nation’s colleges and universities do their students and faculty a grave disservice when they stifle the ability to engage the crucial issues of the day. While colleges and universities may not institutionally endorse candidates, they have a societal duty to foster and encourage debate and discussion about those issues most important to our nation. Any blanket ban on ‘political speech’ betrays one of the academy’s most important functions.”

The Situation: In 2008, with the presidential race between John McCain and Barack Obama the focus of national attention, political speech on our nation’s campuses came under sharp attack. At the University of Texas at Austin (UT), two students were threatened with disciplinary action for refusing to remove political signs placed in their dormitory window.

How it turned out: In the face of nationwide criticism, UT President William Powers Jr. waived that prohibition, pending a policy review.

The Situation: In 2017, high school students in Wall, NJ posed for their yearbook pictures wearing shirts with the word “Trump” on them. When the yearbook was published, the name “Trump” was deliberately photoshopped out.

How it turned out: This incident really happened, and the teacher who made the unauthorized edits to the yearbook was suspended pending an investigation. The District’s superintendent said: “There is nothing in our student dress code that would prevent a student from expressing his or her political views and support for a candidate for political office via appropriate clothing. Rather, I applaud students for becoming involved in politics and for participation in our democratic society.” It is helpful to consider here the difference between content-neutrality and viewpoint-neutrality. If the school said that no political content was allowed in yearbook photos, they could probably enforce that across the board. If, however, they allowed political content (or had no policy on it), and then only edited certain political views, then they would not be neutral with regards to viewpoint; they would be discriminating against certain viewpoints.

