TO THE POINT

Campus Inclusion and Freedom of Expression:
Controversial Speakers

BACKGROUND

Recent events on college campuses—and in greater civil society—have too often juxtaposed the values of diversity and inclusion against those of freedom of expression, when these values can and should be mutually reinforcing. While college students believe in the First Amendment, many are willing to entertain restrictions, such as policies that restrict language and behavior that are intentionally offensive to certain groups, when they perceive a conflict with other values and beliefs (Knight Foundation 2018).

Caught in the crosshairs are college and university leaders, who want to promote robust discourse in their communities, but do not want to negatively affect the student experience or compromise the learning environment. This To the Point brief provides college leaders with insights and considerations regarding the tension between campus inclusion and freedom of expression.

DATA COLLECTION

On four occasions between 2016 and 2018, the American Council on Education (ACE) convened college and university presidents and other higher education leaders from around the country to promote thoughtful dialogue around the intersection of campus inclusion and freedom of expression. After these provocative conversations, we followed up with select campus officials to inform the case example presented here. ACE's Center for Policy Research and Strategy also surveyed college and university presidents on the state of freedom of expression and inclusion on campuses today. From this body of work emerged a desire for practical, actionable resources and tools that higher education leaders can use to navigate an uncertain terrain.

CONTROVERSIAL SPEAKERS ON CAMPUS

The balance between the preservation of a respectful learning environment and the academic values of free inquiry and freedom of expression can be especially challenging when the speech at the center of a controversy is perceived as offensive or bigoted. Given the rich diversity of institutional types and missions—and the distinct legal obligation of public institutions to uphold the First Amendment—different campuses will have different interpretations of how to encourage and preserve the balance between inclusion and open discourse.

Included in this brief is an exploration of common assumptions about an institution's rights when a controversial speaker comes to campus, as well as a case study of a state institution's response to a white nationalist's demand to speak publicly about his divisive and unabashedly bigoted philosophy.

Combating Assumptions

Complicated topics often result in misunderstandings, especially when the topic is as nuanced as free expression. Below, we feature common assumptions often made by a variety of stakeholders about controversial campus speakers, exploring the realities surrounding these campus events in order to further thoughtful decision-making.

ASSUMPTION: Campus protests today are largely against controversial speakers.

IN REALITY: Fewer than 10 percent of all presidents surveyed by ACE reported that students have held demonstrations or protests against such speakers on their campuses.

While accounts of controversial speakers have been highly visible in trade and popular media, protests against speakers were not the most common type of demonstration. Instead, almost 40 percent of presidents indicated that issues of diversity and inclusion have driven campus demonstrations or protests (Espinosa, Crandall, and Howard 2018). When surveyed, just 9 percent of students also report that they have attended demonstrations or protests related to controversial speakers. Both presidents and students engage in activism on issues of diversity and inclusion.
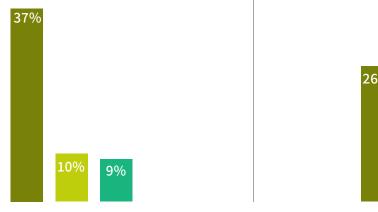
FIGURE 1

Issues of diversity and inclusion
Free speech
Controversial speakers

In the past year, have students on your campus held demonstrations or protests on:

37%
10%
9%

In the past year, have you personally attended demonstrations or protests on your campus on:

26%
12%
9%

Source: Pulse Point Presidential Survey on Campus Inclusion and Free Speech, American Council on Education, 2018; *What Students Think About Free Expression on Campus*, Knight Foundation, 2018

ASSUMPTION: Colleges and universities have a right to reject speakers.

IN REALITY: It depends on the type of institution and the nature of the concerns about the event.

Public institutions are state actors and therefore legally bound to protect the First Amendment freedoms. While it is unacceptable for public institutions to suppress speech, even hateful or biased speech, their leaders may encourage the campus community to discuss it, to answer it, to reject or ignore it, or to deplore it.

However, if the event space can be considered a "limited public forum" (which can vary depending on the space), the institution can create rules and restrictions governing the time, place, and manner of events in order to minimize the risk of violence. Public institutions can deny requests to speak if they have reason to believe the prospective speaker will incite violence against the institution; this cannot, however, be a tactic to ban or block a particular individual, viewpoint, or topic.

Moreover, each public institution's restrictions must be reasonable and cannot be based on the anticipated content of the speech in question; these restrictions extend to students, staff, and faculty as well as outside individuals or groups. In effect, institutions can "regulate how speech occurs but have limited ability to control which speech occurs on campus," as a briefing from the National Association of College and University Attorneys points out (Ross and Kavalir 2018).

Private institutions, on the other hand, are not bound by the First Amendment unless their governing boards

adopt standards in accordance with its protections (Jerry 2018, 66). However, given that most private institutions see themselves as bastions of knowledge creation and critical thought, they generally embrace a broad definition of freedom of expression in order to promote civil discourse and the open exchange of ideas. For them, the question of whether or not to provide a controversial speaker a platform centers not on legal principles, but rather on educational mission and institutional policy (Trachtenberg 2018, 83).

ASSUMPTION: Higher education institutions can pass on the cost of maintaining safety at an event to speakers themselves.

IN REALITY: Public institutions can charge speakers or their affiliated organizations fees that are outlined in their institutional policies and procedures; however, at times, the expenses will go beyond the amounts in these policies, and the institution will not be able to recoup those expenses.

Public institutions can only charge speakers or their affiliated organizations fees that are outlined in their institutional policies and procedures (Collins 2018). Yet, the expense for security and other measures needed to protect some controversial speakers can far exceed this predetermined amount. Expenses could be incurred for a law enforcement presence, physical barriers, and cameras, to name a few. For example, in 2017, the University of California, Berkeley spent more than $600,000 on preparations and security for a controversial speaker, followed by almost $1 million a few weeks later for another speaker (Bauer-Wolf 2017).

Presumably, when these costs are absorbed by public institutions, there are two reasons: to protect the campus community and the speakers themselves, and to preserve freedom of expression. Private institutions will often cover these expenses for the same reasons, though they have greater abilities to limit their exposure.

While both protection and freedom of expression are critical, it is important that everyone on a given campus—including those who seek to invite speakers—is aware of financial and other costs of inviting certain speakers. Participants noted that the extent to which an institution is expected or legally required to absorb the cost of hosting a controversial speaker continues to evolve, particularly in light of the specific, sizeable sums some institutions report simply for hosting one individual.
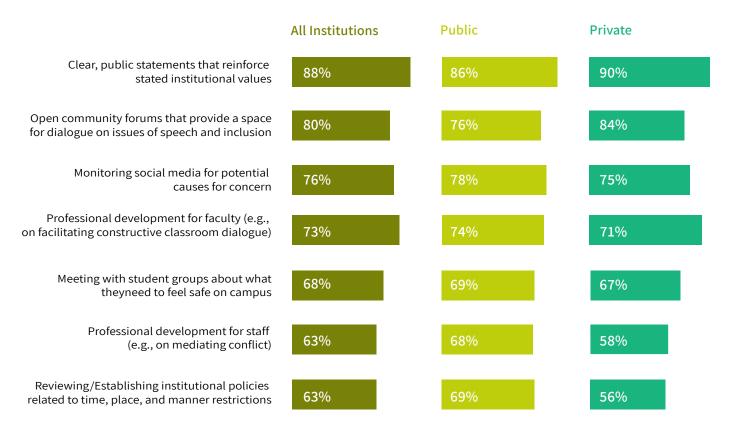

ASSUMPTION: College and university presidents are not permitted to condemn speakers.

IN REALITY: While presidents need to exercise judgment about when, where, and how to address controversy most effectively, there is nothing to prevent them from speaking out against visitors—they, too, have the right of freedom of expression.

When presidents do take such a position, it is often because the visiting speaker's values or objectives run counter to those of the institution. In fact, and as indicated below, almost 90 percent of presidents use clear public statements that reinforce established institutional values to manage the tensions that arise between freedom of expression and inclusion on campus (Espinosa, Crandall, and Wilkinson 2018).

Presidents of private institutions might have more leeway here, but, similar to their public counterparts, they typically align their comments with institutional mission and values. Given that clarity about institutional mission can better empower a president to feel confident about speaking out, institutions are right to revisit and strengthen the language of their mission statements.

FIGURE 2. Top practices used to manage the tension between free speech and inclusion on campus:

	All Institutions	Public	Private
Clear, public statements that reinforce stated institutional values	88%	86%	90%
Open community forums that provide a space for dialogue on issues of speech and inclusion	80%	76%	84%
Monitoring social media for potential causes for concern	76%	78%	75%
Professional development for faculty (e.g., on facilitating constructive classroom dialogue)	73%	74%	71%
Meeting with student groups about what they need to feel safe on campus	68%	69%	67%
Professional development for staff (e.g., on mediating conflict)	63%	68%	58%
Reviewing/Establishing institutional policies related to time, place, and manner restrictions	63%	69%	56%

Source: Pulse Point Presidential Survey on Campus Inclusion and Free Speech, American Council on Education, 2018

CASE IN POINT:
UNIVERSITY OF FLORIDA

Designing an ironclad or perfect campus response to a controversial campus speaker is an aspiration unlikely to be achieved in most cases, but the University of Florida is widely regarded as having effectively managed a visit by a controversial speaker through an effective communications strategy and other tactics.

About

A leading public research university, the University of Florida (UF) is the largest university of the state's 12, with 16 colleges and more than 150 research centers and institutes, and a total enrollment of more than 55,800 students. The total student population is 53 percent white, 18 percent Hispanic/Latino, 7 percent Asian, and 6 percent black or African American.[1] It is located two miles away from downtown Gainesville, Florida, and situated on 2,000 acres.

Background

The Unite the Right rally in Charlottesville, Virginia, in August 2017 focused national media attention on the violent potential inherent in white nationalists and members of the alt-right using campuses as sites to provoke conflict. Widely disseminated stories and images from the weekend of August 11, 2017, showed assaults on anti-racist protesters and a torchlit march on the campus of the University of Virginia.

Shortly following the events in Charlottesville, University of Florida President W. Kent Fuchs acknowledged in a statement that the National Policy Institute had requested a speaking slot for white nationalist and alt-right figure Richard Spencer on September 12, 2017, just one month later. On August 16, President Fuchs announced that UF had decided to deny the request, stating that "this decision was made after assessing potential risks with campus, community, state and federal law enforcement officials following violent clashes in Charlottesville, Va., and continued calls online and in social media for similar violence in Gainesville such as those decreeing: 'The Next Battlefield is in Florida.'"

UF subsequently agreed on an October 19, 2017, date for Spencer's appearance, due to concerns that the initial denial would violate the First Amendment, and because the delay allowed the university time to prepare for safety and security around the event. The university said that security was expected to cost $500,000, which vastly exceeds the $10,500 it typically receives from a group to rent space on campus. Three days before the October 19 event, Florida Governor Rick Scott declared a state of emergency in Alachua County, where UF is located, to ensure the safety of the community by allowing law enforcement from other jurisdictions to move quickly in support of the campus.

---

1   University of Florida Institutional Planning and Research fall 2017 enrollment data (https://ir.aa.ufl.edu/uffacts/enrollment-1). The student population also included 1 percent two or more races, 3 percent race/ethnicity unknown, and 9 percent non-resident alien.

The Role of the President

Prior to Spencer's visit, President Fuchs clearly communicated the institution's stance, publicly expressing concern over students' well-being and denouncing the speaker's message of hate and racism.

Statements from Fuchs and other campus leaders in August, September, and October 2017 made clear the institution's duties under the First Amendment, shared UF policies regarding speakers and use of campus spaces, and featured repeated strong condemnations of the ideologies and rhetoric Spencer would bring to the campus. Fuchs also urged students to stay away from the event, stating, "By shunning him and his followers we will block his attempt for further visibility."

With these actions, the president was able to tap into years of relationship building between the president's office and the student body, ensuring an open line of communication between students and administration.

The Role of the Institution

Leading up to the event, senior leadership met daily to discuss how to manage the potential crisis and to shape a comprehensive communications strategy. As part of that strategy, the institution employed social media to send a message of inclusion, using the hashtag #TogetherUF to connect and promote inclusion efforts and counterprogramming. UF supported student leaders in holding an online, contemporaneous event on October 19 to counteract Spencer's message of hate. This virtual assembly included a series of videos and performances from around the UF community to open dialogue about race relations, cooperation, diversity, and positive action.

"All eyes were on the University of Florida. Many of us watched as leaders achieved what we thought was impossible after Charlottesville. They had one of most controversial speakers and got out on the other side of it. It appears Florida applied some lessons others have learned over time."

-ACE Convening Participant

The institution also built a website to dispel myths on controversial speakers and the university's duties under the First Amendment, and to advertise campus work on issues of inclusion and expression, including public forums and faculty work on the latter. The website also gathered relevant information for the campus as it anticipated the October 19 event, including Fuchs's statements to the community, a timeline of events, information from campus security, and resources on UF speaker policies for internal and external parties. Following the event, the website's resources continue to be updated, and lessons learned from the event are shared as a public resource.[2] In short, the institution not only depended on individual campus leaders, but also brought them together to formulate a collective response.

---

2   See https://freespeech.ufl.edu.

CONSIDERATIONS FOR CAMPUS LEADERSHIP

The considerations and questions below emerged from the ACE convening series and UF's case example. While institutional contexts vary greatly, and not every speaker presents the level of controversy confronted at UF, campus leaders should take at least some of these considerations into account. Above all, campuses should strive to be prepared, flexible, and nimble, and to keep inclusion top of mind before, during, and after a given event.

Relationships and Climate

- Prioritize the cultivation of positive personal and professional relationships with internal constituents such as students, staff, and faculty, and external constituents such as local and state officials and local businesses. As the Florida case illustrates, building and maintaining positive, transparent, and open lines of communication with the student body—and students of color and other marginalized students in particular—will go a long way when conflict erupts.

- Engage students in decision-making processes, so that they understand the details of event approval and organization. Take special care to identify and engage the most marginalized students.

- Know and understand the sociohistorial context of your campus as well as the current state of the campus's climate; in this case, racial climate is especially important. Histories of exclusion and institutional racism are also important and are of special saliency in certain areas of the country.

> "What [the president] did was spend an enormous amount of time on the ground with students, particularly those who felt marginalized. So when things arose, part of the decision-making was conferring with students who had a stake in all sides of the issue. It takes a lot of time, but is a worthwhile investment."
>
> -ACE Convening Participant

Policies

- Be aware of the discrete and distinct jurisdiction of campus police and state and local law enforcement, as well as any tensions that exist between law enforcement and communities of color.

- Review time, place, and manner policies to ensure their strength and to uncover any gaps or inconsistencies. Decision makers should be able to apply policies neutrally, with the policies granting very little discretionary power to the decision maker.

- Continually educate the ever-changing campus community about the application of time, place, and manner policies. A history of consistently enforcing a policy is the best defense against future challenges to it.

Preparation and Response Considerations

- As a proactive measure, identify your response team and conduct tabletop exercises on a regular basis.

- Monitor social media as a preventative and responsive strategy, and have a plan for using social media to reinforce institutional messaging and to counteract false information. In addition, stay current on the policies and practices that govern the institution's official social media accounts.

- Ensure consistent and ongoing messaging across constituent groups that reinforce institutional values. This includes messages used by campus officials responsible for responding to internal and external questions and concerns.

- Create and claim your own narrative; do not allow the speaker to do that for you.

"If you never talk about issues of white nationalism and then suddenly there is a speaker, and you don't respond, you are already so far behind the eight ball. You need to be thinking about the historical context, current context, results of student affairs programming, faculty updating curriculum, research initiatives, etc. This will help you manage the events that unfold."

-ACE Convening Participant

QUESTIONS TO CONSIDER

Relationships and Responsibilities

- How can you leverage your relationships with the campus community, local or state officials, and local businesses? How will you coordinate activity across stakeholders?

- How are you engaging students before, during, and after the event? Are there certain groups of students, or student organizations, that should be prioritized for engagement?

- How do you foster a climate of campus inclusion when students see a speaker's presence on campus as an act of exclusion? How are you educating the campus community about effective and allowed protest tactics in advance of controversial speakers?

> "On the student affairs side, educate students about risk management event planning. Students should be engaged in conversation and have accountability when talking about event size, ticketing, and venue layout to make sure speakers and protesters have different entrances."
>
> -ACE Convening Participant

- Does everyone on your response team know what his or her individual or group roles and responsibilities are? Are there triggers in terms of certain individuals' involvement, depending on how an event unfolds?

Event Organization

- Will the media be welcome to cover the event? Will the event be ticketed? If so, how will ticketing be handled?

- If a threat of violence or spontaneous illegal activity exists, what other measures will you need to take? Do you cancel classes? Is access prohibited to certain buildings? If so, who makes that decision and how do you control access? Are all armed police visible?

- In a moment of crisis, how do you strike a balance between freedom of expression and public safety?

Communications

- What circumstances warrant a public response? When, how often, and from whom? How do communications vary before, during, and after the event?

- How broad is your communication? Are you reaching the campus community and beyond, so that you can leverage existing relationships as needed?

- What is state public record law, and how does that impact communications?

- How does your communications structure ensure messaging will be accurate and consistent across all parties?

- Will social media be used as a tool to dispel myths, for immediate communication around the event, for inclusion messages, or something else?

After the Event

- How do you ensure that your engagement and communications strategies include post-event responses?

- What steps will you take to measure and address the requisite healing of the campus community? How will communications on institutional mission and values take shape in the days and months after the event?

- Do opportunities exist to use your experience for the benefit of other institutions (e.g., lessons learned)?

> "[It is] easy to get caught up on condemnation rhetoric. We are often called upon as administrators to say something happened, we condemn this, it is against our values. And stop there. Why do we stop there? The idea that presidents have First Amendment rights is important. . . . We have to take a stand in courageous ways."
>
> -ACE Convening Participant

REFERENCES

Bauer-Wolf, Jeremy. 2017. "Speakers Stress University Pocketbooks." *Inside Higher Ed*, October 13, 2017. https://www.insidehighered.com/news/2017/10/13/colleges-search-answer-high-spending-controversial-speakers.

Collins, Ronald K. L. 2018. "FAN 188 (First Amendment News) UW Law Profs Release Letter Re Applicable Law Governing Security Fees on College Campuses." *Concurring Opinions*, April 17, 2018. https://concurringopinions.com/archives/2018/04/fan-188-first-amendment-newsuw-law-profs-release-letter-re-applicable-law-governing-security-fees-on-college-campuses.html.

Espinosa, Lorelle L., Jennifer R. Crandall, and Elizabeth Howard. 2018. "For College Students and Presidents Alike, Free Speech Is a Balancing Act." *Higher Education Today* (blog), American Council on Education. April 9, 2018. https://www.higheredtoday.org/2018/04/09/college-students-presidents-alike-free-speech-balancing-act.

Espinosa, Lorelle L., Jennifer R. Crandall, and Philip Wilkinson. 2018. "Freedom of Expression and Campus Inclusion: A Survey of College Presidents." *Higher Education Today* (blog), American Council on Education. April 9, 2018. https://www.higheredtoday.org/2018/04/09/free-speech-campus-inclusion-survey-college-presidents.

Jerry, Robert H., II. 2018. "Framing Campus Free Expression Conflict Through a Dispute Resolution Optic: Insights for Campus Leaders." *Journal of Dispute Resolution* 2018, no. 2 (Spring): 57–70.

Knight Foundation. 2018. *Free Expression on Campus: What College Students Think About First Amendment Issues.* Washington, DC: Gallup, Inc.

Ross, Hannah, and Justin Kavalir. 2018. "Key Considerations in Safely Managing Campus Events in 2018." *NACUA Notes* 16 (7).

Trachtenberg, Ben. 2018. "Private Universities and the First Amendment." *Journal of Dispute Resolution* 2018, no 2. (Spring): 71–86.