

Freedom of Expression On Campus – New Issues with Social Media

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Everyone is in favor of free speech

- Except, speech we don't like
- Or when the speaker disagrees with us
- Or when the speaker criticizes us
- Or when the speech upsets us



The First Amendment Is Not a Safe Space

- Ideas can be scary
- Opinions can be upsetting
- Disagreements can be disagreeable

There Is No Exception in the First Amendment for Speech that Offends

Faculty Impact

Andrea Quenette – University of
Kansas



Class discussion about race and campus protests

- Professor used a 'racially insensitive word' in teaching how words can be used to discriminate/victimize
- Students called for her to resign
 - Described her words as “terroristic and threatening to...a safe learning environment



Good news

- University finds no violation of anti-discrimination policies

Bad news

- Tenure denied
- Contract not extended

Calling something “hate speech” does not
change this
OR
Guess who else has First Amendment rights?

- Nazis
- Racists
- Sexists
- KKK
- John Birchers
- Deplorables

But...



There are limits. The First Amendment does not mean...

- ...that you can say anything you want
- ...however and whenever you want
- ...to whomever you want

Time, Place and Manner restrictions

Perfectly constitutional

“Fighting Words”

Speech that causes violence

Speech v. Conduct

Conduct-as-speech

Where is the line?
“True Threat”

Pop Quiz

- 1969: "They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. ***If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.***"



Facebook in the Supreme Court

Defendant posted "rap lyrics" about his ex-wife:

*Fold up your [protection-from-abuse order] and put it
in your pocket
Is it thick enough to stop a bullet?
Try to enforce an Order
that was improperly granted in the first place
Me thinks the Judge needs an education
on true threat jurisprudence
And **prison time'll add zeros to my settlement ...**
And if worse comes to worse
I've got enough explosives
**to take care of the State Police and the Sheriff's
Department.***



Higher Education meets the social network

The Front Lines Online

- Juicy Campus/RateMyProfessor
- Twitter
- Vines/GIFs/Memes
- YikYak

Yik Yak

- Online bulletin board PLUS
 - Hyper-local – 1.5 mile radius
 - Totally anonymous

Yik Yak - Positive aspects

- Univ. of Michigan and “4/30”

Negative aspects

- Threats
 - Texas A & M
 - Emory
 - Michigan State
 - "MSU police received information about a threat made in Yik Yak," Cody said. "Our police were able to quickly trace the IP address and arrest the individual."



Yik Yak and Title IX

- Univ. of Mary Washington accused of “fostering a hostile environment on campus by responding too slowly and inadequately” to Yaks
- College President wrote a letter responding to accusations
- Accusers claim President’s letter “disparaging” them is itself a violation as retaliatory
- OCR says it has jurisdiction, will investigate



Accusation

- “Every university that allows this type of social media to go through its server...has an obligation to monitor it.
- “The burden needs to be on administrators [not students] to monitor this, and to report it and to take it seriously.

Putting aside the First Amendment for a moment....

- Tech solution: “Geo-fencing”
- Social media solution: engagement

Kenyon College and “Respectful Difference”

- Objective: to address the increasingly harmful effects of anonymous commenting, and to promote positive dialogue on campus.
- “The idea behind this movement is to help everyone move away from that cycle — hearing disrespectful things and saying them back,”
- “The idea behind respectful difference isn’t that every single opinion deserves respect. ... It’s that every respectful opinion deserves respect in turn.”



Hijacked Memes

Example 1: Pepe the Frog

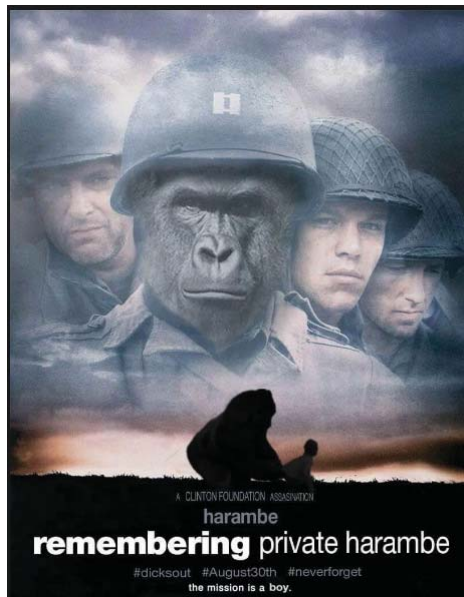


Hijacked Memes

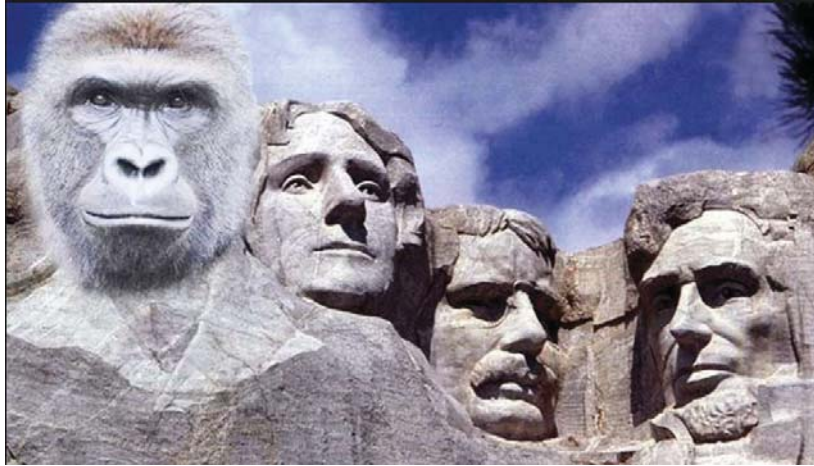
Example 2: Harambe the Gorilla



Some are clever



Some are creative



Clemson bans Harambe

...then reconsiders

Meanwhile, at East Tennessee State University, a protestor dresses as a gorilla

- Attempts to provoke BLM group
- Waves Confederate flag, bananas



Protestor is arrested

- Charged with “civil rights intimidation”
- But that law requires **conduct**, not merely **speech**

A First Amendment Success Story

- BLM group did not rise to the bait
- Student provoking them exposed as a racist and an idiot
- The best cure for bad speech is:



Takeaway from one student

“Let him stay as long as he wants to because once white people see...they can just reflect on that and see, ‘oh, I’m not like that. Oh, I actually might want to help.”



Yes, you can be fired for racism



Jefferson Health fires employee over racist Facebook post

Updated: JULY 15, 2016 — 1:08 AM EDT



Diane Amoratis

Yesterday at 9:06 AM · Philadelphia · 🌐

They should have bulldozed the BLM protest at the 24/25th district last night. Disgraceful!!! And for all the police officers who have to work amongst these trouble makers, you deserve all the praise in the world. Especially the officer who stood there while that fat, braided hair, piece of s*** trouble maker ranted so despicably in your face. You sir, you deserve a medal for letting her continue to make an ass of herself and showing what a low life she really is, and you were strong. Kudos to the Philly PD!!! Blacks kill each other every day, all day long, and it's ok with

Public Institutions – Public Employees

- Government can restrict employees' speech
- UNLESS:
 - Person is speaking in a 'personal capacity'
- AND
- Speaking about an issue of 'public concern'



Private Institutions Get to Make Their Own Rules - Wheaton College and Prof. Hawkins

- Prof. announced she would wear a veil to show support for Muslims
- Says Muslims "worship the same God" as Christians
- Wheaton, a 'distinctively evangelical Christian' institution, rejected that idea; moved to fire Prof.
- No state action, thus no First Amendment issue



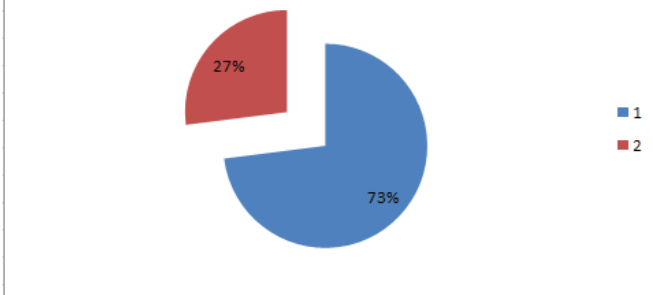
Student Perspectives on Free Speech

Selected data from the
2016 Gallup Survey
“Free Expression on Campus”



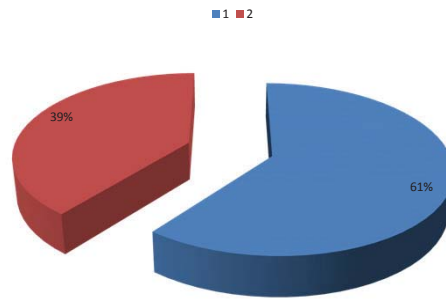
Students' Opinions

Students think free speech is secure



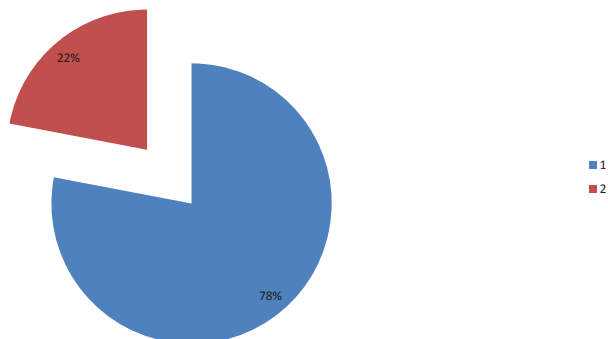
Students' Opinions

Black students believe freedom to assemble is threatened



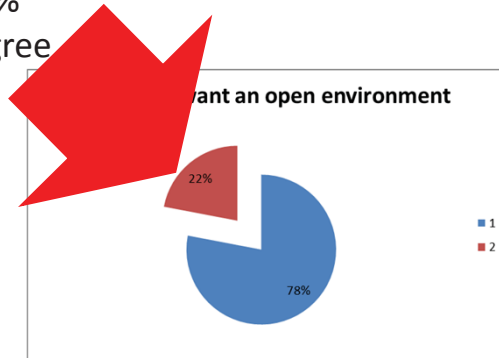
Students' Opinions

Students want an open environment



On the other hand....

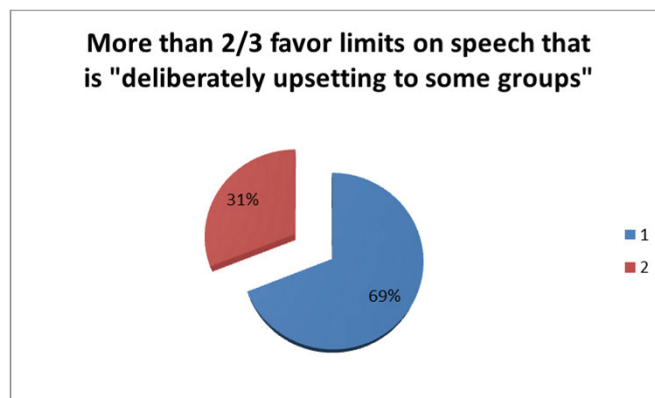
22%
disagree



"Colleges should prohibit biased or offensive speech in the furtherance of a positive learning environment."

And...

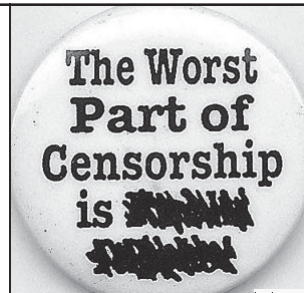
More than 2/3 favor limits on speech that is "deliberately upsetting to some groups"





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All across campus, in all diff buildings, posters for @CHSomers visit to @Columbia on Nov 1st have been ripped down.



Questions?

Thank you.