

**Testimony of J. Richard Cohen
President, Southern Poverty Law Center
before the
Committee on the Judiciary
United States Senate**

**Free Speech 101: The Assault on the First Amendment on College Campuses
June 20, 2017**

My name is Richard Cohen. I am an attorney and the president of the Southern Poverty Law Center (SPLC), a civil rights organization founded in 1971. We have studied extremist activity on campus for many years and have frequently advised college administrators and other civic leaders on how to respond to speeches, rallies, or other events held by hate groups or extremist leaders on college campuses and in other public venues. In addition, we recently started a program called SPLC on Campus in which students form campus clubs that are informally affiliated with, but not managed or controlled by, the SPLC. There are currently SPLC on Campus clubs on approximately 30 campuses, including Auburn University, the site of recent controversy over a speech by white nationalist leader Richard Spencer.

I have testified before numerous congressional committees, including this one. I have served on the Department of Homeland Security's Countering Violent Extremism Working Group and am a past recipient of the FBI Director's Community Leadership Award. I am honored to appear before you today.

I'd like to make three points this morning.

First, the First Amendment is a pillar of our democracy that must be protected by institutions of higher learning. But university administrators also have obligations to provide safe environments for their students and to speak out forcefully in defense of the democratic values that define our nation.

Second, the debate over free speech on college campuses is taking place against a backdrop of increased activity by an emboldened white nationalist movement that is making a concerted effort to organize and recruit new members on campus.

Third, what is happening on college campuses reflects the growing political polarization in society, which has been exacerbated by white nationalist activity and the recent presidential campaign. It will take work from all of us—our elected leaders, our schools, our churches, synagogues and mosques, and our other civic institutions—to repair the social norms that are being frayed.

**Colleges and Universities Must Uphold the First Amendment, Provide a Safe Environment
for Students, and Speak Out Against Hate**

The SPLC has long been a fierce defender of the First Amendment. In 2001, for example, we successfully sued Alabama's chief justice on First Amendment grounds, arguing that the

Alabama Supreme Court's display of a Ten Commandments monument violated the Establishment Clause.¹ Currently, we are among the civil rights groups arguing in court that the president's travel ban unconstitutionally discriminates on the basis of religion.²

The First Amendment is a bedrock principle of our diverse democracy. It protects the right to an open dialogue, described by the Supreme Court as a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."³

Although public colleges and universities can't choose who student groups invite to campus or forbid speakers whose message they abhor from using otherwise publicly available facilities, nothing in the First Amendment requires public colleges to respond *neutrally* to these speakers.²¹ As the Supreme Court recently affirmed, "[W]hen the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf."²²

Because of our decades of work monitoring the activities of extremists, student groups and schools have often sought our advice when speakers they consider hateful come to their campus. Just this year, both Auburn University and U.C. Berkeley sought our advice. We told officials there what we have told others throughout the years: People have the right to express their views, even if those views are loathsome. But schools can and should take steps to respond.

We tell them first to act, to do *something*, because apathy is often read as acceptance.²³ We tell them to join forces, reaching out to allies ranging from local faith leaders to law enforcement partners. We tell them to speak up, to draw attention to hope rather than hate. We suggest creating an alternative event, to provide an open and accepting space for those who want to promote unity rather than divisiveness. We tell leaders that it is their obligation to ETBT1 0 0 1 397.27 709.2

public space on campus sued, and on April 18 of this year, the U.S. District Court for the Middle District of Alabama affirmed Spencer’s right to speak.²⁶

Judge Watkins’ decision helps us understand how colleges and universities should balance the rights and harms in these circumstances. Schools must make *bona fide* efforts to protect the First Amendment rights of speakers and listeners on their campuses and must do their best to defend against hostility and violence by less restrictive means than cancellation if at all possible.²⁷ But Judge Watkins also considered the possibility that there are situations meriting the cancellation of an event.²⁸ As Justice Jackson memorably reminded us, the Bill of Rights is not “a suicide pact.”²⁹ If the speaker in question planned to incite violence, if the school had put on evidence that it could not, despite its best efforts, provide adequate security for the event, Judge Watkins was willing to consider cancellation as a last resort.³⁰ No one expects a school to allow an event to go forward if it learns, at the last minute, that busloads of armed extremists are heading to campus or that bombs have been planted that put student lives at risk. But none of those rare and extreme circumstances were present at Auburn. Instead, as Judge Watkins pointed out, controversial or not, “Auburn presented no evidence that Mr. Spencer advocates violence.”³¹ The university’s justification for the cancellation—that listeners *might* react by engaging in violence—was not enough.³² Moreover, Auburn told the court that it, particularly with the financial assistance offered by Mr. Spencer, could provide adequate security for the event.³³ In this case, the danger was simply too speculative to justify cancellation.³⁴

Given the recent violence at Middlebury when Charles Murray cam4 640.18 Tts Murra

differentiate between facts and rhetoric, and to build an environment that students understand to be safe and welcoming to all.³⁵

Finally, key to the educators' duty here is to teach their students about their own free speech rights. Students who object to hateful rhetoric have options. They can counter speech with speech, holding alternative events to celebrate the values of unity and respect. And if they prefer to respond through peaceful protest, they have that right as well.³⁶ Our universities should be places where students learn to dissent in thoughtful and constructive ways. To do so is to uphold society's highest ideals.

Battle Over Free Speech on Campus is Taking Place Against a Backdrop of Increased White Nationalist Activity

As part of our work monitoring extremism, we have for many years studied hate and extremism on campus. In a report entitled "Hate Goes to School" in the year 2000, for example, we wrote about a rash of hate crimes and bias incidents on campus. We noted that colleges are places where young people are newly independent and often without parental supervision for the first time. Many are entering far more diverse environments and coming into closer contact with people of different races, ethnicities, cultures, and sexual orientations. And they're experimenting with new ideas, rebelling against societal norms, and forging their own identities.³⁷

White supremacists have been active on college campuses for decades. In the 1970s, a young David Duke—now one of the most recognizable figures on the radical right—made a name for himself at Louisiana State University, inveighing against Jews and African Americans and disrupting political debates organized by mainstream campus organizations. Later in the decade, Greg Withrow, considered a founder of the racist skinhead movement in this country, formed an organization called the White Student Union. During the 1980s, it became known as the Aryan Youth Movement and served as the youth recruitment arm of the White Aryan Resistance, a neo-Nazi organization founded by perhaps the most prominent white supremacist of that decade, Tom Metzger. The youth organization was run by Metzger's son, John.

In more recent years, we've witnessed the rise of a new generation of white nationalist leaders involved in the college scene. Matthew Heimbach, for example, gained prominence in the movement by recruiting students at Towson University in Maryland in 2011 and forming a White Student Union there. He has since been heavily involved in recruiting efforts and establishing the Traditionalist Workers Party, the political arm of the Traditionalist Youth Network.³⁸ In June 2016, members of that group, along with members of a California skinhead

³⁵ See *supra* note 8.

³⁶ See *Cox v. Louisiana*, 379 U.S. 536, 551–52 (1965); see also Joe Cohn, *Second Wisconsin Bill Addressing Free Speech Presents Significant First Amendment Problems*, FOUND. FOR INDIVIDUAL RTS. EDUC. (May 5, 2017), <https://www.thefire.org/second-wisconsin-bill-addressing-free-speech-presents-significant-first-amendment-problems/>.

³⁷ "Hate Goes to School," *Intelligence Report*, Spring 2000, available at <https://www.splcenter.org/fighting-hate/intelligence-report/2000/colleges-andort/20o->

Spencer is an openly racist, white nationalist leader who heads a small organization called the National Policy Institute and has been credited with coining the term “alt-right.” He has called for “peaceful ethnic cleansing” and the creation of a white ethno-state in North America.⁴⁵ During a November 2016 gathering of white nationalists—held just blocks from the White House—Spencer prompted sieg heils from audience members after quoting Nazi propaganda in German. He responded by saying, “Hail Trump! Hail our people! Hail victory!”⁴⁶

Propelled by the publicity he received, Spencer launched what he called, in an interview with *The Chronicle of Higher Education*, a “danger tour” of campus speaking engagements. *The Chronicle* described Spencer as a “clean-cut 38-year-old, who attempts to bring an air of respectability to a movement commonly associated with Nazis and the Ku Klux Klan.” Spencer told *The Chronicle* that he hoped to speak at “all the big” universities. He added that it was

Not all of the young people involved in recent demonstrations and confrontations are students, however. We have on multiple occasions seen the involvement of far-left antifa—or antifascist—elements from off-campus. In a recent interview with Vice News Tonight, a chapter leader of a new antifa group kno

We Must Condemn Bigotry and Hate

We are living in precarious times.

Regardless of whether Mr. Dirks was right to cancel Yiannopoulos' scheduled appearance in light of violence on the Berkeley campus,⁶⁰ he was surely right to condemn the views of a man who promotes hate and bigotry. Our country needs many more leaders—across the political spectrum—to stand up for decency and speak out powerfully against the corrosive behavior that is ri