

Safe Spaces and Trigger Warnings in Higher Education: Do These Protect Students or Suppress Free Speech?

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“I Disapprove of What You Say, But I Will
Defend to the Death Your Right to Say It”

Evelyn Beatrice Hall (writing under the
pseudonym S. G. Tallentyre, 1906)

One has only to peruse the headlines of newspapers from the United States to read of how crowds of students are shouting down speakers with which they disagree such as Charles Murray, Heather MacDonald, and Ann Coulter . . .

Is this what higher education is about?

Responding to these phenomena, officials at the University of Chicago created controversy in August 2016 when they published a letter announcing their unwillingness to support trigger warnings or the creation of campus safe spaces. Princeton, Columbia, Johns Hopkins, and Vanderbilt promulgated similar policies.

Is Free Speech at Risk in the United States,
and Elsewhere, especially on College
and University Campuses?

the college

THE UNIVERSITY OF CHICAGO

Office of the
Dean of Students

Dear Class of 2020 Student:

Welcome and congratulations on your acceptance to the College at the University of Chicago. Earning a place in our community of scholars is no small achievement and we are delighted that you selected Chicago to continue your intellectual journey.

Once here you will discover that one of the University of Chicago's defining characteristics is our commitment to freedom of inquiry and expression. This is captured in the University's faculty report on freedom of expression. Members of our community are encouraged to speak, write, listen, challenge and learn, without fear of censorship. Civility and mutual respect are vital to all of us, and freedom of expression does not mean the freedom to harass or threaten others. You will find that we expect members of our community to be engaged in rigorous debate, discussion, and even disagreement. At times this may challenge you and even cause discomfort.

Our commitment to academic freedom means that we do not support so-called "trigger warnings," we do not cancel invited speakers because their topics might prove controversial, and we do not condone the creation of intellectual "safe spaces" where individuals can retreat from ideas and perspectives at odds with their own.

BUT

Bucknell University (April 2017)
withdrew such a proposal in response
to protests from opponents

Yet . . .

Law Day (May 1), Findlaw.Com asked 1,000 American adults to rank order the rights in the U.S. Constitution and its Amendments

30% – Freedom of Speech

20% – Due Process

12% – Right To Keep and Bear Arms

11% – Free Exercise of Religion

10% – Voting Rights

According to the First Amendment
of the United States Constitution (1791)

Congress shall make no law ...
abridging the freedom of speech

Outline

- I. Intro
- II. Background: Trigger Warnings and Safe Spaces
- III. Related Litigation
- IV. Academic freedom, freedom of speech, and trigger warnings-safe spaces
- V. Do trigger warnings/safe spaces belong on campuses?

II. Background

Briefly put, trigger warnings are notices proponents want posted to caution listeners and/or readers about the content of classes, talks by guest speakers, and/or written materials (whether virtual) or in hard copy), they may encounter ideas with which they disagree and/or may find offensive.

II. Background

The related constructs, safe spaces, are locations on campuses, whether residence halls or other designated areas, where students can gather free from exposure to ideas with which they disagree and/or to discuss their reactions to materials they consider offensive.

Some of these provide coloring books and puppies.

II. Background

Critics reject trigger warnings and safe spaces as limiting the academic freedom of faculty members and invited speakers, many of whom had appearances cancelled at US institutions due to protest by proponents of these constructs.

II. Background

The critics also voice concern about how students can learn and get a liberal, in the classical sense of wide-ranging, education if they cannot deal with ideas with which they disagree.

II. Background

Critics also fear trigger warnings and safe spaces as means of suppressing freedom of speech and the open exchange of perspectives in the market place of ideas known as higher education.

II. Background

As of December 2015, among widespread expressions of concern and respect for students, 45% of academics think trigger warnings have or will have a negative effect on classroom dynamics

62% think they have or will have a negative effect on academic freedom.

A substantial minority (17%) view trigger warnings favorably.

See <https://www.insidehighered.com/news/2015/12/02/survey-sheds-new-light-faculty-attitudes-and-experiences-toward-trigger-warnings>

	All	Political Affiliation			Type of College		Gender	
		Dem	Rep	Ind	Public	Private	Female	Male
Yes	39	39	44	40	38	43	31	51
No	44	41	39	44	44	44	49	38
Don't know	16	15	17	17	17	13	21	11

Does the First Amendment protect "hate speech"?

Does the First Amendment Protect "Hate Speech?"

Views Among College Students Regarding The First Amendment:
 Results From A New Survey John Villasenor Sept. 18, 2017
<https://www.brookings.edu/blog/fixgov/2017/09/18/views-among-college-students-regarding-the-first-amendment-results-from-a-new-survey>

A student group opposed to the speaker disrupts the speech by loudly and repeatedly shouting so that the audience cannot hear the speaker. Do you agree or disagree that the student group's actions are acceptable?

		Political Affiliation			Type of College		Gender	
	All	Dem	Rep	Ind	Public	Private	Female	Male
Agree	51	62	39	45	51	51	47	57
Disagree	49	38	61	55	49	49	53	43

A student group opposed to the speaker uses violence to prevent the speaker from speaking. Do you agree or disagree that the student group's actions are acceptable?

	All	Political Affiliation			Type of College		Gender	
		Dem	Rep	Ind	Public	Private	Female	Male
Agree	19	20	22	16	18	21	10	30
Disagree	81	80	78	84	82	79	90	70

II. Background

September 14, 2017

Hundreds of protesters swarmed UC Berkeley on Thursday evening as conservative writer Ben Shapiro spoke on campus...Nine people were arrested, four of them for carrying banned weapons. ... The intense security for the evening came with a \$600,000 price tag, and involved shutting down and clearing out large swaths of the campus.

<http://www.latimes.com/local/california/la-me-berkeley-protest-shapiro-20170914-htmlstory.html>

III. Litigation

In Snyder v. Phelps, 562 U.S. 443 (2011) the Supreme Court upheld picketing at the funeral of a Marine who was killed in Iraq due to what the group claimed was the government's tolerance of homosexuality, particularly in the U.S. military.

III. Litigation

The Supreme Court twice upheld burning of the U.S.

Flag as protected speech in

Texas v. Johnson, 491 U.S. 397 (1989)

and

United States v. Eichman, 496 U.S. 310 (1990)

III. Litigation

BUT

Speech can be prohibited if it includes “fighting words”
per *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
(upholding the arrest of a street preacher for calling
organized religion a “racket”)

III. Litigation

and

Virginia v. Black, 538 U.S. 343 (2003) (Virginia's law against cross burning was facially invalid but forbidding cross burning at a Klu Klux Klan rally where members had the intent to intimidate did not violate 1st Amendment; the case was remanded with orders to prove intent)

III. Litigation

See also

R.A.V. v. City of St. Paul, 505 U.S. 377(1992) (striking down an ordinance against displaying a symbol which one knows or has reason to know “arouses anger, alarm or resentment in others on the basis of race, color, creed, religion, or gender” as facially invalid for imposing special prohibitions on speakers expressing views on “race, color, creed, religion, or gender.”)

III. Litigation

The Court based its order on 2 grounds:

1. Because the speech was of public concern, it was entitled to special protection under the 1st Amendment,
2. The father of the deceased was not a captive audience at the funeral, for purposes of captive audience doctrine.

III. Litigation

“Indeed, it is provocative and challenging speech, ... which is most in need of the protections of the First Amendment. Popular speech is not likely to provoke censure. It is unpopular speech that invites censure.

III. Litigation

It is unpopular speech which needs the protection of the First Amendment. The First Amendment was designed for this very purpose.”

Beussink ex rel. Beussink v. Woodland R-IV School

District, 30 F. Supp.2d 1175, 1182 (E.D. Mo. 1998)

(invalidating discipline of a student for posting remarks critical of educators on the homepage of his computer)

III. Litigation

Tinker v. Des Moines Independent School District, 393
U.S. 503(1969)

“[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate (p. 506).”

III. Litigation

“Certainly where there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,’ the prohibition cannot be sustained (p. 509).”

III. Litigation

Bethel School District No. 403 v. Fraser,

478 U.S. 675 (1986) (the First Amendment does not protect lewd or vulgar speech)

III. Litigation

Hazelwood School District v. Kuhlmeier, 484 U.S. 260
(1988)

“educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” p. 273

III. Litigation

Healy v. James, 408 U.S. 169 (1972) (administrators cannot deny students on campus the opportunity to form due to the fear of disruption; applying *Tinker*, ruling that officials must prove that a material and substantial disruption to the school would take place in order to bar speech).

IV. Academic Freedom

“The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin. But the coin itself is the process of thought and discussion.”

Kleindienst v. Mandel, 408 U.S. 753, 775 (1972)

(Marshall, J., dissenting) (upholding the denial of entry to a Marxist academic from Belgium who was invited to speak at Stanford)

IV. Academic Freedom

1940 Statement of Principles on Academic Freedom and Tenure

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; ...

IV. Academic Freedom

2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

IV. Academic Freedom

3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. ... they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

IV. Academic Freedom

Sweezy v. State of New Hampshire, 344 U.S. 234 (1957)
(invalidating the contempt conviction against a guest speaker at a university who refused to answer questions about his knowledge of political parties and their members because they were invasions of his liberties in the areas of academic freedom and political expression)

IV. Academic Freedom

Keyishian v. Board of Regents of University of State of New York, 385 U.S. 589, 603 (1967) identifying academic freedom as “a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”

V. Trigger warnings-safe spaces?

If the purpose of higher education is truly to learn, then there must be open and vigorous debate.

Certainly, while different opinions will clash

V. Trigger warnings-safe spaces?

As noted by former Supreme Court Justice Louis Brandeis, “[s]unlight is said to be the best of disinfectants; electric light the most efficient policeman,” *Other People’s Money* 62 (National Home Library Foundation ed. 1933), cited in *Buckley v. Valeo*, 424 U.S. 1, 67, note 80 (1976) (striking down limits on election spending for political campaign).

V. Trigger warnings-safe spaces?

Faculty members may want to warn about graphic photos or material that is upsetting (murder, violence)

BUT

Should use “teachable moments” as to ideas which challenge students . . .

V. Trigger warnings-safe spaces?

Students . . . and faculty must learn to

1. Show respect for ideas with which they disagree
2. Disagree without being disagreeable
3. Respect diversity of opinion
4. Come to class with open minds
5. Recognize then value of open, vigorous debate

Thank you
for listening and
participating!