

## **How Far Should Free Speech Rights Extend? Washington State Correct in Protecting First Amendment Rights**

By Nick Gier

*If you're openly inciting violence, that's a problem. But other than that, we can't start doing this filtering of people's words and what they say.*

—Jordan Frost, WSU student body president

*It is virtually impossible to articulate a standard for suppression of speech that would not afford government officials dangerously broad discretion and invite discrimination against particular viewpoints.*

—David Cole, ACLU Legal Director

### **Disruption in the British Parliamentary Tradition**

In 1995, during a research leave at the University of Queensland, I would listen to daily broadcasts on the radio. There would be reports from the Australian Parliament, and I was shocked to hear the constant disruption caused by the parties debating. I was amazed that any work could be accomplished in such chaos. This, of course, is the British parliamentary tradition, and such behavior is found throughout the Commonwealth, where Queen Elizabeth is still the sovereign.

In preparing for this column, I listened to a tumultuous debate in the Canadian House of Commons, and I read also read about the current stalemate in the Indian Parliament. Primarily because of disruption by the opposition Congress Party, only two bills had been passed in the 21-day Winter Session in New Delhi. They met for less than an hour a day before they were forced to adjourn.

### **By Comparison U.S. Congress: Civil in the Extreme**

The U.S. Congress is civil in the extreme compared to this. One exception to this was GOP Congressman Joe Wilson, who, during President Obama's address on health care to Congress in September 2009, shouted out "liar." He very soon apologized for his "lack of civility," saying that his remarks were "inappropriate and regrettable."

As far as I know, there have been no apologies in the British parliamentary experience. For many years British Labour MP Dennis Skinner has heckled the Queen and Conservative leaders. This year he shouted out to the Queen: "Get your skates on; first [horse] race is half past two." In 2000 he told the Queen to read a newspaper that had just called for abolishing the monarchy.

Another exception in the U.S. Congress happened on June 22-23, 2016. House Democrats, their numbers swelling to 170 as their action reached its climax, literally occupied the floor of the House. They were protesting over the GOP's failure to pass gun

control legislation in the aftermath of the Orlando nightclub shooting. This was an unprecedented action and a violation of House rules.

### **Erosion of Free Speech among Students and Millennials**

A survey of 1,500 undergraduate students in August 2017 found that half believed that it was right to shout down a speaker, and 19 percent believed that it was right to use violence to prevent one from speaking. In a 2015 Pew survey of millennials, 40 percent believed that “the government should be able to prevent people” from expressing offensive statements about minorities. These results were most likely driven by the answer those polled gave to a question about hate speech. Four in ten mistakenly believed that the Constitution prohibits hate speech.

In my 50 years of political activism, I have never shouted down a speaker, but it has become far too frequent these days. Especially unfortunate was the disruption of a joint meeting of College Republicans and College Democrats at UC Santa Cruz on October 15, 2017. (Police arrested three students “so that we could protect the students’ right to meet.”) Peaceful joint discussions of these two groups are on-going at Washington State University, where a former College Republican president was forced to resign after attending the Alt-Right rally in Charlottesville (see below).

### **ACLU Speaker Shouted Down by Black Lives Matter**

On October 4, 2016, a speaker from the American Civil Liberties Union (ACLU), the foremost champion of First Amendment rights, was forced from the stage at William and Mary College by members of Black Lives Matters. They were upset with ACLU legal action that secured the permit for a “United the Right” rally in Charlottesville, Virginia. It was held at a park with a statue of Robert E. Lee that the city was considering removing.

The night before the rally several hundred protestors marched without permission through the University of Virginia campus. They carried with tiki torches, gave the Nazi salute, and chanted hate-filled chants such as “the Jew will not replace us,” “blood and soil” (white blood only on America soil), and “white lives matter.” The next day one of the protestors drove his car through a group of counter-protestors, killing one woman and injuring 34 others.

For many, this tragic event brought back memories from 1978, when the ACLU went to court supporting the right of neo-Nazis to march in Skokie, Illinois. The Supreme Court upheld their First Amendment rights, and they, somewhat chastened, chose to hold a rally in Chicago rather than march through Skokie, a American town with the most Holocaust survivors per capita.

### **ACLU Amends Its Absolutist Position**

Asked if the ACLU was reconsidering its absolutist stand on the First Amendment after the Charlottesville tragedy, spokeswoman Stacy Sullivan said that they “would consider the potential for violence” at any future event and “whether protesters were going to be carrying firearms.” Dave Cole, ACLU Legal Director, claims that this is not a new position. For more from Cole read [www.NickGier.com/ACLUCole.pdf](http://www.NickGier.com/ACLUCole.pdf).

ACLU President Anthony Romero has concurred saying that they will not represent any group “carrying loaded firearms.” But he added that “even odious hate speech, with which we vehemently disagree, garners the protection of the First Amendment when expressed non-violently.” In Kansas City the anti-Fascist group Antifa promised that it would no longer carry loaded weapons, but will their opponents do the same?

### **“Fighting Words” and “Hate Speech”: How Does One Decide?**

In a 1942 unanimous decision *Chaplinsky v. New Hampshire*, the U.S. Supreme Court defined “fighting words” as “those that by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Over the years the Court has ruled that cursing the police and burning the flag were offensive but nonetheless constitutionally protected.

The most recent case involved members of the Westboro Baptist Church, who used incredibly offensive words and actions against gays, lesbians, and veterans. In *Snyder v. Phelps* (2011), the Court ruled (only Justice Samuel Alito dissenting) that the church’s speech was public, not private, and therefore protected by the First Amendment. Regarding firearms, images from most recent demonstration by five Westboro members in Cincinnati on September 6, 2017 showed no visible weapons.

### **ACLU Supports “Alt-Right” Leader Yiannopolous**

Recently ACLU attorneys filed a suit against the Washington, D.C. Metro for removing ads for Milo Yiannopoulos’ book *Dangerous* from subway stations and cars. Yiannopolous is a notorious “Alt-Right” speaker, who has caused controversy for his on-campus appearances, as well as when he has been barred from speaking. He is so extreme and abrasive that he was disinvited from the 2017 meeting of the Conservative Political Action Conference.

As with the Skokie controversy, the ACLU has lost members after Charlottesville, even though its previous lawsuits against the Trump administration had led to a dramatic increase in membership and donations since the election. Waldo Jaquith resigned his position on the board of the Virginia ACLU. He tweeted: “Don’t defend Nazis to allow them to kill people,” and “I won’t be a fig leaf for Nazis.”

### **Do We Let Them Speak at Exorbitant Security Costs?**

Jaquith has a good point. Marilyn Mayo, senior research fellow for the Anti-Defamation League's Center on Extremism, reports that "over the past decade, extremists of every stripe have killed 372 Americans, and 74 percent of those killings were committed by right wing extremists. Only 2 percent of those deaths were at the hands of left wing extremists," and none by Antifa members.

The two choices for campus administrators are (1) let anyone speak, and, out of proper concern for public safety, spend, as happened at University of Florida, \$500,000 for security costs (Florida National Guard expenses not included); or (2) deny controversial speakers and incur the costs of a lawsuit. The latter most likely would be less expensive, but would risk a loss in court.

The other advantage with blocking the speakers would be that violent clashes and deaths would be less likely. The ACLU would counter that this would lead to an erosion of First Amendment rights, a greater evil. Perhaps the best argument campus administrators can make is one based on the protection of public safety, but judges have been more inclined to enforce the First Amendment instead.

### **WSU College Republicans Stir Controversy**

After I have reviewed all the news coverage, I've concluded that the Washington State University administration, although slow in responding, did the right thing regarding the controversy surrounding its College Republicans. In October of 2016, they erected a 24-foot replica of Trump's border wall. Hundreds of students reacted by climbing the wall and/or engaging in spirited debate with the young Republicans.

Under the leadership of James Allsup, the WSU College Republicans had grown from 15 to 40 members, primarily because of Allsup's pro-Trump activism. He was a speaker at a number of Trump rallies before the election. In January of 2016, Allsup had invited Yiannopolous to campus, but the speech was cancelled because of icy roads.

Yiannopolous had just spoken at the University of Washington the night of Trump's inauguration, and a Trump supporter, claiming self-defense, shot an anti-Trump protestor in the stomach. The unnamed man said that he had been punched and someone had taken his Make America Great hat, obviously sufficient grounds to pull out his gun!

### **Racist/Sexist College Republican Goes to Charlottesville**

Allsup interviewed white supremacist Richard Spencer on YouTube, but he claims that he is not a racist nor a white nationalist. His stated opinions belie his disclaimers. The *Spokesman-Review* quotes him as saying: "Other cultures have a right to exist, but they can exist [only] in their own countries." He added that when you bring in those "who don't look like you, you lose a sense of national identity."

Allsup recommends the work of Richard Lynn, who argues that whites are genetically superior to all other races, and he can't understand why liberals don't accept Lynn's "scientific" evidence. On his YouTube channel, which has 145,000 subscribers, Allsup has posed videos, some titles of which are "America is not a Melting Pot" and "The War on Whites is Real."

With regard to women's rights, Allsup posted this incredible comment on his Facebook page: "Women are literally ALL retarded." He also suggested that young women should focus on finding a husband rather than pursuing a master's degree.

Although he says that he attended the Charlottesville event only in a "media capacity," Allsup marched with the torch bearers and was thrilled to greet white supremacist Richard Spencer at the rally. When the College Republican National Committee learned of Allsup's participation, it forced him to resign his executive post. Conveniently, he tweeted that "the presidential transition process was already in the works."

### **WSU Did the Right Thing on Campus Free Speech**

Some students on campus were joined by 12 Democratic legislators in demanding that the College Republicans' campus club status be revoked. They also asked if any state funds went to the College Republicans. Allsup responded that "all fundraising was done outside the university system. We were able to successfully raise thousands of dollars to put on our highly successful events."

On September 22, 2017, WSU President Kirk Schulz responded to the legislators, saying that "we can't shut down a viewpoint no matter how horrific or upsetting it is." Following ACLU policy, Beth Hindman, WSU media law professor and free speech expert, supported Schulz: "WSU could stop speech of any group that is inciting immediate violence, but it cannot stop speech that is 'merely' offensive."

Jordan Frost, WSU student body president, says that as a black man he has felt the full impact of racist comments, but he still follows the ACLU: "If you are directly threatening someone's life, that's a problem. If you're openly inciting violence, that's a problem. But other than that, we can't start doing this filtering of people's words and what they say."

### **The Slippery Slope to Limited First Amendment Rights**

James Allsup and many others on the right would just love to tie up those who would restrain them in court, so the best policy is to let them discredit themselves with their hateful and ill reasoned ideas, and then we should double our efforts to teach critical reasoning at all levels of our educational system.

Our universities and colleges are the principal venues for the presentation of all views. Our founding thinkers were convinced that rational public debate would separate truth from falsehood, and they gave us the First Amendment to guarantee that all of us have a place in a free exchange of ideas.

Although the rise of Trump and fake news makes attainment of this ideal far more difficult, we cannot start down a slippery slope where we find ourselves at the receiving end of the limited speech that we have forced on others.

What if College Democrats somewhere say or do outrageous things? What if Republicans request that their right to participate in campus life be denied? The rights that Black Lives Matters have to speak and march are the same as those who would criticize them. As British journalist Edmund Fawcett says: “Free speech gave us Martin Luther King’s ‘I Have a Dream.’ It also gave us Donald Trump.”

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