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At Law Schools, Rowdy Protests Provide Teachable Moments



(<http://images.new.law.com/contrib/content/uploads/sites/292/2017/10/Berkeley-Protests-shot.jpg>)

University of California, Berkeley.

Since February, when violent protests canceled a speech by provocative writer Milo Yiannopoulos at the University of California, Berkeley, colleges and universities nationwide have faced criticism for caving to opposition by canceling events.

Law schools have not escaped the clashes. The nationwide free-speech-on-campus debate took root at three law schools this fall as protesters opposed speakers or events, prompting widely different responses from schools.

Those reactions from law school administrators provide examples of best and worst practices in the free-speech realm, and they come at a time when First Amendment advocates say it's more important than ever for law schools to be role models in upholding

free speech.

“It would be a terrible thing if some of the institutions charged with teaching First Amendment law are wittingly or unwittingly inhibiting or censoring it,” said Chip Babcock, a partner in Jackson Walker in Houston who practices First Amendment law. “You have to recognize the right of the speaker to speak, the right to the audience to hear the speech and the right of people opposed to the speech to protest the speech.”

Safety is critical, Babcock said, but schools can’t tolerate disruptive protesters whose only goal is to shut up their opposition. Such protesters should face harsh penalties, he said.

But in the heat of the moment, law schools have made some missteps. Texas Southern University Thurgood Marshall School of Law in Houston took the drastic measure of canceling an event that attracted protesters, effectively silencing the speaker. Another campus, Seattle University School of Law, upheld central free-speech rights but still let event organizers down in its response to protesters.

A third, Georgetown University Law Center in Washington, D.C., however, seems to have struck the right balance.

Among the recent protests at law schools, the ugliest response came from Texas Southern. In fact, Texas state Rep. Briscoe Cain, R-Deer Park, said he plans to sue TSU and its president, Austin Lane, for abruptly shutting down the event where Cain was supposed to speak.

“I was bothered by having my rights infringed upon by the government through the arbitrary application of an unused rule that no one knew about,” said Cain, a partner with Strahan Cain in Houston who practices First Amendment law.

The school’s Federalist Society chapter invited Cain to an Oct. 9 event to discuss a legislative special session. Disruptive protesters carried signs and shouted slogans, and Cain said he couldn’t utter a word over the ruckus. At one point, campus police removed the loudest protesters, and Cain took the lectern. But once Lane, the president, arrived, he told police to readmit the protesters and canceled the event. Lane said that the Federalist Society was an unregistered student organization and the event was unauthorized.

Lane didn’t return a call seeking comment. Neither did law dean James Douglas. But in an email to law students, Douglas criticized the idea that law student organizations should register with the university’s central administration. “Professional law schools are more or less self-contained units,” Douglas wrote. “The administration of the professional school supervises their student organizations.”

The idea of a law school as a “self-contained unit” was part of U.C. Berkeley School of Law Dean Erwin Chemerinsky’s decision earlier this month to invite former Harvard Law School professor Alan Dershowitz after he was **not permitted to speak** (<http://www.law.com/sites/almstaff/2017/10/02/after-uc-berkeley-blocks-dershowitz-speech-its-law-school-steps-in/>) at the university.

Dershowitz had been scheduled to give a talk about Israel to several Jewish student groups on Oct. 10, but university officials declined to make an on-campus location available, saying the Dershowitz event did not comply with a recently adopted policy requiring organizations to give campus police an eight-week notice for any event expected to draw 200 or more people.

Berkeley's speaker invitation policy does not apply to academic departments such as the law school, and Chemerinsky extended an invitation to Dershowitz as soon as he learned of the situation.

Chemerinsky, a well-known free-speech expert, said in an email that while he's been very involved in conversations about protecting free speech and ensuring public safety on U.C. Berkeley's main campus, law schools especially must protect speech, since they employ professors who are First Amendment experts and they are teaching law students about the right.

"Above all, we should be sure our actions comply with the First Amendment," Chemerinsky said. "I have done all I can within the law school to do this."

Despite the disruption at Texas Southern, Daniel Caldwell, president of the Federalist Society chapter there, said he was happy with the response from his law school dean. Caldwell said his chapter is registered with the law school, and he followed all the rules to earn approval for everything from the speaker to the chicken nuggets he served.

The buzz over the event cancellation has spurred debate and discussion about the student group, he said. The Federalist Society is a legal organization ubiquitous at law schools nationwide that embraces conservative and libertarian legal ideals and supports individual liberties, including free speech.

"We support your right to disagree with us—very loudly, even disrespectfully—so long as you don't actually cause harm. But that right was denied to [protesters] just as much as it was denied to us," Caldwell said.

However, Caldwell did file a police report against one protester for allegedly hitting the back of his head and "chest bumping" him.

The protesters were targeting the Federalist Society itself, rather than Cain's speech, Caldwell said. A student who organized the protest told Caldwell that the Federalist Society shouldn't invite speakers to Texas Southern, because they don't represent the university's values.

Part of the challenges for law schools and larger campuses that invite controversial speakers is a basic lack of understanding among students as to what constitutes free speech. The Foundation for Individual Rights in Education, a nonprofit that focuses on civil liberties in colleges and universities, surveyed 1,250 undergraduate students and found that 58 percent of students thought their campus shouldn't expose them to intolerant or offensive ideas. Fifty-six percent would support disinviting guest speakers whom they disagree with.

At Seattle University, law student Thomas Reinhard, president of that school's Federalist Society chapter, said protesters targeted his group because it's conservative. He added that the school in its response discriminated against his group for being conservative.

Reinhard's chapter and the law school's Access to Justice Institute were supposed to co-sponsor an Oct. 16 panel discussion about the future of the Deferred Action for Childhood Arrivals program. But at least 200 people signed a Change.org petition asking the school to cancel the event. The law school's dean, Annette Clark, announced that the Access to

Justice Institute would withdraw as a co-sponsor, allowing the Federalist Society to move forward alone. Going forward, the school would consult with historically marginalized groups before co-sponsoring social-justice events, wrote Clark.

Reinhard said he took Clark's message to mean that only left-leaning groups, not a conservative organization like his, could contribute to social-justice discussions.

"The school pulling its co-sponsor supporting the event had a negative impact on us—it delegitimized us as a club," said Reinhard, a second-year law student. However, the event turned out positively, with 100 attendees—perhaps 30 to 40 protested silently and were not disruptive.

Clark said she disagrees that her reaction to protesters had delegitimized or discriminated against the Federalist Society. The law school still supported the event by providing a room, helping to find a second speaker and providing a law professor to moderate a question-and-answer session.

"I went out of my way here to make sure the Federalist Society program went forward," she said.

Best Practices

The outcome at Georgetown Law Center was even better. On Sept. 26, Attorney General Jeff Sessions spoke about free speech on campus. Roughly 100 students and professors protested outside the event, holding signs and speaking into a bullhorn. A smattering of students also protested inside the event by wearing tape over their mouths. In response to the protests, the law school issued statements that supported both the protesters and the event organizer.

The outcome was a success, Babcock said, because the speaker got to speak without interruption, the audience got to listen and protesters had time and space to protest without disrupting anyone.

It would have been even better if Georgetown offered the talk in a larger room or set up a video stream to broadcast Sessions' talk to a larger audience, Babcock said. Another solution is to arrange special question-and-answer events so that speakers and protesters can communicate constructively about their differences, he said.

"There's an old saying among First Amendment lawyers that bad speech is countered by good speech," he explained. "The more speech, the better."

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