

**Testimony of J. Richard Cohen
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before the
Committee on Health, Education, Labor and Pensions
United States Senate**

community on lessons that can be learned from the events in Charlottesville.

I'd like to make three points this morning.

First, the debate over free speech on college campuses is taking place against a backdrop of increased activity by

Second, although university officials and students may find white nationalism abhorrent, they must respect the First Amendment rights of white nationalist students of the students who want to listen to them

Third, university administrators and public officials, particularly the President, must speak out forcefully against white nationalism and in support of the First

¹ The AltRight on Campus: What Students Need to Know (2017), <https://www.splcenter.org/20170810/alt-right-campus-what-students-need-know>.

² Ten Ways to Fight Hate: A Community Response Guide (2017), <https://www.splcenter.org/20170814/ten-ways-fight-hate-community-response-guide>.

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with khakis, they chanted “Blood and Soil” while marching on the campus of the University of Virginia.¹⁶ James Fields, the man who killed Heather Heyer and injured numerous people when he ran his car into a crowd, was photographed rallying with Vanguard America.¹⁷

Richard Spencer and Milo Yiannopoulos are prominent “alt-right” figures making the rounds on campus speaking tours. Spencer is an openly racist, white nationalist leader who heads a small organization called the National Policy Institute. He has called for “peaceful ethnic cleansing” and the creation of a white ethno-state in North America.¹⁸

Propelled by the publicity he received from his Washington speech shortly after the election, Spencer launched what he called 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

Spencer as one of the “intellectuals” of the movement.²³ As a former tech editor at Breitbart, Yiannopoulos was a frequent guest on Stephen Bannon’s radio show. Bannon lauded Yiannopoulos as “one of the leading voices of his generation in this whole fight against cultural Marxism, the defense of Western Civilization” and compared his courage to that of Winston Churchill.²⁴

Given the provocative nature of white nationalist activity aimed at colleges and universities, it is not surprising that we have seen a strong backlash among students. There have been instances when students shouted down speakers. And, unfortunately, there have been times when violence has broken out, including at the University of California at Berkeley and at the University of Virginia,²⁵ something that we have always denounced.

Much of the violence has been perpetrated not by students but by persons who identify with the so-called Antifa – a loose-knit, self-described anti-fascist movement. Antifa have been involved in bloody street fights with white supremacists for decades. Many are organized under a loose, national network known as Anti-Racist Action (ARA), formed by anti-racist skinheads in Minneapolis in 1988 to combat neo-Nazi skinhead gangs. ARA is dedicated, according to its website, to “eliminating racism, sexism, anti-Semitism, Islamophobia, homophobia, transphobia, and discrimination against the disabled, the oldest, the youngest, and the most oppressed people.” Its tenets include “challenging racists and fascists when they attempt to recruit, organize, mobilize, propagandize, and cause harm to people” and “refusing to ignore the violent bigots that comprise racist and fascist groups.”²⁶

Clearly, college administrators have their hands full.

The First Amendment Rights of All Speakers and Listeners Must Be Protected

Last week, the organizer of Richard Spencer’s campus speaking tour filed a lawsuit against Ohio State University for refusing to rent a campus venue to him for a Spencer speech.²⁷ The organizer is likely to win, just as he won a similar lawsuit against

²³ Allum Bokhari & Milo Yiannopoulos, *An Establishment Conservative’s Guide to the Right*, Breitbart, Mar. 29, 2016, <http://www.breitbart.com/tech/2016/03/29/an-establishment-conservatives-guide-to-the-alt-right/>.

²⁴ Keegan Hanks, *How Stephen Bannon Made Milo Dangerous*, Hatewatch, Feb. 23, 2017, <https://www.splcenter.org/hatewatch/2017/02/23/how-stephen-bannon-made-milo-dangerous>.

²⁵ Carlo David & Frances Dinkelspiel, *Chaos Erupts, Protesters Shut Down Yiannopolous Events, Banks In Downtown Vandalized, Berkeley* (Feb. 2, 2017, 9:15 AM),

Auburn University earlier this year.²⁸ Although many universities, particularly after

College's student chapter of the conservative American Enterprise Institute (AEI) had a

At what point can a university say that it cannot afford the necessary security precautions and therefore must cancel a speaker because public safety cannot be assured? The law provides no clear answer to this question.

Yet, it is a very real and difficult issue. If [Ben] Shapiro [another controversial speaker] and Yiannopolous and others like them announced they were coming every week, no campus could possibly afford it. Never should anyone be prevented from speaking because of his or her views, but there must be a point at which a campus can say the financial bill is just too high. The law needs to develop in this area to provide guidance to campus administrators.⁴⁷

Texas A&M University recently instituted a rule that will require all campus speakers to be sponsored by an organization or person affiliated with the university. Such a rule would prevent strangers to the university, such as the organizer for Spencer's speaking tour, to rent a university venue. "If the university is going to incur security and overtime costs associated with controversial speakers," a Texa

If students choose to protest, we urge them to be peaceful. We also recognize that ridicule and mockery, when used peacefully, may be effective tactics “to disarm protestors who espouse bigotry and white supremacy.”⁵⁰

College Administrators and P

affirming their commitment to the First Amendment, university presidents take advantage of a teachable moment at a time when there is widespread confusion among students about the constitutional protections afforded to freedom of expression.⁵⁴ It is important, in my view, that statements such as that issued by Mr. Young come from university presidents or other high-ranking officials, rather than from a disembodied institutional office.⁵⁵ Actions, of course, speak louder than words.

Ironically, the Goldwater Institute is promoting model legislation that, in the name of protecting free speech on state college campuses, actually could circumscribe the ability of college presidents to speak on behalf of their institutions.

responsibility for the fact that he has “unearthed some demons,” to use Representative Sanford’s words again,⁶² and heed Congress’s call to “use all resources available” to his administration to “address the growing prevalence of ... hate groups in the United States.”⁶³

⁶² See *supra* note 8.

⁶³ S.J. Res 49, 115th Cong. (2017) (enacted).