A FRAMEWORK FOR
CAMPUS CRISIS MANAGEMENT

Prepared by Donald A. Downs, Kristen Roman, George Waldner, and Emily Chamlee-Wright for the Institute for Humane Studies
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Introduction: Getting Ahead of the Problem—Preparation and Engagement

The authors of this document—a former college president, a First Amendment scholar, a former provost, and a chief of police at a major university—know of no academic leader who stepped into their role eager to take on speech-related campus crises. But given the experience of higher education in the past few years, especially since the tragic events of Charlottesville, Virginia in 2017, no academic leader has the luxury of avoiding the question of how she or he will respond in the face of such a crisis.

The purpose of this framework is to provide academic leaders practical advice on managing speech-related campus crises that is both principled and prudent. By “principled” we mean guidance that is consistent with Supreme Court rulings regarding First Amendment protections, guarantees of academic freedom,¹ and a deep commitment to the intellectual mission of colleges and universities as the wellspring of discovery. By “prudent” we mean that the guidance offered here is based on real-world, boots-on-the-ground experience, in which academic leaders have successfully navigated competing priorities, such as freedom of expression and public safety. In short, this document is intended to assist academic leaders concerned about the future of their institution and looking for fresh thinking about how to create a campus environment that is both physically safe and intellectually stimulating.

College and university campuses have always been sites of social experimentation and unrest. This is, we believe, a good thing. The knowledge-seeking posture is itself one of unrest, searching after new and unknown frontiers, ever unsatisfied with the current state of affairs. It is natural that an open intellectual environment, dedicated to pushing out the boundaries of theoretical and
It is natural that an open intellectual environment, dedicated to pushing out the boundaries of theoretical and practical knowledge, would foster passionate debate concerning core values such as liberty, equality, and justice.

practical knowledge, would foster passionate debate concerning core values, such as liberty, equality, and justice. In fact, it is precisely through such conversations that we learn to build and refine our ideas, by responding to criticism and by learning from others. The nature of the intellectual enterprise should lead us to expect occasional social ferment on campus—it comes with the territory.

Over the last decade, however, we have experienced a marked change, with academic leaders facing novel and increasingly difficult challenges. A confluence of factors, from burgeoning civil rights movements to increasing extremism in American political culture; from regulatory and cultural demands that sometimes pit the desire for social justice against the principle of academic freedom, to changing notions of what constitutes harm, have left many campuses rife with tension. With alarming frequency, these tensions have escalated to the point that public safety becomes a competing, sometimes overriding concern. Institutions small and large, public and private, northern and southern, research universities and liberal arts colleges, have been sites of speech-related crisis. The ranks of academic leaders who can credibly say, “that would never happen on my campus,” are dwindling.

Public or private, college and university campuses are civic spaces. As such, academic leaders have responsibilities much like mayors of towns and small cities. The choices they make impact the health and safety of thousands, sometimes tens of thousands, of faculty, staff, students, guests, and the general public. Further, the choices they make impact the primary physical assets a college or university has on its balance sheet. The sensational nature of cable news, along with the inflammatory potential of social media, means that campus crises have become national news events. A crisis poorly managed inevitably leads to reputational harm, potentially impacting enrollment, alumni giving, and faculty hiring and retention. As we discuss below, preparation and forethought can help to secure the campus in the short term, as well as the reputation of the institution in the long term.

As important as safety, property, and reputational considerations are, however, our primary motivation in developing this framework is to ensure that institutions of higher learning are able to live up to their educational mission—to
serve as sites where the restless search for truth is nourished and propagated. The prioritization of this mission is vital in order to navigate the pressures and counter-pressures that prevail on campus and to reach a legitimate conclusion. As a diverse body of students and scholars strives to discover the truth, individually and collectively, there will necessarily be some conflict. A robust academic community channels this tension, making a virtue of the conflict, as it helps us to refine and sharpen our ideas. Academic leaders have a responsibility, to speakers and protesters alike, to ensure that the exchange of ideas is free from violence and intimidation. Today, this challenge is more difficult than ever, but that also makes it more important and necessary than ever to find principled and practical solutions to those challenges.

In the throes of a campus crisis, leaders are called upon to make hard decisions that few—especially those of us drawn from the professoriate—have been trained to address. Often, these decisions must be made quickly, with nowhere near what feels like enough information, and in the full glare of national and social media. To be caught at such a moment, unprepared and without a coherent plan of action, is to invite failure—failure that could result in physical harm to members of the campus community and loss of reputation for the institution. And as such failures mount, college and university campuses lose something that is perhaps even more precious—their special role in securing the success of the American experiment—their role as sites of fearless inquiry and unfettered discovery.

In the remainder of the framework, we will show how preparation, clear communication, and appropriate engagement with community stakeholders can help to defuse tense situations before they escalate into dangerous situations. Further, we address legal frontiers pertaining to academic freedom and harassment law, questions related to concealed carry laws, and the vexing challenge of managing the costs of providing security for controversial speakers. It is our aim to provide academic leaders with guidance, based upon sound practice, to help them plan for the safety of the campus community, the reputational health of the institution, and the place of higher education in civil society.
Collaborative Preparation

Engaging the Campus Community

The point of view we adopt in this framework is that the university setting is one in which the rights of speakers and the rights of protesters must coexist if the institution is to fulfill its promise of advancing the growth of knowledge. In our view, academic leaders and faculty should encourage students to add their voices to the debate—better yet, coach students so that they can bring their best arguments forward—and should discourage, by means of clear policy and persuasive argument, any effort to forcibly silence other voices.

This point of view is relatively easy to defend when the speaker in question is a serious scholar—controversial or not—who adopts a posture of civility. The scenarios that challenge us most are those in which a speaker lacks academic credibility, and/or purposefully breaks all codes of civil discourse. Under such circumstances, some argue, it is better to place limits on speech than to bend toward what one commentator calls “the liberal obsession with academic freedom.” A significant minority of students seem to hold this view as well. According to a Brookings study, and another released by the Gallup Organization and Knight Foundation, ten to twenty percent of college students surveyed “believe that it is acceptable to act—including resorting to violence—to shut down expression they consider offensive.” With sentiments like these influencing campus culture and student behavior, how does a campus prepare?

The most important aspect of planning for a campus crisis is to fully engage the campus community in dialogue about these issues early and often. All constituencies—trustees, administrators, faculty, students, and staff—must be
included in conversations around campus speech issues. These conversations foster a culture of open inquiry on two fronts. First, the conversations themselves give academic leaders the opportunity to gauge the climate, identify and enlist partners, and steer the conversation in the right direction. Second, such conversations lay the foundation for institutional policy favoring a climate of open inquiry. Clear policies respecting freedoms of speech and expression, and frequent communications about those policies, are critical to setting expectations and reinforcing cultural norms that protect the rights of both speakers and protesters.

As academic leaders launch such discussions, it is important to avoid the all-too-common narrative that there is a necessary incompatibility between academic freedom and social justice. In fact, the history of social movements suggests the opposite. It is no accident that research and social activism supporting civil rights, women’s rights, LGBT rights, and the anti-war movement were situated—long before tolerance for such views were broadly held—within the university context, as it is here that the principles of free speech, freedom of expression, and academic freedom had taken hold. But many students do not know this history, or if they do, relatively few have internalized the role that speech and academic freedoms have played in social progress. Academic leaders need to take the lead in fostering a respect for higher education and the principles that animate it. Introducing students to the historical role that freedoms of speech and expression have played in human progress is one way to “prime” students for the thrills and discomforts of open inquiry.

**Priming the Community: Two Case Studies**

Two case studies are useful here.

The first concerns the University of Wisconsin (UW) system, where Donald Downs has spent the majority of his career, and where Kristen Roman now serves as Chief of Police on the UW-Madison campus. In 2017, the Board of Regents approved robust policies intended to protect free expression on all campuses across the system. To effectively ensure “the broadest possible latitude to explore ideas,” these policies include new sanctions for students who intentionally deprive others of the opportunity to speak when they oppose what is being said—the so-called “heckler’s veto.” Echoing language from the University of Chicago (discussed below), the regents write:

> Although members of the university community at each institution are free to criticize and contest the views expressed on campus, they may not obstruct or otherwise
interfere with the freedom of others, including speakers who are invited to campus, to express views they reject or even loathe. . . . Each institution in the University of Wisconsin System has a solemn responsibility not only to promote lively and fearless exploration, deliberation, and debate of ideas, but also to protect those freedoms when others attempt to restrict them. Exploration, deliberation, and debate may not be suppressed because the ideas put forth are thought by some or even by most members of the university community (or those outside the community) to be offensive, unwise, immoral, or wrong-headed. It is for the members of the university community, not for the institution itself, to make those judgments for themselves, and to act on those judgments not by seeking to suppress exploration of ideas or expression of speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the university community to engage in such debate and deliberation in an effective and responsible manner is an essential part of each institution’s educational mission.11

This represents more than a mere policy; this is a statement of what a healthy university culture looks like. Framing the policy is not enough to cultivate the right kind of community, however, and the regents showed their awareness of this fact by also including in this policy a new student orientation requirement. “Each UW institution shall include in orientation for freshman and transfer students information regarding freedom of expression consistent with this policy.”

In accordance with this policy, an Orientation Toolkit has been developed. It instructs students on such matters as the primacy of free speech and open inquiry; the relationship between these principles and diversity properly understood; the way to sustain respect for free discourse through the proper respect for civility; and what incoming students should expect to encounter in class and the marketplace of ideas on campus. As the Orientation Toolkit states in part:

“When you enter the university, you will encounter fellow students, professors, and staff that represent a wide diversity of backgrounds and ideas. Sometimes these differences will stimulate interesting and engaging discussion and learning. At other times they will generate strong disagreements and emotions. In order for a university and educational experience to succeed, we must find a way to live with our

The patience required for civil discourse is not natural to humans; it must be explained, modeled, and practiced.
The Orientation Toolkit accepts and endorses diversity as a traditional and valued American principle and stresses that intellectual diversity is an indelible component of diversity.

Making such instruction a routine part of college orientation prepares University of Wisconsin students to enter into academic culture as full participants, familiar with the opportunities and the responsibilities that this participation requires. The patience required for civil discourse is not natural to humans; it must be explained, modeled, and practiced. Somewhat similar to building up muscle tissue in the body, the ability to effectively engage in civil discourse takes reps, many of them, before the discipline becomes second nature. The University of Wisconsin’s orientation program takes a much-needed step toward making such discipline part of the routine of learning.

The second case study relates to efforts undertaken by the University of Chicago to introduce students to the importance of free expression and civil discourse. In January 2015, the university published the Report of the Committee on Freedom of Expression, a document that has come to be known as the Chicago Principles. This statement has become the gold standard for university policy, and at least 33 institutions have adopted or endorsed similar statements. The Chicago Principles form the backbone of the University of Wisconsin policy we have already discussed. Like Wisconsin, the University of Chicago did not rely on this policy to propagate and explain itself. Instead, they proactively communicated the policy to the campus community. On the day the committee’s report was published, President Robert J. Zimmer and Provost Eric D. Isaacs sent an email to all faculty, staff, and students calling for “a campus-wide dialogue about the role of free expression at the University,” and announcing a series of public meetings to discuss the committee’s report. Even more importantly, their efforts to communicate the policy did not end with that academic year. Before the beginning of the fall 2016 semester, the Dean of Students sent all incoming first-year students a letter. The dean wrote:

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.
The dean went on to affirm the necessity of maintaining such an atmosphere of “diversity of opinion and background.” He included with the letter a copy of a monograph by Dean John W. Boyer called *Academic Freedom and the Modern University: The Experience of the University of Chicago.* This essay introduces students to the history of their university as a location for and champion of free expression. The university administration conveyed a clear message to students—this is who we are; we believe in these liberal values; we invite you to become part of a community built upon these values.

The University of Chicago has continued to push forward in this regard. In June 2017, the university published the *Revised Final Report of the Committee on University Discipline for Disruptive Conduct,* which recommends new policies for protecting free expression. These recommendations include a reconsideration of penalties for disruptive conduct as well as calling for the creation of “a more robust program of educational programming to ensure that students understand the rights and responsibilities of participating in the free-speech commons at the University.” Following up on that report, the committee has proposed “Co-Curricular Educational Programming,” aimed at fostering such a commons. In this memo, we read:

*Sustaining a free speech environment requires concerted effort to educate and inform students (and the University staff who support them) about the University’s values, goals, policies and procedures around freedom of expression, protest and dissent. . . . Training and programming efforts should not be limited temporally to programs during new student orientation and should be sufficiently diverse in format and content to allow for customization by the academic units and continuing relevance to students at multiple points in time during their academic careers.*

The committee then goes on to recommend a variety of ways to engage students in discussions about free expression, including special sessions for recognized student organizations who may be inviting speakers to the university.

Through policy innovation, along with concerted and consistent communication with the campus community, the University of Chicago has been able to set a high standard for its students as well as for other institutions of higher learning.
We would be remiss if we did not point out that the road to establishing clear policies and campus norms favorable to a climate of open inquiry can be rocky. Some of the steps taken at the University of Chicago and the University of Wisconsin drew sharp criticism. Critics charged, for example, that by belittling “trigger warnings” and “safe spaces,” the letter Dean of Students Jay Ellison sent to incoming University of Chicago students gave the impression that the university was out of touch with concerns over social justice and inclusivity.19 The Board of Regents’ move to adopt system-wide free speech policies was deemed by some as top-down and politically partisan, carrying forward Republican-sponsored legislation mandating free speech policies.20

The point here is not to engage in “Monday morning quarterbacking” but to learn from early efforts. Ideally, champions of free speech policies will avoid “us vs. them” rhetoric that suggests that concerns other than free speech are unimportant. Preferably, efforts to create clear policy emerge from within the university community, rather than being imposed by an external authority. Such cautions underscore the importance of academic leaders being proactive, inviting early collaboration across all campus stakeholders.

Framing Policy

After engaging with students and priming them for citizenship in the academic community, it is important to have clearly articulated policies in place that govern speech on campus. These policies should provide the maximum possible latitude for faculty and students to engage in scholarly as well as constitutionally protected speech, subject to time, place, and manner restrictions that exist to protect the educational mission of the college or university. Given higher education’s distinct place in civic life as the testing ground for new ideas, there should be a strong presumption to resolve difficult questions in favor of allowing more speech rather than less. A full account of the legal and prudential principles that should inform a campus speech policy are discussed in A Framework for Campus Free Speech Policy.21 We summarize the main points here. At first blush, the discussion may seem (merely) philosophical, but our intent is deeply practical. In fact, there is nothing more practical than grounding an institution’s policies in principles that have withstood intellectual and legal challenge.

Academic leaders must take great care to demonstrate a principled commitment to free speech in times when it is threatened. Without this commitment, higher education leaders will be seen from the outside as acting with political or cynical motives.
To begin, the protection and encouragement of lively campus debate requires an institutional commitment to the ideals of free speech espoused by the First Amendment. We are aware that in a strictly legal sense, only public institutions carry the responsibility of upholding the First Amendment. But most private colleges and universities have guaranteed to their stakeholders rights similar to those protected in the Constitution through contracts and official policies. In addition, relevant Supreme Court cases often express normative understandings of free speech and open inquiry that closely parallel commonly accepted principles of academic rights as understood by both public and private institutions.

Academic leaders can derive at least three core principles from the Supreme Court’s treatment of speech issues, which can be applied in a normative sense to all colleges and universities, public or private. First, claims that certain speech is causing discomfort or offense are not sufficient grounds for suppressing speech. Allowing claims of offense to be grounds for censorship opens the door to what is known as the “heckler’s veto,” which permits those who strongly disagree with a comment or speech to silence it. This would amount, in practice, to a grant of power to one person or group to deprive others of their right to speak, and to deprive the right of others to listen and engage in intellectual exchange.22

Second, the Supreme Court reminds us that the commitment to free and open inquiry is meaningful only when it is supported in the face of pressure. Anyone can protect free speech in the abstract or when no one is against it. As Justice Holmes reminded us, the only true test of a commitment to free speech—and the time it matters most—is when threats to speech are in play.23 Academic leaders must take great care to demonstrate a principled commitment to free speech in times when it is threatened. Without this commitment, higher education leaders will be seen from the outside as acting with political or cynical motives.

Third, those who call for the suppression of ideas and beliefs often assume that their notions of justice are infallible and incontestable. Such claims ignore that differences of opinion and belief have always characterized human nature and interaction.24 Furthermore, disagreements over the nature of justice and the proper ordering of society are part and parcel of the very enterprise of political philosophy and theory, which is centered on discussion and debate over the ultimate question: How should we live? The claim that there is only one answer to this question is detrimental to mutual respect and undermines the habits of inquiry and discussion that are necessary to higher education and constitutional citizenship in a liberal and democratic society. And it is
uniquely the role of the academy to ensure that this question is always being explored deeply and seriously.

To these broad principles can be added more specific legal standards governing speech. For example, in *Tinker v. Des Moines School District*, the court held that the free speech of students must not be limited to the classroom and other limited domains, writing that a student “may express his opinions, even on controversial subjects . . . if he does so without materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.” Furthermore, the court has held that even error and falsehood “must be protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need . . . to survive.’” It is clear, on this basis, that wide latitude must be allowed for speech both in and outside of the classroom, so long as it does not interfere with the educational mission of the institution.

The dis-invitation of speakers is troublesome because it raises the specter that the institution is actively censoring certain viewpoints or weakly giving in to pressure.

As the Supreme Court declared, “the classroom is peculiarly the ‘marketplace of ideas.’” That said, speech by students and instructors may be restricted in appropriate ways. Classroom learning is dedicated to particular subject matters, and students are, in effect, “captive audiences.” The basic maxim pertaining to the classroom is that all ideas that are broadly germane or relevant to the matter at hand should be protected regardless of how controversial they might be. But teachers’ own speech and the speech of students may be limited in order to stick to the subject at hand. It would not be appropriate for a physics professor to spend large amounts of class time on his personal political opinions. It is prudent, however, not to adopt too rigid a view of germaneness, since there are often sound pedagogical reasons for discussing contemporary issues. Political events can have a profound impact on the course of scientific research and funding, for example. The need for professional and nuanced judgment on such matters is crucial.

Speech outside of class is best understood according to the principles of the public forum. The provision and protection of a public forum for speakers lies at the heart of the concept of the Open University. The principles of intellectual diversity and the Open University require that a wide range of viewpoints should be not only allowed on campus, but also encouraged. These
principles do not oblige an institution to provide a forum for views that have no academic credibility. Further, in practice, limits on resources, space, and time mean that no campus can provide a platform for every speaker or viewpoint. Within these limits, though, it is advisable for administrators to take seriously their role as curators of a public forum on their campus in ways that broaden and strengthen the intellectual lives of the campus community.

Leaders should establish clear policies and guidelines for those campus stakeholders who have authority to invite speakers to campus, particularly to avoid the problem of speaker dis-invitations. The dis-invitation of speakers is troublesome because it raises the specter that the institution is actively censoring certain viewpoints or weakly giving in to pressure. In addition to betraying a core commitment to the ideal of the Open University, the signals sent by a dis-invitation serve to erode the credibility of the institution, and of higher education, in the minds of the general public.

As a practical matter, a commitment to the principle of free speech must allow for the airing of viewpoints that some in the community find disagreeable or incorrect. In responding to this fact, Justice Brandeis wrote, “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.” Academic leaders are advised to heed this logic, and to publicly and frequently advocate for free speech based on this logic, which holds that it is preferable to oppose false or misguided speech by way of more speech rather than by force. Thus, if someone on campus says something that many find objectionable, but that nonetheless merits protection, there is nothing wrong with the administration making a public statement to demonstrate its disagreement, so long as such a statement does not serve to chill discourse or the marketplace of ideas, and so long as such a statement does not imply or state that no one is “entitled” to say such a thing. As the Supreme Court has held in the doctrinal area of “Government Speech,” the government possesses its own free speech right to express its views. So too do institutions of higher learning. Being able to express an institutional position in an appropriate manner is one way of responding to the expression of unpopular or disturbing—but protected—speech on campus.

Furthermore, regulations on the appropriate time, place, and manner of speech are not only permissible but also important for preserving the integrity of the marketplace of ideas. Examples include limiting the level of noise near classrooms and libraries; requiring advance notice of events in which police might be needed to maintain order—though this requirement must be applied in an
even-handed manner consistent with viewpoint neutrality, and not as a pretext for chilling or discouraging speech; limiting speech to the purposes of a limited public forum; limiting the hours of operation for public speech purposes so long as the hours allowed clearly accommodate the mission of the Open University.

The basic idea is that reasonable measures to protect order and the rights of all concerned are allowed and even necessary, but three fundamental rules apply to their application. First, they must be applied in an even-handed manner regardless of the viewpoints or content of the speech. Second, they must not serve as pretexts for discriminating against speech. Third, they must not limit speech more than is necessary to achieve the legitimate purpose of order and protecting the rights of others.

To protect the rights of others to speak and to listen, a clear policy outlining sanctions for students who abridge the legitimate speech rights of others must be established. In academic discourse, it is ultimately not the loudest and fiercest who prevail, but the most rigorous and reasonable. The heckler’s veto can have no place in higher education, if it is to remain the home of the unfettered quest for knowledge.

Higher education exists as an interlocking system of rights and duties. One’s right to speak is conditioned by one’s duty to allow others the same opportunity. Those who violate this social contract must face sanctions. These sanctions, to be effective, must be as clear as reasonably possible. It must be transparent to all campus citizens what behavior would run afoul of the policy. Allowance must be made for legitimate and peaceful protests that do not disrupt others as they speak. The adjudication process and the potential penalties attached must be spelled out in detail. These policies, furthermore, must be publicly justified to have legitimacy. Ideally, such a policy will not be presented as another part of the conduct code, on par with violations of a dormitory’s “quiet hours” policy. Rather, this policy should be justified by reference to the mission and goals of higher education itself. Citizenship in the academic community requires upholding your end in the bargain; your right to express your ideas requires you to let others do the same.

Once such a policy is in place, it is essential to apply it in a content-neutral manner. All institutionally sanctioned events are equally protected from
infringement, regardless of how objectionable a speaker’s views may be to some in the community. No special dispensations can be made to this policy; otherwise it ceases to function as a regulatory principle of the academic community and begins to seem like picking winners and losers. Content neutrality is a cornerstone of Supreme Court free speech jurisprudence as well. As the Court wrote in *R.A.V. v. St. Paul*, there is “no such authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensbury Rules.” Universities, therefore, may adopt rules limiting access of presentation venues to outside groups, but to remain consistent with First Amendment principles, those rules must apply equally across groups regardless of content.

Just as there is a need for sanctioning students who take it upon themselves to deny speakers a platform, so too there is sometimes a need for academic leaders to cancel potentially dangerous events. While such cancellations should be extremely rare, particularly in cases where a faculty member or academic department has invited a speaker, it cannot be denied that such cases arise. Here again, content neutrality must serve as a guiding principle, and be clearly articulated as part of the policy.

One recent example of such a policy can be found at Middlebury College. Middlebury famously did not cancel a speech by American Enterprise Institute scholar Charles Murray, an event that involved students and non-students shouting down the speaker, pulling the fire alarm, and ultimately attacking and injuring a professor of the college. Subsequent to this event, Middlebury enacted a policy that allows the college to cancel events that meet a threshold of potential danger. According to the policy, “Students, faculty, and staff seeking to make room reservations for events will . . . be asked on the submission form whether the proposed event presents any special considerations or security concerns,” and following this the requests will be “reviewed weekly by staff from Student Activities, Event Management, and Communications to identify any events that are a likely target of disruption, threats, violence, or other acts of intimidation, or are likely to draw unusually large crowds.” If the event is judged likely, “based on prior incidents or current evidence,” to “be the target of threats or violence,” then “the Threat Assessment and Management Team will conduct a risk assessment of the event, consulting with local law enforcement as needed, in order to advise the administration.” Following this assessment, “Representatives from Public Safety/Campus Security and Risk Management” will “determine resources or measures that might be necessary to ensure that the event can proceed without undue risk to the speaker and/or members of the community.” This determination is made with the “Middlebury Emergency Preparedness Plan and Emergency
Operations protocols in mind. The final section of these rules is significant and worth quoting in full:

In those exceptional cases where this review indicates significant risk to the community, the president and senior administration will work with event sponsors to determine measures to maximize safety and mitigate risk. Only in cases of imminent and credible threat to the community that cannot be mitigated by revisions to the event plan would the president and senior administration consider canceling the event.

This policy makes clear that cancelling events is only considered in exceptional cases in which imminent and credible threats have been identified and no steps can be taken to mitigate the threats. While different institutions might frame their policies in different ways, this policy includes many of the key elements. It ensures multiple layers of oversight, all of which default to allowing the event to proceed, and which requires the president’s office to be involved before an event can be cancelled. The policy also makes specific reference to Middlebury’s broader emergency plans while including a wide variety of campus stakeholders in the process, from events management and communications to public safety and the senior administration. If a potentially risky event is to be hosted on campus, this policy seeks to ensure that all the relevant campus community members will be apprised ahead of time.

Engaging Beyond the Campus

As important as it is to engage with members of the campus community, it is equally important to reach out beyond campus to interface with members of the broader community. It is under this heading that we will address questions related to law enforcement. We will also discuss relations with state and municipal leaders.

When preparing for any campus event requiring crowd management, even when no crisis scenario is anticipated, academic leaders should view public safety officers, including campus police, local law enforcement, and when warranted, state police, as partners from the very beginning of the planning process. One of the most serious and common mistakes made is to see law enforcement as a last resort, only to be called upon when a crisis is already underway. Public safety officers, especially those with experience working on campuses, have expertise that can help to avoid problems before they arise. They can serve as advisors for threat assessment, venue selection, and crisis planning. Routinizing such engagement in non-crisis situations affords the opportunity to fully brief local and state law enforcement on the policies and
procedures the university has established for crowd management and crisis situations. Such engagement also provides opportunities to establish good working relationships across teams, improve communications, learn through after-action reviews, and hone best practices. The learning and process improvements gained through multiple iterations pay dividends when a potentially volatile scenario presents itself, as processes and procedures will feel familiar to everyone involved.

Further, by including law enforcement in discussions of crisis planning, community members begin to see that public safety officers serve far more than a punitive function. Rather, their primary role is to ensure that First Amendment rights—of speakers and protesters alike—are protected, not only in principle, but in practice. Administrators also gain a better understanding of police policies, limitations, resources, and approach, helping to set expectations, mitigate confusion, and clarify roles. And in general, having public safety officers present in relevant community-wide discussions helps to ensure that their presence at other times, as when an incendiary speaker arrives on campus, is not an additional source of tension.

Early involvement of campus and local law enforcement also ensures time to establish a decision-making framework in advance. The goal of such a framework is to address in advance key questions, such as: Under what circumstances does the institution’s president have decision-making authority? Under what circumstances does the campus Chief of Police have decision-making authority? Under what circumstances does local law enforcement have decision-making authority? If there is to be a handoff of authority, from say, university administration to campus or external law enforcement, what will trigger it, and how will it be managed? If campus police are overwhelmed, who calls outside departments for backup? Who decides when that time has come? Who manages the coordination between the academic authorities and police departments? In planning for specific events, what factors indicate that state police should be briefed in advance? The National Guard? Who would make the decision to call for such support? Knowing the answers to these questions before a crisis ensues saves valuable time during a crisis. Such planning also fosters strong relationships among the administrators and public safety officials who will work together in the event of an actual crisis.
Building relationships of trust is of the utmost importance, since the safety and well-being of the campus community could depend on it.

The importance of trust goes beyond the relationship between academic leaders and law enforcement. Crucially, this trust must extend to faculty, students, and staff as well. In this regard, campus police and public safety officers play a particularly important role. A well-functioning campus police department works, day-to-day, to integrate into the fabric of the campus community. By working with faculty and staff on relevant governance matters, by getting to know students, by making public statements that underscore their role in supporting students in their pursuit of an education, campus police cultivate essential local knowledge of and trust within the campus community that will serve them well in the throes of a crisis. Academic leaders can support these outcomes by making it their business to ensure that campus police departments hire and train officers who possess deep respect for freedoms of expression and assembly, and embrace the values of higher education. Such considerations may seem far removed from concerns related to crisis planning, but one only need recall the 2011 incident at University of California, Davis, in which campus police pepper sprayed students who had assembled in peaceful protest, to recognize the connection. 35

The goal of forming these relationships and making these plans is ultimately to protect the purpose of higher education, i.e. to create more room for reasoned thought and opinion to flourish. In this way, law enforcement officers serve the purpose of protecting our most valuable rights and contribute to the functioning of the entire academic community. Police are accustomed to managing difference of opinion in the public square. They have seen their share of demonstrations and counter-demonstrations, and they are trained and legally bound to allow both sides to exercise their freedom. Content neutrality is a principle of their action, just as it should be in any legitimate and fair policy governing speech on campus.

In addition to forming relationships with law enforcement, it is also advisable to form relationships with members of the local and state government. Knowing
whom to call in the mayor’s office and the governor’s office if the campus
needs extra support, or whom to warn if events on campus seem likely to spill
off campus, is a critical factor in effective crisis preparation. Most college and
university leaders form these relationships as a matter of course. It is simply a
matter of formally including those relationships within a comprehensive plan
for dealing with a campus crisis, were one to ever occur.
Legal Frontiers on Campus: Difficult Cases

In this section, we will consider an array of policy questions that are less clear-cut. While it behooves all academic leaders to actively plan for the possibility of campus crisis, it is often harder to determine the proper stance that should be taken toward more complicated issues. Acknowledging that these areas are difficult, we will offer guidance based on sound legal and educational principles.

Private vs. Public Institutions

While we touched on the private-public distinction above, it bears additional consideration. Many of the legal requirements for free expression, as well as many of the political pressures to protect it, only apply to public institutions. If private institutions are able to limit speech to a much greater extent than public institutions, and if there are voices on campus calling for such limits, then one might ask, why shouldn’t academic leaders at private colleges and universities regulate speech more forcefully? Is the academic community not free to regulate itself as it sees fit?

Indeed it is, especially in the context of a private institution. There are contexts in which it does make sense for a college to place more limitations on speech than the First Amendment would allow. Religious institutions, for example, often privilege matters of faith over academic freedom, holding their faculty and students accountable to authorized teachings and tenets. Such institutions generally make their standards publically known, so that members of that academic community know what to expect from their educational experience. Being forthright about the limits placed on expression is advantageous to the institution, since it helps to attract the sort of faculty and students it seeks. Such clarity is also advantageous to others who prefer an institution where
more expression is allowed. In theory, private schools could be formed around any number of social or political principles—pacifism, traditionalism, progressivism, etc.—and could limit the variety of opinion allowed on campus to suit their preferences, but they should make this limitation absolutely clear, both for the good of the institution and for the good of potential faculty and students.

For colleges and universities that promise academic freedom and rights to free expression and association, i.e. for the vast majority of institutions, it is certainly most prudent to adhere, insofar as possible, to First Amendment principles when framing and applying policy. There are a number of reasons for this. First, as noted above, the principles of the Supreme Court’s First Amendment jurisprudence express normative understandings of free speech and open inquiry that closely parallel commonly accepted principles of academic rights. It was Chief Justice Warren who wrote, “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”

The overwhelming majority of academic leaders agree with this sentiment and can find principles that were designed to protect free inquiry within constitutional law. Second, when institutions make representations that free expression and open inquiry will be guaranteed for faculty and students, these promises are made within a context in which these terms are already clearly defined, by law, for public institutions. To advertise free and open inquiry, but to adhere to standards other than those set out by established legal precedent would be akin to creating a private lexicon that only applied within the confines of one institution. The appearance of duplicity would be almost inevitable. Further, there is strong pedagogical rationale for private institutions to adhere to the principles of free speech and open inquiry, as it is only this stance that leaves it to students to draw—through reason, argument, and critical debate—their own conclusions. In other words, it is only through open inquiry that students exercise and develop the skills of critical thinking.

Thus, private institutions are absolutely free to put whatever limits on speech they wish, but these limits must be clearly announced and explained as limits. Institutions wishing to be known as locations of pure academic freedom and
open inquiry are best served by applying the standards of the First Amendment, even when they are not obliged to, since these standards form the shared normative basis for what constitutes free and open inquiry in our society.

**Academic Speech and the Law of Harassment**

One of the great sticking points in debates over campus speech is how to balance the protection of free expression with the legitimate desire to shield campus citizens from threats and harassment. Phrased in these terms, as though there is a necessary trade-off between freedom and safety, it seems that academic leaders have little choice but to sacrifice some academic freedom in the name of freedom from harassment. We argue, however, that this is a false choice, or rather an easily resolved dilemma. Speech that would otherwise be protected by the First Amendment is in no danger of running afoul of properly written harassment policies, since harassment is not protected speech.

True threats and harassment are impermissible. A “threat” is a statement that would make a reasonable person or discrete group of individuals feel that his or her physical safety or lawful conduct is in genuine jeopardy. In the 2003 case *Virginia v. Black*, the Supreme Court rendered a useful definition of what constitutes the kind of threat that transgresses freedom of speech protection. The court said that true threats arise only from “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”

A key aspect of a “threat” is that it is individualized: it is directed at a specific individual or discrete set of individuals, making them feel, reasonably, personally threatened. General comments about such things as race, gender, religion, sexual orientation, or the like are seldom considered threats in a legal sense. A speech in the public forum is not usually a threat unless specific individuals are targeted. Posting an intimidating message on someone’s dorm door could be considered a threat, depending upon the content.

“Harassment” has also become a contested legal concept in recent decades, and dispute surrounds recent definitions offered by the Department of Education. The Supreme Court has provided a definition on which we will draw. As with the notion of a threat, it is important not to let the valid concept of harassment bleed into the mere presentation of ideas and honestly held beliefs. In *Davis v. Monroe County Board of Education*, the Supreme Court defined peer-on-peer harassment in the educational context as conduct that is: “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victim-students are
effectively denied equal access to an institution’s resources and opportuni-
ties.”

One related limit, however, is appropriate, but only if applied with
great care. Whereas instructors and students should be free to express all ideas
germane to the course broadly understood, the commission of substantial
gratuitous offense—offense for only its own sake—crosses a line in principle and
should be prohibited. In such cases, however, the
offense must be what a reasonable person would find
substantial and gratuitous. The mere presentation of
germane ideas that many find offensive is protected
academic speech.

Following these clear legal standards, it is very
unlikely that constitutionally protected speech would
become proscribed by a university harassment pol-
icy. If speech is “severe, pervasive, and objectively
offensive” enough to “undermine or detract” from
a student’s educational experience, then that speech
is not protected speech. If the speech fails to meet
this standard, then it is not harassment, and should
not be treated as such. Additional problems may
arise if administrators apply the standard in an
expansive way. In addition to wording rules and
standards correctly, the rules and standards must be
applied correctly.

It is here that we must underscore once again that mere offensiveness does not
constitute harassment. The power of ideas to be offensive is in direct propor-
tion to their power to promote human progress. Especially those who have
dedicated themselves to the pursuit of truth are sensitive to the overwhelming
power of ideas. One often cannot help but be offended, perhaps deeply so, by
ideas that run counter to one’s own. The strict Marxian and the staunch cap-
italist are at loggerheads, each seeing the other as the greatest current danger
to humanity, each charging the other with the blood and suffering of millions.
And yet, higher education is and has been the home of both tendencies, and
neither could be allowed to outlaw the other on campus without detriment to the
intellectual atmosphere of the whole. Passionate, serious disagreement about the
most vital and important things is the modus vivendi of higher education. Being
offended, sometime deeply so, goes with the territory. While every community
member must be absolutely free from threats and harassment, these concepts
must not be allowed to include the average everyday friction of academic life,
which always generates heat as it attempts to create light.

The power of ideas to be offensive is in direct proportion to their power to promote human progress.
Concealed Weapons on Campus

When considering the possibility of a crisis on campus, one factor that frightens academic leaders more than any other is weapons on campus. Political movements have made this concern more salient over the last five years. As of this writing, ten states have passed laws allowing concealed firearms to be carried onto the campuses of public colleges and universities. An additional 23 states have considered such laws since 2013. Meanwhile, 16 states ban concealed weapons on campus, while 23 allow each individual campus to decide for itself. Much depends, then, on where a campus is located and whether it is subject to state law.

Institutions that have a choice in the matter may ban firearms on campus if they are able, as present Second Amendment jurisprudence allows. Even a state like Oregon, which mandates that concealed weapons be allowed on campus, has allowed its universities to ban weapons in university buildings. Such policies, undertaken to ensure the safety and security of campus citizens, fall under the rubric of reasonable time, place, and manner regulation of expressive activity. Since the presence of firearms could be said to undermine the educational mission of the institution, particularly in the context of heated and controversial debate, it is reasonable to limit the right to bear arms on campus.

All such regulations should be made with the cooperation and coordination of public safety officials. Much as they have some expertise in upholding First Amendment standards in difficult situations, so too they are often called upon to become involved in Second Amendment issues as well. Having clear and public policies, and ensuring that law enforcement understands the scope and meaning of these policies, is crucial to maintaining a safe campus environment.

The Cost of Speech

The financial burden of providing security for on-campus events presents one further set of difficult policy questions. Proper security procedures can make the difference between a small scuffle and a real campus crisis, but they can also mean running up significant bills in the name of caution. The Supreme
Court has ruled that charging speakers or groups fees for security may not be so excessive that it chills or limits the incentive to appear. In addition, fees must be applied in a viewpoint-neutral fashion. On-campus groups, in other words, cannot be made to bear the cost of security. In the face of staggering security costs, many institutions have sought ways to shrink costs by allowing fewer controversial speakers on campus. Such decisions, however, have the effect of caving to pressure and punishing speakers for having perspectives outside the norm. Indeed, this is the most pernicious form of the heckler’s veto possible, since otherwise appropriate events are cancelled in order to avoid violence or the threat of violence. Such cancellations only serve to incentivize coercive threats, so as to bar the way to disfavored speech. Similarly, if a faculty member comes under threat for holding controversial views, it may be tempting to ask that faculty member to stay away from campus until the furor dies down. This is the wrong approach, rendering a double injury to the faculty member. If ratcheting up tension tends to achieve the goal of shutting out or silencing heterodox speech, then tension will always be heightened to this breaking point whenever it is in the perceived interest of protest groups to do so. Thus, it is important for academic leaders not to fall into this vicious circle and to protect heterodox speakers in the first instance, to show that coercion and intimidation are not winning tactics within an academic community.

This position can be conveyed most strongly through a policy that attaches strong sanctions to the sort of disruptive behavior that is threatened in such cases. If students are taught that any action taken to silence a legitimately invited campus guest will result in real punishment, then the tendency to fall into a cycle of coercion and over-spending on security is reduced substantially. This consequence, of course, relies on the policy actually being enforced, and in particular in it being enforced in a content-neutral way. Students should not have reason to believe that their particular point of view is being systematically disadvantaged on campus. Cultivating a campus community in which all may share their ideas without fear of disorder or violence helps to make this a reality on campus.

What is often more troublesome in these cases, particularly for campuses adjacent to or within urban areas, is the presence of off-campus individuals
at these events. The trouble at Berkeley, and perhaps also at Middlebury, would likely have been less severe but for the persons unassociated with the campus being present and participating in violence and property damage. Such protesters will not be dissuaded by campus policies that do not apply to them, and appeals to the principles of higher education have no purchase with them. This is a case when partnerships with the local community, and especially local law enforcement, can pay significant dividends. Just as the campus community may not become a danger to the broader community, so too, must the larger community not be allowed to endanger the campus. Strong partnerships with municipal leaders are needed to ensure that order is kept both on and off campus, especially when particularly controversial, but still academically legitimate, questions are to be debated.

Of course, academic leaders are also the guardians of the institution’s budget, and infinite resources are not available. While proper planning, policy making, and communication can dramatically decrease the need and cost of security, there may still be situations when administrators must bend to financial reality. When administrators work to decrease the financial burden of security during the planning process, this can help to justify difficult choices when events do have to be cancelled. Policies like those that Middlebury adopted after their campus crisis, discussed above, help to legitimize these decisions by creating clear, neutral processes for determining what is to be done in any particular circumstance. When academic leaders plan to allow the broadest possible latitude to legitimate expression, and when they demonstrate their commitment to those goals, it becomes possible to make prudential decisions to limit speech when it presents an immediate and credible threat, without abandoning the principles of free speech and open inquiry or the mission of higher education.
Conclusion: A Call to Lead

We began this framework by noting that no academic leader enters the role eager to take on the challenges of a speech-related crisis. True enough. But most academic leaders we know did enter the role eager to champion open intellectual inquiry as a defining value of higher education and as a driving force of individual growth and social progress. They entered knowing and appreciating that colleges and universities are special places, in need of guardians.

Planning ahead, gathering a wide range of stakeholders, building essential relationships, establishing clear decision rights and policies, communicating clearly and consistently, and following through on the written policies—if all this sounds like untold hours of consultation and committee meetings, diving deep into waters that bear no relation to the discipline you love, difficult conversations and negotiation with competing stakeholder groups—you’re right. And few of these hours will likely go down as the happiest you have logged in the academy.

But taking these steps ensures that faculty, staff, and students understand their rights and responsibilities within the broader campus community. Taking these steps reduces the likelihood that crisis erupts in the first place. And if it does, these steps will save valuable time, potentially save lives, and protect the reputation and long-term health of the institution.

What is needed most now, resoundingly, is academic leadership. In particular, what is needed is a renewed defense of the principles and ends of higher education. For all the thankless tasks involved in preparing for crisis scenarios, academic leaders have the happy task of explaining yet again, to a new generation of students, why free expression, academic freedom, and open inquiry are at the core of higher education, and the vital role that students play in upholding those principles. It’s good work if you can get it.
End Notes


2. For a classic account of this argument, see J.S. Mill, *On Liberty*, Cambridge University Press, 1989. See, more broadly, the set of texts collected at http://openinquiryproject.org/faculty-resources/


5. See, for example, the coverage of Evergreen State College following its own campus crisis. “A Campus Argument Goes Viral. Now the College Is Under Siege,” *New York Times*, 06/16/2017. https://www.nytimes.com/2017/06/16/us/evergreen-state-protests.html. See also the video report on the incident by VICE News, 06/16/2017, which can be found at https://www.youtube.com/watch?v=2cMYksOBBBM

7. Elsewhere, we argue in favor of this standard, for constitutional and pedagogical reasons, at both private and public institutions, no matter whether the speaker is a learned scholar or inflammatory provocateur. To summarize, not only do invited speakers enjoy First Amendment rights; not only do good ideas improve through open inquiry; it is when we encounter bad ideas that we need speech freedoms most. The bright lights of intellectual scrutiny expose bad ideas for what they are; not always as quickly and decisively as we might wish, but humanity has yet to devise a better alternative. See Downs et al., *A Framework for Campus Free Speech Policy*, Institute for Humane Studies, 2017. http://openinquiryproject.org/download-ihs-free-speech-policy-booklet/
See also the Institute for Humane Studies’ “Position Statement on Open Inquiry.”


13. See https://www.thefire.org/chicago-statement-university-and-faculty-body-support/ for a list of institutions. They include Princeton University, Johns Hopkins University, Purdue University, American University, Louisiana State University, Georgetown University, Michigan State University, and The University of Wisconsin system, among others.


16. The University of Chicago has made this writing available here: http://college.uchicago.edu/sites/college.uchicago.edu/files/attachments/Boyer_OccasionalPapers_V10.pdf


20. State Assembly Bill 299 was criticized by progressives and conservatives alike, for being too vague, with language that posed serious First Amendment concerns for protesters.

See also the Institute for Humane Studies’ “Position Statement on Open Inquiry.”


24. As Justice Holmes writes in Abrams, “Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. . . . But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.” Abrams v. United States, 250 U.S. 616 (1919).


28. It is important in this connection, however, to also keep in mind the Supreme Court’s ruling in *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000), which held that funding decisions regarding student groups cannot be based on the viewpoint being represented, but must instead be based on other objective criteria, e.g. the academic bona fides of the speaker.

29. The Supreme Court held that the removal of a book from a public school library raised more First Amendment problems than the decision not to acquire a book in the first place in *Board of Education v. Pico*, 457 U.S. 853 (1982).


32. This policy can be accessed on the web at http://www.middlebury.edu/offices/business/scheduling/scheduling_policies


34. Larger campuses often have separate Offices of Emergency Management, which should also be included in any crisis management planning process.


36. The Foundation for Individual Rights in Education (FIRE), whose red/yellow/green light rating system for speech codes is well known, does not assign ratings to schools of this type. According to FIRE, “private universities are just that—private associations—and as such, they possess their own right to free association, which allows them to prioritize other values above the right to free speech if they wish to do so.” https://www.thefire.org/spotlight/using-the-spotlight-database/


43. Following an event on campus that ended in broken windows and fire, the University of California-Berkeley spent over a million dollars to provide security for subsequent events during a single academic year. See “What Stunts like Milo Yiannopoulos’s ‘Free Speech Week’ Cost,” *New York Times*, 09/24/2017. https://www.nytimes.com/2017/09/24/opinion/milo-yiannopoulos-free-speech-week-berkeley.html
About the Institute for Humane Studies

The Institute for Humane Studies (IHS) is a nonprofit educational organization that engages with students and professors around the country to encourage the study of a free and open society. We host educational programs for students and support the careers of graduate students and faculty.

We believe that free speech, open inquiry, and intellectual diversity should flourish on college campuses. These principles are an essential component of how institutions of higher education create engaged citizens, critical thinkers, and skilled communicators. Join us at OpenInquiryProject.org to learn more about how faculty and academic leaders are addressing questions related to free speech and open inquiry on their campuses and in higher education broadly.

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