

# *Free Speech and the Rise of Advocacy on Campus*

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# Dear Berkeley: Even Ann Coulter deserves free speech

By **Marc Randazza**

🕒 Updated 6:55 PM ET, Mon April 24, 2017

## Texas A&M University changes campus speaker policy over Richard Spencer visit

By **Sara Ganim, CNN**

🕒 Updated 4:49 PM ET, Tue March 21, 2017

## Elizabeth Warren to Berkeley Protesters: If You Don't Like Ann Coulter, Just 'Don't Show Up'

by [Josh Feldman](#) | 9:59 pm, April 24th, 2017

## Sexual Assault Awareness Month: 'We need to advocate all the time'

[Nada Hassanein](#), Democrat staff writer | Published 7:41 p.m. ET April 19, 2017 | Updated 10:14 a.m. ET April 20, 2017

## War on campus

The escalating battle over college free speech

By **Elliott C. McLaughlin, CNN**

Updated 9:23 PM ET, Fri April 21, 2017

**(CNN)** — Free speech came to fisticuffs before alt-right white nationalist Richard Spencer could even begin [his speech at Auburn University](#).

Students encircling the brawl said a Spencer supporter began jawing with an antifa, or anti-fascist, protester over Spencer's right to speak. A punch was thrown. The men spun through the crowd, swinging fists and grasping for

# The Robert's Court Comes to Campus

- \* Strong Protection of Content/Viewpoint
- \* Rewards those who play the First Amendment game well.
- \* Use it or lose it!
- \* Expect Litigation/Opposition
- \* Who, What, When, Where Analysis
- \* Forum Analysis
- \* Campuses are not just a place for free speech!
- \* Speech zones?
- \* Internet “true threats?”
- \* Academic Freedom—Institutions, Faculty, Students, Staff, Third Parties (post-*Sweezy/Schuette*)
- \* “The Marketplace of Ideas” → Safety, Educational Mission

# The Robert's Court and First Amendment Rights

- \* Who, What, When, Where
  - \* Freedom of Speech
    - \* Content/viewpoint (true threat/fighting words/incite imminent lawlessness/defamation/harassment/pornography)
    - \* No prior restraint/No heckler's veto/Right not to speak/Right to listen
    - \* Time, place and manner
    - \* Chill, overbreadth and vagueness
- \* Student Activity Boards (*Southworth*)

# First Amendment Rights Cont'd

- \* Forum Analysis
  - \* Traditional Public Forum
  - \* Limited Public Forum
  - \* Nonpublic Forum
  - \* Nonforum
- \* Rights of Association (RSO's) – *Boy Scouts/CLS v. Martinez*
- \* Faith is a Viewpoint: Establishment/Impairment of Religion – *Town of Greece*
- \* Press/Funding - *Rosenberger*
- \* Academic Freedom/Administrative Autonomy – *Southworth, CLS v. Martinez*
- \* Hate speech <-> Bullying <-> Hostile Environment <-> Hazing
- \* Material Disruptions/Loyalty Oaths (*Healy*)

# Title IX and the First Amendment

## ***Does Title IX trump free speech?***

“OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.

Title IX protects students from sex discrimination; it does not regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX.”

\*US Dept. of Ed. Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (April 2014), pg. 43 – 44.

# A Campus is a Speaker, too!

- \* *Citizens United*
- \* *Garcetti/Lane v. Franks*
- \* Create the spaces you want/Not a focus on dealing with negative speech or speakers
- \* Teach the First Amendment
- \* Rights Imply Responsibility
- \* Fight Speech with Speech
- \* Don't Grace the Graceless
- \* The Power of Silence and Listening
- \* Dealing with Black Bloc/Catfishing

# The Rise of Expression= A New Advocacy Culture

- \* “Alma Mater”
- \* Publish/Disseminate/Perpetuate/Instantaneous
- \* Positional/Oppositional Speech and Expression



# What is Advocacy?

- \* Oppositional?
- \* Collaborative?
- \* Facilitative?
- \* Auxiliary to other functions?
- \* A primary function?

# Types of Advocacy

- \* Legal
- \* Victim/Survivor
- \* Respondent/Accuser
- \* Helping individuals
- \* Fights for a cause
- \* Internal/External
- \* Consultants?
- \* Who are the advocates we have now [List]
- \* Who needs advocates but does not have them?

# Effective/Ineffective Advocacy

- \* When does it work/fail?
- \* “The lost summer”
- \* Lawyers are not trained for all types of advocacy.

# Advocacy Skill Sets

- \* Legal Training?
- \* Alignment/Nonalignment with client cause or causes?
- \* Demeanor/Temperament?
- \* “Zealous”?
- \* Risk averse?
- \* Myers Briggs/Big Five?
- \* Assessment?
- \* Regulation? PR

# Engaging/Dismissing Advocates

- \* Who chooses?
- \* How does the relationship terminate?
- \* How do advocates define the scope of the relationship?
- \* Compensation/Conflict of interest?

# Advocacy Meets Education

- \* Do education goals align with advocacy goals?
- \* How does advocacy culture impact educational culture?
- \* ERM and Advocacy

# Conclusion

- \* Prepare in Advance of Conflict
- \* A New Meta-Curriculum
- \* Beware of the instinct to silence others, punish viewpoint, or “keep calm.”
- \* Protect Your Educational Mission
- \* Support the Rule of Law