

PAPERCLIP COMMUNICATIONS

Welcome to Today's
PaperClip Communications
Webinar

www.Paper-Clip.com

PAPERCLIP COMMUNICATIONS

**Hate Speech vs. Free Speech:
Navigating the Boundaries**

Protect Expression and Uphold Your Academic Mission

November 15, 2017 • 2:00 – 3:30 pm ET

This presentation is copyrighted by PaperClip Communications 2017. This presentation may not be reproduced without permission from PaperClip Communications and its presenters. This presentation and all materials provided during the presentation may not be altered. This presentation is not intended as legal advice and should be considered general information only. The answers to legal questions generally hinge upon the specific facts and circumstances of an institution. Individuals with specific questions should contact their institution's legal counsel. The opinions expressed during today's event are not necessarily those of PaperClip Communications.

www.Paper-Clip.com #PaperClipTopic

PAPERCLIP COMMUNICATIONS

Presenter

- Raquel E. Aldana
- Associate Vice
Chancellor for Academic
Diversity/Professor of
Law
- University of California,
Davis
- realdana@ucdavis.edu




The opinions expressed during today's event are not necessarily those of the University of California or PaperClip Communications. No part of this presentation is legal advice.

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Presenter

- Sheila O'Rourke
- Senior Campus Counsel
- University of California, Davis
- sorourke@ucdavis.edu



The opinions expressed during today's event are not necessarily those of the University of California or PaperClip Communications. No part of this presentation is legal advice.

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Overview

- A Brave New World
 - A History of Progressive Free Speech
 - A Battleground of Rightwing Ideology and Hate Speech
 - The Debate Around Hate Speech
- Framing the Legal Landscape
- Lessons Learned & Practical Tips

Excellent reference resource:
[Free Speech on Campus](#), Chemerinsky & Gillman, 2017

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

The Difference a Half a Century Makes

- The History of College Free Speech in a Progressive Era
 - E.g., The Berkeley Free Speech Movement (1964-65)
- The Values of Free Speech Then

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Campus as Battleground

Colleges and universities are a prime target of the newly energized white supremacist movement because it sees them as bastions of liberalism and multiculturalism – institutions that are “infected” with political correctness. From the movement’s perspective, making a speech on a college campus is a highly symbolic act – equivalent to going into the belly of the beast.

Testimony of J. Richard Cohen, President, Southern Poverty Law Center before the Committee on Health, Education, Labor and Pensions, United States Senate.

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

A Brave New World

- From Charlottesville to Evropa and Vanguard America
- From Richard Spencer and Milo Yiannopoulos (“The Dangerous Faggot”)
 - *“America, at the end of the day, belongs to white men...Our bones are in the ground. We Own it.”*
Speech at Texas A&M, Richard Spencer, December 6, 2016.
- Academic as targets (e.g., George Ciccariello-Maher)

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

No Consensus on the Response

- Clash of Values ?
- Clash of Realities?
- Or Both?

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Intolerance with Intolerance

- Responses to hate/offensive speech on campus
 - From outsiders (violence)
 - Antifa
 - From students (disruptive speech, demands for disinviting speakers)
 - Richard Spencer at the University of Florida
 - Claire Gastañaga, ACLU Director, Virginia Chapter – College of William and Mary

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

The “Safe Spaces” Expectation

- Surveys of attitudes toward free speech today (FIRE)
- In the classroom (“Trigger warnings”)
- Outside the classroom
 - Flyers around campus – “Build the Wall”; “Make America White Again”; “It’s okay to be White”
 - Social Media—University of Pennsylvania’s “Mud Men.”

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

The Uniqueness of Hate Speech

- Unequal Speech/Unequal Marketplace
- The challenge of line drawing: hate vs. offensive speech
- How much do we trust the government to get it right?
- Does regulating hate speech help eradicate hate?

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

The Legal Landscape

US Constitution

- Protects Freedom of Expression (First Amendment)
 - "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
- Requires Equal Protection (14th Amendment)
 - "No State shall...deny to any person within its jurisdiction the equal protection of the laws."

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Threshold Considerations on the First Amendment

- The public vs. private distinction
 - But consider overall value of free expression
- Content regulation vs. time, place, manner restriction
- Protected v. unprotected speech
- The "heckler's veto"

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Hate Speech – Unprotected?

- Fighting words?
- Group libel?
- Harassment?
- True threat?

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Fighting Words

- Chaplinsky v. New Hampshire (US 1942)
- Cohen v. California (US 1971)
- Note: in more than 70 years, Court has not uphold a fighting words conviction.

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

True Threats

- Wars v. U.S (US 1969)
- Virginia v. Black (US 2003)

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Group Libel

- Despite early precedent, unlikely to prevail today
 - *Beaubarnais v. Illinois* (US 1952)
 - Contrast *R.A.V. v. City of St. Paul* (US 1992)
 - Enhanced penalties for "hate crimes"

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Catch 22 - Fighting Words

- Void for vagueness or overly broad
 - Eg., Gooding v. Wilson (US 1972) (declaring GA statute that forbade any person to “use to or of another, and in his presence approbrious words or abusive language, tending to cause a breach of peace.”
- Void for specificity
 - E.g., R.A.V. v. City of St. Paul (US 1992) (striking down law for singling out instances of hate – e.g., burning a cross or Nazi swastika – for drawing content-based distinctions.

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Civil Rights Statutes

Federal Laws Prohibit Discrimination

- Civil Rights Act of 1964
 - Title VI: 42 U.S.C. 2000d et seq.
 - Title VII: 42 U.S.C. 2000e et seq.
- Education Amendments of 1972
 - Title IX: 20 U.S.C. 1681 et seq.

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Prohibition on Harassment

Five-part Harassment Test:

- Unwelcome verbal or physical conduct
- Directed at an individual because of a protected status (race, sex, religion, or sexual orientation)
- Purpose or effect of interfering with work or educational environment
- Severe or pervasive standard

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Hate Speech vs. Harassment

- Hate speech: speech that offends, threatens, or insults groups based on race, color, religion, national origin, sexual orientation, disability, etc.
- Key: pervasiveness and severity

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Where is the line?

- College Experiences with Regulating Hate Speech Codes
 - By early 1990s, over 350 colleges and universities adopted hate speech codes
 - A number challenge in court – all those challenged declared unconstitutional.
 - E.G. University of Michigan 1988 Policy
- What, then, can campuses do?

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

“30 Second Stretch”

We think your health is important. Please feel free to take a 30 second break to stretch and/or reflect before we continue.

www.Paper-Clip.com

PAPERCLIP COMMUNICATIONS

Case Study: Berkeley 2017

What happened at Berkeley This Fall

- Shapiro Speech
- Free Speech Week

- \$1.4 million in security costs

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

What We Learned

- Expression or Disruption?
- Time Place and Manner Restrictions
- Academic Freedom
- Policies and Procedures are Key
- Language Does Matter
- Campus Community

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Expression or Disruption?

Colleges and universities can prohibit:

- Disruption/interference with speakers
- Destruction of property
- Actual violence
- Conduct such as carrying open flames or starting bonfires (but enforcement must be consistent)
- Wearing masks, riot gear

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Time, Place and Manner

The continuum from “Quad” to “Dorm”:

- Limitations on time of day
- Designated “public areas”
- Limitations on amplification
- Reasonable permit and fee process
- Content neutral

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Permissible Restrictions

- Limited Public Forum:
 - Some content restrictions are permissible if reasonable in light of the purpose of the venue
- Dormitories and Housing
 - Content neutral restrictions
 - Protect “tranquility and repose”

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Academic Freedom

Academic Freedom and Free Speech are often used interchangeably on campuses

Academic Freedom is subject to limits

- Peer evaluation and professional standards
- Curricular guidelines as established by faculty

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Review Policies

- Develop/review time place and manner policies for expression and events
 - Viewpoint neutral?
 - Transparent and Accessible?
 - Document criteria and decisions?
 - Consistently applied?
 - Reflect campus values?

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Language Matters

- Language does matter –viewpoint neutral
 - “public areas” rather than “free speech zones”
 - “outside speakers” rather than “controversial speakers”
- Train staff and campus representatives

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Other Policy Issues

- Student sponsorship required?
- Sufficient timelines?
- Ticketing requirements?
- Appeal process?
- Security assessment?

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Procedures for Events

- Develop/review procedures for events
 - Reservation requirements
 - Precise language
 - Responsibility of campus sponsors
 - Insurance requirements
 - Appropriate fees

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Be Prepared

- “Command” committee
- Communications to campus, community
- Alternative events
- Security planning
- 24 hour news cycle
- Police presence, enforcement discretion

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

After the Event

- Debrief, reflect on the event
 - Disciplinary considerations
 - Respond to speech with more speech
 - Review policies for areas of improvement

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Unresolved Issues

- Security Costs
- How much disruption?
- Outsider participants, trolls

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

First Amendment Values

- Importance of debate in democracy
- Campuses as “marketplace of ideas”

BUT,

- Vital to maintain inclusive campus climate
- Is more speech the best response?

www.paper-clip.com

“All ideas can be expressed, but not everything you can do with words is protected.”
- Carol Christ, Berkeley Chancellor

PAPERCLIP COMMUNICATIONS

Be Proactive


- Support Campus Dialogue
- Model Civil Discourse
- Foster an Inclusive Climate

“All ideas can be expressed, but not everything you can do with words is protected.”
- Carol Christ, Berkeley Chancellor

www.paper-clip.com


PAPERCLIP COMMUNICATIONS

Q&A Session



How Do I Ask a Question of the Panelist(s)?
Write in a question or comment anytime during the webinar by using the Q&A panel at the bottom of the screen.

For Questions that Arise After the Conference
If you have a question that you were unable to ask during the webinar, please feel free to email the presenters directly or email info@paper-clip.com.



www.paper-clip.com

PAPERCLIP COMMUNICATIONS

5 Takeaways from Today:


1. Understand campus speech and the functions of the university
2. Appreciate the complexity of free speech on campus today
3. Understand basic elements of first amendment law
4. Understand when to draw lines between free speech and harassment
5. Have a set of strategies for speakers and events on campus

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

We Want Your Feedback!

If you would like to provide suggestions for improvement and/or ideas for future event topics, please email us at info@paper-clip.com and we will send you the link to our brief online survey.



Thank you for your participation,
PaperClip Communications

www.paper-clip.com

PAPERCLIP COMMUNICATIONS

Certificate of Completion

Thank you for your participation in today's webinar. Please note that we do offer certificates of completion to our webinar participants.

If you and/or your colleagues would like a certificate, please go to the link below and complete the information requested — by selecting the webinar you are seeking a certificate for and using the password provided in your registration information — then simply click submit and your certificate will arrive shortly.

www.paperclipcertificate.com

www.paper-clip.com

PAPERCLIP COMMUNICATIONS


PaperClip Resources

Upcoming Webinar Conferences:

Dealing With Sudden Student Death on Campus Immediate & Long Term Response Strategies 2:00-3:00pm ET Wednesday, November 29, 2017 <small>A PaperClip Communications Webinar</small>	TEN HAZING CASES THAT CHANGED THE LANDSCAPE IN HIGHER EDUCATION Present Masters in Reporting, Investigating & Adjudicating Hazing Violations, Ensure Compliance & Preserve Your Institution's Reputation 2:00-3:00pm ET Tuesday, December 5, 2017 <small>A PaperClip Communications Webinar</small>	Bystander Intervention Use Current Trends in Programs & Curriculum To Assess Community Needs, Address Barriers and Ensure a Safer and More Inclusive Campus 2:00-3:00pm ET Thursday, December 7, 2017 <small>A PaperClip Communications Webinar</small>
--	--	--

Join Our Community! Sign up for our FREE weekly electronic newswire! Go to www.paper-clip.com, scroll down and click on the link at the bottom of the page.

www.Paper-Clip.com

@PaperClipComm 

facebook.com/PaperClipComm 