

HOW THE “DANGER TOURS” INFORM PROTECTION OF CONTROVERSIAL SPEECH  
IN THE MARKETPLACE

A Dissertation

by

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## ABSTRACT

Concepts are shared, considered, traded, and transmitted in institutions of higher learning. Protecting the freedom to engage in such discussions at colleges and universities ensures continued academic freedom and learning uninhibited by a state or cultural ideology.

Public higher education institutions are required to protect freedoms of speech and expression granted by the First Amendment of the U.S. Constitution and are frequent locations for avant-garde ideas and speakers expressing views unpopular with segments of the population. When the speech spurs reactions threatening campus disruption and safety, it is controversial. Such controversies can be costly to an institution's finances, reputation, and relations with constituents. This study seeks to understand how higher education institutions prepare for, manage, and protect speech and the campus when visited by a high-profile, controversial speaker.

Two controversial speakers generating such responses at U.S. colleges and universities during 2016-2018 were Milo Yiannopoulos and Richard Spencer, each embarking on self-titled campus tours including "danger" or "dangerous" in the title. Using a qualitative, multicase study design, the research explores and compares how the University of California at Berkeley and Texas A&M University prepared for, managed, and protected speech and the campus during two announced and actual visits of the "Danger Tour" speakers at each campus in 2017. Data were collected through 22 participant interviews, review of documents released by the institutions in response to state public information or request laws, and news reports.

Findings of the unique Danger Tour experiences of the universities studied are chronologically detailed and thematically viewed through the prism of First Amendment legal principles and Tierney's Framework of Organizational Culture. The data indicate that higher education institutions prioritize legal compliance and missional obligations to protect even disruptive expression on their campuses, even though fulfilling these commitments is a resource-intensive endeavor. Institutional cultural and campus safety concerns influence university responses to controversial speech and aid in sense-making of the very different outcomes of the announced controversial expression of Yiannopoulos and Spencer at the University of California at Berkeley and Spencer Texas A&M University. The study suggests higher education institutions implement early plans aligning with the campus culture and educational mission to prepare for controversies and socialize the importance of protecting academic and First Amendment freedoms.

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## NOMENCLATURE

ARRT	Activity, Resource, and Response Team, Texas A&M University
AVP	Associate Vice President
BCR	Berkeley College Republicans
FSM	Free Speech Movement at the University of California, Berkeley, 1964
IHE	Institution of Higher Education
LEAD	Center for Leadership, Engagement, Advising, & Development, Student Affairs, University of California at Berkeley
MarCom	Marketing and Communications Division or Department
RSO	Registered Student Organization
MLK	Martin Luther King, Jr. Student Union Building at University of California, Berkeley (where Yiannopoulos' was scheduled to speak)
MSC	Memorial Student Center, Texas A&M University (where Spencer spoke)
POTUS	President of the United States
PRT	Protest Response Team, University of California, Berkeley
TAMU	Texas A&M University
TPM	Time, Place, and Manner (allowable, reasonable restrictions on expression)
UC	University of California (System of higher education institutions)
UCB	University of California, Berkeley
UPD	University Police Department, Texas A&M University
UCPD	University of California Police Department
VP	Vice President
YAF	Young American's Foundation (partnered with BCR to host Coulter and resulting litigation)

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CHAPTER I  
INTRODUCTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or 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 (First Amendment, U.S. Constitution, n.d.).

**First Amendment Freedoms**

The rights granted under the First Amendment to the United States (U.S.) Constitution are foundational for the survival of a self-governing democracy. Through speech, a populace develops and demonstrates the freedom of inquiry and thought essential to maintaining independence and autonomy. The search for such liberty was a motivator for the U.S. Revolution and the creation of the country (Chemerinsky & Gillman, 2017; Franklin, 1722).

Beyond ensuring the political survival of the American form of governance, First Amendment freedoms are fundamental to epistemology. Knowledge is often formed by sharing opinions, receiving information, discussing, questioning, debating, debunking, arguing, and denouncing the views and philosophies of others. Learners require the liberty to speak and hear new, novel, unpopular, and, occasionally, even inaccurate information to acquire knowledge, discern wisdom, and form beliefs (Chemerinsky & Gillman, 2017; Strossen, 2018). Therefore, freedom of speech, which may include words, symbols, movement, or other forms of expression, is crucial to any educational endeavor, notably higher education. Further, under the U.S. Constitution, as applied to the states through the Fourteenth Amendment, public institutions must

uphold First Amendment rights (Chemerinsky & Gillman, 2017; Hutchens & Sun, 2014; Sun & McClellan, 2020).

Higher education is no stranger to expressive activities. Institutions of Higher Education (IHEs) are often the epicenter of free speech (Brock et al., 1969; Chemerinsky & Gillman, 2017; Horowitz, 1986; Lockard et al., 2019; Saul, 2010). The presence of scholars, students, and youthful exploration of philosophies foreign to one's household or neighborhood of origin fosters an environment for lively exchange and interaction. In recognizing the U.S. Constitution's First Amendment protection of speech, assembly, and association occurring in this unique ecosystem, the U.S. Supreme Court refers to higher education as a "marketplace of ideas" (*Healy v. James*, 1972 p. 180; *Keyishian v. Board of Regents*, 1967, p. 603).

Political issues and public figures increasingly serve as lightning rods attracting expression from the campus community and loosely affiliated external individuals and groups. Once an individual attains status as a divisive celebrity, the person's actions, policies, or, over time, mere existence may entice expression (i.e., Donald J. Trump, David Duke, or Mahmoud Ahmadinejad). A provocative person's actual or anticipated visit may incite disruptive, sometimes violent, responses and catch IHEs between the speaker's supporters and opponents (Bauer-Wolf, 2018; Bennett, 2020; Martin & Tecklenburg, 2020). The potential for disrupting campus operations necessitates advanced planning and preparation. However, encouraging and safely facilitating unusual or contentious speech enables IHEs to fulfill commitments to learning and maintain freedoms of inquiry, speech, and thought.

From 2016 to 2018, U.S. IHEs experienced a wave of polarizing visitors. Many universities hosted speakers championing uncomfortable, challenging, and even loathsome messages about race, gender, and politics with views unwelcome to significant portions of

student and academic communities (American Council on Education, 2018; Morse, 2018). For example, during a time of national focus and hearings to address sexual misconduct at IHEs, Milo Yiannopoulos (Yiannopoulos) emerged as a force on the college speaking scene, denying the existence of a campus rape culture. At the time of his self-titled “Dangerous Faggot Tour,” the British-born Yiannopoulos was a writer and editor for the Breitbart News organization (Kovacs, 2016; Logue, 2016; McLelland, 2019). Often invited by conservative student organizations, Yiannopoulos raised ire at events by denigrating feminism, campaigning against Title IX reforms, mocking transgender persons, establishing an educational grant program for White males, asserting freedom of speech, and challenging the use of safe spaces to protect students from disagreeable ideas (Kovacs, 2016; Logue, 2016; McLelland, 2019; Milo Yiannopoulos destroys, 2016; Yiannopoulos, 2017).

As Yiannopoulos’ tour gained momentum, Richard Spencer (Spencer) entered the fray. Spencer, President of the National Policy Institute and self-proclaimed leader of an “Alt-Right” movement, focused his speeches on promoting the expansion of White privilege, support for student groups designed for individuals of European descent, and, like Yiannopoulos, asserting constitutional protections of his divisive speech (Downs, 2016; Mangan, 2016; Thoreson, 2016; Wood, 2017). He charted a plan to speak at all major public U.S. universities expecting to have great fun on a college “danger tour” (Mangan, 2016). Although there is no evidence of an official connection between Yiannopoulos and Spencer, given the similarities of at least some of their views, period of the events, media coverage, tendency to draw counter-protestors, and related self-declared names of their expeditions to U.S. universities, this study refers to their visits to IHEs collectively as the Danger Tours.

The overt racism, chauvinism, and often abhorrent speeches of Yiannopoulos and Spencer drew complaints, demonstrations, and media attention. The Danger Tours gave rise to student unrest and counter-protests staged by internal and external groups. IHE tour stops endured racial tensions, threats to inclusive environment goals, questioning by students, alumni, and local communities, and, in some instances, physical danger to persons and campus property (Bauer-Wolf, 2018; Bellow, 2016; Heaphy, 2017; Logue, 2016). Speech sparking disruptive opposition causing a threat to operations or physical safety goes far beyond incivility. It is, in a word, controversial. Thus, the visits of Yiannopoulos and Spencer are exemplars of controversial expression at IHEs.

The Danger Tours created free speech challenges for the very institutions the U.S. Supreme Court labeled the marketplace of ideas (*Healy v. James*, 1972; *Keyishian v. Board of Regents*, 1967). Some universities attempted to balance First Amendment protections for the speakers' disruptive and unnerving expression with institutional commitments to education, inclusion, and safety. Others allowed or orchestrated obstacles to Yiannopoulos or Spencer's speeches in the form of cancellations, moving the event to remote locations, or failing to provide or permit appropriate actions of security personnel (Brown, 2018; *Padgett v. Auburn University*, 2017; Park & Lah, 2017; Texas A&M University, 2017). In responding to announced visits from the danger duo, collectively, IHEs defended lawsuits, spent millions on security, consumed countless hours of personnel time, and engaged in significant post-event damage control, repairs, and healing (Farrell, 2019; Jmabadi, 2018; *Padgett v. Auburn University*, 2017; Park & Lah, 2017; Svrluga, 2017; Thelin & Hirschy, 2009).

## Problem Statement

Given the importance of free speech, IHEs facing controversial expression from individuals like Yiannopoulos or Spencer confront a conundrum: how to protect expressive freedoms fundamental to education while also ensuring the institution's ongoing operations, campus safety, supportive student and constituency relationships, reputation, and survival. Institutional management of high-visibility expression can be costly, damage student relations, result in leadership changes, and impact future enrollment, legislative support, and alumni donations (Bohanon, 2020; Combs, 2018; Deutsch, 2016; Sun & McClellan, 2020). Many publications document institutional obligations, risks, and sensational news stories of campus expression taking an ugly turn (Glaser, 2018; Kozak-Gilroy, 2017; Rahn, 2020; Scaduto & Fourlas, 2017; Schmidt, 2017; Wong & Green, 2016). However, guidance for IHEs in approaching, preparing, managing, and protecting speech and speakers offensive to the majority comes mostly from practitioners and lawyers. Empirical research is necessary to ensure IHEs are aware of options for addressing expressive challenges. Further, researching the management of these events may help avoid the true danger to higher education, silencing speech instead of safeguarding and fostering First Amendment rights.

## Research Questions

The following overarching question guides the study at hand: **how did IHEs visited by the Danger Tour participants prepare for, manage, and protect the campus and First Amendment rights?** In addition to the primary research question, the study will explore the following:

1. What factors influence the institution's decisions and actions in responding to controversial expression?

2. How does the financial cost of protecting expression impact decision-making?
3. How does an institution weigh the rights and importance of the free exchange of ideas with the protection of the university community, especially historically underrepresented groups?

The primary research question seeks to uncover the effectiveness of approaches taken by IHEs in responding to a visit from Yiannopoulos or Spencer for the campus community and ensuring First Amendment freedoms. The first supplemental question explores IHE decision-making influences with an expectation of uncovering any legal concerns and cultural factors unique to an institution. The second question pursues documentation of financial realities involved in protecting expression and the extent to which IHEs considered fiscal matters when determining Danger Tour approaches. Finally, the last question invites reflection on how IHEs balance security, inclusion, and freedom of speech values.

The Danger Tour duo no longer threatens to descend on IHEs. Interest in Yiannopoulos and Spencer declined as the truly harmful nature of their views became very real and repugnant (Hersher, 2017; Svrluga, 2018). These two were not the first, nor will they be the last provocateurs stoking hate and discord on campus. However, their brief period of fame involved obnoxious messages, widespread media coverage, several IHEs, and varied institutional responses to their visits. Therefore, Yiannopoulos and Spencer present free speech challenges that facilitate comparing responses.

Although the Danger Tours are dormant, their events leave a legacy of unanswered questions regarding appropriate and effective approaches for protecting, preparing for, and managing controversial speech. These questions call for study and analysis. In that way, the IHE experiences examined below offer more than a few headlines and expenditure of resources

related to an unpopular speaker. Documenting and increasing knowledge of IHE responses to Danger Tour challenges by examining the circumstances, legal risks and obligations, and cultural influences may aid other institutions in charting a path of effective protection of freedom of speech for future expressive controversies.

### **Purpose of Study**

The purpose of this study is to examine public IHE responses to, preparation for, and protection of controversial expression on campus. As demonstrated by the Danger Tours, when expressive activities involve views distasteful to portions of the institution's constituents, campus tensions mount (Heaphy, 2017; Park & Lah, 2017). These high-stakes events present IHEs with risks to legal liability, safety, institutional values, support for students and others that may view the speech as harassing and hurtful, and ongoing educational operations. Review and analysis of response to the Danger Tour can guide other IHEs in designing approaches to controversial expression that protect both the campus and First Amendment rights.

Unfortunately, even though well documented by the media, there is little empirical research holistically examining effective IHE management of controversial speakers. Understandably, interest in these matters remains high. The information void is filled primarily through news accounts, opinion articles, legal analysis, and reports authored by journalists, legal scholars, and law enforcement organizations.

With few exceptions, IHE responses to the pressures that Yiannopoulos or Spencer's events posed are detailed through journalism or practitioner opinion articles. Some institutions denied or attempted to deny access, established event crisis teams, staffed the venue and grounds with security, partnered with state and local law enforcement, charged organizers a security fee, opened large and small venues for alternate speech, educated students regarding First

Amendment rights, ignored or supported protests, and, in almost all cases, delivered communications to distance the administration from the provocative speakers (‘Aggies United event 2016; Associated Press, 2018; Heaphy, 2017; Jmabadi, 2018; Lee, Shyamsundar, & Lynn, 2017; Lockard et al., 2019; Mangan, 2018; Ryan, 2017; Scaduto & Furlas, 2017; Thelen & Robinson, 2019).

The lack of empirical research leaves an absence of guidance for managing high-profile, contentious expressive events. The dearth of scholarship calls for research and analysis to aid IHE leaders in preparing for controversy while ensuring freedom of inquiry, thought, and speech. An in-depth examination of approaches, motivations, and outcomes of IHE decisions is necessary to support sensemaking and provide insights that may inform other institutions addressing similar expressive events. As previously mentioned, the purpose of this study is to examine IHE responses to, preparation for, and protection of controversial expression on campus.

### **Theoretical Frameworks**

The study employs First Amendment jurisprudence and Tierney’s “Framework of Organizational Culture” to examine potential factors influencing Danger Tour IHE decision-making and event outcomes (Tierney, 2008, p. 30). While the literature review below provides an extensive discussion of the study’s frameworks, the following summary contextualizes the study’s scaffolding.

#### *First Amendment Principles*

A legal lens is helpful to studies of IHE responses to controversial expression because the First Amendment to the U.S. Constitution protects freedom of speech. As a part of the Bill of Rights, the First Amendment speech freedoms address rights, responsibilities, and potential

liabilities for IHEs. Several free speech principles are relevant to understanding the legal impact on IHE management of the Danger Tours:

- 1) Public versus private institutions. Private colleges or universities may, if their policies allow, deny a speaker access to campus. As an arm of the government, public institutions (coincidentally were the primary targets of the Danger Tours) must uphold all rights granted by the U.S. Constitution and, therefore, have less flexibility to limit speech.
- 2) Protected Speech. Scholars, students, and other constituencies may raise questions of whether gender-centric and racist speech is constitutionally protected. Per the U.S. Supreme Court, the constitution does not shield certain speech, including defamation, obscenity, harassment, fighting words, true threats, and expression that incites impending lawlessness (*U.S. v. Alvarez*, 2012).
- 3) Restrictions on protected expression. Public educational institutions may regulate speech content only when the institution has a compelling interest in controlling the speech. Time, place, and manner restrictions are permissible when limited to meeting a significant governmental need and when other options for expression are available (*Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983).
- 4) Forum analysis. The restrictions available to be placed on speech depend upon the location where the expression occurs. The Supreme Court identifies three types of forums: traditional public, designated or limited, and non-public forums. Governmental bodies, such as public IHEs, have less flexibility to regulate speech in a traditional public forum and the most control over expression in non-public forums like offices. A college or university can partition its campus to create limited or

designated public forums by assigning areas for speech only by a class of persons or for specific topics (*Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983).

Designated or limited forums are likely the locations IHEs assigned for Yiannopoulos' or Spencer's speech.

- 5) Heckler's veto. Even when a history of disruptive activity at previous events follows a speaker, as in Yiannopoulos and Spencer's case, IHEs cannot prevent expression because a negative response to the message is anticipated. To do so is tantamount to allowing a heckler to shut down a speech. A heckler's veto is a prior restraint that suppresses or censors First Amendment rights (Chemerinsky & Gillman, 2017; Lasson, 2020).

### *Institutional Culture*

Each IHE has an ethos that is unique to the organization and comprises internal and external factors. Tierney organizes these aspects of an institution into a “framework of organizational culture” to include elements of environment, mission, socialization, information, strategy, and leadership (1988, p. 8; 2008, p. 30).

Tierney's framework contributes to the study in multiple ways. Examining the interplay of all the potential factors reveals much about organizational culture and how it influenced approaches to Yiannopoulos or Spencer's speech. Additionally, any one of the cultural factors may independently motivate a response or output regarding Yiannopoulos or Spencer's visit. For example, the region's political climate is an environmental cultural factor. It may be the primary motivator for allowing or denying controversial expression in some instances.

To ensure continued “transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society,” IHEs must guard free speech rights (American

Association of University Professors, 1969). When the speech or speaker is offensive, doing so presents many, sometimes competing, challenges for IHEs. Using a legal and institutional culture framework, this study examines IHE approaches addressing the controversial Danger Tour visits and considers effective preparation and management measures. The following section details literature that grounds this study and provides a detailed discussion of the conceptual/theoretical frameworks used to make sense of the data and analysis.

## CHAPTER II

### LITERATURE REVIEW

#### **Introduction**

Protecting provocative speech poses significant challenges for public IHEs. Although Yiannopoulos and Spencer left the college speaking circuit, IHEs continue to experience growing campus controversies (Gallup-Knight Foundation, 2020; Giersch, 2019). Successful navigation of a controversial expressive event involves decisions and actions related to risk management, safety, support for students and others who see the speech as harassing and hurtful, protecting rights, avoiding litigation, and ensuring continued educational operations. As mentioned above, limited empirical scholarly research is available to guide institutions in traversing these treacherous waters. This review samples three law review articles, three studies examining the impact of campus expression on IHE leadership, and a feminist critique of narratives surrounding free speech and campus speech incidents. Following the research studies, First Amendment legal doctrines and institutional culture models are discussed as factors that may influence expressive activity decisions of IHEs.

#### **Legal Scholarship Lens**

Legal rights of free speech originate from the U.S. Constitution. Most scholarship regarding unpopular expression at IHEs is from legal disciplines. These works are usually authored by attorneys and law students considering, lamenting, or calling for a change in First Amendment principles as applied by governmental entities or the courts (Lockard et al., 2019) (for examples, see Calvert, 2018; Ceci & Williams, 2018; Chemerinsky & Gillman, 2017;

DuMont, 2016; Hutchens & Sun, 2014; Juhan, 2012; Lasson, 2020; Strossen, 1990, 2018; Sun & McClellan, 2020; Tsesis, 2017).

For instance, three recent law review articles consider current campus expressive issues, including the constitutional implications of charging security costs for controversial speakers, the legitimacy of student shout-downs of unpopular speakers, and the importance of exchanging opposing or diverse views at IHEs (Magarian, 2019; Roman, 2020; Whittington, 2019). Roman analyzes and compares jurisprudence addressing costs of speech and whether governmental entities may shift financial burdens of expression. Under the case law Roman describes, an IHE may not charge a student organization more for an event because the speaker is expected to draw controversy or unrest. Instead, the article argues that IHEs must engage in advanced budget allocations and security planning to protect all expression (Roman, 2020).

Magarian considers the application of First Amendment doctrines to students shouting down campus speakers, using the example of Charles Murray at Middlebury College in 2017 (Magarian, 2019). The article asserts IHEs have a duty to select speakers with a wide range of views, provide the campus community an opportunity to participate in the selection of speakers, and invite debate or protest. While confirming shout-downs violate the expressive rights of a speaker, the author also argues such protests are legitimate when an IHE has not involved student voices in the process (Magarian, 2019). Whittington also refers to the Middlebury College event when exploring the symbiotic nature of education and expressive freedoms (2019). Finding the Murray shout down an embarrassment to higher education, the author advocates establishing student expectations for debate in advance and ensuring an intellectually inclusive campus. Whittington concludes that IHEs should embrace deliberate dialogues of diverse viewpoints (2019).

## **Research on Controversial Campus Expression**

A legal lens does not address many of the factors facing IHEs when in the midst of what is or may become a campus crisis related to freedom of speech. In this void, a few scholars go beyond the law to consider the thorny issues and impacts of being the site of a highly visible expressive activity.

### *IHE Leadership Response*

Farrell conducted a multisite case study of presidential approaches to understand highly-visible free speech incidents at four private IHEs from 2014 to 2017. The sites and speakers include David Duke at Dillard University, Charles Murray at Middlebury College, Ben Carson at Alma College, and, from the Danger Tour, Milo Yiannopoulos at DePaul University (Farrell, 2019).

While focused primarily on IHE executive reaction, action, and leadership, Farrell's research is relevant for IHEs preparing for and managing speech events. Specifically, Farrell's findings demonstrate expressive controversies involve risks to IHEs, including safety, institutional values, school reputation, and the continued employment of the administrators. Safety risks required careful advanced planning and tight execution of event strategy. Risks to institutional values and reputation were managed by invoking aspects of the organization's mission and culture to design and communicate about the incidents (Farrell, 2019).

Every president and even some vice presidents Farrell interviewed understood the events' outcome might impact the participant's job. Regardless, the leaders participating in the study forged forward, determining the institution's approach, preparation, communications, and dealing with the fallout from the decisions by relying on a combination of institutional and

inner/personal values (Farrell, 2019). Based on his research, Farrell recommends IHE leaders confronting an expressive incident be present, remain flexible and show emotion. Taking immediate control of messaging and framing the situation in a manner aligned with the institutional mission and values is a critical early step. Equally important is the need for the leader to evolve and change course as necessary as events unfold. The research also suggests it is essential for leaders to share personal reactions to the controversy and demonstrate empathy for others (Farrell, 2019).

On a final note, Farrell found “[p]ractice and preparation for what can happen during a free speech controversy are important, but they may not be enough” (2019, p. 195). Each institution believed factors leading to and repercussions of the 2016 presidential election's outcome impacted the speaker, students, and external parties. For example, Farrell asserts preventing unrest caused by external agitators at Dillard University would have taken “a police presence large enough to make the school appear as if it was under martial law” (2019, p. 196). Farrell’s study concludes leaders must maintain a pulse of the external political environment because even IHEs with a great history of expression and activism are not insulated from, and must prepare for, actions originating from events, controversies, and clashes occurring beyond the campus (Farrell, 2019).

#### *Impact of Student Activist Speech on IHE Leaders*

Smith researched administrative preparation and strategies for responding to student activism with a phenomenological study of the experiences of six Texas IHE administrators in addressing student expression. Pseudonyms assigned to each participant and institution obscure events and motivations for the activism described. However, none of the incidents appear to be related to controversial Danger Tour-type speakers (Smith, 2020).

Smith concludes the participant administrators were well prepared to address student speech, including protests, demonstrations, and viral electronic communications. Administrator strategies involved assessing the level or degree of likely activism, responding with empathy, and educating students about First Amendment rights (Smith, 2020). As with the executives in Farrell's study, Smith's participants employed institutional values when addressing an expressive controversy. However, perhaps because most were not chief executives, the administrators in Smith's study relied significantly on internal policies, state law, legislative guidance, and discussions with peers at other institutions (Smith, 2020).

In another parallel to Farrell's study, Smith highlights pressures, safety risks, and complications that external parties cause. Smith found it critical for IHEs to be aware of outside organizations that may use the campus as a site for exercising First Amendment rights. Further, participants recommended preparing students for such groups by giving student leaders advanced notice of expected external activism, providing education on First Amendment Rights of outside individuals and groups, offering counseling to those dealing with challenging viewpoints, and facilitating counter-speech events or safe space locations (Smith, 2020).

#### *Auburn's Approach to Spencer*

Auburn University was the site of not just one but both Danger Tour speakers. Two Auburn administrators published a case study detailing the university's resolution of conflicting institutional values presented by Richard Spencer's 2017 announced campus visit (Clayton & Huff, 2018). Yiannopoulos visited Auburn in fall 2016, a semester before Spencer's announced visit. The university believed it successfully negotiated the controversy related to Yiannopoulos by adopting a posture of support for freedom of speech while engaging in proactive and ongoing

communications with student leadership to allow space for discussing opposition. Per Clayton and Huff (2018), Auburn planned to apply this same approach to Spencer's event.

However, since Yiannopoulos' visit, the political climate around racism escalated. After President Trump's inauguration and announced travel ban from predominantly Muslim countries, an unofficial Auburn White Student Union became active at Auburn. Social media posts of the White Student Union and Spencer's organization quickly spread the news of the event, which generated many internal and external complaints.

The university established a working group of administrators to develop plans for Spencer's speech. The team of administrators relied on a "values-responsibility based integrated management strategy" to plan and make decisions (Clayton & Huff, 2018, p. 8). With this strategy, the group considered responsive options in light of the institution's core values, including (1) free speech, (2) diversity and inclusion, (3) civility and community, (4) collaboration and teamwork, and (5) shared governance. The workgroup answered complaints, attended multiple faculty and student organization meetings to respond to concerns, crafted institutional messages for campus and media audiences, arranged additional event security support with law enforcement agencies, facilitated supplemental programs to provide alternate speech options for students, and monitored social media (Clayton & Huff, 2018).

Throughout this experience, the workgroup obtained input from students, faculty groups, and campus police. Based on that feedback, when tensions mounted and Auburn received credible threats of impending violence, the leadership team canceled Spencer's visit, citing safety and institutional values concerns. The authors state the team understood its decision would likely draw a lawsuit, and indeed it did. A federal judge found Auburn produced no evidence of imminent lawless action and enjoined Auburn from preventing the event (Clayton & Huff, 2018;

*Padgett v. Auburn University*, 2017). Spencer spoke as scheduled. Clayton and Huff share no further details about the event other than securing the presence of additional law enforcement for the event (2018).

Auburn determined security risks: inclusion, civility, collaboration, and shared teamwork outweighed protecting free speech. Notably, when balancing all the interests, a federal judge made it clear that legally, the First Amendment tips the scale.

### *Reframing the Freedom to Speak*

McLelland challenges current constructions of liberty and speech freedoms at IHEs through a feminist critique of Lukianoff and Haidt's book *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure* (Lukianoff & Haidt, 2018; McLelland, 2019). Lukianoff and Haidt discuss an increasing tendency for students to reject and prevent speech perceived as detrimental to emotional safety. The *Coddling* authors believe student emotional fragility is an outcome of parental and IHE overprotection. The result is an unwillingness of students to explore or be exposed to ideas that may be uncomfortable or confrontational. Catering to this change in student culture, instead of teaching students to deal with challenging concepts through inquiry and debate, IHEs perpetuate a protectionist perspective by offering trigger warnings, safe spaces, and occasionally violating the First Amendment rights of those with unpopular views (Lukianoff & Haidt, 2015, 2018; McLelland, 2019).

McLelland asserts Lukianoff and Haidt's book is a reductionist, "inherently oppressive" view (2019, p. 162). Viewed through the feminist political frame of Nancy Hirschman, the dominant discourse around freedom at IHEs, which the *Coddling* authors articulate, serves to perpetuate privileged White male dominance and marginalizes those of a different gender, race,

or class. McClellan argues that IHEs should include a feminist perspective in civic education. Doing so will move institutions and students from viewing freedom of speech as an individual autonomous right toward a more holistic frame where one is accountable to others for the content of one's speech (McLelland, 2019).

The philosophical perspectives of freedom in the *Coddling* critique are beyond the scope of the current study. However, sourced by other publications, McLelland includes a detailed description and analysis of four controversial IHE speech incidents relied upon by the *Coddling* authors, including (1) Professor Christakis' Halloween email at Yale University (2) the shutdown of Charles Murray's speech at Middlebury College (3) Professor Weinstein's ouster and brief student occupation of offices at Evergreen State College and (4) Danger Tour speaker Milo Yiannopoulos' thwarted speech at UC Berkeley (2019). The accounts of these contentious events provide a helpful background for the current study.

In summary, research of recent activism, expression, and First Amendment rights exercised on campuses demonstrates risks involved to safety, reputation, student relations, institutional values, potential litigation, and even the continued employment of leadership. Common themes in the scholarship discussed above are that IHEs addressing controversial expression should (1) consider safety as the paramount concern, (2) rely on institutional mission, values, and culture to educate, plan, and defend actions, and (3) monitor and prepare for potential external individuals and groups reacting to expression and exacerbating a speech situation.

## **Theoretical Frameworks**

### *First Amendment Principles*

The legal framework of freedom of speech in IHEs is necessary because the study examines IHE responses to, preparation for, and protection of controversial expression on

campus. For public IHEs, the most significant and mandatory authority on speech rights, institutional obligations, and regulation of speech on public property is found in the First Amendment to the U.S. Constitution and U.S. Supreme Court (Court) opinions interpreting this provision.

The drafters of the First Amendment were privileged, White, straight, males, and rebels. The privilege of those crafting the U.S. Constitution and Bill of Rights, which includes the First Amendment, is evidenced, if for no other reason, in their literacy. For many years, the First Amendment was interpreted to protect Caucasian male citizens' rights through the Alien and Sedition Acts, regulation of abolitionist speech, the Espionage Acts of World War I, and more (Chemerinsky & Gillman, 2017; Farrell, 2019; Scott, 2006). Some argue speech protections continue to be inequitably applied in the present day, serving primarily as a shield for the hateful expression of White individuals (Bindewald & Hawkins, 2020; Ross, 2016). Further, research increasingly demonstrates psychological and even physical reactions an individual may have to hateful and racist speech, calling into question whether the Constitution should protect such expression (Ceci & Williams, 2018; Strossen, 2018; Aggie Agora, 2017).

Therefore, tensions exist between those interpreting the First Amendment as providing an absolute right to all expression and others imbuing a moral responsibility into the application of speech protection (Lasson, 2020; McLelland, 2019; Strossen, 2018). Public IHEs, however, do not have the luxury of basing First Amendment decisions on textual, postmodern, or other constitutional interpretations. Legal obligations necessitate IHEs rely on the precedential interpretations of the judiciary when addressing matters of expression (Chemerinsky & Gillman, 2017). Thus, recognizing that no law, neither in text nor enforcement, is perfect, this literature review discusses First Amendment interpretations articulated by U.S. Courts as the relevant

authorities for IHE expression management. In recent years, some states enacted laws related to campus speech, generally with the intent of ensuring broad protection of First Amendment rights (Sun & McClellan, 2020). While an IHE must be vigilant in monitoring and complying with all legal authorities within the jurisdiction, analysis of state legislation is beyond the scope of this study.

### **Application of First Amendment to Educational Institutions**

Educational environments must maintain a degree of order to ensure instruction. Student rights to expression in such a structure were suspect until the Court decided *Tinker v. Des Moines Independent School District* in 1969. Mary Beth and John Tinker wore black armbands to public grade school in silent, symbolic speech protesting the Vietnam War. Following a school board policy hastily enacted two days before, the school suspended the siblings when each refused to remove the armband. The Tinkers sued. Ultimately, the Court determined when speech, including the symbolic speech of the Tinkers, does not materially interfere with education, it is permissible and protected by the First Amendment. The Court's decision famously stated students and teachers do not "shed their rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines Indep. Cmty. School Dist.*, 1969, p. 506).

A few years later, *Healy v. James* extinguished any doubt of whether the *Tinker* decision extended to higher education (1972). In *Healy*, a public college denied student organization status to the Students for Democratic Society (SDS) due to the president's concern of potential unrest caused by student ties to the national SDS. In a decision remanding the case for further factual review, the Court clarified, "[S]tate colleges and universities are not enclaves immune from the sweep of the First Amendment" (*Healy v. James*, 1972, p. 180). Further, the Court

referred to IHEs as “the marketplace of ideas,” acknowledging the need for orderly campus operations and vigilant protections of speech, association, and academic freedom (*Healy v. James*, 1972, p. 180).

### **Public Versus Private Institutions**

Unless mandated by state law, a private institution is not required to allow nor enforce First Amendment rights. Private colleges and universities often adopt expressive freedoms through policies deemed contracts with students. However, outside individuals denied the right to speak usually have no standing to bring a lawsuit (Bird et al., 2006; Chemerinsky & Gillman, 2017; Hutchens & Sun, 2014). Thus, a private IHE has greater flexibility to preclude speech, as Yiannopoulos experienced through event cancellations at Villanova University, Miami University, and New York University (Kanno-Youngs, 2021; Kovacs, 2016; Lim, 2016; Nahl, 2021).

A public IHE, on the other hand, must ensure freedom of speech. The Fourteenth Amendment to the U.S. Constitution applied governmental obligations to protect privileges granted in the Bill of Rights to each state. A college or university created or adopted by a state legislature is an arm of the state government mandated to protect expressive rights (Farrell, 2019; Hutchens & Sun, 2014). This study focuses on public IHEs because such institutions must protect speech. Ensuring the protection of speech rights remains a delicate balance for the public IHE. The privileges of a speaker to engage in expression are weighed against the institution’s obligations to the campus and as a governmental entity (Axmather & Sun, 2014).

### **Protected and Unprotected Expression**

The constitution generally protects words and symbols conveying a speaker's thoughts and opinions (Bird et al., 2006). However, as a high school student learned when the Court

upheld his suspension for speech encouraging illegal drug use through holding a banner during an off-campus event with the words “bong hits for Jesus,” expressive rights are not absolute (*Morse v. Frederick*, 2007).

The government may restrict speech falling outside the bounds of the First Amendment. In *Alvarez*, the Court decided the Stolen Valor Act, which punished individuals claiming bogus military honors, infringed on First Amendment rights (2012). In determining whether the content of false, but not fraudulent, speech is constitutionally protected, the Court summarized speech the First Amendment does not protect: defamation, obscenity, fighting words, incitement of impending lawlessness, true threats, fraud, and child pornography (*Alvarez*, 2012).

Some scholars assert ugly, gender centric, or racist speech, like that spoken during the Danger Tours, amounts to harassment, hate speech, fighting words, true threats, or incitement of violence, and thus IHEs may regulate or restrict the expression (Lukianoff & Haidt, 2015; Papandrea, 2017; Ramlo, 2020; Tsesis, 2017). However, for the most part, the Court’s precedents do not support this argument.

### *Harassment*

When not rising to the level of a criminal act directed at a specific individual to annoy or create fear, harassment usually takes the form of a hostile environment. Per the Court, in an educational context, harassment is severe, persistent, and objectively offensive unwelcome conduct interfering with access to instruction, learning, or extracurricular opportunities (*Davis v. Monroe County Bd. of Ed.*, 1999). *Davis* was an action brought under Title IX of the Educational Amendments of 1972 against a school board on behalf of a 5<sup>th</sup>-grade female student, Davis. The young student experienced relentless, sexually aggressive comments and behavior from a fellow

male student. Allegedly, teachers and an administrator ignored her pleas (*Davis v. Monroe County Bd. of Ed.*, 1999).

Although dismissed at the trial and appellate level, the Court allowed Davis' Title IX claim. The Court found an educational institution may be liable for actions of non-employees when it has knowledge of, and is deliberately indifferent to harassment (*Davis v. Monroe County Bd. of Ed.*, 1999). *Davis* set a high bar for harassment, requiring an institution to have knowledge of all three elements: severity, pervasiveness, *and* offensiveness.

The U.S. Department of Education lowered the *Davis* standard in a Dear Colleague Letter addressing harassment and bullying. The communication asserted harassment was conduct *either* "severe, pervasive, *or* persistent" (Ali, 2010). However, the agency maintained the Court's requirement that harassing behavior must "interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school" (Ali, 2010).

Applying these authorities to the speech of Yiannopoulos or Spencer indicates Danger Tour's expression would be unlikely to meet either the judicial or administrative agency standard of harassment. Offensive words spoken at a one-time optional attendance event may be severe but are unlikely either pervasive or persistent. In defense of a harassment claim, one might argue that those electing to attend welcomed the speech instead of avoiding offense by staying away. Further, it would be difficult to demonstrate one extracurricular speech by Yiannopoulos or Spencer interfered with educational opportunities.

### *Hate Speech*

Hate speech refers to words or actions considered rude, disparaging to individuals or classes of groups, or otherwise offensive and contrary to the majority views. Many believe hate speech is socially inappropriate, and IHEs should prevent or punish the expression (Gallup-

Knight Foundation, 2020). However, the very purpose of the First Amendment is to ensure the voices of the minority are not suppressed. Hateful or offensive speech cannot be restricted or regulated simply because of its content (*R.A.V. v. City of St. Paul*, 1992).

The Court considered the following potentially hateful expressions fully protected by the First Amendment: burning the American flag, allowing the Confederate flag image on a governmentally issued license plate, trademarking “The Slants” as a name for a band comprised of Asian individuals, and picket signs outside a U.S. Marine’s funeral service denigrating soldiers, homosexuals, the Pope, and priests, (*Matal v. Tam*, 2017; *Snyder v. Phelps*, 2011; *Texas v. Johnson*, 1989; *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 2015). In light of these examples, even Yiannopoulos and Spencer's most odious speech is unlikely to be regulated or restricted because of potentially hate-filled content or viewpoints.

### *Fighting Words*

In 1942, the Court articulated an exception to the First Amendment for fighting words (Sun & McClellan, 2020). Chaplinsky distributed Jehovah’s Witness literature on a street corner, much to the frustration of local citizens. A disruption ensued, and during his removal, Chaplinsky called the marshal a racketeer and fascist with his use of profanity disputed. Charged and convicted of violating a law prohibiting an “offensive, derisive, or annoying word to any other person” in a public place, Chaplinsky asserted the statute infringed on First Amendment rights (*Chaplinsky v. New Hampshire*, 1942). In upholding the conviction, the Court disagreed and found the government could prohibit fighting words likely to cause an immediate breach of the peace (*Chaplinsky v. New Hampshire*, 1942).

Since *Chaplinsky*, the fighting words exception to the First Amendment is somewhat of a unicorn. The Court consistently narrowed the doctrine and overturned every subsequent fighting

words conviction it reviewed (Strossen, 1990, 2018). Over the years, the Court refined the fighting words exception as follows:

- 1) The government may only regulate fighting words directed to a specific individual likely to respond with a physical reaction (*Cohen v. California*, 1971; Sun & McClellan, 2020). *Cohen* involved the reversal of a breach of peace conviction for wearing a jacket emblazoned with the words “Fuck the draft” (1971).
- 2) Fighting words cannot be criminalized based on the class of the intended recipient (*R.A.V. v. City of St. Paul*, 1992). *R.A.V.* reversed a bias-motivated conviction for disorderly conduct by a teen burning a cross on the lawn of a Black family. The Court found the statute unconstitutional because it punished expression only when intended to offend because of race, religion, color, or gender. However, there was no penalty for equally offensive or peace-breaching speech targeted at other classes (*R.A.V. v. City of St. Paul*, 1992).
- 3) The context of the expression may change whether it is protected (*Virginia v. Black*, 2003). *Black* involved three individuals found guilty of intent to intimidate by burning crosses during a Ku Klux Klan event. The Court overturned the convictions because cross burnings at a rally are likely symbolic speech. Under other circumstances, per the Court, a cross burning may be fighting words or a true threat subject to governmental regulation and criminalization (*Black*, 2003).

### *True Threats*

As the Court opined in *Black*, warnings of an action directed at an individual or group with the intent to harm and place the recipient in fear of physical injury or death are not constitutionally protected (2003). Mere hyperbolic comments, such as “if they ever make me

carry a rifle, the first man I want to get in my sights is L.B.J.” asserted at a political rally, remain shielded by the constitution (*Watts v. U.S.*, 1969). Only direct communication forecasting a danger upon which the speaker intends to act are true threats subject to a governmental restriction (Sun & McClellan, 2020).

### *Inciting Violence*

As a corollary to threats of harm and fighting words, speech intentionally provoking near-immediate lawless behavior is not constitutionally protected, per the Court’s holding in *Brandenburg v. Ohio* (1969). In another Klan case, during a televised rally, Brandenburg warned of revenge if leaders of the three branches of the U.S. government continued to suppress Caucasians. The Klansman described plans to march on Washington and showed films of cross burnings. In reversing Brandenburg’s conviction for advocating violence, the Court found his expression merely called for future violence, as opposed to initiating imminent lawless action (1969).

Like the expression prosecuted in *Chaplinsky, R.A.V., Cohen, Black, and Brandenburg*, the Danger Tours included controversial, offensive, and racist expressions that may cause fear, anger, or motivate others to violence. However, to fall outside of First Amendment protection, Yiannopoulos or Spencer must threaten or advocate *immediate* violence against a specific group or person that is likely to happen. Danger Tour speaker Milo Yiannopoulos once isolated a student by name and image for public ridicule (McLelland, 2019). When directed at an individual present in the audience, such speech may rise to the level of unprotected fighting words. Further, some argue that Yiannopoulos’ speech mocking a specific person met the standard of harassment (Chu, 2017). Regardless of whether the IHE could have terminated

Yiannopoulos' speech at the time, First Amendment jurisprudence does not indicate past speech may be relied upon to thwart future expression.

## **Permissible Regulation of Expression**

### *Time, Place, and Manner*

An IHE, as an arm of the government, may place few constraints on protected speech. However, like all governing bodies, an IHE has multiple responsibilities. For example, in addition to ensuring First Amendment rights, an IHE must maintain the delivery of services and the population's health, safety, and welfare. When the government has compelling or important interests, it may impose content-neutral reasonable time, place, and manner (TPM). However, to ensure speech is not unduly burdened, suppressed, or censored, limits on speech can be no broader than necessary to address the government's interests and must leave open other avenues for expression (Chemerinsky & Gillman, 2017; *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983; Sun & McClellan, 2020).

An illustration of authorized TPM regulations is an IHE determining speech using a bullhorn (manner) is not allowed in front of the windows of a classroom (place) while classes are in session (time). Such a policy may meet an IHE's important interests in ensuring educational instruction is not interrupted. (A public school has an interest in orderly education operations (*Tinker v. Des Moines Indep. Cmty. School Dist.*, 1969; *Healy v. James*, 1972)). In the example, restrictions are narrowly drawn to fulfill the IHE's interest, in that bull horns are not precluded at all times, and the expression in the location is only limited if it is too loud. TPM limitation must apply regardless of whether the campus community favored the topic, speaker, or views expressed. Further, the university may design course schedules to ensure alternate expression

availability. For example, if classes do not meet between noon and 1:00 p.m., amplified sound is available in the area during that limited period.

### *Forum Analysis*

Governmental restrictions on speech are dependent on where the expression occurs. In *Perry*, the issue was access to teacher mailboxes (1983). A union had exclusive rights to access the inter-school mail system through a collective bargaining agreement. A second union without such privilege sued, claiming a right to use the mail system under the First Amendment. The Court detailed three government property classifications for expression in finding that the mail system was not a public forum for unregulated expression (*Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983).

**Public forum.** Areas traditionally open to the public for expression, such as parks, sidewalks, or campus grounds, are public forums. An IHE may only limit speech content in a public forum when the institution has a compelling reason for doing so, such as an immediate health and safety concern. Any speech content regulation must be narrowly tailored to meet the critical concern and provide other avenues for expression (*Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983). By default, an IHE is only rarely able to support content-based restrictions in a traditional public forum (Sun & McClellan, 2020). Because they are not directed at speech content, TPM restrictions are available in public forums when the IHE has a significant or important interest (*Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983).

**Designated or limited public forums.** To meet an important interest, an IHE may restrict the content of expression to a particular topic or limit speech rights to a group of individuals in a designated or limited forum (*Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983). A hall reserved for a Danger Tour event may be a limited public forum. For the

scheduled period, Yiannopoulos or Spencer may use constitutionally protected words or symbols to share a message with the audience. No other individual has a right to interfere with the speaker. A designated public forum might be a student townhall advertised as a space to debate whether the college or university should permit a Danger Tour speaker. Students may assert pro or anti-Yiannopoulos/Spencer opinions. However, as the event is limited in topic and attendance, a concerned alumnus has no right to be present. Nor may an attendee turn the subject to another issue such as abortion.

**Non-public forums.** An IHE may reserve spaces free from expressive activity, such as business offices or campus residences (Sun & McClellan, 2020).

### **Heckler's Veto/Prior Restraint**

The government cannot base decisions on the fear of disorder or disagreement with the philosophy of those exercising speech rights. Doing so is an unconstitutional suppression of First Amendment rights called a heckler's veto (Lasson, 2020; Sun & McClellan, 2020). The history of judicial application and free speech principles may be spotty concerning minority voices. Some contend it continues to serve as a protection of the expression of privileged Caucasians (Bindewald & Hawkins, 2020; Chemerinsky & Gillman, 2017; Farrell, 2019; Scott, 2006; McLelland, 2019; Ross, 2016; Strossen, 2018). However, the plain language of the First Amendment indicates it applies to all, not merely to those in power, groups with greater numbers, or individuals shouting loudest. Under principles of equality, neither the government nor the audience may operate as a heckler vetoing expression through censoring or denying the speaker regardless of a speaker's views. Silencing speech is only possible with actual evidence of imminent, not merely expected, disruption. When an IHE authority prevents speech in

anticipation of a hostile, or potentially violent reaction, it is an impermissible prior restraint (Hutchens & Sun, 2014).

The *Tinker* and *Healy* cases demonstrate attempts of educational institutions to restrict speech because of potential negative consequences. Whether punishing the wearing of an armband or denying student organization status, the Court noted: “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression” (*Tinker v. Des Moines Indep. Cmty. School Dist.*, 1969, p. 508; *Healy v. James*, 1972, p. 191, quoting *Tinker*).

Another form of a heckler’s veto is to burden speech with over regulation, licensing, or security costs. In *Forsyth County v. The Nationalist Movement*, the government charged a parade fee with the rate dependent upon the expected cost of maintaining order during the event (1992). The Court determined the policy taxed speech content and served as a heckler’s veto (*Forsyth County v. The Nationalist Movement*, 1992). Even though a history of disruptive activity at previous events followed the danger duo, canceling, denying, or charging security fees on speculation of repeat violence is likely an unconstitutional prior restraint of speech.

### **Fight Speech with More Speech**

“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” (*Whitney v. California*, 1927, Brandeis, L *concurring*, p. 377). *Whitney* upheld a communist party member's conviction under a criminal syndication statute and famously noted that First Amendment rights are not absolute. *Whitney* (1927) was overruled in the 1960s. However, as recently as the *U.S. v. Alvarez* decision, the Court continued to comment that the cure for obnoxious or false speech is an articulation of the opposing view (2012). Following the

Court, several scholars and practitioners recommend fighting controversial speech with more speech (Morse, 2018; Rahn, 2020; Ross & Kavalir, 2018; Scaduto & Furlas, 2017; Strossen, 2018).

Taken together, the judicial doctrines indicate a public IHE must permit and protect controversial speech in many campus locations, even when portions of the population consider the expression loathsome and hateful. An institution may regulate the speech with reasonable TPM when the restrictions serve a significant or important interest, are narrowly tailored to address that interest, and other avenues for speech remain available. When Danger Tour speakers secured an invitation or location for a campus event, an IHE was hard-pressed to find a constitutionally authorized avenue to prevent the expression.

### **Institutional Culture**

The culture of an organization or institution includes demonstrable facts, rituals, statements, and practices as well as intangible folklore, myths, values, and beliefs (Kezar & Eckel, 2002; Kuh & Whitt, 1988; Manning, 2017; Masland, 1985; Peterson & Spencer, 1990; Tierney, 1988, 1997, 2008; Tierney & Lanford, 2018). Although culture can be ethereal in nature, higher education scholarship demonstrates the ethos of an IHE can influence operations, decision-making, and change. Understanding culture aids in explaining organizational management and actions. It may help leaders develop strategies, navigate future conflicts, and embrace change (Kezar & Eckel, 2002; Kuh & Whitt, 1988; Masland, 1985; Schein & Schein, 2016; Tierney, 1988).

Cultural concepts are subjective, overlapping, and often barely, if at all, visible. Due to the flexible, translucent, interconnected nature of culture, scholars frequently liken it to a spider's web (Geertz, 1973; Kuh & Whitt, 1988; Tierney, 2008). The uniqueness of a college or

university and the potentially invisible elements of its ethos complicate cultural study. Further, an institution's constituencies (faculty, staff, student, alumni, and others such as local and state government officials) may have diverse experiences with and perspectives of an IHE, making cultural concepts subject to constant, shifting interpretations (Tierney, 2008). Exploring and identifying institutional culture is a relevant endeavor despite the challenges. For a leader, cultural knowledge allows ongoing awareness, consultation, and even manipulation of the various voices and ideologies within the organization and provides a historical context that may aid in avoiding decision-making missteps (Schein & Schein, 2016; Tierney, 1997; Tierney & Lanford, 2018).

### *History and Definitions*

The study of organizational culture is rooted in sociology, anthropology, and psychology disciplines (Manning, 2017; Peterson, 2007; Schein & Schein, 2016). In the 1960 and 1970s, business and management studies adopted the concept, exploring behavioral patterns, assumptions, decisions, norms, and processes of organizations and the individuals collectively comprising those entities (Kuh & Whitt, 1988; Schein & Schein, 2016). In the 1960s, scholars began to study colleges and universities, including the subtleties of institutional behaviors, traditions, and sagas, all elements of an institution's culture (Kuh & Whitt, 1988; Peterson & Spencer, 1990; Tierney, 1988).

While cultural studies continued to grow, the scholarship did not produce an agreed-upon definition. Using a corporate culture lens, Schein and Schein describe organizational culture with a focus on patterns, assumptions, problem-solving, learning, and assimilation in perception and feeling (2016). Education scholars include less perceptible cultural elements in definitions, such as values, ideologies, practices, assumptions, and beliefs (Kuh & Whitt, 1988; Masland, 1985;

Peterson & Spencer, 1990; Tierney, 2008). Kuh and Whitt also assert that culture belies an exact, consistent definition (1988) because it is inferential. Although there are differences in formal definitions, scholars agree culture has adhesive properties. It is often referred to as the glue that keeps an entity together (Kuh & Whitt, 1988; Masland, 1985; Peterson & Spencer, 1990; Schein & Schein, 2016; Tierney, 1989, 2008).

### *Institutional Cultural Analysis Models*

Cultural studies involve examining institution-specific data of actions, communications, and histories to identify organizational influences (Masland, 1985). Scholars developed several models for analyzing and interpreting cultures and their impact on an organization. Foundational frameworks include:

#### **Schein**

Edgar Schein developed a three-layered model to assess organizational culture, which was implemented primarily to study corporations. The elements are structured in descending order of observability, beginning with artifacts, then espoused beliefs and underlying assumptions at the bottom (Schein & Schein, 2016). Artifacts are the most visible parts of an organization, such as processes, structures, architecture, and rituals. Artifacts are “both easy to observe and very difficult to decipher” without a detailed understanding of the other two cultural Schein and Schein components (2016, p. 18). An example of an artifact is the University of California at Berkeley’s (UCB) Sather Gate. The gate initially signified an entrance to campus. As the university has grown, it now marks the beginning of an area known for activism, Sproul Plaza. The central feature at the top of the structure is a star, signifying the institution’s motto, “*Fiat Lux,*” or let there be light (Chou, n.d.).

Espoused values are the organization's goals, aspirations, vision, or other beliefs. These elements of Schein's model are often easily identified in formal institutional statements, such as Texas A&M's (TAMU) Core Values of excellence, integrity, leadership, loyalty, and selfless service (Texas A&M University, n.d.). However, values may also be difficult to perceive as they develop over time through shared experience. Espoused values should be evaluated for practice contradictions or other institutional declarations. Finally, underlying assumptions, the unconscious, "taken for granted" beliefs, often define the organization's identity (2016, p. 22). This last level is the most difficult to observe but may manifest in patterns of actions or individuals. Underlying assumptions are at the core of an organization's identity. With a thorough understanding of the fundamental shared beliefs of an organization, one can develop a greater understanding of the first two levels (Schein & Schein, 2016).

### **Masland**

Accessible "windows" into distinctions of higher education institutional culture, per Masland (1985), are sagas, heroes, symbols, and rituals (p. 160). Sagas describe unique, usually historic experiences frequently retold and perpetuated in the present day. Heroes are the founders or role models whose story represents institutional values. Inanimate objects or communication metaphors are symbols personifying the organization's culture. The last of the four are rituals, the repetitive actions or events demonstrating matters of import to the organization, such as graduation. Masland's approach helps reveal the institutional significance of the meaning behind a story, person, event, icon, etc. It is not merely that all share an understanding of the sagas, heroes, symbols, and rituals but what they represent (Masland, 1985).

An example touching on each of Masland's elements, further demonstrating the overlapping nature of institutional culture, is E. King Gill, a TAMU football practice squad

player who became a role model and an institutional hero. When the team was in trouble during a 1922 game, Gill donned a jersey and stood on the sidelines for the entire game, ready and willing to play should the team need him. Although Gill's services were unnecessary (TAMU won 22-14), his tale became an institutional saga—the 12<sup>th</sup> Man. His story represents university values of loyalty and selfless service, visually symbolized by two campus statues of Gill, which further personifies the saga. Today, each student body member is to consider themselves the 12<sup>th</sup> man, which is ritualized with students standing during every home football game to demonstrate selfless support and readiness for service (12th Man, n.d.; Texas A&M University, n.d.).

### **Kuh and Whitt**

In their 1988 Report to the Association for the Study of Higher Education, Kuh and Whitt suggest a four-part cultural framework examining the dynamics between and within the external or surrounding environment, college or university, subcultures, and dominant individuals. While IHEs have unique and, to varying degrees, isolated settings, they interact with the local community, alumni, peer institutions, regulatory bodies, and other constituencies. Therefore, the external environment influences the actions, beliefs, and behaviors of an IHE (Kuh & Whitt, 1988).

The second Kuh and Whitt (1988) element focuses inward on the institution's history, academic program, mission, goals, purpose, and general ethos. The third factor is subcultures or internal groups with shared experiences forging beliefs and assumptions that may depart from the overall culture. Subgroups proliferate at IHEs. At a high level, administrators, faculty, staff, and students are subcultures. However, further subdivision exists within each group, such as faculty disciplines, student majors, student organizations, campus location, and more. The final element is individuals with the most influence over the institutional ethos. Often the presidents,

founders, or other storied persons from an institution’s history maintained in myths and sagas “shape, over time, the interpretation of issues, policies, and governance structures” (Kuh & Whitt, 1988, p. 52).

An individual influencing UCB’s mission and approach to expressive activities is former student Mario Savio, heralded as the 1964 Berkeley Free Speech Movement (FSM) leader. The FSM engaged in a series of protests against university content-based restrictions on campus expression. Due to the success of the FSM in securing policy changes, Berkeley now vigorously protects its reputation for embracing speech freedoms. Savio’s legend is synonymous with the FSM (Christ, 2017; Cohen, 1985; Saul, 2010).

**Tierney**

Close in time to Masland’s and Kuh and Whitt’s works, Tierney’s (1988) seminal article on higher education culture designed a framework of organizational culture. His model for institutional culture analysis includes six elements; environment, mission, socialization, information, strategy, and leadership (Tierney, 1988). As Table 1 below shows, Tierney scaffolds his frame with accompanying questions instead of definitions or examples of each term. The queries aid researchers in designing data collection and considering the information gathered.

**Table 1**

*A Framework of Organizational Culture*

Element	Questions
Environment	How does the organization define its environment? What is the attitude toward the environment? (Hostility? Friendship?)

**Table 1 (continued)**

<b>Element</b>	<b>Questions</b>
Mission	How is it defined? How is it articulated? Is it used as a basis for decisions? How much agreement is there?
Socialization	How do new members become socialized? How is it articulated? What do we need to know to survive/excel in this organization?
Information	What constitutes information? Who has it? How is it disseminated?
Strategy	How are decisions arrived at? Which strategy is used? Who makes decisions? What is the penalty for bad decisions?
Leadership	What does the organization expect from its leaders? Who are the leaders? Are there formal and informal leaders?

Source: Tierney, 1988, p. 8.

#### *Selected Institutional Culture Framework*

This study employs Tierney's framework to determine cultural factors relevant to addressing controversial speech. It is suited for studying IHE responses to the Danger Tours as the frame encourages analysis of factors relevant to controversial expressive campus events. Tierney's frame includes both internal and external influences, which enhance the investigation of campus constituency response to the provocative expression from outside the community. Further, Tierney's frame identifies leadership decision-making as an institutional strategy and focuses on information identification and dissemination. IHE approaches adopted for managing Danger Tour speakers are strategic exercises tactically communicated by the universities as information.

Tierney's structure serves as a tool for identifying, gathering, and organizing an IHE's cultural information. The case study data analysis through Tierney's six elements demonstrates cultural factors influencing IHE actions. Additionally, the cultural lens aids in the sense-making of the dramatically different approaches and outcomes of the events studied.

### **Summary of Literature**

Protecting First Amendment rights is crucial to ensuring freedoms of thought, inquiry, and speech, no matter how contentious the expression. As demonstrated in the research studies reviewed in this section, high-profile, controversial expression creates, among other concerns, risks to safety, litigation, reputation, institutional values, and constituency relationships. The review details the theoretical frameworks applied in this study to identify and analyze legal and cultural factors influencing the IHEs studied. The lack of empirically-based qualitative or quantitative scholarship indicates this research may contribute to the body of knowledge to aid in addressing institutional options for protecting campuses and First Amendment rights.

## CHAPTER III

### METHODOLOGY

#### **Introduction**

This section outlines the research design and methods guiding the study of public IHE responses to, preparation for, and protection of controversial speech on campus. The description includes IHE selection criteria, data collection, analysis, and procedures to build the trustworthiness of the research. Like the studies exploring campus expressive activities described above, this endeavor's primary, although not exclusive, data source centers on interviews of individuals who experienced the events under examination (Farrell, 2020; Smith, 2020). To ensure analysis of cultural elements, documents, artifacts, news reports, impressions, and other available material were also gathered and analyzed.

#### **Research Design**

A qualitative approach is appropriate for an in-depth study of administrative responses to the Danger Tour's controversial expressive activities for two primary reasons. First, qualitative methods permit exploration and telling stories of the experience on a detailed, holistic level (Creswell & Poth, 2018; Yin, 2018). Second, qualitative researchers often employ a constructionist or social constructivist perspective, assuming individuals create knowledge as they make meaning of experiences (Creswell & Poth, 2018; Merriam & Tisdell, 2015). Indeed, a researcher employs qualitative methods to “understand how people make sense of their lives and their experiences” (Merriam & Tisdell, 2015, p. 23). This study expands understanding and constructs knowledge by examining the responses of IHEs at the epicenter of controversial Danger Tour events.

### *Case Study*

A case study design is most suitable for this project because the unit of analysis is a contemporary problem in a bounded system (Creswell & Poth, 2018; Merriam & Tisdell, 2015; Stake, 2006; Yin, 2018). Campus speaker events featuring Yiannopoulos or Spencer are representative of current IHE difficulties with high-profile contentious expression. Further, both time and place bind the Danger Tours. Yiannopoulos and Spencer toured IHEs during the period of 2016-2018. The campuses visited by the Danger Tours and selected for in-depth study serve as the limited space. Additionally, the research question asks *how* prior experiences of IHEs may inform future institutional protection of free speech. A case study is a preferred method when seeking to answer *how* or *why* questions (Creswell & Poth, 2018; Yin, 2018).

The study focused on developing an in-depth understanding of influencing cultural factors and methods undertaken by more than one IHE. Other qualitative designs, including ethnographic design, grounded theory, narrative inquiry, and phenomenology, do not embrace a review of multiple data sources beyond interviews and observation. Further, the case study design provided flexibility to compare the rationales and outcomes of differing approaches and results (Creswell & Poth, 2018; Merriam & Tisdell, 2015).

### *Multicase Study Design*

A comparison case study, also known as a multisite or multicase study, allowed collection, analysis, and data comparison from more than one location (Creswell & Poth, 2018; Merriam & Tisdell, 2015; Stake, 1995; Yin, 2018). In addressing controversial expression, IHEs have canceled speeches, disinvited a speaker, organized the presence of massive numbers of law enforcement officers, charged the inviting organization or speaker with the cost of security, relocated the speech or demonstration to remote or online venues, hosted counter-speech events,

created safe spaces, or merely sent messages distancing the institution from expression the institution deems offensive (“Aggies United’ event,” 2016; Brown, 2018; Foundation for Individual Rights in Education, 2020; B. K. Mangan, 2018; Thelen & Robinson, 2019). Given the range of institutional approaches, the multicase case study design provided an opportunity to compare cultural factors influencing IHE preparation, management, and protection of controversial speech and the campus.

### *Cases and Selection*

A multicase study is a holistic, in-depth examination of complex phenomena. With a minimum of two, multiple cases allow analysis or contrast of replicated, or at least similarly occurring phenomena. Researching more than one case also strengthens findings (Yin, 2018). This study pursues knowledge of IHE responses to the Danger Tours and the factors influencing those responses. The number of cases was limited to two universities to attain the detail level necessary for a thick description of events and include legal and cultural factors.

The selection of cases or IHEs included in the study is purposeful and based upon choosing samples “from which the most can be learned” (Merriam & Tisdell, 2015). Yin’s suggestion, including institutions experiencing extreme, potentially opposing outcomes (2018), was employed. The following threshold criteria were used to identify IHEs included in the study:

(1) a public college or university. As discussed above, status as a public institution is appropriate because, as an arm of the government, a public IHE must protect speech rights (Chemerinsky & Gillman, 2017; Hutchens & Sun, 2014);

(2) an announced or actual event featuring a speech from Yiannopoulos or Spencer on campus. The actual expression of Yiannopoulos or Spencer was not required as an IHE’s denial or cancellation of speech warrants study;

(3) regional or national news reporting of the event. The attraction of media beyond the campus demonstrates the controversy of the Danger Tour event; and

(4) occurred during 2016 – 2018, the primary Danger Tour activity period.

Events occurring within that period, within five years of the data collection, demonstrate the controversial speeches of those like Yiannopoulos and Spencer remain a contemporary problem for study. A more recent event indicated data sources were more likely to remain accessible.

To identify potential case sites, I reviewed reports of Yiannopoulos and Spencer campus events in general news publications, internet postings, recently published books, doctoral dissertations, and both the Newsdesk and Recent Case pages of the Foundation for Individual Rights in Education (FIRE) website (Farrell, 2019; “Foundation for individual rights in education,” n.d.; Lukianoff & Haidt, 2018; McLelland, 2019; Sun & McClellan, 2020). Reported speech incidents of the danger duo indicate almost 50 potential Danger Tour sites for inclusion in the study. Yiannopoulos announced visits to more than 40 IHEs. Spencer’s tour record includes planned events at eight IHEs, four speeches, and four lawsuits. The two IHEs selected, the University of California at Berkeley and Texas A&M University, experienced two announced Danger Tour speaker visits within a twelve-month span of time.

### **Texas A&M University Visit from Richard Spencer**

In 2016, a former Texas A&M (TAMU) student rented space in the University’s Student Center and invited Richard Spencer to speak. Members of the campus community and the general public petitioned the administration for cancellation. Plans for peaceful and violent protests were rumored (Surette, 2016).

The university organized an alternative event entitled “Aggie’s United” for the same day and time as Spencer’s speech. TAMU’s large counter-speech event brought in speakers,

entertainers, campus administrators, representatives from student organizations, and Holocaust survivor Max Glaubien (“‘Aggies United’ event brings campus and community together to denounce hate,” 2016). While approximately 1,000 individuals peacefully protested outside the Spencer engagement, a few thousand more attended the counter-speech event (Downs, 2016; Jmabadi, 2018; Rodriguez & McCown, 2016). TAMU arranged a wealth of security for the event, including officers from the university police, local law enforcement, state agencies, and federal agencies (Smith, 2016).

After violence occurring at the Spencer-featured Charlottesville Unite the Right Rally, Spencer supporters announced plans to return to Texas A&M in September 2017. Although no formal arrangements were made to schedule the event, Texas A&M issued a public cancellation of Spencer’s second appearance due to safety concerns (Texas A&M University, 2017).

### **Yiannopoulos at UC Berkeley**

Berkeley College Republicans (BCR) invited Yiannopoulos to speak at the University of California at Berkeley (UCB) in February 2017. Once announced, faculty members sent the Chancellor requests to cancel the Danger Tour event citing Yiannopoulos’ prior harassing and degrading comments. The university refused to prevent the event and forged ahead, adding additional officers for security (Chu, 2017; McLelland, 2019).

Before the event began, more than 100 protestors wearing masks, dressed darkly, and armed with bats, fireworks, rocks, and pipes, joined formerly peaceful protests. As the evening became increasingly violent, UCB canceled Yiannopoulos’ speech before it began. Law enforcement did not intervene in the riot, although injuries occurred to people and property (Hauser, 2017; McLelland, 2019; Tate, 2017; Yiannopolous, 2017). Later that year,

Yiannopoulos spoke at Berkeley, protected by an extensive and costly UCB security force (Quintana & Thomason, 2017).

### **Data Collection and Instrument**

A strength of the case study design is its inclusion of multiple data sources (Merriam & Tisdell, 2015; Yin, 2018). As the primary research instrument, I gathered and analyzed data (Lincoln & Guba, 1985; Merriam & Tisdell, 2015). Sources included descriptions and impressions of events collected through document examination, participant interviews, news reports, and available videos (Creswell & Poth, 2018; Lincoln & Guba, 1985; Merriam & Tisdell, 2015; Stake, 1995). The range of materials permitted a rich description and triangulation of data through comparison and cross-reference to increase the study's trustworthiness, as discussed below (Merriam & Tisdell, 2015; Yin, 2018).

I maintained a reflexive journal recording thoughts, impressions, plans, dates, and reflections (Creswell & Poth, 2018; Lincoln & Guba, 1985; Merriam & Tisdell, 2015; Stake, 1995). News articles, digital archives available through subject institutions' libraries, and other electronic sources were also reviewed and cataloged.

As the IHEs studied are public institutions, I employed freedom of information style requests and responses to gather materials not available in website archives. The purpose of the information requests was to gather information such as internal correspondence, after-action reviews, or event expenses. The University of California Office of the President provided, at the time data were collected, an open public access archive of documents released under the California Public Records Act related to controversial speakers attempting to speak at Berkeley in 2017. (The archive remains available to those with a box.com account.). More than 900 pages of UCB's publicly released records were downloaded, reviewed, and relevant information

categorized. I submitted five requests under the Texas Public Information Act to TAMU seeking records related to Aggies United and Spencer's actual and announced events. The number of records released from TAMU was much smaller than those available from UCB, but those received were also reviewed and coded.

To collect information on the experiences and impressions of those involved in making, communicating, or directing Danger Tour decisions, I sought interviews with individuals engaged, in some manner, with the Yiannopoulos or Spencer events. The criteria for participant inclusion were IHE leaders at the director level or above, persons implementing decisions, such as security personnel, student leaders, and individuals formally supporting or opposing the event. I initially cultivated informants and participants through personal or association affiliation connections (Lincoln & Guba, 1985; Stake, 1995).

For TAMU, my dissertation committee provided the names of several potential participants, and I secured referrals from other relationships. Snowball sampling helped identify additional potential interview participants (Merriam & Tisdell, 2015). For UCB, I began searching for participants by reaching out to the original 13 who authored a "concerned" faculty letter demanding Chancellor Dirks cancel Yiannopoulos' visit (B066). Additionally, I notified the Chancellor's Office requesting assistance and was connected with an administrator who participated and facilitated a connection with others. Former student participants from both institutions were identified through publicly released documents, news articles, LinkedIn social media, or other participants. I added additional participants through snowball sampling until saturation was achieved (Creswell & Poth, 2018).

Participant identity confidentiality was maintained by assigning a pseudonym and number to each individual in notes and interview records, with a few approved exceptions noted

within (Merriam & Tisdell, 2015). The high-profile nature of events necessitated revealing the IHEs, and a few prominent leaders were willing to share their names as having participated in the study. Otherwise, no names of any other participants are identified.

Due to restrictions caused by the Coronavirus Pandemic, participants were given the option to visit by telephone or video conference. Research indicates benefits of telephonic interviews include ease of access for those who may not be available in person, greater researcher attention to auditory cues, and increased participant comfort provided by the distance and relative anonymity of voice-only communications (Lechuga, 2012). Video conferencing offered the same benefits as telephonic interviews and added the opportunity for visual participant observation. Of the 24 interviews conducted, two were telephonic, and the rest occurred via the Zoom video conferencing platform.

Semi-structured interviews were scheduled for 60 to 90 minutes. The interviews followed a guided conversation approach with open-ended questions and follow-up queries to seek additional information warranted by participant comments (Creswell & Poth, 2018; Merriam & Tisdell, 2015; Yin, 2018). The study interview protocol is attached in Appendix A. Participants were given the option of allowing or denying recording to maintain the greatest openness and comfort (Yin, 2018). No more than one meeting occurred per day and no more than two per week. The spacing allowed for a detailed account of the interview from the notes (Stake, 1995; Yin, 2018). Within a few days of each interview, participants were forwarded detailed meeting notes to ensure member checking of the information (Merriam & Tisdell, 2015; Stake, 2006). Participants were invited to provide edits, corrections, additions, or omissions to the information gathered.

The substantial volume of documentary and interview data required an organizing system for retrieval and analysis (Creswell & Poth, 2018). I managed data through readily available software, including Microsoft Excel, Adobe Acrobat, and Mendeley Reference Manager. Documents were logged into source list spreadsheets with a referenced name and notation of the document location. The naming convention for documentary data is a four-digit reference beginning with T when related to TAMU or B when related to UCB. The last three digits are numeric. For instance, the reference for the letter from UCB concerned faculty to Chancellor Dirks is B066. Documents secured from publicly available sources were stored as searchable portable document format (.pdf) records on my laptop, iCloud drive, and Mendeley (each password protected) in a folder/sub-folder system by case and topic.

Interview participants were assigned one or two-digit numbers paired with a hyphen and letter; a T when related to TAMU or B when connected to UCB. For example, a former TAMU student participant quoted within is referenced as T-5. Participant names were memorialized in a separate hard copy document, so synopses on the laptop or uploaded to iCloud did not personally identify the interviewee (Lincoln & Guba, 1985).

### **Data Analysis**

Data organization and review began with an initial set of categories constructed from the research question and theoretical frameworks (Merriam & Tisdell, 2015). Information collected from each site or case was maintained separately. Data were summarized and coded into one or more categories. Coded information was copied (with document identification) into an Excel worksheet designated for that category (Creswell & Poth, 2018; Merriam & Tisdell, 2015). In reviewing data, the initial codes expanded until, through saturation, no additional categories were necessary (Creswell & Poth, 2018). Throughout the process, I generated field memos to capture

insights, notes for further research, or questions for consideration (Creswell & Poth, 2018). Data were compared and cross-checked with other sources of information collected (whether documents, observation, or interviews) to verify the trustworthiness of the information (Lincoln & Guba, 1985; Merriam & Tisdell, 2015; Yin, 2018). As data were coded, reviewed, sorted, and compared, patterns or themes emerged from each case (Merriam & Tisdell, 2015).

As this is a multicase study of institutional responses to events, the findings of each were first constructed into a chronological description of an IHE's discovery, decisions, and actions taken to respond to controversial speech scheduled on campus (Merriam & Tisdell, 2015). The findings are then applied to an overview of the theoretical frameworks. Then, within-case and cross-case comparisons of themes are discussed (Merriam & Tisdell, 2015; Yin, 2018).

#### *Quality and Rigor*

Many scholars agree scientific research concepts of validity, reliability, and objectivity are not fully applicable to qualitative research, and scholars often dispute the terminology for addressing qualitative quality and rigor (Creswell & Poth, 2018; Merriam & Tisdell, 2015). Having had the fortune of exposure and study of qualitative research with Yvonna Lincoln, this discussion adopts her vocabulary of the trustworthiness of research through methods intended to establish credibility, transferability, dependability, and confirmability (Lincoln & Guba, 1985).

Research is credible when the reader has confidence in how the research was conducted and the findings. To establish credibility, a researcher may employ techniques of (1) prolonged engagement with the site and participants, at least sufficient to reach the point of saturation of information, (2) continuing observation focused on matters relevant to the research question, (3) triangulation of data, (4) identifying and storing a portion of the data collected for later analysis

and comparison to the findings, and (5) verification of researcher interpretations and conclusions with the study participants, also known as member checks (Lincoln & Guba, 1985).

Qualitative case findings are not designed to be generalized or transferable to other situations or populations (Merriam & Tisdell, 2015). A researcher should provide a rich, thick description of the study so the reader can decide the extent of the applicability of the findings (Lincoln & Guba, 1985; Merriam & Tisdell, 2015). While the proposed study seeks examination of responses, preparation, and protection of controversial expression on campus that may be useful to those facing similar experiences, the transferability of conclusions to another IHE will be in the eye of the beholder.

A study is dependable when it can be replicated. Because an exact replication is unlikely in qualitative research, dependability may be established through maintaining a detailed accounting of methods, decisions, procedures, and information. This record is often referred to as an audit trail (Lincoln & Guba, 1985).

Confirmability refers to the researcher's biases and determining the extent to which a researcher influences the study outcomes. To control for bias, the researcher should identify positionality for the reader, maintain a record of reflections and decisions regarding the data, and ensure triangulation of data (Lincoln & Guba, 1985; Merriam & Tisdell, 2015).

#### *Trustworthiness Techniques Employed in This Study*

The design of studying more than one IHE helped ensure the opportunity for data triangulation within and across the sites studied. At the proposal stage of the study, it was decided that 7 to 10 interviews from each site would provide sufficient information to offer readers a thick description of events and to enable consideration of transferability. Engagement and exposure were met, and saturation was attained with 14 participants from TAMU and 8

participants, along with significant documentary data, from UCB. Member checks were provided to every participant, and any changes or comments received during that process were incorporated.

For dependability, I maintained an audit trail of processes and decisions. To address potential biases and confirmability of the study, I preserved a record of reflections, interpretations, and data judgments. Further, I share my positionality, so the reader is aware of the researcher's background and perspective (Creswell & Poth, 2018; Lincoln & Guba, 1985). Specifically, I am a White female lawyer, a doctoral candidate at Texas A&M University, and a twenty-plus-year veteran of higher education employment as an educator, administrator, and attorney. I am also the daughter and wife of military men who see themselves and their life's work as protecting the U.S. Constitution. My spouse is a 1971 graduate of UC Berkeley, having attended the institution during a period of significant expressive activities and unrest. With an educational, legal, and "god and country" background, I believe protecting freedoms of inquiry, thought, and speech is crucial for continuing academic freedom and democracy.

#### *Limitations*

Limitations of the study include access to data, transferability of findings, and subsequent changes in expressive approaches. First, access to information was limited by personal connection, identification, contact, and interest in participation in a study of widely reported, potentially contentious events. The information gathered from interviews may not completely represent the views and impressions of all who experienced the events. In particular, in seeking representation from the breadth of the campus community, only two former students were interviewed from each institution. While each details a unique experience with the Danger Tour events, many more perspectives from the student body are not included. Further, while UCB

retained and released an abundance of documents related to controversial speech, TAMU's retention, per library archivists and as evidenced in response to records requests, was minimal.

Even with a thick description of an IHE and an expressive incident, the small number of IHEs studied, unique culture, influences, and other biases among interview participants are specific limitations precluding broad transferability or application of the findings.

Finally, the dynamic nature of both expression and law may limit the applicability of findings. For instance, UCB asserted the violent, masked protestors were an unanticipated and unprecedented expressive approach for U.S. IHEs. It is hoped that findings of an in-depth study of IHE responses to the Danger Tours may be extrapolated to ever-changing First Amendment incidents. However, depending upon how expansively expression evolves, methods for preparation, management, and protection of speech views discussed in this study may not adequately address the next wave of controversial expression.

### **Summary**

The study employs a qualitative multicase study design to research the preparation, management, and protection of speech and the campus of two IHEs visited by the Danger Tour. An in-depth empirical analysis of IHE responses to Yiannopoulos' or Spencer's announced speeches through the lens of free speech jurisprudence demonstrates the understanding and value the studied institutions, as representatives of the marketplace of ideas, place on the importance of First Amendment Rights. Further, Tierney's Framework of Organization Culture reveals institutional elements influencing the university's responses and varying outcomes of controversial expression occurring at UCB and TAMU.

## CHAPTER IV

### FINDINGS

#### **Introduction**

On a damp, cold, and occasionally windy Tuesday night on the eve of final exams, a small section of the 5,115-acre TAMU campus was ablaze with the lights of Kyle Field. The football stadium held approximately 5,000 people attending the university's unity event entitled Aggies United. Across the street and within earshot of the amplified music and messages from the stadium, Alt-Right-affiliated Richard Spencer addressed a small crowd in the Memorial Student Center (MSC). Outside the MSC, people clustered about, protestors carried signs, groups holding opposing views jostled verbally, journalists chatted with the crowd and watched for newsworthy clips, university staff stood alongside observing the curious and demonstrators, and, in almost every corner, officers of the law were at the ready.

TAMU's show of force included university police, officers from local and regional cities, county sheriffs, and the Texas Department of Public Safety Texas Rangers and State Troopers. Over the evening, plainclothes officers attempted blending into crowds; uniformed police monitored groups, bike officers patrolled streets and sidewalks, a riot-gear team pushed would-be ambushers out of the MSC then stood at attention barring access, mounted police appeared as if on cue to quiet crowds, and blocks away a small law enforcement cadre concealed a riot tank at the ready should demonstrations turn violent.

Less than 60 days later, a small corner of the 1232-acre campus of the University of California at Berkeley (UCB or Berkeley) was also ablaze. The evening began with thousands of

peaceful protestors outside the student union, where Breitbart editor Milo Yiannopoulos' was scheduled to address the BCR and their guests.

Shortly after sunset, peaceful demonstrations transformed into a riot. Just before 6:00 p.m., a group of assumedly anarchist-affiliated individuals moved into Sproul Plaza en masse, wearing black clothing and facial coverings. The masked group, referred to later by the University as the Black Bloc and some participants as Antifa, estimated to be 100-150 strong, moved with a synchronistic purpose; to shut down Yiannopoulos' talk by inflicting fear and causing damage. The Black Bloc disoriented the crowd with deafening death metal music, smoke bombs, and M-80 firecrackers. A fire started in the Plaza, protestors smashed windows of the student center, and physical assaults occurred. Meanwhile, dozens of law enforcement officers detailed to the Yiannopoulos event watched the violence unfold from the heavily windowed student center. UCB canceled Yiannopoulos' speech.

Within two months, two well-known public IHEs experienced vastly different outcomes to the planned oration of individuals known to express views abhorrent to many in each campus community. Later in 2017, each IHE faced the possibility of hosting the same speaker and again took dramatically different approaches. Why?

### **Summary of Research Question and Purpose**

Ideas must thrive in the IHE marketplace uninhibited by the social, academic, or cultural acceptability of the thought. The obligations of public IHEs to learning and legal compliance dictate broad protection of speech at colleges and universities. However, institutional support for the right to articulate unpopular ideas can trigger a host of other IHE obligations such as reputation, relationship, the tension of values, and safety management. This study considers how

IHEs confronted with controversial expression prepare for, manage, and protect the campus and First Amendment rights. In addition to the primary research question, the study explores:

1. What factors influence the institution's decisions and actions in responding to controversial expression?
2. How does the financial cost of protecting expression impact decision-making?
3. How does an institution weigh the rights and importance of the free exchange of ideas with the protection of the university community, especially historically underrepresented groups?

The purpose of the research is to examine, through a qualitative multi-case study, the responses of two IHEs to announced and actual visits of Richard Spencer and Milo Yiannopoulos during their respective Danger Tours and in the months following. The experiences of TAMU and UCB are representative of controversial campus expression creating constituent conflict, cost, and, at times, chaos. Review of the considerations, influences, decisions, actions, and varying outcomes of events at each IHE demonstrates the risks such expression may pose to an institution, as well as for continuing speech and academic freedoms. The findings may be a resource to guide other institutions in protecting expression and the campus when faced with similar, potentially contentious, expression.

## **TAMU and Richard Spencer – Experience and Findings**

### *Background*

TAMU is a large land grant university established in 1876. The institution enrolls more than 60,000 students at the main campus in College Station. Situated in an area east of Central Texas, the university is less than a two-hour drive to the state's major cities; Dallas to the north, Houston to the southeast, and Austin to the southwest. TAMU students are affectionately known

as Aggies, with the campus, and surrounding town referred to as Aggieland. Administrators note the central Texas location and historical land grant mission of educating state citizens in agriculture and mechanics influence the political perspective of the student body:

We have some rural students. They haven't been exposed to anything else. They are very conservative in mindset because of lack of exposure. I think that some of them broaden their perspective quite a bit while they're here at Texas A&M, but it's still a conservative student body. It has been ranked among the top 10 conservative student bodies. One time we were second, next to Liberty University (T-4, p. 2).

When asked about the TAMU mission, administrative participants focused on research and educating students,

We have a dual mission. We're a land grant. So, being a land grant, we need to be accessible to the citizens of Texas. We need to be accessible to first-generation students. We have an obligation to the state to educate students to be productive members of society. The second piece of that is we're also in an AAU university, which has connotations for research excellence and program excellence. So, we have to have excellence and accessibility, all rolled in together (T-6, p. 2).

The university is a member of the AAU and a land grant. Our mission is to balance those agendas better than anybody else (T-4, p. 1)

Recognized for research productivity and capacity, TAMU is a member of the exclusive, invitation-only, Association of American Universities (AAU). AAU membership includes two Canadian and 64 U.S research universities, otherwise known as "R1: Doctoral Universities – Very High" research productivity (Carnegie Classification, 2020).

Three participants focused more on TAMU's core values than the formal mission statement. The values include excellence, integrity, leadership, loyalty, respect, and selfless service (Texas A&M University, n.d.). Per one administrator, "We talk about core values all the time" (T-8, p. 3). A former student participant noted, "I sometimes think the core values of the institution are something that really was sold to me as an 18-year-old that first got to the

campus” (T-9, p. 8). Values are often repeated and infused in institutional messaging and are central to the Aggie experience.

For almost 150 years, the university infused core values, educated students, served the state, expanded research, and built loyal, predominately conservative Aggie alumni. While it experienced some national controversies, such as ending race-conscious admissions, TAMU rarely encountered controversies reported nationally (Arnone, 2003).

*Richard Spencer*

The election of Donald Trump to the U.S. presidency in early November 2016 brought attention to supporters called the Alt-Right. Although Trump went on record as rejecting the Alt-Right, in 2016, they claimed alignment with the elected candidate’s views (Blau et al., 2016; Chang, 2016). Per Spencer, the Alt-Right needed a face. After Trump’s election, he accelerated into the limelight going “from zero to 60 in 2 seconds flat” (T-10, p 3). The Alt-Right presented as conservative, outspoken, Caucasian males asserting the need to reclaim White identity, rights, and attention from minorities and women. Study participants considered White identity or nationalism simply a smarter-dressed version of White supremacy and plain old racism.

Spencer is most known for involvement in the 2017 Charlottesville Unite the Right Rally turned riot, where an Alt-Right supporter drove a car into and killed a peaceful protestor and injured dozens (Heaphy, 2017). In late 2016, Spencer merged into mainstream consciousness when “in Washington, DC, where he was speaking to a group, they all gave the Nazi salute” (T-3, p. 2). Less than two weeks later, TAMU learned the heil-Trump saluted White nationalist would be on campus.

### *The Reservation*

Preston Wiginton, a College Station business owner, reserved a room on campus and announced Spencer would speak. Wiginton was not a current student, graduate, or employee. He previously enrolled in courses at TAMU and subsequently hosted events or speakers discussing topics such as immigration, gun rights, racial matters, and far-right political perspectives. Those events were poorly attended and largely unnoticed by students and media (Watkins, 2021). But, interest in his sponsored speaker changed in 2016.

### *Managing and Preparing for Spencer 1*

#### **Learning of the event**

TAMU's leaders learned of Spencer's scheduled speech through media reports or the student affairs special events staff.

The vice president of student affairs [VPSA] has people who were following protocol to approve [Wiginton's reservation] and understood what it was. They alerted the VPSA, and then the president's cabinet was convened to talk about it. (T-4, p. 2)

Preston Wiginton advised the community, whether he posted something on social media, the Battalion, or whoever he told (T-1, p.2).

As news spread through the university and to social and traditional media outlets, TAMU's leadership team began to discuss managing Wiginton's expressive rights.

Attempting to get in front of the issue, the university released a near-immediate statement to separate TAMU from the now notorious Spencer.

There has been deep concern expressed by our Aggie community about an individual planning to speak at our campus. To be clear, Texas A&M University – including faculty, staff, students and/or student groups – did not invite this speaker to our campus nor do we endorse his rhetoric in any way. In fact, our leadership finds his views as expressed to date in direct conflict with our core values.

Private citizens are permitted to reserve space available to the public as we are a public university as is the case here. Public groups must cover all rental expenses so that state resources are not burdened. This rental is classified as a 'Class 5: non-Texas A&M

University-related' use of public space in the school's events guidelines typically reserved for community events, wedding receptions, and local high school events (T008).

Beginning with the statement above released on November 23<sup>rd</sup> and throughout the speech controversy, TAMU consistently repeated it had not extended an invitation, sponsorship, or endorsement of Richard Spencer.

Distancing efforts did little to stem the groundswell of calls, emails, inquiries, and social media posts from reporters, unhappy Aggies, parents, and at least one legislator. "Thanksgiving was not a fun day. It was full of hateful emails from Aggies asking questions and threatening to withhold funds [donations] if Spencer spoke" (T-8, p. 1). The tide of communications during a holiday weekend clarified that TAMU faced a potentially volatile situation.

### **Must we allow the expression?**

At the time, other institutions were canceling or not allowing speakers to come, even people like Condoleezza Rice. It was not en vogue to allow someone with hateful views like Spencer's to come (T-8, p. 2).

I was unable to identify any participant who welcomed Spencer's presence or rhetoric. TAMU, therefore, explored ways to prevent Spencer's speech, but "it was a brief conversation" (T-14, p. 2). Canceling Wiginton's reservation was not a viable possibility because of TAMU's history of renting campus space, legal protection afforded to speech, and obligations of an educational institution to ensure the expression of ideas on campus.

As a matter of longstanding practice and facilities use policy, TAMU permitted access to places on campus for any person or group to rent, regardless of affiliation. In granting access, the university established rental spaces as limited public forums for expression.

TAMU had a very liberal policy in the use of its facilities. That primarily stems from the fact that it's a historical legacy, that there just simply weren't facilities in the Bryan College Station area big enough to hold big events. It was pretty common to see, whether it be at Rudder Auditorium or Theater. You might come in on a Monday and see little cans of glitter, and you're thinking, 'why is this on the carpet'? It was because somebody

had some recital that weekend from the community or what have you. It's really great for the university in the town-gown relations to have that, where people didn't feel disconnected from the institution. . . . Once rented, we were kind of boxed in to some degree (T-2, p. 4).

People didn't get very far down the road of how we could stop Spencer because it was obvious. Our policies allowed it. We didn't have any rules against it. We don't control what speakers talk about what. So, stop thinking about that (T-4, p. 6).

The history of renting space left TAMU few, if any, options for canceling Wiginton's event.

A few participants questioned whether the First Amendment protected Spencer's racist and hateful speech.

Whenever you hear someone like Richard Spencer is coming to TAMU, that's going to get some very visceral reactions from people. It very much was that response. Publicly, everyone's feelings towards the event were that they were very much against it. People didn't want him to come to campus (T-5, p. 2).

There were faculty and students and staff who were adamant about: 'why are we letting this guy come to campus in the first place?'. . . . This is not free speech anymore. This is hate. This is harboring somebody (T-7, p. 11).

Against a current of opposition, knowledgeable leaders worked to convince administrative colleagues the First Amendment and academic freedom necessitated protection even of ideas many consider hateful. The president of TAMU, Michael K. Young ("the president" or "Young"), was uniquely informed and equipped to address matters of controversial speech.

At the time, thankfully, and maybe this was a big piece of it. You had somebody who was Michael Young, who was a lawyer himself. He understood, through a legal lens, the ramifications of the crisis happening at the time. Then you had somebody who was the chief academic officer . . . with a lot of academic experience in administration, who understands crisis. You have all those at the table in conversation, all of us listening to these ideas and possibilities around the table (T-7, p. 3).

President Young, having clerked at the Supreme Court, was very much, from a personal standpoint, a First Amendment expert. He took it quite seriously, particularly the First Amendment at colleges and universities (T-2, p. 4).

Without question, the president was extremely knowledgeable of the rights and responsibilities of a public IHE to the marketplace of ideas, the First Amendment of the U.S. Constitution, as

well as the need to protect the campus and its many constituents. One participant credits the president with deciding TAMU would not interfere with Spencer's speech "because of his legal background and strong belief in freedom of expression" (T-8, p. 2). Under Young's leadership and with team members well-informed in law, activism, and education, all participant administrators came to understand the necessity of allowing and protecting Spencer's speech.

### **Include the brightest minds**

While the executive holds ultimate responsibility for outcomes, most administrative participants saw TAMU's decision-making as a collaborative and consultative experience where the president listened to and relied on his leaders:

One of the things I enjoyed most about President Young was his invitation to contribute as a leader, not just from your functional area perspective. We had a leadership team we could count on (T-8, p. 6).

Mike Young was very deferential to his vice presidents or the divisions in terms of autonomy (T-2, p. 2).

When news of Spencer's visit prompted reactions from current and former Aggies, the president dialogued via telephone with four of his vice presidents (VPs), including the provost, chief financial officer (CFO), and marketing and communications (MarCom) over the Thanksgiving weekend. From the earliest conversations, the leader determined the university would engage in some form of counter-speech. Upon returning to campus the following Monday, Young held meetings with larger groups. Leaders including the provost, associate provost for diversity, CFO, and VPs for governmental affairs, student affairs, and marketing and communications participated. The associate vice president (AVP) for safety and security, chief of police, athletic director, and an attorney from the TAMU System Office of Legal Counsel also weighed in. One participant shared:

Leadership makes a difference. How a university engages their leadership team at a time of crisis is very important . . . When we caught wind of the fact that the room was being rented to host Richard Spencer, one of the things that I'll never forget that was pretty invaluable was we had the bright minds at the cabinet table (T-7, p. 3-4).

Another participant noted the meetings were necessary to move the group forward because initially, “we spent a day with everybody kind of acting like, ‘it’s not my fault that this is happening’” (T-4, p. 7).

As meetings continued, a supplemental group formed. This unit, known by some as a task force, included student leaders and several additional administrators, select faculty, and staff council representatives. A former student participant recalled those present at an early task force meeting:

Literally, I think what the event did was it raised all the alarms for the administration. I remember going to the president’s office, and everyone was there. The provost was there. The communications director was there. They had someone from legal there. The president, the president himself, was there. I think even . . . legislative relations; he was there. When I say everyone, everyone was there, everyone who was a part of his cabinet. They had the president of the SGA; the student body president was there. The student speaker was there. I was there (T-9, p. 14).

The number and rank of attendees were overwhelming. A task force attending administrator noted, “There were ideas on top of ideas we came up with. We had conversations around the table” (T-7, p. 4).

As a legal expert, the president knew the obligations and limitations of a public institution in addressing controversial speech. But as an experienced president, he did not dictate nor delegate initial decisions regarding Spencer’s visit. Instead, he gathered his team, allowed them to voice opinions, listen to one another, and consider options. Under Young’s leadership, TAMU secured the input, consensus, and participation of a larger group of institutional representatives, including faculty, students, and staff, to implement a response to the expected controversial expression.

## **Assess the environment**

The outcome of the 2016 presidential election was surprising and polarizing to many. The political climate and rise of tensions between Trump supporters, opponents, and those advocating for anarchy had not escaped the attention of TAMU leaders, particularly those responsible for campus safety. Law enforcement and security officers began to gather and review information about the anticipated speaker.

The security team surveyed outcomes of expressive activity from divisive individuals at other IHEs, and Alt-Right or White nationalist meetings across the country.

A lot of our plan was based on what was going on around the country. That research has to be done. What is the current environment that we're operating in for an activity event, a mass expressive activity event? Monitoring what's going on [at] other places and what kind of problems that they had (T-1, p. 21).

Per the research collected, police across the country struggled to keep the peace during pre-presidential election events when the Alt-Right were involved:

We heard from others during the campaign that when one side tending toward White supremacy had an event, there was going to be a counter-protest. There were plenty of recent examples of how police had either separated those groups or been unable to separate those groups and how they handled it. The campaign that led up to the 2016 election had lots of examples of unrest, in having different factions at each other's throats (T-3, p. 4).

To ensure safety for the campus community, visitors, and even the speaker and his sponsor, TAMU determined if Spencer came to the fairly rural campus, it would augment UPD with supplemental security personnel, and significant expense was expected to do so.

## **Impact on reputation and recruiting**

Upon learning of Spencer's scheduled speech, administrators worried about the impact on their public standing. As one stated,

TAMU wanted to and still works to increase the number of African American students. We were concerned that [Spencer's] rhetoric would appear to be welcome, which was not

the case as we know that he was booked by someone with no TAMU affiliation. People of all races weighed in that his beliefs and rhetoric are antithetical to that for which TAMU stands. His presence could significantly damage our reputation; hurt recruiting underrepresented students. His beliefs were the opposite of our core values. That was the first concern (T-8, pp. 2-3).

TAMU's African American enrollment at the time was just under four percent (4%) of TAMU's total student population (*Student Demographics*, n.d.). Some participants felt Spencer's visit, coordinated by a former TAMU student and Aggieland business owner, would support impressions that TAMU does not welcome and respect diversity. Tying the university to an overtly racist message and messenger threatened to damage TAMU's reputation and further reduce interest from potential African American applicants.

According to former student participants, both identifying as Black or African American, TAMU's reputation with racial issues before Spencer's visit was the more likely reason for the dismal enrollment of minority students:

I think A&M has the type of culture and is known as the type of institution where it seems like Spencer's type of speech would be welcomed on our campus . . . . Historically, A&M has not had the best reputation when it comes to racism and racist people. When you think of a Richard Spencer coming to A&M, many people are like, 'Oh, Richard Spencer is coming to A&M because A&M is already known as having a very racist culture.' There's still that stigma attached to Texas A&M. I think that's what contributes to someone like Richard Spencer being emboldened enough to come to the university. (T-5, pp. 1-2).

I remember when there was talk about Richard Spencer coming into town, I kind of brushed it off because it would be any like other time where we had someone like this come to campus, and it wouldn't be much of a big thing. We have professors who are tenured who say things worse than Richard Spencer all the time (T-9, p. 2).

Non-White TAMU student participants felt like cultural outsiders before Spencer's speech. Although the institution made strides in creating support systems and organizations dedicated to inclusion, former student participants from historically minoritized populations reported:

For many African Americans and people of color, you really have to actively search out your community. I applaud the Department of Multicultural Services and the different organizations and departments that actively seek out people of color because it's vastly needed at a university like Texas A&M, where it can be hard to find your people, your culture, and where you feel like you will fit in (T-5, p. 3)

We still hear complaints about international students going home from Northgate and being attacked and called racial slurs when they were going home at night. You still have folks that were unwelcome in spaces. Or [minoritized] folks just trying to participate in things related to Aggie football and meeting with donors and people making remarks about you. [There was a time] 'you wouldn't have been able to come to this school of ours here.' Yes, that's a thing. But it's the way in which he said it, like, it's microaggressions (T-9, p. 5).

Participants found being a student of color at TAMU challenging and disheartening. Neither former student wanted TAMU to permit Spencer's visit. Initially, a few TAMU leaders agreed with the former student participants. Those seeking to deny Wiginton's event felt the university's reputation, recruiting, and student interests outweighed the expressive rights of Wiginton and Spencer, as neither had institutional or student sponsorship.

### **Who bears the security costs?**

After concluding that TAMU would honor the reservation, the group next considered security threats posed by the event. Per three participants, the leadership team expected Spencer to draw protestors and knew additional law enforcement was necessary. The anticipated cost of protecting the campus was significant, and leaders considered whether Wiginton should be responsible.

At least one participant administrator felt those considering transferring security costs were attempting to manipulate a shutdown of the event "by pricing it out of range for it to really happen" (T-4, p. 4). Another considered any attempt to shift expenses to those engaging in expression would make TAMU look "like a bully who was trying to repress free speech or

recover actual out-of-pocket costs” (T-6, p. 6). Ultimately, TAMU treated Wiginton like all other space lessees.

We charged Spencer’s sponsor for security for a normal event for the size of the room they were having. We had this basic, if it’s a non-controversial event, we have this basic security charge we apply. It’s three officers for every x people at a certain rate per hour (T-6, p. 5).

Although the university anticipated significant security costs, it did not charge the event organizer responsible for the cost of managing responses to Spencer’s presence or reaction to his views. TAMU coordinated and funded the security it believed necessary to protect the campus.

### **Expanding options**

“We know that the antidote to disagreeable speech is more speech” (T-14, p. 3).

Three administrative participants involved in leadership discussions felt TAMU should diminish attendance at Spencer’s speech by offering an alternative event. The university used a similar approach when faced with controversial expressions years earlier.

For decades, we had an event called Whoop Stop. It was a spring event, and everybody played in the front yard of campus. It started because the KKK was coming to town. These wise people on campus said, let’s have this fun event with all kinds of snow cones and the like over here and totally starve attention. When the media covered the KKK, there was nobody around, just those 30 people. Whoop Stop had hundreds of people, and it grew over time. The KKK wasn’t coming every year, but it grew over time to thousands of people (T-4, p. 4).

Those seeking to limit the audience by offering students a better option thought if Spencer spoke to an empty room, there would be (a) no one to hear his offensive rhetoric, (b) no news worth reporting, and (c) less damage to the climate and reputation of the institution.

An administrator in favor of limiting Spencer’s attention offered to fund an alternate event held simultaneously with the White nationalist’s speech. The idea held promise both for managing TAMU’s reputation as well as navigating First Amendment obligations. An event

offered an opportunity for TAMU to deliver its own message, or counter-speech, promoting inclusion and unity. Participants noted,

I didn't want our values to be defined as merely the negative of his. We weren't going to leave it to him (T-14, p. 3).

We have to allow hate speech, but we will use our institutional voice to say we don't support hate speech and it is against our core values (T-1, p. 4).

TAMU's unity theme provided a positive message clearly juxtaposed to Spencer's expected White nationalism rhetoric. Attracted to the counter-speech concept, the president's cabinet agreed the university would sponsor an alternate event. Two participants were careful to mention that TAMU used no state funds to support Spencer's speech or the counter-event.

In addition to sharing TAMU values, leaders hoped an opposing event would attract students and prevent protests. One commented,

The student leaders had to understand the strategy was to have the counter-event because otherwise, they'd spend a whole lot of their energy on the protest events (T-4, p. 6).

Some students understood the goal of precluding protests, and others were not going to allow TAMU to interfere with their right to confront Spencer.

It came from a good place. Like folks wanted to have like a counter-event [that was] supposed to be an option for students to have counter protests. Rather than going and physically protesting, you could go to the event and counter-protest by being a part of the event where we're supposed to be reaffirming who we are (T-9, p. 16).

The circles I traveled in, we were all starkly against Richard Spencer coming to campus, and for most of us, we were also against the counter-protest, the Aggies United (T-5, p. 13).

Brainstorming continued until plans morphed from a smaller student-focused program into something far more expansive. It became a resource-consuming, media/journalist-hosted, celebrity-appearing program sprinkled with members of the TAMU community and held in the

largest possible campus venue, the football stadium at Kyle Field. Not all were in favor of the developments. One administrator noted

They just got carried away with making it big and bigger. They were so excited about making a big deal, so they put it in the stadium, which was the wrong approach because the stadium was going to look empty when the cameras looked. I get the stadium that holds 100,000 people versus an MSC room that holds a couple hundred. (T-4, p. 5).

Even Spencer was amazed at the largess of the counter-speech event plan, stating,

I thought the [TAMU] reaction created its own reaction. If your reaction is to fill a stadium, you are saying what is happening is extremely important and flammable. Maybe it was a miscalculation on TAMU's part . . . I never ordered TAMU to fill a stadium. I don't think you can turn lights on for less than \$100K, then there are janitors, food service, etc. It was their own doing (T-10, p. 3).

Besides selecting a huge venue, scheduling the counter-speech event in Kyle Field diminished the purpose of preventing protests. The football stadium is situated directly across the street from the MSC where Spencer spoke, enabling attendees, including the media, to go back and forth between events.

Regardless of the detractors, venue size, and locale, TAMU pursued the large-scale venue and a star-studded counter-speech program. Once TAMU settled on the counter-speech event, under the leadership of a VP experienced with crisis management, the department and task force quickly planned and executed Aggies United. Simultaneously, MarCom monitored online threats, crafted internal messages, interacted with the press, and ensured TAMU maintained contact with its constituents.

Once it decided how to starve Spencer of an audience, the university had less than two weeks to plan, book guests, arrange travel for speakers and entertainers, organize security, staff, promote, and make the highly visible, costly event happen.

## **All in for Aggies United**

Deciding to host an event is one thing; implementing the now mammoth occasion was a significant undertaking. Administrators used alumni and personal networks to identify entertainers and other speakers, planned security, and continued to collect research on Spencer and his supporters.

### *Using students to reach students*

TAMU selected Aggies United as the name of the alternate event. Only one participant, a former student, recalled a potential naming wrinkle. TAMU had a registered student organization with the same name.

My friend . . . she got tapped to be there too. Because she was one of the co-founders of the actual organization called Aggies United. They brought her in as a rubber stamp to use the organization's name for the event because they liked the way that sounded (T-9, pp. 14-15).

Once the potential opposition assimilated into the task force, Aggies United became the official event name.

Student organizations and leaders became even more critical to the task force, as administrators believed they had a greater capacity to draw their peers in and keep the focus away from Spencer-related protests. One participant who identified students for the task force noted, "I worked with students. Getting them on board, that was easy. They wanted someplace different" than Spencer's event (T-12, p 2). Assigned speaking and planning roles; student leaders worked alongside employees laboring institution-wide to prepare for December 6<sup>th</sup>.

Other student-facing efforts included a Student Affairs slide deck and presenting student-focused information on the First Amendment to student organizations, other campus entities, and the university website. Student Affairs also arranged resources such as counseling and safe

spaces where students negatively impacted by Spencer's speech had an opportunity to share and process through respectful dialogues.

*Leveraging MarCom for event planning and press*

As public relations experts, MarCom staff designed and promoted the Aggies United program. Tasked with engaging and shepherding celebrities and speakers, they secured headliners singer Ben Rector, actor Hill Harper, actress, and singer V. Bozeman, and journalist Roland Martin. Marcom also arranged internal speakers such as the president, faculty, athletes, and student leaders. The department released press statements, gave or coordinated interviews for other institutional representatives, created communications about the event for release by TAMU executives, and responded to every press inquiry.

MarCom also shouldered significant responsibilities related to Spencer's visit.

It was frustrating for many on the MarCom team that they were burdened by the Spencer event, which was not university-organized to credential media and staff. They were involved in so many things like issuing media passes to the event. With the poison Spencer was pursuing, we had to verify who was coming. We monitored social media. TAMU is in the top 10 universities for number of followers on social media and the top 5 in engagement. The MarCom team leveraged software programs . . . to monitor [the] frequency of topics, including anything related to threats, weapons, or other activity (T-3, p. 8).

[MarCom had to] make sure that we ha[d] a response set up and ready to go. Had to be ready with communications; MarCom had to have messages recorded for whether it went well or badly. Had to be ready to tell a different story (T-1, p. 22).

Spencer's polarizing views attracted external individuals and groups; those who supported and others opposed him. MarCom helped monitor online threats and credentialed media passes for Spencer's speech and Aggies United. In that way, TAMU had a better idea of the legitimacy of individuals asking to attend.

*Advanced security planning and staffing*

TAMU's University Police Department (UPD) addressed threat planning in more detail. The UPD Chief reports to the AVP for Safety and Security. Their teams researched, planned, and organized security for Aggies United and Spencer's speech.

We never had anything quite like this. We've had different elements of this . . . We decided early on we really needed to over-prepare because we were one of the first. We didn't know how big this could be. We just knew we couldn't afford to be caught underprepared. (T-3, pp. 4-5).

Most participants considered Spencer's campus visit and expected protests unprecedented at TAMU. However, using plans from previous major campus events, safety and security personnel built an event plan for December 6, 2016:

We didn't create the plan from scratch; we borrowed from Game Day event planning and just adapted it for expressive activity. So, they have a very developed plan. Every institution that has a big football program has an incredibly detailed, I mean timed to the minute action plan for football games. You can adapt those and use those and other events. And you just get the right people, the right table, one table, and then you modify the plan that we use for games for a different event (T-1, p. 20).

In addition to employing a detailed event plan, TAMU also drew upon prior training:

Our unit trains together for events. We have an emergency management department that puts on full-scale emergency exercises, tabletop emergency exercises, where we get together, and we talk about everything from natural disasters to active shooters to plane crashes to riots, you name it. Those are things we all had practiced together (T-3, p. 4).

Although inexperienced with anticipated racial or anarchist protests, TAMU personnel were previously trained for risky situations. Further, the team drew on experience working with high-profile speakers visiting the George H.W. Bush Presidential Library and Museum.

The TAMU security experts further prepared by working with the regional FBI Joint Terrorism Task Force and state law enforcement.

We realized the resources the FBI had, not just the FBI, but also the Texas Department of Public Safety. . . Between the both of them, I knew they had the intelligence resources to start finding out not only about Mr. Spencer but any people that traveled with him. Or

they were able to look at different social media to see who might come. They were a wealth of information for us because we needed that to get ourselves geared up for what was possibly going to come (T-13, p. 2).

The additional intelligence underscored a need for more officers than those available from UPD.

One administrative participant disagreed with the staffing assessment:

Given the time of the semester, few classes, and almost to exams, I thought was that faculty members are getting ready to give their final, and students are getting ready to take their finals. Staff don't tend to get engaged as much for things like this, although some do. I just didn't think there was going to be very much activity, but we had to plan for the worst. (T-6, p. 10).

Others appreciated UPD's ability to call in additional officers through established cooperative relationships.

In the Aggieland area, law enforcement agencies commonly assist with emergencies and large events. TAMU secured support from several city, county, and state law enforcement organizations.

We had virtually all the University Police on duty. We had assistance from our local law enforcement agencies in College Station, Bryan, Brazos County, as we do for every football game. We had over 100 officers from the Department of Public Safety, including their mounted team and essentially their riot team. Likely about 250 in total (T-3, p. 6).

Another security personnel participant estimated the combined number of law enforcement officers as closer to 200. As planning progressed, the teams considered how to keep protestors separated on the grounds and in the parking garages. Only four of the 200-250 expected officers would be in the room with Spencer.

The MSC had been outfitted previously with technology. We could automatically lock down the building, and there were cameras (T-5, p. 5).

Beyond the MSC, TAMU added cameras to locations not easily accessible by individuals on the ground. The university established a Command Center (Command) to monitor Spencer's speech and Aggies United. Throughout the evening, administrators and staff in Command included:

the chief of police, president (from time to time), vice president for communications; all the heads of the different law enforcement units that came to help us; EMS; our transportation folks [and] Assoc GC (T-3, p. 7).

Located in the lower inner workings of Kyle Field, Command included communications gear and cameras focused on areas of expected unrest.

TAMU's planning for Aggies United and Spencer's speech included (1) event design, marketing, and execution, (2) press/journalist management, (3) attention to student communications, resources, and leadership, (4) continued research and intelligence gathering through peer institutions, social media, and law enforcement agencies, (5) detailed day of event plan, (6) securing and coordinating supplemental law enforcement, and (7) arranging the Command Center along with a myriad of other security details.

#### *Day and Night of Spencer 1*

The daylight hours of Tuesday, December 6, 2016, were an anxious time for most participants. Each had a measure of concern or downright fear about what may transpire. Two participants prepared to speak at Aggies United and were uncertain as to the size or reception of the audience. Others monitored the travel activities of invited speakers and entertainers, hoping to avoid gaps in the programming. At least one participant planned to protest, frustrated with TAMU for allowing a situation that, in the participant's perspective, necessitated activism. Conversely, some participants were concerned opponents and supporters might clash, causing a violation of Spencer's speech rights and creating thorny legal and publicity issues for TAMU.

Preparations, security, and logistics management continued throughout the day as entertainers and speakers were transported, security forces moved into assigned locations, and a stream of media interviews occurred. One of the final touches for Aggies United was constructing a free speech wall outside of Kyle Field intended to encourage the expression of

thoughts and images. During preparations, administrative participants were aware of Spencer's movements in College Station.

### **Monitoring Spencer's movements and safety threats**

The Alt-Right and its opponents posed a potential threat to the TAMU Community. Both sought engagement with Spencer.

We have very close contacts with different law enforcement fusion centers, so we were able to gather intelligence on who would likely be coming, what would likely happen, and talk about threats of violence and who might have been prone to those. We could gather that kind of intelligence (T-3, p. 3).

Through their connections, TAMU's safety and security kept an eye on potentially threatening individuals and Spencer's movements after he arrived in College Station on December 5, 2016.

Aware of the predicament his presence created for the university, Spencer offered, "I had heard about the opposition. It fueled my motivation to go" (T-10, p. 1). He knew there were safety concerns but also had experience with followers providing necessary protection:

With the Alt-Right, these people would just show up, and you had pro bono, unauthorized security. I'm like, I didn't hire you. I don't think it was problematic at TAMU. I didn't meet with supporters. But at the hotel, there were clear supporters meeting in the bar, and that was it (T-10, p. 3).

Even though aware of safety threats, Spencer sought the spotlight. He relied on Wiginton to interact with the University and coordinate media. Wiginton successfully turned Spencer's visit into a press junket. Spencer noted,

I've never done so many interviews. I sat down for the media, and they were all there; Al Jazeera, NBC, they were all there. I gave them each 10 minutes. It was like a marathon. It was probably the height of the Alt-Right. It was miraculous. I thought a lot more would be possible (T-10, p. 2).

Spencer also held a press conference at his hotel where he mocked Aggies United:

The fact that the president of Texas A&M University has created the world's largest safe space, I think we might need to call Guinness, a hundred thousand people shows the power of the 'Alt-Right.' It shows the power of the ideas. . . He's actually making us

much more powerful. He is demonstrating the truth that our ideas are important (Pryce, 2016).

Spencer repeated the jab during his evening remarks and again in his participant interview.

A later interview included filming Spencer and a journalist strolling TAMU's campus, where he became even more aware of potential threats:

Earlier in the day, I was with a media group, and we were walking on campus. We went to one place, and Antifa was hovering around and coming toward us. We got out of there. The Antifa group was like a hive. Even the media wanted to go (T-10, p. 2).

Although a public space, campus visitors usually notify the university before filming. TAMU administrators did not appreciate the lack of courtesy.

I mean, the nerve of you. Yeah, we're giving [an] audience and to see him walking across the frickin campus with somebody who was interviewing him as he was walking. I mean, he owned the damn campus. I was like, 'you son of a bitch' (T-7, p. 7).

In addition to using TAMU's grounds as a backdrop, Spencer brazenly wrote on the free speech wall in front of Kyle Field. His comment: "today is the day we triggered the world" (T-7, p.6). In response and the spirit of TAMU's unity event, two students altered the meaning of his message by drawing floral designs around his words.

The aggressive personality one saw in front of a camera appeared more cautious behind the scenes. "To put it politically correctly, he was very risk-averse. He was concerned for his own safety. He wanted to come in late, give his speech, and be ready to get out. He did get out quickly" (T-3, p. 12). Spencer appreciated TAMU's security precautions, noting

I don't think the police presence was overkill. . . . We forget now, but there were major street protests when Trump won the election. It seems hysteric now. I did have a little moment of concern sitting backstage in the green room. I was thinking, 'Wow, this is how people get assassinated. This is an extreme sport' (T-10, p. 3).

Threats to TAMU's reputation and safety did not wait until the evening of December 6. To ensure safety and effective press responses, the university monitored Spencer's activity and comments throughout the day.

### **Spencer's expression spurred the expression of others**

#### *Posturing and protests in the speech venue*

At the Spencer speech on the evening of December 6, 2021, audience members appeared unsupportive of his ideals.

A lot of us were in that room where Spencer spoke. It was definitely a majority of people who did not want him there. . . Genuine supporters were in there, but they were a very small number (T-5, p. 6).

This participant's impression matched TAMU's intelligence indicating Spencer traveled or affiliated with about a dozen attendees in advance of the event. Others in the audience were students or members of the public present to either observe, question, or protest. When asked why students would attend Spencer's talk, participants offered

We went to the event because we were of the mindset that if he's going to say what he wants to say, he's not going to say it behind closed doors, closeted, with a whole bunch of people that think like him. He's gonna have to say it to our face. We showed up almost as an act of protest. We were not gonna let you come in here and just talk to your little 20 or 30 supporters who brought you to the campus. You're gonna have to say it to us, and you're gonna have to defend everything you say to us, and we're going to ask you one-on-one questions about how asinine your viewpoints are (T-5, p. 6).

You had two things happening at the same time. The counter-protest event, which was Aggies United, and the actual counter protests where students went to the Richard Spencer event; they were sitting in the venue (T-9, p. 7).

The former student participant who attended the speech wanted to hear whether Spencer could defend his views. This participant came away with the opinion that most of Spencer's ideas "did not track, [they] did not make sense" (T-5, p. 7).

Participant recollections and miscellaneous videos on social media indicate primarily peaceful protests in the room where Spencer spoke. “During Spencer, we had students at the back with their fists up the entire time. It wasn’t disruptive. But also, we had a person dance around in a clown outfit” (T-11, p. 3). The costumed women stood, periodically circled, and held signs, one of which said, “He’s the real bozo” (*Photo Gallery: Protests on the Texas A&M Campus*, 2016). Spencer commented on her physique and indicated she should keep moving because she needed exercise. He now considers his statements to the clown and several others that evening as “mean, sarcastic, and bullying” (T-10, p. 2). However, he also notes the First Amendment protects even rude speech.

At times, Spencer’s White-nationalist comments garnered collective groans or reactions of disgust from the audience. It was the response he hoped for, “I think that was cool. That part was fun. I think it was highly appropriate . . . and it gave a little edge to it” (T-10, p. 2). Twenty minutes into the speech, young men, two White and one Black, locked arms in front of Spencer’s stage. Next, Spencer’s Alt-Right, pro bono security popped out of seats and faced the audience. The next wave of people moving toward the front included three uniformed officers. With law enforcement’s de-escalation and urging, people returned to their seats. The brief interference quickly quieted.

In our interview, Spencer referred to his early Danger Tour events like the TAMU visit as a game, fun, one-upmanship, a figurative boxing match, and a productive exchange of ideas.

When queried about the cost involved in enabling his enjoyment, Spencer responded,

It was money well spent. There must be a test of free speech to show if you are serious about it. Or, is it only free if it is an arcane subject for 15 people in the basement of the library? I don’t have any regrets. I didn’t have to spend the money. You could say I was taking advantage of them. For big rallies, donors put up the money, but we didn’t have that. So, we went another way . . . I know people do not want us to use a public platform

for insidious communications. But the point isn't to have free speech only when we agree (T-10, pp. 3-4).

Per TAMU's release of documents in 2017 and as confirmed by at least one participant, the university expended well over \$300,000 and perhaps as much as half a million responding to Spencer's Danger Tour (T002, T-11).

### *Counter-speech Protesting*

**Aggies United.** The counter-speech event came together in a very brief time. In addition to the celebrity guests, students, faculty, staff, and a few administrators performed music, dance, poetry, and gave speeches. Other notable individuals appeared via videos, such as Dan Rather and professional athletes. Unaffiliated religious leaders from the College Station community attended and supported the event (*'Aggies United' Event Brings Campus and Community Together*, 2016; *'Aggies United' Event Information*, 2016). Administrators and student speakers structured remarks around institutional core values of loyalty, integrity, excellence, leadership, selfless service, and respect. The entertainers and speakers focused on expressing themes of unity.

For some, communing with fellow audience members was positive and moving.

It was incredible. Aggies United was beautiful. We had press/media all over. You would think we were having an actual football game at Kyle Field. People were singing in the stands, joining hands, singing along with Ben Rector at the time and others who were performing. It was amazing. There were tears. It was special (T-7, p. 7).

TAMU touted Aggies United as a unifying opportunity attended by thousands to demonstrate who Aggies are at their core ('Aggies United,' 2016). For two participants, the length of the program, the coolness of the evening, and uncomfortable seating made more of an impression than the asserted unity:

I watched Aggies United with a couple of friends and stayed for the entire event. It was cold. I watched people come and go, and there weren't that many people who stayed for the entire event. It was much too long (T-4, p. 1)

It was freezing, and I think the cold affected the attendance. I left before it got wild at the Memorial Student Center (T-2, p. 7).

A former student participant was even less impressed with the event and attempted to convey frustration through his speech:

I was a speaker for Aggies United. We did a thing where we talked about the different core values. . . .The whole speech was kind of tongue-in-cheek because it was about questioning whether or not we actually have true [core values] . . . when it comes to actual experiences, hint hint, like Richard Spencer coming to campus, we really get to see how [core values] work (T-9 p. 4).

The honesty of these three participants is a jarring juxtaposition to the university's narrative and declarations of unity success.

For all the energy, entertainers, promotion, and expenditure of funds, the Aggies United attendance was disappointing. "About 4,000-5,000 people came" (T-9, p. 3). Some participants thought the low attendance was due to the chilly weather or the final exam season. Kyle Field holds just over 100,000 spectators (T-4, p. 5). With the actual turnout filling less than five percent (5%) of the stadium, the optics of a sparsely populated stadium appeared to demonstrate limited campus support for TAMU's counter-speech message.

**Scholarly Discussion Attracts Few.** While Aggies United was underway in Kyle Field and Spencer spoke in the MSC, lawyer and TAMU professor of sociology, Wendy Moore addressed a group of students and faculty in Rudder Tower. Memorialized on YouTube, Dr. Moore challenged Spencer's right to use TAMU as a platform for his brand of racism. She also dissected email messages sent by Young promoting the protection of speech, even that which was hateful and hurtful (Aggie Agora, 2017). The group was small, but the seats were full. Even so, none of the students and only one participant administrator mentioned Dr. Moore's event.

**The Action is Outside and Coming In.** Demonstrators gathered to protest in the fourth expressive activity area; the grounds, walkways, and entrance to the MSC.

A crowd came to the MSC and protested outside. Many of the people had nothing to do with TAMU. Some supported Spencer, and some opposed (T-8, p. 4).

There were some White nationalists that came with Richard Spencer spread out amongst the crowd, standing in groups of two or maybe by themselves. Opposition crowded around them. There was a lot of jawing going back and forth between the two groups (T-3, p. 8).

Anti-Spencer enthusiasts outnumbered pro-Spencer protesters outside the MSC. TAMU's barricades and other preparations for separating the groups proved unsuccessful.

After Spencer began to speak, a group of protestors with some masked and carrying flags entered the MSC and moved to the second floor towards the event.

Protestors rushed the building because they wanted to break through security, get in, and shut the event down (T-1, p. 10).

For the most part, it stayed calm until about halfway through, when people from outside came into the building, and they started down the hallway, then they came up the staircase and made that turn. Then there came the riot police out of the room in full gear, and they made a wall right there so that people could not get to the ballroom. All of a sudden, you had a standoff (T-12, p. 3).

Unbeknownst to many, TAMU's planning and preparations included staging a Texas Department of Public Safety unit out of sight in a ballroom on the second floor of the MSC. To end the law enforcement/protestor standoff, TAMU announced a sudden, early closure of the MSC, except for those with tickets to the Spencer speech. "We just shut down the whole Memorial Student Center and said, it's a non-public forum, except for people who have a ticket to the event" (T-1, pp. 13-14). Disruption and security threats posed by protestors denied others, including students, use of the building.

The police officers began to move the protestors only after the building closure announcement, and the crowd failed to disperse.

Law enforcement did an extraordinary job. The state law enforcement was there in gear, calm, held the line, and walked it back. I witnessed their professionalism from inside the command center and was able to see that on cameras. After they calmly walked the protestors back, we deployed the automatic lock on doors (T-8, p. 5).

At that point, we announced over the speakers that the Union was closed. They didn't retreat. That's when the state patrol started pushing them out. It was one step at a time, and it was the most amazing thing. They were so calm. It was like we just needed this one step. Then we'll wait to take another step. It wasn't like 10 steps forward to get them out of the building. It was just one methodical step at a time (T-12, p. 3).

We actually had to deploy the DPS crowd control unit to force the anti-Richard Spencer group to exit the building. That was done efficiently, and I can't say without injury, but with a relatively minimal amount of physical injury (T-3, p. 7).

While DPS management of the MSC disruption impressed administrative participants, their actions upset a former student participant.

I still vividly remember a video where there is a ton of police actively blocking the door to get into the MSC, and there are students trying to come in, and they're pushing them back. They're being aggressive with them. This is supposed to be a sacred center designed to honor our fallen Aggies and a memorial for all of that. And, you have police officers actively assaulting students who are just trying to get into the Memorial Student Center to see what Richard Spencer is talking about (T-5, p. 9).

The former student believed most protestors were fellow students mishandled by police.

Conversely, administrators thought the group rushing the MSC involved very few students.

I only know of one student there. I recognized him under his face covering (T-12, p. 3).

A good number of those individuals were pushing back and were not pro-Spencer people; these were people from outside the institution that wanted to come in and protest (T-2, p. 7).

Whether students or members of the general public, TAMU permitted law enforcement to walk protestors out of the building to protect Wiginton and Spencer's expressive rights and mitigate safety concerns. A few demonstrators fell to the ground, attempted to rush the line or police, or held onto doorways, refusing to exit. DPS physically removed non-compliant persons. "The last thing you want to see is your university on the national news with a big show of police . . .

parents don't want to send their kids to a school like that" (T-13, p.11). Unfortunately, although the MSC protest involved only a handful of demonstrators, videos and photos displayed on traditional and social media channels memorialized the incident.

Per TAMU event logs, it took more than 30 minutes to move the protestors through the doors, after which DPS officers in riot gear remained outside, forming a line on the walkway in front of the MSC. Mounted police appeared to ensure those recently removed from the building remained under control.

Once they got the protestors back outside and the horses came in, people left. It was almost as if, 'well, the horses are here, we're done.' I don't know what it was about the mounted officers that just dissuaded everybody. And by the time the Spencer event was over, they'd really broken up outside (T-12, p. 4).

The mounted police had the effect of quieting and clearing protestors. In the end, law enforcement arrested only two or three that evening.

While riot geared and mounted officers worked outside, other officers and MSC personnel inside ensured non-protestors vacated the building. Per police logs, one person unable to use the MSC that evening was the Aggies United host, journalist Roland Martin. Mr. Martin planned to gather with other speakers in "the Respect Lounge to create dialogue" (T001, p. 5). After Spencer's speech concluded, the log reveals staff escorted other students out of the MSC when they "refuse[d] to leave because it is the Student Union and their building and want to stand their ground" (T001, p. 8).

Preparations and management, including offering an entertaining counter-event, may not prevent the expression of those opposed to controversial speech. Although participants noted racially related protests of the nature experienced during Spencer 1 were unprecedented at TAMU, the protections orchestrated by the safety security personnel likely prevented greater disruption and ensured uninterrupted expression in the designated location set aside for Spencer.

### *After Action Review*

After Spencer's December event, TAMU took stock of its response to Spencer. The university successfully diffused a potential threat to its campus and external reputation with a high-profile, and thus high-risk, counter-speech assembly, and it was successful. Accolades came from many corners:

- Howard Gillman, Chancellor of the University of California at Irvine, and co-author of *Free Speech on Campus*, wrote an editorial in the Los Angeles Times about the need for IHEs to address White nationalism. He held TAMU's Aggies United as a compelling example of doing so (Gillman, 2016).
- The Anti-Defamation League named Aggies United the number one most inspirational moment of 2016 (*ADL Most Inspirational Moments*, 2016).
- Peer institutions called, conferred with TAMU colleagues, and suggested the university's approach could be a model for other IHEs to follow when faced with controversial expression.

Not only was Aggies United well-received by the press and public, but the campus also remained under control, with no property damage and few arrests.

UPD and the MSC event staff conducted internal logistical reviews, suggesting minor tweaks for future events. MarCom memorialized the counter-speech event by creating and uploading an Aggies United summary video on YouTube (*Aggies United*, 2016). The university reviewed and updated policies for using campus space, as detailed below. Otherwise, TAMU's focus seemed to return to business as usual.

*Wiginton Announces a Second Spencer Visit (Spencer 2)*

Brief ties to TAMU brought Spencer significant media attention, and he capitalized on the moment by seeking other audiences for his cause. He noted Aggies United “may have fueled the fire. I felt invincible. I felt we could keep getting away with this” (T-10, p. 3). A few months later, he spoke at Auburn University after an initial cancellation and winning a federal injunction mandating the university to allow his speech (*Padgett v. Auburn University*, 2017). He then rallied in Charlottesville in late spring, protesting the removal of Confederate monuments. In August 2017, his supporters gathered again in Charlottesville for a “Unite the Right Rally.” The day turned violent with an Alt-Right supporter driving his car into a group of peaceful counter-protesters, killing a young woman (Heaphy, 2017).

While the Unite the Right Rally was still underway, Wiginton issued a press release headlined, “Charlottesville Today, Tomorrow Texas A&M” (*Texas A&M Cancels*, 2017; Watkins, 2017). Subsequently, Wiginton announced Spencer as a confirmed speaker for a *White Lives Matter* rally on the grounds of TAMU on September 11, 2017.

Young gathered his leaders again. One administrative participant recalled, “We convened another cabinet meeting. This time, the Chancellor was sitting around the table, along with senior legal counsel” (T-7, p. 7). A continuing concern included TAMU’s reputation with African American communities. However, recent violence from Charlottesville and current threats caused the meeting to center on safety topics.

We were getting some feedback from the FBI that there were some real potential threats that people were posting out there (T-12, p. 5).

The chief of police on campus said to me, ‘I cannot guarantee protecting everybody on this campus if this guy comes back here, and in light of what just happened in Charlottesville.’ I overheard the Chancellor saying something like, ‘that’s it’ (T-7, p. 7).

The security experts felt Wiginton's proposed event posed a significant risk of harm to the campus community and visitors. The Chancellor determined that TAMU would not facilitate Wiginton's event, and the leadership team agreed. The group recognized the decision might spark litigation.

By then, TAMU's event policy required external groups to have a university sponsor. Thus, TAMU believed it had a basis to deny facilitating the announced rally. Participants dispute the extent and nature of Wiginton's Spencer 2 contact with TAMU.

Wiginton asked to reserve a table in the reservable spaces that we have available for expressive activity. And we simply told him, no, we're not going to reserve a table for you. He went to the media and said TAMU canceled my event. We didn't cancel his event. We just didn't reserve a table for him. He could have come (T-1, p. 15).

There was nothing for us to cancel. There was never anything formally done. So, there wasn't anything to cancel (T-12, p. 5)

Well, at least the version I heard was [Wiginton/Spencer] got ahead of their skis acting like they were coming in. But they didn't have the right approvals. So, it became, you're canceling these events. But really, we just had never approved of it (T-4, p. 10).

They wanted a particular time and facility. It was previously scheduled. We said, come before or after, but they had a TV spot and didn't want a different day. There was a conversation about available facilities. They were going to make a stink until we said, 'who is your sponsor?' They had not worked through a student group. We never canceled the event. That is nonsense. He never scheduled it. Negotiations about time and place didn't work. They put out the word that we canceled, but we corrected that. It was clear he didn't have a student or staff sponsor. Further, he was unwilling to schedule the event at a time and place that was actually available (T-14, p. 7).

Most participants emphasized that Wiginton never had a confirmed registration to cancel.

However, the university's public statements make a different assertion. As of December 2021, a MarCom release remains on the institution's website claiming TAMU *canceled* the 9/11 event *registration* (T005, *emphasis added*). One participant shared,

TAMU didn't go out of its way to correct the perception that we canceled it because some in the administration liked the way that sounded. This is what some wanted to have happened the first time (T-1, p. 15).

TAMU's *cancellation* statement cites security risks of connecting the proposed event to the violence in Charlottesville, and potential disruption of educational activities as the announced date fell on a class day.

As predicted, Wiginton threatened litigation, and Spencer claimed it "might be fun" to win a federal judgment against Texas Governor Abbott (Alfonso III, 2017). For all the public posturing, neither Wiginton nor Spencer appeared on the TAMU campus on September 11, 2017, and litigation never materialized.

Both TAMU and the Alt-Right took bold public positions exceeding their actions. Wiginton announced an event before coordinating the use of the campus, and TAMU promoted itself as *canceling* an unarranged event. Neither the university nor Wiginton exhibited transparency. However, the public posturing of each may have enabled TAMU to deny the expression while also avoiding legal liability.

### **Conclusion – TAMU**

TAMU faced threats to reputation, safety, legal liability, tension of values, and the free exchange of ideas with Spencer's announced and actual visits. In 2016, under the guidance of a leader and legal expert, the university prepared for, managed, and honored legal and educational obligations to protect freedom of speech. Counter-speech, safety planning, supplemental security, reputation management, and student involvement were all critical to the success of Spencer 1, but also the result of a decision to fulfill constitutional obligations of allowing expressive activity regardless of the views of the speaker.

With Spencer 2, TAMU declined to foster an exchange of ideas. It opted to limit safety threats to the campus community by making decisions and statements *canceling* the event. Understandably, an academic administration would not relish the idea of managing White supremacists on campus while law enforcement attempts to hold back anarchists and other protestors. However, eradicating safety threats also eliminated expressive rights and opportunities to educate and demonstrate the importance of the First Amendment. When the marketplace of ideas is unwilling to protect controversial and unpopular opinions, how secure are our constitutional and academic freedoms?

## **The University of California at Berkeley Experience and Findings**

### *Background*

UCB, often considered the most renowned public IHE in America and one of the most liberal, was the final stop on the Danger Tour of the conservative-leaning Yiannopoulos. His anticipated speech caused significant advance dissention on campus and violent protests resulting in the cancellation on the night of his scheduled appearance. In the wake of public reactions to the campus violence and speech shutdown, Yiannopoulos announced extravagant plans to return to Berkeley with a host of other conservative speakers. He appeared later that same year, albeit without most promised guests.

### **UCB location and political culture**

Like Texas A&M, UCB is a land-grant institution, first established in California in 1868. The university has a three-part mission to advance teaching, research, and service. When asked about the mission, participants commented on institutional commitments for sharing diverse

perspectives, trading ideas, and creating open-minded leaders. Further, many also referred to the UCB motto, *Fiat Lux*, or “let there be light.”

The Berkeley undergraduate and graduate student enrollment total about 45,000. The campus real estate comprises about a quarter of the acreage of A&M, with a little more than 1200 acres. Renown as one of the top public universities in America, UCB is known for research and was a founding member of the AAU when established in 1900. The UCB’s longstanding AAU membership is barely mentioned on the Berkeley website. Instead, the university focuses admissions and marketing information on the academic or athletic successes of its faculty, alumni, or students, touting Nobel or Pulitzer Prizes and Olympic medals.

Located on the eastern edge of the City of Berkeley across the bay from San Francisco, UCB is also north and adjacent to Oakland. The location and regional politics influence the institution. As participants commented:

We live in one of the bluest states in the country. I have no reason to believe that the staff and faculty of UC Berkeley are somehow not representative of the state as a whole, that somehow our political makeup of the thousands of people who work at the university is somehow different than the state as a whole (B-1, p. 2).

The activists in and around Oakland and the City of Berkeley are hard-core people. We have a hub of activism that goes well beyond the campus. Things on the campus spark the activists, and they show up. They aren't part of our immediate campus community, but they expect to create or participate in activism here (B-5, p. 3)

The City of Berkeley touts itself “as one of the most politically liberal within the nation” (*About Berkeley*, n.d.). Participants overwhelmingly considered the political culture of the UCB community as left of center, with disagreement only as to how far left on the spectrum or degree progressive politics are imposed on those with views closer to the center. With a left-leaning political culture and activism in the area, UCB is not a stranger to progressive ideas and demonstrations advancing political and social agendas.

## UCB free speech history

Such was the case in 1964 when UCB experienced a wave of campus activism from a group labeling their cause the Free Speech Movement (FSM or the Movement). This group, comprised primarily of enrolled students, protested university prohibitions against political advocacy and fundraising on campus. The Movement included student protests, sit-ins, building occupancy, arrests, and a strike. It was ultimately successful. After three months of protest, the FSM garnered the support of the UCB faculty, demonstrated by an Academic Senate resolution, and the UC Regents voted to change policies to allow students to engage in expression, opinion, assembly, and even advocacy for political causes on campus (Cohen, 1985; Perrino, 2017).

While the UCB administration was reticent to permit partisan student expression in 1964, it now considers the FSM a part of its rich history and an example of its motto, *Fiat lux* or let there be light. The university website lists the FSM under "milestones and discoveries." Former Associate Chancellor Nils Gilman also identified the Movement as inseparable from the history, mission, and character of UCB:

This is a core part of Berkeley. It's brand identity, if you want to put it that way. Its reputation is that we're the home of the Free Speech Movement. There was a big fight about that in 1964. And since then, there's been a very established protocol that anybody can invite anybody to speak. Anybody in good standing can invite anybody they want to speak, period (B-2, p. 6)

A former student further explained

Berkeley has the free speech movement. It has the Free Speech Movement Café attached to one of the libraries. It has an outsized reputation it has to protect (B-4, p. 5).

Campus activism did not end with the FSM. It continued through the following decades with protests against Vietnam and other wars, for women's rights, against Apartheid in South Africa, demonstrations over tuition, the Occupy Movement, and even riots originating with denial of entrance to a registered student organization (RSO) dance. As one participant shared, "At

Berkeley, we are like the lightning rod. Protests and demonstrations are a weekly if not daily occurrence for us” (B-6, p. 3).

Demonstrating the reach of free speech principles at UCB, soon after assuming office in the summer of 2017, Chancellor Christ sent a communication to the campus reminding that Berkeley is the birthplace of the FSM and asserting, “Free speech is who we are” (B011). Unquestionably, UCB’s mission, history, and the mantle of the FSM shaped approaches to campus expression, including that of Yiannopoulos’ Danger Tour.

### *Yiannopoulos 1*

#### **Invitation and alarm**

RSOs, as indicated above, are often at the center of activism at UCB. As an RSO, the BCR hosted numerous speakers each semester. A member recalled

usually, 15-17 of us would meet regularly and discuss various individuals we would like to see come speak. We worked very hard to bring in conservative or different types of thought. We knew the campus was liberal. We wanted to mix it up. We were tired of hearing from one side. We tried to have more variety. We wanted to bring in more speakers than actually happened (B-3, p. 2).

The campus controversy and IHE response described below began when student BCR member Troy Warden extended a Danger Tour speaking invitation.

I sent the invitation back in August of 2016 before Milo Yiannopoulos was an extremely controversial figure... He hadn’t really started his extensive tour of U.S. universities. So he was just coming into being, so to speak. I invited him because I thought he was interesting. In other words, I thought Milo Yiannopoulos would be something sort of different than the run-of-the-mill conservative speaker (Dinkelspiel, 2018, p. 3).

The agreed date was February 1, 2017. In the intervening months, Yiannopoulos’ Danger Tour events gained greater notoriety and caught the attention of the UCB community.

As the number of universities visited by Yiannopoulos increased, so did his aggressiveness. In December 2016, he spoke at the University of Wisconsin-Milwaukee while

live-streaming the remarks on the Breitbart.com website. Yiannopoulos made a production of identifying a transgender student, Adelaide Kramer, by showing the student's picture and mocking her use of women's bathrooms. The picture came from a public source; the student newspaper featuring Kramer's fight for transgender rights. She was present at Yiannopoulos' Wisconsin-Milwaukee event and, after being outted on a live-stream feed, withdrew from school. Yiannopoulos' unabashed public shaming of a specific student, coupled with other reported comments and activities, stirred action among the UCB faculty and area activists.

### **A matter of routine: reservations and security**

UCB has hundreds of RSOs, and collectively the groups reserve campus spaces for as many as 11,000 meetings and events a semester. The Student Affairs LEAD (Leadership, Engagement, Advising & Development) Center assists RSOs in coordinating organization events. With LEAD Center assistance, the BCR secured reservation of the Pauley Ballroom in the new UCB Martin Luther King (MLK) Student Union near where the campus and city meet, a well-known center of campus activism. As a matter of routine and under the UCB Special Events Policy in place at the time, the University of California Police Department (UCPD) learned of Yiannopoulos' event.

The sponsoring group, the BCR, notified the LEAD Center that handles student groups about the event and that they needed space. That triggered an inquiry to the police of what kind of security would be needed. We began working with the BCR on the event in late November or December 2016 (B-6, p. 1).

Once aware of an external speaker event, UCPD's practice is to assess and determine necessary security:

A part of our protocol on event management is to query and check out where a speaker has been before and talk to those institutions about how they staffed, what was good or bad, and what they would have done differently. We also query news media sites to see how the speaker or event was received (B-6, p. 4)

The sponsoring RSO would bear the cost of security based on the UCPD estimate after reviewing the number of attendees, venue size, and other neutral factors. BCR claimed member representatives were advised the security cost would be \$1,500-2,000. The BCR planned to cover the cost from available organization funds and by selling event tickets for \$2.00.

**Notice: trouble, it's going down**

With a vibrant campus and high degree of student activism, few RSO events capture the attention of Berkeley administrators outside of the LEAD team and UPD. However, about six weeks before the event date, awareness grew of Yiannopoulos' tour events elsewhere and his upcoming UCB visit. Some participants learned through the student newspaper or social media, and others through their employment chain of command. One, Assistant Vice Chancellor Dan Mogulof, discovered the event through a series of letters:

Prior to mid to late December of 2016, I don't think I, or any of my colleagues, had any idea who he was. Maybe I'd heard the name in passing. At some point, maybe it was early January, I started getting emails that looked to be form letters, but not all. They basically said: 'Milo Yiannopoulos is coming to your campus. And if you don't take the steps necessary to stop him from coming, we will be forced to take matters into our own hands.' And then we started to get mail from the opposite side. 'We know Berkeley will never let Yiannopoulos speak, and if you don't let him, it won't be pretty' (B-1, pp. 3-4).

After receiving the correspondence, Mogulof researched the phrasing and identified a website appearing to be the origin. While Mogulof did not mention the specific site, a former student and anti-fascist participant shared that the website, *ItsGoingDown.org* is "as close as you're going to get to an anarchist news source" (B-4, p. 10). The website encouraged readers to submit written opposition to Yiannopoulos, provided a form letter, and listed addresses and emails of Mogulof, Dirks, and a UCB communications manager.

With its long history of protecting expression, UCB administrators are well versed in First Amendment obligations. Even so, leadership relied on the opinion of legal counsel:

Somebody may have said in an initial meeting, ‘can we keep them from coming?’ and campus counsel was like, ‘no way. He has a right to be here. The student groups are autonomous and independent from the campus. They are legally independent. We do not have the authority, ability, desire, nothing, to stop the way or interfering with what a student group wants to do’ (B-1, p. 12).

The UCB administration would not interfere in the BCR’s right to host Yiannopoulos, even though the barrage of correspondence indicated Yiannopoulos’ visit could create significant campus tension. Nonetheless, administrative and safety personnel did not anticipate violence:

There was this growing sense that we could be in for some trouble. But nobody ever expected what actually occurred that night (B-1, p 5).

At Berkeley, these are the kinds of threats we get all the time. It is routine, business as usual, but is also considered when we staff an event (B-6, p. 2).

It's part of what happens every day. But we knew we were going to have to do all sorts of preparations for it because it was obviously going to cause severe reactions on campus. We knew that this was going to cause protests. We knew that there [were] going to be people who demanded that the administration not allow him to speak on campus. I mean, this happens regularly at Berkeley, too, even though the official ideology of the campus and the administration is anybody can invite anybody (B-2, p. 6-7).

With its history and mission of ensuring the protection of all speech, campus leadership saw the news reports and threatening letters as merely identifying a situation for UCB to manage. At this point, BCR’s event appeared no different than numerous prior campus expressive events.

### **More voices for cancellation**

Coinciding with receipt of the form letters, in early January, UCB Chancellor Nicholas Dirks received a letter from concerned faculty urging the cancellation of Yiannopoulos 1. Per one signatory

There had been a number of campus scandals around sexual harassment at a high level in the university. That created a real loss of confidence around the then Chancellor Dirks on this Yiannopoulos issue. He [had] resigned. He was there as a placeholder until an interim could be found. So, the sense the administration was not credible in protecting vulnerable populations from harassment was something that informed the original letter, as well as the evident goal or the evident practice [of Yiannopoulos] singling out students

for harassment based on their membership in certain vulnerable identity categories (B-8, p. 1).

The faculty letter detailed Yiannopoulos' public ridicule of Kramer at the University of Wisconsin-Milwaukee. Per the correspondence, Yiannopoulos' conduct was harassing and defamatory. Further, the faculty asserted if Yiannopoulos repeated such behavior at UCB, it might violate the UCB code of conduct and institutional Title IX obligations "to provide an environment free of sex and gender-based harassment" (B066, p. 2).

Nonplussed, the UCB administration responded the very next day with an email from Associate Chancellor Gilman. Relying on campus policies, Gilman disclaimed any UCB affiliation or responsibility for Yiannopoulos' invitation and suggested the faculty address concerns directly to the student event hosts, the BCR. The administrative response included a brief primer on First Amendment obligations to protect speech, including offensive and hateful expression.

The faculty sent a rejoinder. The follow-up correspondence continued to question the constitutionality of Yiannopoulos' expression and asked whether the administration would put protective measures in place, such as preventing the projection of images of students or immediate removal of Yiannopoulos if harassment occurred. Additionally, the faculty asked the administration to detail the repercussions BCR members might suffer if their speaker violated the campus code of conduct. A faculty participant explained,

The desire was to get a direct response from the administration that would show they were engaged in this situation in a thoughtful and proactive way, rather than, to put it unkindly, hiding behind a student group (B-8, p. 1).

As the event approached, the faculty members endorsing the letter grew from the original 13 to more than 100. Meanwhile, Yiannopoulos' events continued to draw controversy. A shooting

occurred outside his speaking venue at the University of Washington less than two weeks before the scheduled UCB appearance.

With evidence of violence in another city and swelling support for cancellation from the professoriate, the administration met with a representative body of the concerned faculty. Gilman viewed the meeting as a necessary leadership action.

There was one very tense meeting with about four or five faculty members who were there . . . It was a courtesy, right. I mean, you had 96 faculty sign a petition. The chancellor should respond to that. And that's what he did; he took the meeting. I think they felt heard. They weren't satisfied because we didn't give them what they wanted. We didn't say yes, we're going to disinvite him. (B-2, p. 9).

A faculty member participant recalls several engaged administrators at the meeting, including the then Provost and current Chancellor, Carol Christ. Overall, the participant's impressions aligned with Gilman's above.

My takeaway was there was more of a sense of urgency within the room, among the chancellor's cabinet, than there was in the public statements. The stakeholders or whatever you want to call them, the 'vices this and the executives that' were working hard behind the scenes. I was frustrated that the sophistication on display there wasn't making its way into these relatively anodyne public positions being taken. As I remember, my sense walking out of the meeting was that we had been heard. Then, my sense five minutes after processing was that there were no commitments (B-8, pp. 2-3).

Although the meeting did not alter his decision, Chancellor Dirks demonstrated interest and acknowledgment of the faculty members' concerns.

The faculty meeting and correspondence put administrators on further notice of potential harassment and violence. A participant recalled

Someone had been shot at the Seattle event, and the possibility of a riot was clearly articulated at that meeting with the chancellor, with some table-thumping or banging on the part of one of my colleagues. My colleagues quite emphatically brought forward that the Spencer and Yiannopoulos events are clearly programmed to be riotous (B-8, p. 4).

Along with concerned faculty notices of potential violence and form letter crusades, other entities notified UCB of threats. Dr. Gilman recounted

You have these people walking into our office saying, hey, there's credible threats of violence. I had the Southern Poverty Law Center call up and say we're hearing chatter in the network that right-wing groups are planning on showing up and perpetrating violence around Yiannopoulos. That's the reason why you should shut this thing down because there's credible threats of violence. And we kept saying, look, show us the evidence. . . .

There might be right-wing violence that could happen. I personally believe it. I fully believe that that could be happening. But I need to see the evidence. I'm not going to make this decision because you assert this. You've got to show us the evidence. Nobody ever showed us any evidence. And then we know what ended up happening. There was violence. It didn't come from the right (B-2, pp. 9-10).

Despite mounting external and internal communications, the UCB administrative position was unwavering. Based on the information available, it would not engage in prior restraint of BCR's or Yiannopoulos' speech.

Per the BCR, rumors of violence altered the original \$1,500-2,000 UCPD security assessment. Representatives from student affairs, UCPD, MarCom, and the BCR, dialogued by email, telephone, and in-person during the first and second week of January 2017. The University released emails indicating BCR was unaware of missing forms and did not finalize the formal security estimate request until early January. The police department's estimate included 13 security personnel staffing the event for four hours at the cost of \$6,372. From BCR's perspective

The response was due to the attention given to the event by a lot of other groups, both students and others in the greater Oakland/Berkeley areas. On social media, these groups stated they were going to intervene in the BCR/Yiannopoulos event in some way. When the administration started to hear about it, they said more security was needed (B-3, p. 3).

The new estimate was 298% higher than BCR's initial cost understanding, resulting in the student organization emailing Chancellor Dirks to request a fee waiver.

BCR's correspondence declared it absurd for the university to assume students had access to thousands of dollars. Further, the RSO asserted that UCB's fee was an unlawful speech tax. A

former student and BCR member participant confirmed, “BCR had legal counsel. I’m sure they still do. It was a necessity because of how standoffish the university was with us. The fee made it difficult and was almost prohibitive” (B-3, p. 1). UCB’s attorney responded on behalf of the university, citing alternate legal precedents and university policies. BCR and the UCB counsel engaged in a brief flurry of correspondence over the next few days citing case law, public information requests, and contract interpretations to support the respective positions.

Yiannopoulos’ opinion on security fees may have fueled BCR’s position. The evening UCB canceled his speech, Yiannopoulos stated on *Fox News*:

A new kind of censorship is a slippery tactic that American colleges use. They only ever levy services on the other speakers they don't like. At the last minute, they impose massive security fees on the students who have invited you. What they'll basically say is, ‘oh, by the way, you have to come up with six and a half thousand dollars in five days-time, or you can't have the speaker. And they wait right until the last minute to do it.

Now, in this case, they absolutely did this again at UC Berkeley . . . the students are wise to it. But these are 19-year-old kids. They can't always come up with six, seven, eight thousand dollars with five days’ notice. And they [universities] do this strategically. They do it last minute and then on purpose to try to derail events where conservative speakers are going to be present (B109, p. 3).

The former student and BCR member participant offered that an unintended effect of the fees and media surrounding Yiannopoulos 1 was an influx of financial support from beyond the campus. After receiving an anonymous gift to cover security, BCR agreed to pay the fee.

### **Preparations and discontent continue**

As Yiannopoulos 1 neared, staff and administrators continued preparations and communications to disgruntled campus community members. The student newspaper ran a series of anti-Yiannopoulos articles, UPCD arranged staff for the evening, and the UCB Protest Response Team prepared to serve. Student affairs administrators encouraged counter-speech RSO programming and monitored announcements of anti-Yiannopoulos protests.

A week before the event, newly inaugurated President Trump announced a ban on travel from foreign nationals to the U.S. from seven Muslim countries while increasing arrests and deportation of undocumented individuals. Then, one day before the BCR event, Breitbart news announced Yiannopoulos would kick off an anti-sanctuary campus campaign at Berkeley. Trump's actions and Yiannopoulos' reported intentions strengthened the current of concern on campus. Participants explained,

Yiannopoulos had the practice of outing transgender and undocumented people and speaking out against them. The immigrant/undocumented students were very much a concern and priority for the campus. There was a real concern that Yiannopoulos was potentially dangerous to undocumented individuals because he might out them/dox them (B-5, pp. 1-2).

The sort of thing people were really scared about was going to be material effects on people's lives. Not just that he's going to stand up there and say whatever racist thing he wants to say (B-4, p. 6).

Administrators attempted to address fears by reaching out or responding to students expected to be most impacted by Yiannopoulos. The chancellor met with a select, RSVP-only group of concerned students at the International House (home to many international UCB students) and, on another occasion, addressed LGBTQIA students. Students were encouraged to avoid Yiannopoulos' speech or, if planning to protest, to do so peacefully.

Both pro and anti-Yiannopoulos students experienced threats and intimidation. A former student and anti-fascist participant recalled the experience:

Things got very scary, and they'd gotten very serious, very fast. I never really got that much in the way of credible threats, but I ended up on lots of lists. . . People's names, locations, and pictures were being circulated by individuals on the far right. . . I, because of my speech, was now in very real in fear for my life on, on a level that I never had before (B-4, pp. 1, 4).

Two administrative participants shared that BCR members were also at risk

some of these young Republicans were the subject of death threats, anonymous death threats. . . . There were lots of people who were claiming, and I don't think incorrectly,

that Yiannopoulos showing up here was generating a furor of death threats to various members of the community around him (B-2, pp. 7, 13).

When a student reported threats, administrators dispatched UCPD to take statements and investigate available information. However, students not initiating a formal complaint, even those very publicly doxed on Breitbart or social media outlets, never heard from UCB administrators, police, faculty, or even student affairs practitioners.

Faculty continued to seek cancellation or postponement of Yiannopoulos 1, taking their case directly to BCR. The UCB administration said, both before and after February 1, that it did not anticipate coordinated violence. Yet, the concerned faculty did. In an email to a BCR member and the Dean of Students just a few days before Yiannopoulos 1, a faculty member stated we are “facing the prospect of a riot on Sproul Plaza between outside groups using our campus as a battlefield” (B038).

Continued warnings did not sway BCR or the university’s approach. Chancellor Dirks sent campus-wide correspondence explaining the event would proceed. The message affirmed two institutional values and commitments: constitutionally protected free expression and inclusion. Dirks recognized tensions the BCR event created for these values and pointedly shared his opinion of the speaker

Mr. Yiannopoulos is not the first of his ilk to speak at Berkeley, and he will not be the last. In our view, Mr. Yiannopoulos is a troll and provocateur who uses odious behavior in part to ‘entertain’ but also to deflect any serious engagement with ideas (B-029).

In a thinly veiled attempt to shame BCR members and engage in anticipatory blame-shifting, Dirks acknowledged BCR’s independence and right to host Yiannopoulos while declaring the students morally responsible for the event and actions of their guest. The chancellor also stated that UCPD was prepared and “will not stand idly by while laws or University policies are

violated, no matter who the perpetrators are” (B-029). Finally, Dirks confirmed the importance of exchanging and exposing even hateful ideas at a university.

Per Chancellor’s Dirks communication and the research conducted by UCPD, the department added law enforcement officers from other UC campuses for the evening of Yiannopoulos’ speech. UCPD “felt we had adequate staffing for the heated moments expected with Yiannopoulos protestors” (B-6, p. 2). Police prepared for comments it discovered on *ItsGoingDown.org* and social media posts of By Any Means Necessary (BAMN), another organization active with protests in the area. As a safety precaution and practice, the university does not formally release the number of officers staffing high profile and security-sensitive events. However, one administrative participant estimated the number of police present as being between 150 and 200, with many hidden in the basement of the MLK Student Union.

In collaboration with UCPD, members of the Protest Response Team (PRT) prepared and planned to be on hand the evening of Yiannopoulos 1. In 2012, UCB created the PRT after the Occupy Cal and other UC protests. Two administrative participants recalled the precipitating situation.

The Occupy Berkeley police beat down of students and community members looked bad. Our chancellor at the time really messed up the messaging about student and community peaceful resistance. He described locking arms as NOT being a form of nonviolent resistance. My recollection is they were peaceful protests. There were tents around Sproul Hall, and it was not particularly pleasant. But it wasn’t violent. As I remember the Occupy protest, the violence came from the police (B-5, p.3).

There were horrible incidents; UC Davis police sort of nonchalantly walking around tear-gassing kids who were sitting down with their arms linked. Really horrible. We had the batons out on the Berkeley campus. People got rattled. Rattled. Nobody was happy about the way those protests were handled (B-1, p. 9).

The University of California (UC) System coordinated a review of activism management by the General Counsel Charles Robinson and UCB Law School Dean Christopher Edley, and issued a

report referred to by UCB participants as Robinson-Edley (2012). Robinson-Edley recommendations for protest management include clearly defining decision-making roles, training, communications, and establishing a PRT (2012). A strong desire to avoid expressive controversy at the FSM legacy university led to UCB's broad adoption of many recommendations, including forming the PRT.

The Vice Chancellor of Administration and the Executive Vice Chancellor and Provost (Carol Christ during Yiannopoulos 1, the subsequent chancellor) co-chaired the PRT. The team includes representatives from the Academic Senate, Mar-Com, student affairs, UPCD, and facilities management. It conducts regular and special meetings, depending upon the situation. The PRT met the day before Yiannopoulos 1, engaged in scenario planning, rehearsed situations, and developed specific protocols for the February 1 event.

### **Evening of Yiannopoulos 1**

Yiannopoulos never took the stage at UCB on February 1, 2017. He arrived in the Pauley Ballroom around 4:30 and briefly greeted BCR members. Yiannopoulos then prepared in the green room while BCR members watched a huge crowd growing outside. Other participants remember the early evening as not unlike many others at Berkeley.

My office is very close to where the students gathered on and near Sproul Plaza in anticipation of (hours before) Yiannopoulos' scheduled appearance. I remember leaving the office that Wednesday night around 5:00 p.m. I remember thinking the crowd was a little hot, more intense than usual, but not that hot or intense. There were a lot of people. It seemed, for the most part, like a party, not a hostile vibe. It wasn't unusual; we have a crowd like that at least once a semester. It didn't have the vibe to me that it was going to get bad (B-5, p. 1).

Nightfall is about 5:30. The usual barricades to make sure that the people were lining up to get into the venue or separated from the protesters that had all been set up in advance on Sproul Plaza, outside the Student Union. Starting around five or so, people started to line up to get into the venue. And some protesters are starting to show up. And there was fairly standard-issue Berkeley stuff, where there's a protest group, and they've got signs, and they're chanting and doing as protesters at Berkeley do. It's totally normal stuff (B-2, p. 14).

I was there earlier that night. I didn't see anything get set on fire. It was dense, but at the time, festive. The student-organized counter-protests involved a lot of dancing (B-8, p. 4).

As predicted, numerous student and community demonstrators came to protest Yiannopoulos' presence. Participants estimate 1,000 to 1,500 people in or around Sproul Plaza.

The Chancellor and ten to 15 members of the UCB leadership team, many of whom were members of the PRT, gathered in California Hall. The leaders watched live feed cameras and listened to radios/telephones for real-time reports from police. The evening unfolded as anticipated until a large group of similarly-dressed individuals entered the scene together and changed the dynamics.

#### *People in black are heading to campus*

Administrators received early indications of concern in the war room.

We got this APB [all-points bulletin] from the private feed from the police. We saw a notification come in saying Berkeley City Police have identified that there are approximately 150 black-clad and masked people approaching the campus from the south side. I remember when that came across, all of us looked at each other like, 'what the fuck is going on?' (B-2, p. 14).

Participants and UCB documents refer to the masked group as either the Black Bloc or Antifa.

Both terms are likely accurate, but each has a distinct meaning.

Antifa is an abbreviation of anti-fascist. Per one participant, Antifa "is not like a group that you've got a membership to; anybody can be an anti-fascist" (B-4, p. 7). While the group has no organizational structure or mission statement, the Anti-Defamation League notes those

affiliated with Antifa usually have an anarchist or far-left view. Some use vandalism or violence to counter-protest or oppose White supremacy, former President Trump, and conservatives in general (Anti-Defamation League, n.d.).

Black Bloc is not an ideology or organization but a tactic used in protests, recently by Antifa. Groups employing a Black Bloc dress in similar, usually black, clothes to unite the group and create a show of force. They wear masks to help prevent the identification of individuals involved. The group moves together as one unit, often destroying property and, occasionally, attacking persons who appear to support the protestors' opponents.

A former student and anti-fascist participant student frustrated with Berkeley's failure to cancel Yiannopoulos learned of Antifa's planned black bloc through friends:

What I saw was everybody sort of exhausting all the legitimate ways that you normally go about petitioning in university to do something different, and it wasn't working. . . Me and my friends were mostly just getting together, trying to figure out what we could do now that all of the other options had been exhausted (B-4, pp. 2, 10).

On February 1, 2017, the participant met with a large group of others off campus. According to multiple reports, they organized outfits, face coverings, signs, and items used as weapons.

Coordinators carried megaphones to guide the group. The bloc marched to campus, knowing arrest was possible, but armed with the phone number of the National Lawyers Guild (B-4;

Kutner, 2017; Lawrence, 2017). The Black Bloc participant summarized the evening as simply:

that day, there was a big crowd already, the Black Bloc rode in, then some stuff got broken. There was a fairly small fire, all things considered. But then it was the biggest news story that had ever happened. Berkeley was getting talked about by everything. The picture of the light on fire was everywhere. That's a light on fire and a tree that caught fire. Nobody burned down buildings, barely a riot (B-4, p. 10).

Per this participant, the point was to show up, break things, and fight to ensure Yiannopoulos did not speak. It was, per the participant, what Antifa does.

*Where were you when the Black Bloc entered the plaza?*

Other study participants had more vivid impressions of the Black Bloc's presence and activities. Mogulof was in front of the student center when the Black Bloc entered Sproul Plaza.

There is this energy shift in the crowd, and people start to turn away from me, and I look over the tops of their heads. I see there's this group of 100 to 150 people who are clearly dressed in Ninja outfits with weapons and Molotov cocktails (B-1, p. 5).

From the window inside the student center, the former student BCR member participant saw

as it got darker and closer to our timeline, things seemed to have turned for the worse outside very rapidly. People came into the area in all-black attire. It was like they all got off a bus together or something. From inside the building, we saw the crowd growing, a very large crowd. Very quickly, I saw fireworks shot at the building, things thrown, and then a fire alarm went off. I am concerned. We are all getting concerned. (B-3, pp. 3-4).

A security personnel participant noted

I was inside the student center when the Black Bloc turned the corner. A brick was thrown and rolled to a stop at the building. I was at that window where the brick stopped . . . The Black Bloc came into campus and immediately went to the barricades and cut the zip ties we used to tie them together. They launched M-80s at our officers that were overseeing the area from up high. Then they started using the barricades to break glass to try to get into MLK [Student Union]. The Black Bloc turned over the lights (B-6, p. 4).

Gilman watched on cameras in the war room, then walked to the plaza to see events in person.

They put out smoke machines, so all of a sudden, it obscured what was going on, on campus in Sproul Plaza. They started throwing M-80s and then rocket launching M-80s, the big firecrackers, shooting those at the brand spanking new quarter-billion-dollar Student Union Yiannopoulos is supposed to be speaking in. They plug in, they haul in a bunch of huge speakers, and they're playing death metal. There're four helicopters, news helicopters, overhead with spotlights, so there's super noise. So, I got a huge bonfire in the middle of Sproul Plaza. This starts licking up against the side of our brand new quarter-billion-dollar Student Union (B-2, p. 14).

BCR members, administrators, and even security personnel recalled specific, graphic details of their first sighting of the Black Bloc. In juxtaposition to the Black Bloc participant's view that it was a "pretty tame protest," other participants found the presence of the aggressive, similarly dressed group intent on destroying property troubling (B-4, p. 10).

Determining the police were outnumbered, UCPD officials decided not to engage the Black Bloc until more officers arrived. Campus police requested additional officers, per the California Law Enforcement Mutual Aid Plan. The numbers appear almost equally matched with 150 Black Bloc protestors and 150-200 officers. However, UCPD's concern extended to the thousand or more who turned out to protest peacefully:

It would have been a bad thing for our officers to have confronted the Black Bloc. The Black Bloc had metal pipes and bats. If we had gone out, the use of force would have been horrendous. It was the right call to keep the UCPD officers inside until aid arrived. We did have teams going out to rescue individuals that were caught in the Black Bloc. It was teams from those officers locked inside MLK. They would dash out and bring an individual to safety (B-6, p. 4).

Gilman further explained the crowd's composition:

TV cameras showed a big group of people in the middle of Sproul Plaza, several 100 people. But what it didn't show was that all around the edges, there were 1000s of spectators, many of whom were drinking and smoking grass, because it's entertainment. Rioting at Berkeley is entertainment. I can tell you that having been an undergraduate there . . . They did have enough cops to stop the Black Bloc people, because the cops outnumbered the Black Bloc people. But they did not have a tactical plan to separate the Black Bloc people from all the rest of the crowd of protesters. (B-2, pp. 14-15).

Even though only a fraction of the people in Sproul Plaza were Black Bloc protestors, UCPD declined to enter the crowd due to concern for escalated violence and impact on bystanders.

### *Shut it down*

With aid and engagement decisions made, UCPD leadership conferred with the rest of the PRT to determine the fate of the BCR event. Security personnel shared that in accordance with Robinson-Edley,

once an event starts going down a path of administrative involvement, then our job is to work with the PRT to determine the resolution. . . It is important for senior leadership to take on the role of managing events and not leave it to the police. The stakeholders and leaders need the voice. This method provides more of a partnership between the police and the administration (B-6, p. 4).

Per Gilman, police told war room administrators

‘We don't think we can control the situation. I think we have to pull the plug.’ Everybody looked around at each other, like the police say they can't control it, got to pull the plug. Well, you know, we relied on the police (B-2, pg. 15).

Due to highly-visible and obvious safety concerns and on the advice of security experts, Berkeley, the home of the FSM, canceled Yiannopoulos’ speech.

Law enforcement officers shared the news with Yiannopoulos and BCR. Neither opposed the decision at the time. The former student and BCR member participant shared, “We didn’t push back because we could see the scene outside. We never expected it to rise to that level; to have glass in the building shattered” (B-3, p. 4).

Police escorted Yiannopoulos to a basement parking garage. He left campus and traveled to a TV studio. On *Fox News* that evening, he recounted his experience, stating:

Violent left-wing protesters stormed the building and forced me to be evacuated by police and by my security detail this evening, preventing me from giving the last speech in my tour, which was supposed to be exactly about this problem. Heavily ironic and very self-defeating for the social justice left (B-109, p. 5)

About the same time, and while protests continued unabated on the plaza, the BCR departed from the student union without a police escort. The BCR member participant recalled:

They opened a door in the back of the building. We kind of snuck out and found our way home. I remember walking. The crowd was on the West side of the building, and we went out the opposite side, down some back stairs, and were not spotted. No one noticed us, and we were all dressed in business casual, so it would have been obvious who we were if spotted (B-3, p. 4).

The BCR left the building with a measure of personal risk. Another BCR member reported a much more fearful walk home after being identified, yelled at, tripped by an Antifa member, hiding in a dorm, and calling his parents for assistance to escape the campus (Dinkelspiel, 2018).

Word of the cancellation spread quickly outside. The protestors remained in control of the plaza and began to enjoy their victory as the fire still burned. The death metal changed to

dance music, and the crowd celebrated the shutdown while police gave the periodic dispersal orders. The plaza party ended around 8 p.m., close in time to the 7:45 p.m. arrival of the mutual aid from the Alameda Sherriff's Office. Some Antifa protestors moved into the city, looting and vandalizing, seemingly at random. A small contingent remained or returned to campus, asking people they met where they could find the chancellor's house. The lack of campus knowledge indicated to administrators that few students were involved in the Black Bloc.

With primary order restored and Chancellor Dirks in a safe room at his residence, UCB public affairs issued a late statement recounting the institutional event preparations, attack of "outside agitators," cancellation of the event, and reaffirming the university's commitment to free speech (B037).

### **The aftermath of Yiannopoulos 1**

#### *A bad day and beyond*

The shutdown of Yiannopoulos' speech was a dark mark on the reputation of the FSM university, and Berkeley immediately knew it. Administrative participant reactions include,

I remember thinking at the time, this is going to make UC Berkeley look very stupid, and that sucks. . . I thought it would look like a bunch of irrational UCB students and an administration lacking control that also suppresses free speech (B-5, p. 1).

I said in a press conference; it was a bad day for Berkeley. It was a bad day that we had to shut down an event in order to protect the life of the speaker. No matter how odious his beliefs and perspectives are or were, a bad day (B-2, p. 20).

It's a bad thing if there's a riot on campus. I think everybody perceived this to have been not Berkeley's finest hour. There wasn't much to do other than the physical cleanup, which was done pretty quickly, [after] the event was over (B-2, p. 20-21).

The administrators recognized shutting down speech, particularly that of a speaker as controversial as Yiannopoulos, damaged UCB's reputation as a place for sharing all ideas.

The Black Bloc's broadly televised violence and event cancellation left Berkeley's leadership over matters of free speech in the higher education marketplace teetering. The violent, successful anarchists revealed numerous failures in law enforcement intelligence, security planning, risk management, and overall preparations of a world-famous research institution. Moreover, the UCPD decision not to engage protestors, when coupled with Dirks and faculty members' public denouncement of Yiannopoulos, made it appear, at least to Yiannopoulos supporters from conservative circles, as though Berkeley was unwilling to protect speech because of the viewpoint of the speaker.

### *Communications*

**POTUS Weighs In.** Beyond the need to put the campus and city back in order, the immediate fallout of BCR/Yiannopoulos' cancellation and the Black Bloc were news reports, social media statements, emails, and telephone calls. Before dawn, the President of the United States (POTUS) tweeted early the next morning:

If U.C. Berkeley does not allow free speech and practices violence on innocent people with a different point of view – NO FEDERAL FUNDS?  
- Donald J. Trump (@realDonaldTrump)

The Black Bloc at UCB and Yiannopoulos shutdown was already a top news story. "A barrage of people calling in from all over the world" flooded telephone lines in administrative and security offices (B-6, p. 3). Once the media realized POTUS was potentially threatening UCB's funding, inquiries became more specific. Reporters wanted to know the amount of federal dollars the university received, which were federal government-funded programs, and the expected impact of losing funds.

The POTUS tweet was a red herring. Gilman "kept saying, we don't have to answer that question, because the question is premised on bullshit. He [Trump] does not have the power to

do this” (B-2, p. 20). The president did not pursue removing UCB’s funding, and how he could have accomplished such a task remains uncertain. Thus, President Trump’s 23-character missive issued less than twelve hours after the Yiannopoulos 1 cancellation resulted in additional headlines, stress for UCB employees, and necessary institutional after-action analysis delays.

**Damage Control: It was Them, Not Us.** Even with a deluge of calls from reporters and angered citizens, UCB released two statements on February 2. Chancellor Dirks relayed regret for the speech shutdown and the violence. He called the presence of the Black Bloc unprecedented and said those who committed violence were infiltrators invading the campus. The follow-up media relations release discussed police investigation of violent perpetrators, an initial damage assessment of \$100,000, and referred to the Black Bloc participants as agitators.

All three post-Yiannopoulos 1 UCB communications highlighted the unexpected nature of the violent attack, defended UCPD’s actions, and underscored the university’s belief in free speech. Each communication attempted to distinguish the violent Black Bloc actors as non-student outsiders separate from those gathering to protest peacefully.

**The Black Bloc is Us.** Black Bloc participants employed other avenues to dispel distinctions between protestors and the UCB community. One wrote an anonymous story for *ItsGoingDown.org*, claiming victory for shutting Yiannopoulos down and asserting protestor unity.

I am a former UC Berkeley student who showed up in Black Bloc, ready to break shit, ready to stop the event from happening. I am queer. I am trans. I am femme. I am fighting for survival. I am fighting for my people . . . *none of us are outsiders*. As Martin Luther King Jr, for whom the building set to host Yiannopoulos is named, himself said, ‘Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial, *outside agitator* idea’ (B-102, *emphasis added*).

The student newspaper, *The Daily Californian*, published a slate of op-eds from current and former students supporting the Black Bloc. One piece entitled *Black Bloc did what campus should have* written by an enrolled student asserted Antifa student affiliations:

behind those bandanas and black T-shirts were the faces of your fellow UC Berkeley and Berkeley City College students, of women, of people of color, of queer and trans people (Lawrence, 2017).

Moreover, at least one administrative participant reported knowledge of a student who joined the Black Bloc to shut Yiannopoulos down. Regardless of UCB labels, the data indicate that Berkeley students played a significant role in the violent Antifa demonstration, resulting in the cancellation of controversial but likely constitutionally protected speech.

The other affected party, Yiannopoulos, took to social media to announce his intent to return to Berkeley to give the canceled speech. A few weeks later, Yiannopoulos resigned, many believed in disgrace, from Breitbart over comments appearing to endorse pedophilia. But Yiannopoulos surfaced on social media again in April 2017, asserting, “I intend to return Berkeley to its rightful place as the home of free speech — whether university administrators and violent far-left [A]ntifa thugs like it or not” (B111). His unrelenting pursuit of a follow-up event indicated Yiannopoulos perceived the cancellation of his speech as much a black eye for his career as UCB did for their FSM legacy. Yiannopoulos was not backing away.

*And for the BCR’s Next Act . . .*

In the months following Yiannopoulos 1, BCR continued to invite controversial conservative speakers. The student organization scheduled visits from David Horowitz and Anne Coulter, the latter co-sponsored by the Young Americans Foundation (YAF). Per UCB, the BCR committed to speakers before confirming venue availability or security requirements. Having reassessed campus security after the February 2017 Black Bloc problem, UCB’s approach to

“high-profile speakers” changed (B112). An email from the Interim Vice Chancellor for Student Affairs to BCR advised

in the wake of events surrounding the canceled appearance by Milo Yiannopoulos, law enforcement professionals (UCPD) conducted a comprehensive review of the event’s advance planning, security arrangements, and logistical details. Among the findings were two key points: the timing of an event, as well the location and nature of the venue, can play an important role when it comes to the safety and security of the speaker, attendees, and individuals engaged in lawful protest (B060).

UCB student affairs professionals and police spent many hours coordinating both BCR events within the updated security protocols.

Under the new high-profile speaker guidelines, UCB determined BCR’s Horowitz event must conclude by 3:00 p.m. and offered a space about a mile away from the main campus. Six days before Horowitz was to speak, the university levied a security fee of almost \$6,000, resulting in BCR canceling the speaker’s invitation.

Perhaps due partly to the YAF partnership, BCR did not give up on hosting Coulter. UCB again confined the time and location of the proposed event. Then, the university determined that the YAF/BCR event could not occur that spring due to active security threats but might happen the following fall semester. Coulter, YAF, and BCR considered UCB’s unilateral decision a cancellation. After much media attention, Berkeley reversed its decision. The university decided Coulter could speak in the spring after all, but due to a lack of space, the event would not occur until classes finished for the semester. After more back and forth, Coulter did not speak, and her sponsors sued the university for violations of constitutional rights. This lawsuit was settled in 2018 for the cost of attorney’s fees and policy changes, but it remained pending during Yiannopoulos 2.

### *More Litigation*

In addition to the YAF/BCR litigation, UCB faced two other lawsuits related to Yiannopoulos 1. Oakland resident Kiara Robles came to hear Yiannopoulos speak wearing a Trump-supporting red baseball hat. As unrest occurred in front of the venue, Robles agreed to talk with a local TV station. While still on camera, an assailant ran up and attacked Robles with pepper spray. Robles sued the Regents of UCB, City of Berkeley, and other defendants asserting, among other claims, a violation of her freedom of speech, assembly, and rights to equal protection because the UCPD took no action to protect her nor pursue her assailants. The court dismissed UCB from *Robles v. Regents of the University of California, et al.*, in 2020, but the action remained pending during Yiannopoulos 2.

*Jennings et al. v. Napolitano et al.* is the third related lawsuit, filed in January 2018. John Jennings, his wife, and friends came to UCB to see Yiannopoulos on February 1. The litigants claimed masked assailants attacked, assaulted with wooden sticks, pepper-sprayed, and kicked before distributing Jennings' picture on social media. The Complaint states

City and UC Berkeley Defendants knew for weeks that Yiannopoulos' appearance could prompt violent protests that would threaten the school's long tradition of facilitating free speech. City and UC Berkeley Defendants should have reasonably anticipated a violent response to Yiannopoulos' presence on their campus and developed, in accordance with the CMP [UCPD Crowd Management Policy] tactical procedures sufficient to safeguard ticket purchasers attending the event. The school's inaction was motivated by the fact that Yiannopoulos and his supporters have opposing viewpoints to the majority of the school's students and administration (B114, p. 13).

The action alleged UCB was negligent, violated equal protection rights, and engaged in battery, conspiracy, and other harmful acts. Jennings and UCB reached a confidential settlement in 2020. However, the agreement cannot erase the publicly filed complaint with richly detailed fear and pain experienced on Sproul Plaza while UCPD watched from windows.

In the aftermath of Yiannopoulos 1, UCB assessed and took measures to prevent the reoccurrence of violent security issues, reworked policies, faced litigation, and negotiated other BCR proposed events. The university also navigated negative publicity, community response, and even a presidential tweet. None of their actions ended controversial speeches and speakers at Berkeley.

### *Yiannopoulos 2. The Most Expensive Photo Op in Cal History*

#### **A New Host**

Yiannopoulos' social media posts forecasted organizing a Free Speech Week at Berkeley featuring a bevy of speakers with views to the right of the political spectrum. BCR determined it could not arrange Yiannopoulos' proposed event, perhaps because it committed to hosting another conservative speaker, Ben Shapiro, on September 14, 2017. Instead, the previously dormant California Patriot RSO, now reformed and rebranded as the Berkeley Patriot (Patriot), became the host. As noted by *The Daily Californian*,

Berkeley Patriot became involved with Free Speech when Milo Yiannopoulos, whose campus event was canceled February 1 due to violent protests on Sproul Plaza, contacted the Berkeley College Republicans about returning to campus. Wright said BCR was unable to host the event, so the Berkeley Patriot took the opportunity to expand its publication and recruit new writers by organizing Free Speech Week with Yiannopoulos (B081).

Patriot's purpose was to share conservative news and values. Yiannopoulos approached and promised the fledgling organization \$10,000 to aid their startup. The publicity expected from Free Speech Week was also attractive to the student members:

For the newly created group, it was both an opportunity to make a splash on campus and bring a host of conservative speakers to Berkeley, including three — David Horowitz, Ann Coulter, and Milo Yiannopoulos — who all had scheduled talks at UC Berkeley canceled earlier th[at] year (B116).

The anticipated splash from Free Speech Week and Ben Shapiro on the heels of Yiannopoulos 1 and ongoing First Amendment litigation suggested more controversy for UCB.

Students and faculty opposed Yiannopoulos' return, circulating a petition calling for a boycott of classes and campus in general due to safety concerns. The newly named Chancellor, Carol Christ, forged ahead. Christ highlighted the university's role and legal obligations through communications and events discussing speech and the First Amendment. UCB staff worked with Patriot members to facilitate the event. Mogulof thought the Patriot's desire to host such a big event was unusual:

Berkeley Patriot, I met with them early on, and I'm like . . . we've never heard of you guys; who are you? They were like six people. Six. Any other place would be like, get the hell out of here with six. Spend a million dollars to secure an event for six people? You guys are being used by Yiannopoulos. He went student group hunting. But we said, no, you're right. You are a recognized student group. It was never considered that he wasn't going to come (B-1, p. 12).

The small, newly reformed RSO had a great deal to learn about hosting a major media event at a public university.

The Patriot soon became aware of UCB's recently updated Major Events Policy. The policy defined deadlines and terms for reservations, security assessments, and event insurance, each a source of tension for the Patriots. Mogulof recalled, "They weren't paying the deposit. I mean, we kept saying we didn't have enough because this was a whole week. They couldn't figure out what they wanted to do" (B-1, p.15).

### **Enhanced security preparations**

Regardless of the Patriot's missed deadlines, UCB prepared to protect the campus and any Free Speech Week speakers. A security personnel participant noted changes in UCB's preparations

Milo was a whole different situation. We had the Black Bloc communicating on non-public social media channels. We knew this from Milo 1 because our research didn't reveal communications. Had we been able to access those communications, we would have taken a different tactical approach. But now that we had that experience, we had to prepare differently for Milo 2 (B-6, p. 5).

Berkeley's arrangements included deeper research into newly discovered resources, procurement of many officers to staff the event, and many more barricades. Because UCB expected two controversial speakers, Shapiro, followed by Yiannopoulos two weeks later, many physical barriers and personnel remained between events.

Not all participants appreciated the enhanced security measures or length of time barriers were in place. An administrative participant shared,

There was an enormous number of barricades set up everywhere near Upper and Lower Sproul Plazas. It felt like we were overreacting because of what happened with Yiannopoulos earlier in the year. Yiannopoulos seemed to be a real influence on how the campus handled Shapiro (B-5, p. 2).

A former student and anti-fascist participant commented,

What we ended up was a climate of the campus was under siege because it was water barricades once a month with huge columns of riot cops. . . . [Even] if you're not political, you have to walk across campus and climb over weird barricades and go around guys in riot gear because that's how the university wants to handle this. That's super stressful for the average student. Think of being in a place that people decided to make an ideological battleground while you're trying to do your pre-med (B-4, pp. 8, 12).

The extra security created discomfort and the sense of being in a militarized zone.

Recall that Yiannopoulos 1 was a bad day for Berkeley. Chancellor Christ determined UCB would not endure another speech shutdown. A security personnel participant shared,

The reputational damage to the institution would have been astronomical if Yiannopoulos came a second time and didn't speak. People would say we weren't capable of protecting free speech. Chancellor Christ met with police and said, 'I want you to understand this must be successful' (B-6, p. 5).

In addition to concerns for the free speech legacy of Berkeley, the need to protect people was at the forefront of mind for the UC executive. President Janet Napolitano committed to helping Berkeley cover the cost of extra security. She noted

it's a cost that the university is bearing to protect the speakers but also to protect the value of free speech. But the rock and the hard place that the campus is in, is the value of free speech versus the need to protect the safety and the security of the students and the faculty (B117).

Security concerns stemmed both from the violence of Yiannopoulos 1 and the deadly outcome of the Charlottesville Unite the Right Rally occurring a month before. The university's prior experience and newly gathered intelligence indicated potentially severe safety threats necessitating costly and time-consuming precautions.

### **Free speech week unravels**

As UCB continued to arrange security and negotiate event details with the Patriot, Yiannopoulos' Free Speech Week fell apart. The Patriot provided a list of expected speakers to the university. To keep the community informed, UCB shared the list with the campus, along with information about locations, road closures, and potential traffic. The university immediately received emails and calls from people on the list explaining that they had no plans to speak at Yiannopoulos' event.

One speaker contacted Mogulof to share that Free Speech Week was a "set-up" (B085). But Yiannopoulos continued to assert he and others would appear. In an email to Mogulof, Yiannopoulos took UCB to task, stating,

You have no basis and no authority from which to confirm or deny the booking of any speaker at Free Speech Week until the students organizing the event or I tell you otherwise, unless it is your intention to put me, my speakers, our audience, and indeed your own students in harm's way. . . . I am writing to ask you to stop and think about what you are doing, and to refer further media inquiries to the organizing students and to me (B025).

Yiannopoulos appeared to convey that he would direct UCB's communications regarding the Patriot's event. Mogulof recalls thinking, "This whole thing is getting weirder by the moment" (B-1, p. 15).

Even though Yiannopoulos continued to pursue the event, Patriot students did not. On September 23<sup>rd</sup>, a day before Free Speech Week was to begin, the RSO canceled. Like the BCR, the Patriot retained legal counsel who cited UCB's lack of support, communication, and flexibility as precipitating factors. The Patriot subsequently filed a complaint with the U.S. Department of Justice (DOJ) alleging UCB systematically suppressed constitutional rights.

Yiannopoulos was undeterred and asserted he would speak even without a host. On September 24, law enforcement officers escorted Yiannopoulos and two previously announced speakers, Mike Cernovich and Pam Geller, to Sproul Plaza. UCB's security included snipers on rooftops, officers in riot gear, bag checks for a long list of prohibited items, and a metal detector for audience members to pass through before going into the area where Yiannopoulos would speak. Although UCB estimates at least 700 people showed up, only 150 were through security by the time Yiannopoulos appeared. One attendee reported:

They were blocking hundreds of people from accessing the event in the first place. The line wasn't even moving, and they only had one metal detector. . . So how long is Yiannopoulos going to stay when people aren't even allowed into the event? (B115).

The answer to the audience member's question is about twenty minutes. Standing near, but not on the Savio Steps, Yiannopoulos asked all to pray, sang the Star-Spangled Banner, made a few comments, took a selfie, and exited. Few heard what he had to say. There was no amplified sound, and with news helicopters overhead, his remarks did not project.

Some in the area held signs opposing the speaker and fascism in general. Others wore red, Trump-supporting baseball caps. Opposing camps periodically yelled or shoved one another,

but serious violence did not occur. Law enforcement partnerships beyond the campus established or strengthened after Yiannopoulos 1 may have prevented violence. A security personnel participant shared, “We were engaged heavily with the City of Berkeley and had teams out to look at what was happening in the city before it came to campus “(B-6, p. 6). A pattern of active local law enforcement partnerships to identify and, when appropriate, engage threats off-site appeared to reduce event violence.

When asked why Antifa did not make a more visible appearance for Yiannopoulos 2, the former student and anti-fascist participant suggested several possible reasons:

One was the sheer amount of cops that they were willing to throw at the problem because I think the university was very embarrassed by February 1, 2017. They were very embarrassed that a bunch of kids in hoodies can roll in and break a couple of windows.

- Also, they kept changing where and when anything was going to happen. A lot of people felt it wasn't even going to happen. He wasn't even going to show up.
- I think a lot of people felt this wasn't the sort of thing they wanted to go to jail for. You make those kinds of decisions because people get arrested.
- I think a lot of people didn't want to go deal with this sort of thing when it happened during the day. I think that was probably fairly relevant.
- I think also, just after a solid six months, people were really tired. I don't want to cede ground, but the far-right did a really good job of exhausting people by showing up constantly. By that point, a lot of people were so tired of going to Berkeley to go defend it (B-4, p. 13-14).

Antifa protestors avoided Yiannopoulos 2 because of the changing location, daylight timeframe, significant number of visible law enforcement, and protest fatigue.

UCB learned from Yiannopoulos 1. Expanded security measures may have frustrated some campus community members, caused the RSO to withdraw from involvement, and restricted the number of people hearing Yiannopoulos, but they kept people and property safe.

## Aftermath of Yiannopoulos 2

Yiannopoulos' team informed UCB he would not return to campus that week. Thus, UCB removed barricades, reduced the law enforcement presence, and attempted to return to normal. Berkeley took stock of the impact of protecting speech and controversial speakers. Initially, UCB estimated the cost of security for the September 2017 Yiannopoulos event at almost 3 million dollars. Per Mogulof, Yiannopoulos' 20-minute visit "was the most expensive photo op in the university's history" (B-1, p. 13).

Security for other expressive events during Fall 2017, such as BCR's Shapiro speech, brought the total cost to 4 million dollars. Even though UC President Napolitano funded half the cost, Chancellor Christ opined, "Event security costs of this magnitude are not sustainable, even as many of the factors that drive them are beyond the control or influence of a University." (Here, 2018).

Chancellor Christ appointed approximately 25 staff, faculty, and administrators to a UCB Commission on Free Speech. The commission's charge was to make recommendations for changes to reduce the cost and disruption of events featuring external speakers. A faculty participant and signatory of the original concerned faculty letter opposing Yiannopoulos 1 was a commission member. The participant recalled the commission's outcomes:

The Major Events Policy that had emerged at the same time as Yiannopoulos 1 needed to be tweaked in certain ways in the fall. Our further recommendation was that another free speech zone be defined on campus. One that was not placed in the beating heart of the campus but was still in the central campus, just that wouldn't affect classes, student services, or the ordinary life of the campus in the same way an event on Sproul would that's as disruptive as Yiannopoulos 2 intended to be. This is the West Crescent. If you look at a campus map, you can just see how that quarter mile or whatever it is that separates Sproul Plaza from the West Crescent would make a difference (B-8, p. 7)

In addition to proposing significant changes to UCB designated speech forums, the commission brought community members together, several from different viewpoints. Christ's advisory body

also recommended communications and police presence changes and promoted greater discourse across political perspectives. The chancellor accepted and implemented the policy and many other recommendations. Participants who were a part of the commission either recalled that it helped update the Major Events Policy and underscore the need for campus education about the First Amendment.

### *Conclusion – UCB*

Berkeley has a history and reputation for campus activism. Thus, the university should have had no trouble anticipating the threat or preparing, managing, and protecting the campus as the last stop on Yiannopoulos' Danger Tour. Faculty, outside entities, and unrest occurring at other institutions all forecasted violence. Yet, Berkeley's administrators and police claim to have researched, conducted scenario-based training, increased the police force for the evening, and believed they had the matter well in hand.

After the Danger Tour speech shutdown, Yiannopoulos provided a second opportunity for Berkeley to manage controversial speech. In preparing for Free Speech Week, the university found it necessary to revise policies, improve intelligence research, modify security, and increase dialogue about free speech through multiple avenues. Doing so required committed and engaged leadership, as exhibited by Chancellor Christ.

It is apparent from the Yiannopoulos 1 and 2 experiences that the marketplace, including Berkeley, must remain in a perpetual state of assessment, learning, and fostering expression to ensure the free exchange of ideas in the face of extreme controversy. Berkeley's failure to prevent or put down a riot during Yiannopoulos' first visit created a shock wave that reverberated throughout the higher education community. After all, if the home of the FSM

cancels speeches, how can other IHEs possibly protect expression and keep their campuses from exploding?

### **Conclusion – TAMU & UCB**

UCB and TAMU experienced unrest, tension, expense, negative publicity, student frustration, campus dissent, and reputational damage in response to institutional management of the controversial speech of the Danger Tour. TAMU protected speech for Spencer 1 with a huge security force and a large-scale, entertainment-focused unity counter-speech event. UCB's preparations and speech protections failed for Yiannopoulos 1. Learning from the first experiences, each institution dramatically altered its approach to managing expression when the speakers attempted to return. TAMU facilitated denial of expressive opportunities for Spencer 2, citing security concerns. Whereas, UCB, at great expense for expanded security, ensured Yiannopoulos spoke to a limited audience in a public area a few months after his earlier speech was shut down.

Each institution was knowledgeable of the First Amendment and valued expressive rights. However, the campus environment and security concerns impacted the universities' ability or commitment to protecting speech. Further, per TAMU and UCB student participants, neither institution adequately prioritized the educational or emotional interests of their student populations.

Observations and themes from the case study findings are presented and analyzed in the following chapter.

## CHAPTER V

### WITHIN AND CROSS CASE DISCUSSION AND ANALYSIS

#### **Introduction**

Several themes emerge from examining UCB and TAMU's responses to expected and actual controversial expression on campus. This chapter considers the themes through the lens of organizational culture as "a sense-making device" (Kuh & Whitt, 1988, p. 21). For uniformity of analysis, Tierney's Framework of Organizational Culture is employed as the primary analytical tool (Tierney, 1988). Additionally, matters relating to rights of expression include the application of legal principles. First, the elements of the organizational culture and legal theoretical frameworks are described through a brief overview of legal and cultural responses to the events of Yiannopoulos 1 and Spencer 1. Following the framework application summary, the discussion turns to the most prevalent themes arising from both sites, including protecting expression, leadership approaches, security management, student experiences, policies, and reputational concerns. Recommendations for practice and future research conclude the chapter. While qualitative research is not designed for generalization, IHEs may find the description of experiences, themes, and application of legal and cultural frames helpful in preparing for, managing, and protecting their campuses while fulfilling commitments to the expressive freedoms during incidents of controversial expression.

#### **Overview of Theoretical Frameworks as Applied to First Danger Tour Events**

An overview of the legal and institutional culture frameworks is described in this section through application to the events of Yiannopoulos 1 and Spencer 1. A more detailed discussion

of the themes arising from these events and Yiannopoulos 2 and Spencer 2 is included later in this chapter.

### *Legal Framework*

Administrators at both institutions were knowledgeable of the First Amendment and were further informed by legal counsel. Upon learning of scheduled Danger Tour speakers, UCB and TAMU first examined their policies. In determining which university policies applied, the leaders considered First Amendment requirements for the protection of speech by public institutions in authorized fora (*Keyishian v. Board of Regents*, 1967; *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983). Each institution assessed that the expression of the Danger Tour speakers, while unpopular and even hateful to many, did not fall within categories of speech excepted from First Amendment protection (*U.S. v. Alvarez*, 2012). A governmental entity has an interest in avoiding potential claims of content or viewpoint-based discriminatory application or enforcement of policies (*Forsyth County v. The Nationalist Movement*, 1992; *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983). Therefore, each university determined it would not interfere with the scheduled events. Although constituents pressured the universities to cancel the Danger Tour speakers, the universities did not capitulate. Neither UCB nor TAMU engaged in a heckler's veto of preventing speech because of threats or anticipated violence (Lasson, 2020; Sun & McClellan, 2020). Spencer's speech was protected and occurred without incident at TAMU. Unfortunately, UCB was unprepared to protect Yiannopoulos' speech from the Black Bloc and, as a riot unfolded, canceled BCR's event. The masked group perpetuated actual, not merely anticipated violence and disruption; therefore, UCB's actions did not violate the constitutional obligation to protect speech (*Brandenburg v. Ohio*, 1969; *Tinker v. Des Moines Indep. Cmty. School Dist.*, 1969).

### *Institutional Culture*

Cultural differences influenced institutional preparations, community responses, and the ultimate outcome of the Danger Tour events. Even within each university, “The shared values, practices, and symbols that constitute an organization—does not speak with one voice. It is always cacophonous and multivocal” (Tierney, 2008, p. 14). While Tierney’s framework categorizes cultural concepts into mission, environment, socialization, information, strategy, and leadership, the concepts are interdependent. A spider’s web is frequently invoked as a visual representation demonstrating the intersecting and overlapping relationships of cultural elements. Further, interpretations of culture, such as the analysis in this study, are inherently subjective (Geertz, 1973; Kuh & Whitt, 1988; Tierney, 2008).

Although categorization is subjective, a framework provides a structure for the analysis and sense-making of data (Tierney, 1988; Tierney & Lanford, 2018). Tierney’s six cultural concepts are applied to a brief overview of UCB and TAMU’s management, preparation, and protection of speech during the first Danger Tour events on the respective campuses. Understandably, the organizational culture analysis of other individuals may differ significantly from the researcher’s.

#### **Environment**

A campus environment comprises many influences and variables, including, but certainly not limited to, campus history, symbols, town relations, demographics, regional politics, and campus community attitudes (Tierney & Lanford, 2018). The geographic regions, political leanings, history, and tendency towards activism of UCB and TAMU differ greatly.

Located in a progressive city, with more than half of the undergraduate population originating from historically underrepresented groups, the UCB campus leans politically to the left, albeit not uniformly. Gilman explained:

They say the thing to understand is there's two different factions at Berkeley. There're liberals, and there's leftists. And those people are very, very, very different in terms of the kinds of ways they regard politics. This is a fissure that runs through the campus on all sorts of different levels. The leftists are not liberals. They don't believe necessarily in free speech, don't necessarily believe in pluralism. . . Liberals don't have that perspective. Liberals have the perspective that it's a pluralistic society with a lot of different points of view. The definition of tolerance is that you put up with points of view that you find odious. And so, that division is very deep in Berkeley (B-2, p. 22-23).

Moreover, UCB has a long history of community members sharing opinions and demands through activism, including the revered and widely known Free Speech Movement (FSM) saga. As such, UCB anticipated demonstrations during Yiannopoulos 1 but felt it could rely on experience with numerous previous protests to protect the campus.

Conversely, TAMU is situated in a rural area of a southern state with a predominantly White and politically conservative student body. TAMU imbues a sense of community by perpetuating Aggie traditions and fostering a sense of duty and discipline through the proud and visible Corps of Cadets. With a conservative campus and several ROTC units on campus, TAMU's leadership and security personnel prepared for Spencer 1 by creating a battleplan coordinated with federal, state, and local law enforcement, complete with an entertaining distraction to limit potential protests.

### **Mission**

A university's mission describes the function and aspirations of the institution and can include the core values (Tierney, 1988; 2008). Both land grant institutions, TAMU and UCB exist to educate. Beyond education, the mission of each institution also refers to the importance of ensuring expression.

TAMU's mission specifically states it "assumes as its historic trust the maintenance of freedom of inquiry and an intellectual environment nurturing the human mind and spirit" (T007). Similarly, Berkeley's values statements include a commitment "to ensuring freedom of expression and dialogue that elicits the full spectrum of views held by our varied communities" (B006). However, it is not unusual for an organization's values to conflict (Schein & Schein, 2015). Yiannopoulos' opponents undoubtedly found the principle of ensuring free speech clashed with another value statement affirming UCB's commitment to recognize "the dignity of all individuals and strive to uphold a just community in which discrimination and hate are not tolerated" (B006). This value conflict led to threats, unrest, and ultimately a shutdown of Yiannopoulos' speech at UCB. Nonetheless, each universities' attempts to facilitate and protect the expressive events demonstrated commitment to the educational importance of ensuring the free exchange of ideas in the marketplace of ideas, as envisioned by their mission statements.

### **Socialization**

Socialization is how individuals become knowledgeable of and acclimated to an organization's culture (Tierney, 1988, 1997; Tierney & Lanford, 2018).

At UCB, new community members, whether students, staff, or faculty, are quickly socialized to the predominant liberal philosophies by sharing peer opinions in the classroom, publications, events, and student, staff, or faculty organizational messaging. Activism acceptability is introduced and reinforced through regular observation of campus or community demonstrations, and artifacts. Retelling of the FSM saga, the Mario Savio Steps, or Free Speech Café in Berkeley's Moffitt Undergraduate Library preserves the stories and symbols of Berkeley's reverence for expressive rights.

Activism has become so much a part of the culture, with protests so frequent, that the UCB administration and security personnel adopted a business as usual approach to preparing for Yiannopoulos 1. UCB was the 33<sup>rd</sup> campus tour stop for Yiannopoulos. He stirred controversy in many locations, yet no other IHE escalated into a full Antifa riot while campus police watched. UCB's socialization of welcoming activism and coexisting liberal and leftist viewpoints created a fertile ground for the growth of anarchist views escalating to the use of Black Bloc tactics.

TAMU promotes unity among its students by reinforcing Aggie Traditions and repeated inculcation of Aggie Core Values. Induction into the organization's culture begins for many incoming students with a four-day orientation to institutional traditions called Fish Camp (fish being short for freshman). It immediately creates a delineation between those who participate and those who do not. TAMU reiterates its values of excellence, integrity, leadership, loyalty, and respect in institutional messaging and even, by some faculty, in course syllabi. Additionally, the highly visible, often uniformed Corps of Cadets provide a daily reminder of expectations of discipline, hard work, and the importance of following a chain of command.

TAMU's socialization of unity, discipline, and aligning authority with the use of positive, aspirational principles play to and promote deference to those who enforce the values of the conservative-leaning TAMU student body. As such, the few Aggies attending or protesting Spencer 1 overwhelmingly respected and followed the instructions of the law enforcement officers. The compliant, loyal, unity-focused, and law-and-order socialization culture at TAMU helped ensure the Spencer 1 battleplan was effective and the campus remained peaceful.

## Information

Information is critical for decision-making, building knowledge, communications, socialization, and general operations of an organization. Tierney poses three questions for considering the information element of culture, including, “What constitutes information? Who has it? How is it disseminated?” (Tierney, 2008, p. 30). Although Tierney and Lanford note the source and quantity of information are higher than ever before (2018), the voluminous influx of data creates a need to evaluate and discern the significance of information received.

Yiannopoulos 1 and Spencer 1 demonstrated the importance of identifying, gathering, and sharing information in the form of event intelligence. Complaints and threats sourced through concerned faculty correspondence, a community letter-writing campaign, *It'sGoingDown.com*, *BAMN*, social media, student publications, and media interviews overwhelmed UCB in advance of Yiannopoulos' first visit. The UCB administration received the information, either directly or channeled through student affairs or communications staff. Additionally, UCPD sought information regarding Yiannopoulos' visit from other IHEs and law enforcement partners. Berkeley's leadership, however, did not seek intelligence from outside sources. Per Mogulof,

Berkeley can be a little arrogant. And I think because of our experience, because we're in a major media market, because of the iconic nature of the university's reputation, its history, its legacy, the nature of its student bodies, we're kind of in a category of one, particularly when it comes to activism. And again, a little bit of arrogance. We tend to think there's not that much we can learn from other universities about handling this kind of stuff (B-1, p. 8).

UCB leaders received many reports indicating Yiannopoulos' presence would result in unrest. The administration's evaluation of threats confirmed a need to increase the number of officers. However, no modifications to the Robinson-Edley guidance or additional actions were deemed necessary. Chancellor Dirks disseminated opinions and decisions regarding the upcoming BCR

event through an Open Letter to the campus, including notice of potential disruptions. His letter asserted the police “will not stand idly by while laws or University policies are violated” (B029).

Upon becoming aware of Wiginton’s reservation, TAMU advised the press and community of the event, emphasizing the university did not invite Spencer. TAMU’s awareness of Spencer 1 related threats and complaints came through social media, telephone calls, and emails. Marketing and Communications staff collected much of the information and shared data with the TAMU leadership and security teams. Like UCPD, TAMU’s safety and security personnel sought additional information from other IHEs and law enforcement agencies knowledgeable and experienced with Alt-Right and Antifa interactions. TAMU acted on the information by requesting assistance from other law enforcement agencies to build a large, strategically placed force protecting the campus. Further, the university coordinated an alternate event. President Young then informed the university community of his “outrage and indignation” at Spencer’s “reprehensible positions” and shared Aggies United event information (T006). Young used the informational message to reinforce TAMU traditions by confirming that the “Silver Taps” ritual of recognizing fallen Aggies would occur shortly after the unity event (T006).

Each institution received, routed to leaders, and disseminated information about Yiannopoulos 1 and Spencer 1. TAMU considered the data to be critical and sought external intelligence and officers to ensure campus safety. UCB, extremely familiar with activism and no stranger to campus threats, did not consider the quality or quantity of the information received as necessitating significant alterations to safety precautions.

## Strategy

Strategy focuses on organizational decisions. “Change and disruption plays a role in contemporary strategic decision-making” (Tierney & Lanford, 2018, p.5). The Danger Tours were disruptive to both UCB and TAMU. Ultimate authority for the universities’ actions rested with Chancellor Dirks and President Young. As detailed later in this chapter, the leadership styles were vastly different, with Young soliciting input from many more people before arriving at a decision than did Dirks.

Each executive leader rested on legal principles and policies in determining that Yiannopoulos’ and Spencer’s events would go forward. In campus messages, the leaders communicated legal obligations and invoked the institutional mission. Collectively Dirks and Young reminded their communities of the importance of expressive rights to education, expectations of respect and/or unity, and questioned whether listening to Yiannopoulos or Spencer would be worthwhile. Such messaging, which relied on mission and value statements to inform and deflect attendance from the Danger Tour, may be viewed as an “interpretive strategy based on the strategic use of symbols” (Tierney, 1988, p.14).

Tierney asks, “What is the penalty for bad decisions?” (Tierney, 1989, p. 8). Executive leaders own responsibility for the outcomes of their decisions. President Young’s alternate event and his security team’s event planning/law enforcement placement resulted in maintaining campus control and receiving external accolades. Dirks’ business as usual approach resulted in a “bad day for Berkeley” (B-1, p. 20).

UCB participants and leadership statements claimed the Black Bloc was not foreseeable. However, UCB received threats from multiple sources, and the black-clad, masked protestors were not new in the Bay Area or at IHEs, including universities within the UC System. Antifa

was present at Yiannopoulos' University of Washington speech and contributed to the cancellation of his speech at UC Davis, just two weeks before the Berkeley BCR event (Paul, 2017). UCB's lack of preparation for potentially violent protests falls to the executive leader, as do all major decisions and outcomes. Media outlets discussed, questioned, mocked, and vilified Berkeley's response to the Black Bloc. However, as Dirks resigned in advance of Yiannopoulos 1, his decision appears to be unpenalized, beyond excoriation in the press.

### **Leadership**

Those executing power and influence over an IHE are the leaders. Under Tierney's framework, cultural analysis involves understanding an organization's expectations of leaders, levels of leadership, and whether formal or informal leaders shape decisions (Tierney, 1988; Tierney & Lanford, 2018).

UCB faculty and students felt comfortable making public and private demands of Chancellor Dirks. As the formal institutional leader, university community members expected Dirks to listen, seriously consider concerns, and take actions to protect the campus community. Some constituents were satisfied with merely being heard, while others expected Dirks to implement precautions to end Yiannopoulos' speech should he engage in harassment of transgender students, while a third group demanded nothing less than a complete cancellation of the speech. The BCR expected their event would be treated the same as other RSO events, regardless of the controversy Yiannopoulos stirred.

Like most IHEs, UCB has layers of leadership. Data demonstrate Dirks' Associate Chancellor, Gilman, influenced decision-making. He crafted responses to the concerned faculty letter, chaired meetings when Dirks was unavailable, answered complaints, and routinely addressed student leaders. As the Assistant Vice Chancellor for Communications, Mogulof

constructed institutional communications and acted as Berkeley's spokesperson. The examples of Gilman and Mogulof demonstrate how leaders under delegated authority from the executive have a hand in designing portions of an institution's response to a controversy like Yiannopoulos 1. Further, Gilman and Mogulof shared and socialized information before and after the event.

TAMU participants presented a more holistic web of leadership where many individuals were given opportunities to influence the university's strategy for Spencer 1. President Young's consultative approach of gathering opinions and recommendations behind the scenes and presenting a united leadership front solidified public perception of him as the one in authority. Behind the scenes, all members of Young's cabinet appreciated the opportunity to weigh in. A few viewed the university's approach as being the decision of the executive, while others saw TAMU's management of Spencer 1 as truly collaborative.

Likely because of Young's consultative approach, informal leadership was more apparent at TAMU than at UCB. TAMU's president brought in representatives from the faculty, staff, and student organizations to aid in planning and executing the counter-speech event. The university's expectations of student leaders are visible through their Aggies United planning and speaking roles. Students were equally featured with TAMU executives and entertainers.

### *Summary*

This section summarized principles of the legal and organizational culture frameworks and how they are connected using examples from two of this study's four announced controversial speech events. The thematic discussion of the findings below further identifies the interplay of the legal framework and how Tierney's cultural elements of the environment, mission, information, socialization, strategy, and leadership that institutions employ impact decision-making.

## **Thematic Discussion of Findings**

### *Protecting Expression in the Marketplace*

#### **Protecting expression - UCB**

Even during the tumultuous experiences of 2017, UCB administrators maintained a consistent commitment to the First Amendment and exchanging *all* ideas on its campus. Every Berkeley participant mentioned the importance of ensuring free expression. Both Chancellors Dirks and Christ made decisions and expended significant resources to protect Yiannopoulos' message and rights.

The security-driven shutdown of Yiannopoulos 1 overshadowed UCB's protection efforts. When the Black Bloc took over Sproul Plaza and precluded Yiannopoulos' speech, the FSM campus appeared either ill-prepared to provide security or perhaps complicit with protestors seeking shutdown. UCB did not understand or adequately evaluate information to appropriately forecast and form a strategy to address campus threats. The university's failed business as usual strategy and inability to protect speech shook the core culture of the university, reverberating through Berkeley's mission, environment, and heavy FSM socialization. For Yiannopoulos 2, expanded law enforcement and security measures aided in preventing violence but served to constrain the size of the audience.

UCB's protection of Yiannopoulos' rights widened the chasm between those wanting to shelter transgender and undocumented persons and others holding freedom of speech as a higher value. Very few of the controversial speakers invited by the BCR or Yiannopoulos actually addressed an audience; however, the anticipation of controversial speech fostered expression by many others on campus, broadening the number of voices and views available.

The former student BCR member participant believed by inviting controversial guests, the group was “ensuring everyone had a platform and others could critically assess the speaker’s views” (B-3, p. 1-2). While vehemently opposed to Yiannopoulos, the former student and anti-fascist participant noted the experience held “a net good, that people know what anti-fascists are and realize that that is a thing you can be” (B-4, p. 17). Whether an event organizer or protestor trying to shut Yiannopoulos down, former UCB students appreciated the importance of expression and viewed themselves as playing a role in expanding ideas.

Conversely, and underscoring the gulf of opinions related to Yiannopoulos’ visits, participants employed by UCB did not see the 2017 controversial speaker experience as expanding First Amendment rights on campus. One viewed the Yiannopoulos’ visits as “purely negative” (B-2, p. 22). Another noted, “We don’t think it impacted free speech. No one was saying I won’t go to Berkeley after the Yiannopoulos event. They kept coming” (B-6, p. 6). Only one participant administrator, Mogulof, considered the tumultuous year “an incredible educational opportunity” to learn what free speech means (B-1, p. 22).

### **Protecting expression - TAMU**

Initially, TAMU demonstrated a stalwart commitment to First Amendment principles. Beyond legal obligations, in discussing how to manage Spencer I, President Young focused on educational purposes for safeguarding speech. Participants recalled him commenting that a university encompasses a universe of ideas, “some brilliant and some stupid” (T-8, p. 6) and that the purpose of universities is “to have disruptive speech” (T-2, p. 4). TAMU leaders found Young’s views on the importance of safeguarding expression at educational institutions particularly persuasive.

When considering the best approaches for protecting Spencer's speech while also providing campus safety, TAMU considered the concept of counter-speech; that the best remedy for false, unpopular, disagreeable, or hurtful speech is more speech (Strossen, 2018; *Whitney* 1927, Brandeis, *concurring*). TAMU sent an institutional counter-speech message of unity by hosting an alternate event. Then, the concept of fighting speech with more speech expanded, some participants felt, to an ostentatious level with Aggies United.

Spencer 2 presented TAMU with a second opportunity to manage, prepare for, and protect expression. Participant administrators disagreed over the extent, if any, of Wiginton's interaction or requests to the university for Spencer 2. But all was confirmed when Wiginton announced a post-Charlottesville, Spencer-featured event at TAMU, administrators met again. This meeting focused more on safety than constitutional or educational obligations. There was no discussion of a need to protect Wiginton's *White Lives Matter* rally as a part of the universe of ideas at TAMU.

TAMU publicly asserted it *cancel*ed Spencer 2. The *cancellation* strategy was a legal gamble. The data reveal the university did not have information communicating direct and specific dangers amounting to true threats, imminent lawless action, or even fighting words, all of which would fall outside of the categories of speech a governmental entity is mandated to protect (*Brandenburg v. Ohio*, 1969; *Chaplinsky v. New Hampshire*, 1942; *Virginia v. Black*, 2003). TAMU's leaders were willing to set aside the institutional purpose and mission and skirt constitutional obligations to address anticipated threats to the campus environment. Ultimately, no lawsuit was filed, and TAMU avoided planning and expending resources to protect the campus from Spencer 2. *Cancel*ling Spencer 2 demonstrated an insincerity of commitment to

the institutional mission and free speech. However, considering Tierney's question regarding penalties (1988), TAMU experienced no apparent consequence for the decision.

TAMU relied on news reports of violence in Charlottesville, FBI intelligence, and first-hand experience with Spencer a few months earlier. The information indicated Spencer's return presented a very serious safety situation. One participant shared, the *cancellation* occurred "because of the violence in Charlottesville and them calling us out. It was timing. . . I don't think we could have said no if he was never here to begin with" (T-11, p. 4).

However, while likely legitimate, the safety threats were not immediate. With almost a month's notice, TAMU had ample time to prepare security and limit campus disruptions. One administrator labeled TAMU's Spencer 2 a heckler's veto because the university thwarted speech due to expected violence. Prior restraint of speech when negative consequences are anticipated but not immediately apparent is a violation of First Amendment rights (*Brandenburg v. Ohio*, 1969; Lasson, 2020; Sun & McClellan, 2020; *Tinker v. Des Moines Indep. Cmty. School Dist.*, 1969; T-2). TAMU chose to prevent Spencer's likely disruptive, ugly, unpopular, and even racist expression. Therefore, TAMU's ability to safely protect speech and the campus post-Charlottesville remains unknown.

Even with national headlines and campus tensions, TAMU's experience with high-profile, controversial speech expanded community knowledge of the First Amendment. Participants believed discussion of institutional constitutional obligations, core values, unity counter-speech, and even opposition to Spencer resulted in more campus expression. One participant shared, "There is no doubt that Spencer coming to campus gave the institution the opportunity to educate the community about the First Amendment wholesale" (T-1, p. 17).

Unfortunately, TAMU's sleight of hand *cancellation* muddied gains the campus made in understanding the First Amendment. Two participants acknowledged that TAMU's decision in Spencer 2 appeared to be a reversal of earlier institutional messages of speech freedoms being a part of the university's mission. At least one former student participant felt if TAMU had the ability to *cancel* the second speech, it could have done so for Spencer's first visit.

### **Protecting Expression - Cross-case Analysis**

Both UCB and TAMU understood and articulated legal and academic obligations for ensuring speech protections, regardless of the quality of the speech or popularity of opinions of Yiannopoulos or Spencer (Chemerinsky & Gillman, 2017; *Healy v. James*, 1972; *Sweezy v. New Hampshire*, 1957; *Synder v. Phelps*, 2011). Legal and values-based decisions to facilitate Danger Tour events represent compliance and mission-oriented strategies. Although committed initially to the law and institutional mission, both universities experienced environmental concerns in the form of safety threats that overwhelmed and leadership's strategy and intentions.

From a First Amendment perspective, the Danger Tour's silver lining was an increase in overall expression. UCB and TAMU's efforts to share event details and explain institutional obligations employed cultural concepts of information, mission, and socialization (Tierney, 1988). The universities disseminated information about expressive freedoms and socialized institutional missions and values to underscore the importance of free speech. The Danger Tours generated dialogue with faculty, students, student organizations, institutional partners, and the press, growing the views and voices participating in expression.

## *Leadership Matters*

### **Leadership matters - UCB**

The executive of an IHE significantly influences reactions to campus controversial speech. Chancellor Dirks was at the helm during Yiannopoulos 1. Data indicate the leader relied on procedures in place at the time and engaged in little to no event decision-making. With regular campus activism, the university knew how to prepare for and shepherd external speakers, plan for security, use its policies, and had an experienced PRT.

Dirks soothed concerned faculty, met privately with affected students, and, as campus tensions rose in anticipation of the BCR event, issued a “communicative symbol” with an *Open letter regarding Milo Yiannopoulos campus visit* (Tierney, 1989). Dirks relied on ideational symbols, the “images leaders convey about the mission and purpose of the institution” to unify the campus (Tierney, 1989). The communication invoked an institutional saga, reminding readers of the FSM and that UCB even “defend[ed] in court the constitutional rights of students of all political persuasions to engage in unpopular expression on campus” (B029). Dirks’ letter also underscored other institutional values of tolerance and inclusion. As Tierney and Lanford note, leaders often rely on and prioritize institutional values during moments of crisis (2018).

During Yiannopoulos 1, Dirks was observing events unfold on Sproul Plaza in the war room. Once UCPD advised it could not control the Black Bloc, he and his leadership team canceled Yiannopoulos’ speech. In brief, Dirks’ actions for Yiannopoulos 1, addressing complaints, sending symbolic communications, and responding to violence in the plaza, were reactionary.

UCB experienced a change in leadership between Yiannopoulos 1 and 2. Christ, who served as Provost and co-chair of the PRT during Yiannopoulos 1, became the next chancellor.

Most administrative participants welcomed the change and saw Christ as a visible, active leader. The new chancellor appears to have escaped the stain of Yiannopoulos 1, although she likely applied wisdom from that experience to the management of Yiannopoulos 2. Nevertheless, Christ successfully protected Yiannopoulos' speech, whereas Dirks became known for presiding over a Black Bloc riot resulting in a speech cancellation.

Whether learning from Berkeley's bad day or due to her own leadership style, Chancellor Christ operated more openly, transparently, and in line with UCB's values from the inception of her administration. She embraced Berkeley's FSM saga very early and took steps to align actions and communications with institutional values. Per Tierney, leaders can use symbols to communicate ideas or personify institutional representations (1989). Christ used ideation and personification symbols in messages claiming, "Free speech is who we are" (B011). Through campus communications and open debate, Christ addressed the community by taking tough, non-scripted questions and extending the reach of her messaging through live-streaming events (B011).

Free Speech Week presented an opportunity for Christ to show Berkeley could protect expression and repair reputational damage caused by Yiannopoulos 1 (B006). Gilman opined, "I think Chancellor Christ wanted Yiannopoulos back to prove Berkeley and the administration [are] totally committed to having a diversity of points of view be able to express themselves on the campus" (B-2, p. 23). Christ maintained the importance of protecting expression, even when coordinating speakers and student organizations proved extremely difficult. Mogulof summarized Christ's approach for dealing with implausible plans and demands of Yiannopoulos' Free Speech Week:

Yiannopoulos said, 'I'm coming back and I'm coming back with every known conservative in the world.' . . . I remember, I met with the chancellor, and she goes, 'this is a chess game and we're not going to take the bait.'

[UCB] Sure. Yeah. You want to come? Sure. Come on down. No problem.

[Yiannopoulos] Oh, and I'm bringing Steve Bannon.

[UCB] Cool.

[Yiannopoulos] And I'm coming for two days.

[UCB] Excellent.

[Yiannopoulos] No, I'm coming for a week.

[UCB] Even better.

[Yiannopoulos] I'm going to shut down the campus.

[UCB] Go for it (B-1, p. 14).

Christ's flexibility continued even as Free Speech Week fell apart and the organizing RSO withdrew involvement. Indicating a more directive leadership style, Christ brought administrators in, instructing every precaution be taken to ensure Yiannopoulos' speech was not shut down. She authorized millions of dollars of security expenses to protect his expression.

When Yiannopoulos 2 occurred without significant incident, but at a tremendous cost, Christ continued the campaign to restore UCB's free speech commitment and reputation. She shared a preference for spending resources on education programs but did not "regret having taken the steps that were clearly necessary to support our paired commitment to Free Speech and the safety of our campus community" (B017). Christ stayed on message, announcing a Free Speech Commission shortly after Yiannopoulos 2. Task forces akin to the Commission are vehicles for ensuring formal communication and sharing of information with the university (Tierney, 1988). The commission appointment engendered positive responses from participants, such as, "She was stepping up and saying 'we stand for free speech. Even if you don't like it, that is what we do'" (B-5, p. 4).

UCB's Danger Tour speaker experience demonstrates the importance of a credible leader who exhibits a commitment to free speech and an understanding of the multiple facets of the

IHE's culture, especially its values, history, sagas, symbols, and the way it best receives/absorbs information (Tierney, 1988, 1989).

### **Leadership matters - TAMU**

At TAMU, Young presided over both Spencer 1 and 2. The TAMU leadership team referred to him as collaborative, inclusive, and even deferential. Young describes his leadership style as "consultative," with decisions usually involving three steps (1) surrounding oneself with high-quality people, (2) bringing in people with different roles and perspectives for "debate and dialogue," including those "that will work on the issue/event" and (3) listening (pp. 1-2). Per the former President, "If you do it right, one will say, 'here is my role and what I think.' Then, another says, 'here is how I can help you,' and a third says, 'I'll do X.' Then you get collaboration across the spectrum" (p. 2).

Administrative participant recollections of the Spencer 1 decision-making process align with Young's comments. His consultative and inclusive approach garnered group agreement and ownership of decisions. Reflecting on the experience, participants opined:

Conversation and communication matter. You're not going to please everyone. You are not going to please your internal and external stakeholders but having a conversation around the table with individuals about what this event could mean, about campus safety, and the ramifications if you do have it. Like the first visit: What happens if we do have it? What happens if we don't? That is the key to preparation (T-7, p. 3).

He also wanted to hear from people, and he was able to allow that freedom of expression around the room. It wasn't like he walked in and did all the talking. It was like framing it up. What are people's thoughts? What are some options? If we could get to a unifying consensus, that was great (T-12, pp.7-8).

To address the challenge of Spencer 1, Young invited opinions, fostered collaboration, and built consensus. Through a strategy of engagement and guiding the process, he maintained centralized decision-making power and exerted authority. In doing so, per participant observations, Young appeared to meet TAMU's expectations that its leader is in command.

Further, Young guided his team in developing a large-scale, counter-speech event focused on institutional values; a unique strategy for IHEs at the time. His leadership extended to the front lines for Spencer 1 as he conducted interviews, socialized unity and other values through a campus-wide message, wrote on the free speech wall and spoke at Aggies United. The TAMU leader provided a visible and symbolic presence. Under Young's leadership, the university's response to Spencer 1 demonstrated cultural elements of environment, socialization, strategy, mission, and information.

Further, Young's consultative method built loyalty and unity in his cabinet. Members of the leadership team articulated uniform and wholesale support for TAMU's approach to both Spencer events, demonstrating the strength of the leadership, values, and overall culture. However, "it is easy for a strong culture to produce groupthink, a pressure to conform to the dominant view" (Pfeffer, 1992, p.43). It may be that TAMU's leaders tended towards conformity in that even participants asserting Aggies United grew too large, or those viewing the Spencer 2 decision as a heckler's veto, still staunchly supported the decisions.

### **Leadership matters - Cross-case summary**

Three leaders oversaw the four Danger Tour events in this study. Chancellor Dirks was a reactionary leader employing environment, mission, and information cultural concepts in campus messages communicating expectations, sharing institutional obligations, and reminding of UCB's values.

Christ and Young exhibited different leadership styles. However, both were proactive in addressing the anticipated controversies and demonstrated consideration of the conflict "on the broad canvas of organizational life" (Tierney, 1988, p. 6). Further, each appeared to understand the symbolic dimensions of the university's approach to controversial speech. Christ and Young

utilized all six cultural elements in campus preparation and management of Yiannopoulos 2 and Spencer 1. Christ upheld UCB's mission, protecting speech at all costs. With the support of his unified and loyal leadership team, Young allowed environmental concerns for Spencer 2 to outweigh TAMU's mission and the successful strategy employed during Spencer 1. The course change exposes leadership, even for an executive who exhibited cultural awareness, to be dynamic and dependent on shifting situations.

*Security: Identify and Prepare for Changing Security Threats*

**Security - UCB**

The presence of the Black Bloc and lack of UCPD engagement during Yiannopoulos 1 surprised more than half of the UCB study participants. Environmentally and through socialization, Berkeley is known for activism. The university is experienced in managing protests and related campus violence. Such incidents were so prevalent in the UC System the Robinson-Edley Report identifying “practices that will facilitate such expression and encourage lawful protest activity—while also protecting the health and safety of our students, faculty, staff, police, and the general public when protesters choose to violate laws and regulations” (2012, p. 1) was issued only four years before Yiannopoulos' Danger Tour began. Given the environment and FSM legacy, protest socialization, and broadly disseminated information indicating disruption, UCB's failure to anticipate and prepare for a violent protest on Yiannopoulos 1 is difficult to conceive. Some participants concurred:

Saying the Milo incident was unprecedented sounds like a CYA thing . . . It doesn't seem credible to me that the university couldn't see the possibility of Antifa. But would you rather say you didn't know it or acknowledge our own incompetence? This is what the police are there for, to anticipate violence (B-5, p. 3).

It seemed to me just observing informed news reports, the potential for large scale disruption and violence was accelerating” (B-8, p. 3).

Riots happen in downtown Berkeley a couple times a year. It's not like this is totally unprecedented behavior” (B-2, p. 17).

Security personnel participants shared police intelligence, and that of “federal or state partners” did not detect a violent Black Bloc threat (B-6, p. 2). The university inadequately gathered, analyzed, and acted on widely available threat information and environmental concerns evident in the experience of other clashes in the region and at other IHEs. Instead of a security force visible or easily accessible to the Plaza, UCB kept many of the 150-200 police out of sight inside the student union to avoid creating tension or chilling the expression of protestors.

Operating under new leadership and having learned from Yiannopoulos 1, UCB’s security strategy changed for Yiannopoulos 2. UCPD expanded the information gathered by identifying alternate intelligence channels. The university prepared by adding water barricades, re-routing traffic from the event area, issuing communications warning of potential violence, a metal detector, police from eight to ten other agencies, and law enforcement liaisons in the city. There were skirmishes, but widespread violence did not occur. As the student and anti-fascist participant opined, few Antifa protestors showed up because of the “sheer amount of cops” (B-4, p. 13-14).

The extreme cost of security for a few minutes of Yiannopoulos made many question whether UCB overprepared. An administrator shared, “I felt like that was a mistake, that we cannot capitulate to this. We cannot overprepare all the time” (B-5, p. 2). But, Mogulof reportedly said, “Whether it’s overkill (or not), we’ll take that – given it was safe” (B013).

Three million dollars is a hefty price for a Free Speech Week that never was. Even as the Patriot’s plans crumbled, Yiannopoulos claimed he would appear. Therefore, the university and the UC System remained committed to protecting his speech, despite the cost. Willingness to incur expenses confirms UCBs leaders’ understanding of the environment and mission cultural

elements. Due to a history of protests, UCB designated funds for such events long ago. “It is for protests and rallies or security concerns with speakers .... There will be times every year, every single year, when the funds need to be used” (B-6, p. 2). However, even with earmarked funding, every IHE has fiscal limitations, and the UC System provided additional financial support for Yiannopoulos 2 security. UCB, the symbolic free speech university, needed to remedy the shutdown of Yiannopoulos 1. Therefore, improved threat identification, extreme security costs, and a significant show of force for Yiannopoulos 2 represented a leadership-approved strategic safety maneuver.

Tierney’s information, strategy, leadership, and environmental organizational cultural factors influenced Berkeley’s changes in security for Yiannopoulos 2 and fulfilled safety and First Amendment obligations.

### **Security - TAMU**

Like UCB, environment, information, strategy, and leadership were primary cultural influences aiding TAMU in preparing, resourcing, and executing actions to address anticipated threats during Spencer 1.

While potentially violent protests were foreign in TAMU’s environment, the university watched and gathered information on responses to the recent national presidential election, including Spencer’s “heil Trump” rhetoric (“*Hail Trump!*”: *Richard Spencer Speech Excerpts*, 2016). Fortunately, TAMU assigned a UPD officer to the regional Federal Bureau of Investigation (FBI) Joint Terrorism Task Force. This connection provided the university with intelligence and analysis to focus on safety preparations. Additionally, TAMU’s safety and security personnel routinely trained and developed excellent relationships with other law enforcement agencies.

TAMU staffed Spencer 1 with 200-250 security officers from collaborative local, state, and federal agency partnerships. Although initially, TAMU leaders anticipated expenses for the supplemental security, the cost did not influence planning for ensuring campus safety and First Amendment protections. After the fact, the university never received bills from any other agencies, likely because of the collaborative law enforcement environment and relationships that UPD fostered.

Like UCB, TAMU also attempted to mitigate the visible presence of law enforcement. The forces were divided into locations around campus close to the Memorial Student Center (MSC) and Kyle Field. Police appeared from the shadows when protestors rushed in and would not disperse from the MSC. Almost half of the participants, including students, felt the large number of officers was excessive and triggering. The remaining participants were grateful, including one who shared, “When we did have to deploy that team, we were all singing hallelujah that we had them there” (T-3, p. 9). The strategic decision to supplement and stage security, including officers mounted on horseback, likely prevented disruption of Spencer’s speech, precluded violence, and aided in removing protestors and restoring order at the MSC.

White nationalism and Antifa engagements grew in the months following Spencer 1, causing TAMU to lack confidence in their ability to ensure safety during a second Spencer event. In deciding it would not facilitate Spencer 2, TAMU’s leaders relied heavily on policy changes discussed below and opinions of safety and security personnel, as informed by the FBI.

The government may only prevent protected speech for safety reasons when lawless action is direct, imminent, and likely (*Brandenburg v. Ohio*, 1969). Even so, with a successful Spencer 1 experience, trained safety team, and excellent law enforcement relationships, TAMU

allowed a volatile national environment and information of anticipated, but not imminent, violence to outweigh constitutional obligations of ensuring expressive rights for Spencer 2.

### **Security – Cross-case analysis**

Free exchange of ideas is essential to the academic mission and must be protected by public institutions (*Healy v. James*, 1972; *Keyishian v. Board of Regents*, 1967). However, free speech rights are not absolute (*Morse v. Frederick*, 2007; *Virginia v. Black*, 2003). An IHE must balance obligations. As Young shared, “[F]ree speech is extremely important. But safety probably is more important. You cannot be dedicated only to one value. You usually have two or three in the mix and have to prioritize” (p. 2).

Data from both universities indicate that achieving a security balance necessary to protect expression is a resource-intensive endeavor. Security resources, including intelligence, people, equipment, and communications, are all critical factors for ensuring safety. As evident in UCB’s Yiannopoulos 1 experience, simply having information and adding additional bodies does not ensure campus protection. Especially in this age of voluminous information, reviewing and distinguishing the quality and importance of data received, along with appropriate sharing of intelligence, are necessary critical steps (Tierney & Lanford, 2018).

Participants at both IHEs followed policing philosophies for limiting officer visibility; the number of officers seen by protestors should be limited as a heavy law enforcement presence can communicate an expectation of violence, escalate tension with protestors, and thwart expression. Further, former student participants noted police in riot gear were an unwelcome and triggering sight. Thus, the strategy for both institutions during the first Danger Tour events was to hide large numbers of officers from public view. UCB’s revised strategy for Yiannopoulos 2 included a much greater show of security, deterring violent protests at a significant cost.

Controversial expression reveals potentially conflicting obligations between the law and campus safety. UCB's Yiannopoulos 1 shutdown demonstrated an IHE cannot become complacent with information evaluation and rely on business as usual to manage protests. TAMU's denial of Spencer 2 was informed by law enforcement information and was a strategic, if constitutionally questionable, leadership decision.

When threats of harm are imminent, safety trumps speech rights (Farrell, 2019; Young, p. 2). Because the sincerity of lawless threats cannot be known until emergent, an IHE must prepare for worst-case scenarios. Collectively, TAMU and UCB protected speech in two of four events. The universities engaged in information gathering and examination, environmental awareness of broader national concerns likely to affect campus protest activity, and decision-making strategies regarding the number and placement of security officers.

### *Student Experience*

#### **Student experience - UCB**

Student experiences and impressions of UCB's environment and approach to Yiannopoulos' visits differed. This study included two former UCB student participants, one a BCR member and the other who protested as part of the Black Bloc on February 1, 2017. Each participant identifies with either a historically minoritized or vulnerable population.

The former student and BCR member participant believed it essential for the RSO to engage the campus. From early days at Berkeley, the BCR member recalled widespread viewpoint bias. His initial excitement for attending the prestigious institution faded as,

I very quickly learned my instructors were skewed in one direction. I thought, wow, here I am working hard, writing papers, but I find myself somewhat skewing what I think/write/my opinion. It happened organically, because you are listening to faculty, hearing them be hostile to other ideas or student viewpoints (B-3, p. 1).

Believing messages socialized on campus and in the classroom were predominantly, if not universally, unwelcoming to conservative or even centrist opinions, this participant sought to offer alternate perspectives. Working with BCR peers from various racial and ethnic backgrounds, including Hispanic, Asian, Middle-Eastern, and Caucasian students, the participant planned events to bring in libertarian and conservative speakers, such as Yiannopoulos, Coulter, Horowitz, and Shapiro. Per the participant, navigating UCB's event planning policies required "work and energy" (B-3, p. 1). Notably, BCR kept an attorney on retainer, primarily because of "how standoffish the university was with us" (B-3, p. 1).

Other UCB participants viewed BCR as either naïve or intentionally seeking the limelight. One noted the BCR might not have "realized what they were signing up for at the point they invited Milo" (B-8, p. 3). Another attributed a peer saying BCR felt oppressed at Berkeley and wanted to say, "Fuck you to the man, and there's no better way to say fuck you than to invite Milo Yiannopoulos" (B-1, p. 12). A third noted historic poor attendance at BCR's events and viewed Yiannopoulos' invitation as the RSO making a "purchase on the attention economy" (B-2, p. 8).

In advance of Yiannopoulos 1, BCR members received death threats and were aware of a campus "atmosphere thick with the energy and attention being devoted to the event" (B-3, p. 3). Even so, the BCR believed it was their duty to proceed until the Black Bloc entered the plaza. While the BCR accepted canceling Yiannopoulos, the participant questioned UCPD's strategy of staying in the building instead of confronting Antifa and protecting people in the plaza.

In advance of Yiannopoulos' first visit, Dirks' Open Letter to campus emphasized that BCR members would have "a moral responsibility for the consequences of their" event (B029). The BCR member participant did not express remorse or moral responsibility. As both a racial

and political minority at UCB, this participant's views did not align with most at Berkeley. However, he did not take the opinions or actions of the administration, faculty, or students personally. He noted Berkeley "was a lion's den," but the challenges "made me want to be a changemaker, and that is what I became" (B-3. p. 1). Even though the Chancellor's veiled message in his Open Letter vilified BCR for hosting Yiannopoulos, the former student member holds no animus towards the institution.

The UCB former student and anti-fascist participant was less enthusiastic about the college experience and more critical of Berkeley's approaches to Yiannopoulos. Although knowledgeable of the FSM legacy, this participant strongly believed Yiannopoulos had other platforms for expression, like Breitbart, and therefore did not have a right to speak on campus. Per the participant, anti-fascists see a duty to protect their environment and sometimes socialize this obligation using a "Nazi Bar" metaphor.

First, there'd be one skinhead. And if you didn't kick him out immediately, next time, there'd be five. And next time, there'd be 20. And all of a sudden, you have a Nazi Bar. And if you don't do something about the first one, it'll continue. If you slip up the first time, now you have a problem (B-4, p. 8).

When UCB refused to cancel the BCR's plans, this participant joined the Black Bloc alongside UCB peer students and protestors from the community, all of whom were later referred to by UCB's administration as "outside agitators" (B035; B103). The participant's goal was to ensure Yiannopoulos did not harm transgendered or undocumented individuals through words that outed or humiliated them. Further, if Yiannopoulos did not speak, it was less likely his views would gain a foothold and proliferate on campus like a Nazi Bar. The participant saw the Black Bloc as a defensive act necessitated by UCB's failure to protect its students.

BCR's subsequent attempts to bring in conservative speakers and the presence of "fascists," like the Proud Boys, increasingly infiltrating campus, overshadowed the participant's

sense of success in shutting Yiannopoulos down. UCB's approach to shouldering the extreme security costs for Yiannopoulos 2 was also a disappointment when the funds could have helped students and others in need of basic food and shelter. The university's management of Yiannopoulos' events left this alumnus with a bitter taste for UCB.

The experiences of UCB former student participants demonstrate the cultural concepts of environment and socialization. Each former student perceived a hostile campus environment. The anti-fascist participant believed the leadership strategy of allowing Yiannopoulos to speak created an unsafe campus for many vulnerable students. The former BCR participant held political and philosophical views unwelcome in UCB classes and many social circles. When he attempted to present and socialize alternate ideas, he found the UCB administration standoffish. The BCR ultimately sued the university, alleging that UCB discriminated against the organization because of the views of their invited guests.

Beyond reactions to institutional decisions or interactions, both former UCB student participants or their close affiliates faced online threats and/or public doxing. These intimidations occurred because the former students and their peers exercised First Amendment rights when sharing personal opinions of Yiannopoulos or BCR's event. Even though the threats were reported to UCB, or happened in the public eye, no one from the "impersonal" university reached out to affected students with calls, care, or support (B-4, p.3). No signatories of the concerned faculty letter demanding cancellation of Yiannopoulos' speech contacted students publicly exposed and bullied online for similar advocacy.

From the perspective of the former UCB students, Berkeley's environment was unfriendly, inflexible, and detached from student life and difficulties. The experience fueled the goals and plans of one former student and fostered disregard from another.

## Student Experience - TAMU

Two former TAMU student leaders participated in this study and shared intense impacts from Spencer 1:

Seeing certain students that I know get assaulted by police: definitely images that will forever be in my head. It is almost a full form of trauma I can't get out of my head because I will never forget how I felt that day (T-5, p. 12).

The whole experience for me was so frustrating and so demoralizing that I quit student leadership altogether and just focused on myself afterwards because I was like, what's the point? (T-9, p. 4).

In addition to learning of the trauma and withdrawal experienced by the two quoted above, a third former student leader declined involvement due to troubling memories of related events. Spencer 1 left lasting dramatic, disheartening, and even damaging impressions that continue to influence the thoughts and behaviors of the former students in the present day.

The two former TAMU student participants identified as African American or Black. One contributed to Aggies United, and the other attended Spencer's event in protest. Both noted a dichotomy between the TAMU mission of ensuring speech freedoms and fostering inclusion. Each struggled to accept TAMU's claim of valuing diversity while spending resources guarding Spencer and implementing a strategy to direct attention away from his blatantly racist message. The former students saw Spencer's protected presence as incredibly disloyal and disrespectful, especially from an institution repetitively pointing to core values of loyalty and respect.

The former TAMU student participants viewed low attendance at the unity event as demonstrating a lack of student support for the Aggies United leadership strategy. One shared, "We didn't feel supported by the administration, and that is why we didn't go to Aggies United" (T-5, p. 15). The Aggies United slogan of denouncing hate rang hollow for former student participants. Further, holding a one-time unity event to deflect attention from a white nationalist

visiting campus underscored the insincerity of TAMU's counter-speech unity message. Aggies United did not socialize inclusive concepts, in the opinion of the former students. Instead, it served merely as a face-saving façade to guard against backlash from Spencer being on campus.

With a perspective informed by TAMU's announced *cancellation* of Spencer 2, one participant remains convinced the university should have prevented Spencer's first speech due to safety concerns. As evidence, he cites the overwhelming number of law enforcement officers present on campus during Spencer 1. The other participant conducted research to understand TAMU's Spencer 1 decisions. Armed with a broader understanding of the First Amendment, the participant now believes

A&M should have laid out the legal statutes, [laid it all out, and said], 'we, unfortunately, as a public university, cannot stop [Spencer] from coming to express his free speech, even though others may view it as hate speech. With that, we want to let you know that as an administration, we are strongly against him coming to campus' (T-5, p. 15).

Arguably, administrative emails and posts in late 2016 provided the exact information and denouncement sought by this participant (T006; T008; T009; T010; T011; T012). However, the text, tone, or method of transmission of TAMU's communications failed to connect with the former student leaders.

Resources spent on the entertaining Aggies United disturbed both former student participants.

They could have put that into existing programs. TAMU has tons of critical race theorists on campus. They could have worked with the faculty to do programming. . . The school has such a great wealth of actual scholars and faculty there. They're not people we have to fly in. They're there (T-9, pp. 23-24).

Each felt TAMU missed an opportunity to expand information on issues of race from a researched and scholarly perspective. Neither appeared aware of critical race theorist Dr. Wendy Moore's concurrent speech in another part of the MSC. Instead, the participants recall the

grandly designed Aggies United with singing and dancing occurring while Spencer spoke of white nationalism as a mockery of the racism each encountered at TAMU.

The former student participants did not receive, understand, or believe the university's decisions and messaging regarding values of inclusion, constitutional obligations, or the importance of protecting expressive rights. Participants found inconsistencies between their lived realities in the TAMU environment and the university's espoused value of inclusion. Those contradictions, coupled with the elaborate, entertaining, and costly counter-speech strategy that did little to socialize unity, left an enduring conflict for students regarding their alma mater.

### **Student experience – cross case analysis**

IHE approaches to highly charged speech events make a significant impression on students. Danger Tour events altered former student views and support for their institutions. Students represent an institutional subgroup nested within the overall organizational culture. Subgroups often have different priorities and values than those normative to the overall institution. Rejection of organizational values can result in ex-communication (Kuh & Whitt, 1988; Schein & Schein, 2016).

Former student rejection of mission and espoused values is evident in participant quotes above. Two former student participants do not subscribe to the organizational mission of ensuring speech protections, with one even willing to join a violent group to prevent expression the participant considered fascist. UCB metaphorically rejected this student as a community member when referring to the Black Bloc as “outside agitators” (B035; B103). In a sense, former students distancing themselves in response to university approaches taken to the Danger Tour self-select at least figurative ex-communication.

The poignant experiences and reactions shared by most of the former student participants demonstrate insult, hurt, offense, anger, conflict, or trauma, among other sentiments. Along with many students across the U.S., some participants call for IHEs to protect campuses from harms caused by offensive speech (Chemerinsky & Gillman, 2017; Lukianoff & Haidt, 2015). It seems that for controversial speech, protection is a two-sided coin. Prevention of physical and emotional harm is on one side, and expressive rights are on the other.

As previously established, public IHEs are bound by the First Amendment and must permit most expression. Obscenity, defamation, harassment, fighting words, true threats, or incitement to immediate violence fall outside constitutional protection (*U.S. v. Alvarez*, 2012). Many consider the history of speech from the Danger Duo rude, transphobic, racist, anti-immigrant, misogynistic, threatening, hateful, and even harassing. Even so, speech may not be suppressed because it is offensive (*Synder v. Phelps*, 2011). Expressive rights are protected unless and until the speech begins and falls within one or more categories of unprotected speech. Fighting words, true threats, or incitement require speech directed to a specific individual likely to physically respond with imminent physical violence (*Brandenberg v. Ohio*, 1969; Calvert, 2018; *Chaplinsky v. New Hampshire*, 1942). Harassing speech is expression directed at a specific individual that is severe, pervasive, and persistent and interferes with or denies educational activities (*Davis v. Monroe County Bd. of Ed.*, 1999). In accord with these legal principles, TAMU and UCB administrators determined the universities were legally prohibited from engaging in prior restraint of expression by canceling or denying the Danger Tour speeches in advance of the scheduled events. Further, when speaking at UCB and TAMU, Yiannopoulos and Spencer engaged in protected speech. Neither uttered apparent communications directed to a

specific individual rising to the level of harassment or provoking an immediate physical or violent reaction.

I am grateful for the openness, transparency, sincerity, and time the former students gave to the study and have no wish to detract from the genuinely expressed views and frustrations of the participants. However, providing students with greater protection from emotional injury experienced or expected due to controversial expression would place greater restrictions on speech. Expressive rights are not merely for campus provocateurs. Expanding restrictions for controversial speakers like Yiannopoulos and Spencer may limit harms to students today but would erode the speech privileges for all tomorrow.

Nonetheless, IHEs cannot ignore the impact on students. Facilitating controversial expression presents a tremendous opportunity for education and exhibits the purpose and need for free speech and academic freedom (Chemerinsky & Gillman, 2017; Sun & McClellan, 2020).

In many ways, UCB and TAMU missed the educational mark with the Danger Tour visits. Neither university fostered widespread dialogue or debate, sharing of experiences, voicing concerns, or challenging institutional messages. Even Christ's Free Speech Commission recommended that UCB do more to sponsor events like teach-ins to guide and empower students with increased knowledge of divisive and emotionally charged issues (B001). Engaging students is the best opportunity to educate and aid students in understanding protection of uncomfortable expression is critically important to expanding education and ensuring the future of that freedom.

Without structured campus outlets, students expressed themselves, if at all, through protest, social media, and peer exchange. Such speech avenues support subgrouping by like-mindedness and echo chambers instead of promoting that which the First Amendment exists to protect: discourse on differing views. Idea isolation and lack of exchange allowed each IHE to

continue planning and preparing without looking too deeply into or making efforts to address the student impact of institutional messaging and speech management.

Admittedly, once knowledge of the Danger Tour speakers surfaced, each institution had a limited window to adopt and implement plans to protect the speech and the campus. Yet, each has personnel dedicated to student instruction and engagement. With education and preparing students for life after college as the primary institutional purpose, another recommendation for IHEs would be to task their experts with creating opportunities to hear from students, create dialogue, and ensure expressive education at a grassroots level. Employing an educational framework for addressing student experiences with controversial expression would capture the attention of students, promote critical thinking and problem-solving skills, allow exploration of the interplay between social and legal justice principles, and may prevent ex-communication and damage to long-term relations (Schein & Schein, 2016; Sun & McClellan, 2020).

#### *Ensure Transparent and Workable Policies and Procedures*

##### **Policies - UCB**

Yiannopoulos 1 and 2 revealed complications with UCB's procedures and policies. Institutional planning involved student education/facilitation, student affairs, UCPD, risk management, student organization funding arrangements, insurance, facilities, and advanced planning for potential protests. Chancellor Christ commented that high-profile expressive events were so complex, they involved working "with 14 different policies in our preparations" (B080).

Chancellor Christ's statements about policy complexity and emails between the BCR and UCB demonstrate hosting an event was a minefield, at least for students with high-profile, unpopular guests. Recall the BCR arranged ticketing for Yiannopoulos 1, believing it met all

event planning requirements. Later the group learned additional forms and a supplemental security assessment were necessary.

UCB's first attempts to address and mitigate event security concerns for controversial guests were interim and unpublished procedures for "high profile speakers" (B118). Given the rise of physical clashes between politically opposed groups in and around Berkeley in the months after Yiannopoulos 1, from a safety perspective, the university's attempts to limit the time of day and locations for BCR's proposed Horowitz and Coulter events were well-intentioned. However, the lack of publication and distribution gave rise to legal claims (ultimately settled) of discriminatory application.

After Yiannopoulos 2, Christ charged the Free Speech Commission with analyzing event procedures, including a recently published interim event policy combining several procedures into one document. After soliciting input in writing and during public hearings, the Commission endorsed the interim Major Events Policy. Christ's Commission served three important cultural purposes. First, it established a body functioning as "informal leaders," performing a critical leadership task of listening to the community (Tierney, 2008; Tierney & Lanford, 2018, p.5). Second, similar to a "task force," the Commission provided opportunities for UCB's faculty, staff, and students to "share information" and "discuss possible solutions" (Tierney, 2008, p. 35). Finally, the strategy of relying on the Commission's recommendations gave Christ, as the leader, both support and shield for critical policy decisions impacting constitutional rights, including time, place, and manner (TPM) restrictions.

### **Policies - TAMU**

TAMU honored Wiginton's room reservation because the university's policy allowed renting campus space to any member of the public. Shortly after Spencer 1, TAMU leaders

revised the facilities use policy to require events to be “sponsored through an agency departmental office, administrative unit, or recognized University group” (T004). TAMU always considered the spaces available for rent to be limited public forums (T-1). In changing to sponsored rentals only, TAMU’s policy revision did not change the character of the spaces or place new TPM restrictions on use. A governmental entity may adjust the classification of people eligible to engage in expression in a limited or designated forum (*Perry Educ. Ass’n. v. Perry Local Educators’ Ass’n.*, 1983). Realizing the dramatic difference in the policy changes, Spencer commented, “I don’t think the Danger Tour would happen again. [Many] schools have changed policies” (T-10, p. 5).

After Spencer 1, TAMU also updated procedures to expand student messaging methods and the creation of the Activity, Resource, and Response Team (ARRT). Instead of relying primarily on emails, the university now uses text, GroupMe, and video shorts to capture students’ attention and expand information absorption. The AART Committee provides expressive activity resources with planning assistance, presence during activism, monitoring event activities, assisting speakers and bystanders with policy information, and serving as an educational resource (T003). ARRT is not a decision-making body like the PRT at UCB. However, it is a more proactive, engaged method for managing speech freedoms. The ARRT appears to serve as a “communicative pathway” for TAMU in that it is comprised of individuals from different institutional subgroups and shares information across constituencies (Tierney, 2008, p. 127).

Post Spencer, TAMU developed strategies to manage controversial speakers and greater efforts to share information with students. The facilities use policy change, a leadership decision initiated and approved at the presidential level, exercised TAMU’s authority to designate (and

limit) users of institutional forums. With the new policy, TAMU was emboldened to *cancel* Spencer 2.

### **Policies – Cross-case analysis**

Policies and procedures at TAMU and UCB complicated the flexibility and optics of institutional responses to divisive speech. For the first Spencer and Yiannopoulos events, the hosts registered according to institutional policies in place at the time. TAMU and UCB upheld their policies and honored the event registrations. In doing so, the universities fulfilled the requirements of the First Amendment (*Perry Educ. Ass’n. v. Perry Local Educators’ Ass’n.*, 1983; *R.A.V. v. City of St. Paul*, 1992).

After expending resources and political capital to protect the speech of the Danger Tour speakers, TAMU and UCB re-evaluated and revised policies. UCB’s revisions resulted in more transparency of the process, and TAMU’s changes restricted the category of individuals eligible to use and speak in campus spaces.

### *Reputation Matters*

#### **Reputation matters – UCB**

UCB’s culture includes an environment of activism. The university’s expectation of student protests, emanates from, and is socialized through strategic reminders of the FSM saga and campus artifacts. As such, UCB was relatively unconcerned with the pre-event Yiannopoulos 1 controversy. The administration maintained that any invited guest could speak at Berkeley, regardless of the views or opinions of the speaker. The “absolutist First Amendment” position stemmed from the IHE’s mission, environment, and recognition of the legal obligations of a public institution (B-2, p.1). When the Black Bloc thwarted Yiannopoulos’ speech, the riot

was widely televised, and then-President Trump questioned the distribution of future federal funds, UCB's focus turned to the institution's reputation.

After Yiannopoulos 1, during Dirks' remaining tenure as chancellor, UCB placed more restrictions on the TPM of high-profile speaker events to avoid another Black Bloc or similar violence. The result was heightened media attention and litigation, further questioning UCB's commitment to protect and foster free speech. Chancellor Christ tackled UCB's free speech reputational slide with communications focusing on the institutional environment and mission and proclaiming the inseparability of free speech from the university. She marshaled resources to emphasize the importance of expression and protecting speech even when speakers were not popular with many in the campus community. In terms of Tierney's framework, Christ's actions employed cultural concepts of environment, mission, information, and strategy to restore UCB's status as a free speech leader in higher education (1988).

### **Reputation Matters - TAMU**

TAMU's reputation was at the forefront of leaders' minds when learning of Wiginton's Spencer 1 event. To deflect negativity about Spencer, the university released messages pointing to TAMU's core values and mission. It designed and implemented Aggies United, an entertainment/counter-speech event. With help from the media, the counter-speech event largely eradicated rumors TAMU welcomed a white supremacist, at least for those beyond the campus.

The university's greatest concern was the impact Spencer's event might have on its external constituencies, especially prospective students. Less attention was concentrated on the university's standing with enrolled students. TAMU provided options for those seeking to avoid Spencer, but few students used the safe spaces, and a very small percent of the student body

attended Aggies United. Despite the elaborate counter-speech event, former student participants from historically underrepresented populations remain unconvinced of campus unity.

Even with TAMU's unity event, positive media reactions, an ADL award, and the spin of *canceling* racist speech for Spencer 2, TAMU's recruitment of African American students declined. The most recent data from TAMU shows Black student enrollment remains below the pre-Spencer, Fall 2016 level (*Student Demographics*, n.d.). Although unintended, the university alienated enrolled African American students with memories of racist speech, a one-off entertainment event, and an overwhelming presence of riot police.

TAMU's reputation management strategy for Spencer 1 and 2 failed to mitigate TAMU's standing with the population of greatest concern, prospective Black students, and it distanced African American students enrolled at the time.

### **Reputation matters – Cross-case analysis**

Regardless of the history, prominence, political leanings, or location where an institution is situated, no IHE is immune from the reputational impacts of high-profile, controversial speech events. Protecting speech and campus safety are the most critical elements of an institution's response. Failing to successfully ensure either will damage an IHE's standing, as UCB found with Yiannopoulos 1. However, the nature of divisive speech is that even when protected and the campus is safe, not all constituencies will be satisfied. For example, TAMU's largely successful Aggies United event resulted in the university appearing tone deaf to current students of color. Likewise, the cost to protect Yiannopoulos' second speech was so exorbitant that Chancellor Christ engaged in a communications campaign before and after the event to explain the necessity of her actions.

In sum, both universities drew heavily on organizational culture concepts of mission and information to preserve or repair reputational damage.

### *Summary of Thematic Discussion*

The data revealed similar themes arising from the speech management and protection of each IHE studied. When managing and preparing for controversial expression, collectively, TAMU and UCB encountered missional, legal, policy, security, reputational, and student impact concerns. Of those, leaders placed the most significant weight on addressing legal obligations, including those housed in institutional policies. In doing so, the leaders exhibited varied leadership styles, but each leaned heavily on cultural concepts of the institutional mission and environment in sharing information with the campus and constituents.

The next level of concern was for security. Extreme and well-documented safety concerns are factors that may outweigh IHE commitments to expressive rights, as in the case of Spencer 2 at TAMU. However, safety concerns are usually (and in this study for three out of four controversial expressive events) a factor IHEs manage through intelligence gathering, law enforcement agency partnerships, increasing the police presence, and adding safety equipment.

IHE's addressed reputation management through communications and counter speech. Leaders focused less on reaching and supporting students, including those from historically underrepresented groups than on First Amendment compliance, campus safety, and institutional reputation management.

### **Implications for Practice**

Themes emerging from this multicase study generate recommendations IHEs may consider to ensure preparation, management, and security when protecting controversial campus expression:

*Embrace speech freedoms in the marketplace*

Expression is fundamental to the purpose, mission, and future of academic institutions. As the freedom to exchange ideas is central to higher education, information and education regarding First Amendment rights and obligations should be infused into an IHE's culture and academics. Including free speech or inquiry in the mission can lay a cultural foundation. However, even when it includes history, heroes, sagas, and symbols, mission alone is insufficient to ensure a campus embraces the importance of ensuring speech protections. First Amendment education and socialization are keys to safeguarding current and future exercise of expressive freedoms.

IHEs are uniquely situated to convey values, expectations, obligations, legal requirements, and policies through curricular and co-curricular offerings. When controversial expression is expected, an institution should open both guided and unstructured discourse to foster student and community exchange regarding reactions to the speech or speakers. Educational offerings should include information about the rights of speakers, the rights of individuals to avoid hearing the speech, and the precious freedom to fight speech with more speech. In that way, students may be more cognizant of legal obligations and the importance of giving a voice to and examining unusual, unpopular, and even unwelcome speech. Educational opportunities open dialogues, expand inclusion of perspectives, and broaden understanding of why particular messages are offensive and inappropriate to portions of the community (Chemerinsky & Gillman, 2017; Darnell, 2018; Edley & Robinson, 2012; Hertz, 2020; Morse, 2018; Sun & McClellan, 2020; Telles-Irvin, 2018).

### *Leadership*

There is no one-size-fits-all leader, particularly given the unique institutional culture of each IHE. However, the study data suggest proactive, engaged, visible, and mission-focused leadership, whether directive or collaborative, is necessary for successfully navigating a campus through controversial expressive events. When an IHE leadership team frequently forms a consensus, it may be a sign of groupthink. To test and combat groupthink, the group should expand research on and explanation of opposing views from multiple sides of the issue (Ceci & Williams, 2018; Pfeffer, 1992). Generating a more complete understanding of the opinions of those who do not have a seat at the table is likely to reveal greater options for IHE action.

### *Security*

Legitimate, near-immediate threats to safety supersede an IHE's obligation to protect speech. However, an expression must occur before an IHE may assess the safety concern and terminate the speech (*Brandenburg v. Ohio*, 1969; Calvert, 2018). Therefore, an IHE must gather intelligence, monitor the environment, and prepare for a myriad of potential dangers. Doing so is a time-intensive, potentially costly, but necessary endeavor. The risks of harm to students or community members and the IHE's reputation outweigh cost considerations. Suggestions to mitigate the expense include partnerships and intelligence.

### **Regional law enforcement partnerships**

IHEs must establish relationships with local and regional law enforcement agencies before a controversy occurs, so an officer's first day on campus is not the day of the speech event (Axmather & Sun, 2014; Campus Protests and Demonstrations, 2018).

## **Intelligence collection and analysis**

Invest in gathering, reviewing, and ongoing evaluation of intelligence on a local, regional, and national level. No matter how sleepy the campus, an IHE should not allow itself to become complacent with information or be lulled into the illusion that it “could never happen here” (Mitroff et al., 2006). Law enforcement partnerships may be leveraged to gather intelligence, and student interns from various degree programs may aid in analyzing information and monitoring social media (Maintaining Safety and Order, 2013; Campus Protests and Demonstrations, 2018).

### *Establish an Earmarked Fund for Managing Expression*

An ongoing budget line item set aside for security during expressive activities may help ensure safety is not limited (1) by a lack of readily available funds or (2) the content-based reaction of leadership to a speaker disguised as a cost-saving measure.

Additionally, the data in this study indicate a visible security force deters and prevents lawlessness. A heavy show of officers may increase tensions, chill protestors’ speech, and trigger community members, but it is also a resource that can keep persons and property safe.

### *Policies*

Policies govern the boundaries of institutional response to speech. As such, IHEs should ensure expressive event policies are:

- a. Frequently reviewed. To keep pace with a changing world, like the emergence of Antifa and the Alt-Right in 2016, IHEs should periodically review policies to keep abreast of changing laws and methods of expression (Darnell, 2018).

- b. Simple with clear language. Complicated policies can create user frustration, chill speech, and be difficult for an IHE's staff to accurately and consistently apply (Scaduto & Furlas, 2017).
- c. Compliant with state and federal law. Expressive activities invoke constitutionally protected freedoms frequently interpreted by the judiciary. New judicial decisions and state legislation may necessitate policy revisions to ensure legal conformity (Scaduto & Furlas, 2017; Sun & McClellan, 2020).
- d. Transparent and accessible. Broad dissemination and ease of access to policies aid in ensuring notice of requirements. Openness in the policy implementation process can assist in managing expectations and creating an expressive partnership between the policy user and the IHE (Scaduto & Furlas, 2017).
- e. Uniformly applied. Procedural requirements must apply equally to all similarly situated groups to avoid claims of discrimination and selective enforcement (*Forsyth County v. The Nationalist Movement*, 1992; *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 1983). Categories of users may be treated differently if accounted for in a policy. For example, external groups may pay higher rates than student organizations. However, treatment for all within a category must be the same.

Policies communicate organizational information and are an effective method for managing controversial speech events. Ensuring institutional expressive regulations are current, legally compliant, employed equitably, and easy to find and use will ease the process for both the university and those desiring to exercise First Amendment *rights*.

## *Reputation*

The approach a university adopts to manage controversial speech impacts the IHE's reputation, which further influences the institution's goals, relationships, finances, and enrollment. Therefore, an institution must protect speech and safety in a manner consistent with its culture and values while also adjusting and giving attention to the expectations of varied internal and external constituents. Further, socializing freedom of *all* speech and ensuring dialogue regarding controversial viewpoints on campus can reduce the reactionary impacts of hurtful and hateful speech.

### **Implications for Future Research**

Limitations of the study, methodological reflections, consideration of an additional theoretical framework, and concern regarding leadership communications inform implications for future research.

A significant limitation of the study identified at the outset was access to interview participants. The researcher's geographic proximity, enrollment, and the connections of the dissertation committee aided in securing data from TAMU. Fourteen individuals related to TAMU participated in the study, including many administrators. Obtaining participation from those affiliated with UCB was challenging. The study includes data collected from eight UCB participants, with four current or former administrators. Ideally, the number of participants from each case would be closer, as the disparity may distort the comparison of institutional preparation, management, and protection of expressive events. Fortunately, reviewing, coding, and comparing hundreds of pages of UCB released public records related to the 2017 controversial speech events supplemented the UCB interview data. Future researchers of IHE approaches to high-profile expressive activities should consider initial exploration and estimation

of institutional leadership interest, transparency, and willingness to facilitate researcher access to aid in data collection and comparison.

Identifying and obtaining student interviews presented difficulties at both institutions. Data collected from the four former student participants was rich and meaningful, with some of the most thought-provoking comments of the study. Former student participant data suggests greater study of this subgroup's impressions of approaches to controversial speech would aid in evaluating the impacts of IHE management of expression. Researching a broad group of former students representative of the student body, with attention to and categorization by political, ethnic, gender, organizational, and other affiliations may demonstrate the free speech educational and service-related actions IHEs may take to meet the needs of an increasingly diverse student population. As suggested above, much planning for identifying and securing participation should precede a study of former student participants.

Studying documents filed in First Amendment lawsuits against IHEs may further identify institutional approaches for preparing, managing, and protecting speech and the campus. Reported judicial opinions are helpful to illustrate legal interpretations an IHE should monitor for compliance. However, as case decisions often omit many factual nuances, research reviewing court filings would reveal more data for comparison of controversial speech management. A documentary review would reduce the need to secure participants while increasing the number of institutions studied. Limitations of a study focused on court-filed documentary data may be an inability to secure a thick description without interviewing participants. It may also be challenging to overcome a prejudiced assumption that the IHE engaged in rights violations, negligence, or other malfeasance causing the lawsuit.

In addition to the legal and organizational frameworks employed for this study, an organizational learning lens would enhance the analysis of how IHEs handle expressive activities on their campuses. “Organizational learning is the study of whether, how, and under what conditions organizations can be said to learn” (Kezar, 2005). A learning framework would have been useful for this study, as both UCB and TAMU revisited their management, preparation, and protection of speech and the campus when Yiannopoulos and Spencer announced plans for second campus events. Examining whether and how knowledge from the first Danger Tour speaker visits transferred to decision-making for subsequent expressive controversies may reveal additional dimensions of the educative value of an IHE ensuring expression. A learning framework may help further explore whether and how peer institutions' actions inform an IHE's decision-making.

Finally, the impact of executive messages communicating opinions on the viewpoints of an upcoming speaker warrants further examination. Data in this study shows Christ, Dirks, and Young engaged in such communications to varying degrees. They are not alone. In the last decade, scholars have urged IHE leaders to use their position and pulpit to publicly denounce views that do not align with the school's mission and standards, whether arising from campus expressive activity or controversial events emerging across the country (Chemerinsky & Gillman, 2017; Hertz, 2020; Lockard et al., 2019; Morse, 2018; H. Ross & Kavalir, 2018; Scaduto & Furlas, 2017; Sun, J. C. & McClellan, 2020; Telles-Irvin, 2018). Longstanding First Amendment counter-speech principles support the guidance of scholars and actions of UCB and TAMU leaders to apply “more speech, not enforced silence” (*Whitney v. California*, 1927, Brandeis, L *concurring*, p. 337).

The question for additional study is whether encounters with controversial expression in the marketplace of ideas are an appropriate time and space for a leader to engage in a Brandeisian exposure of opinions on fallacies of the speech. Or, might leadership communications thwart individual learning and discovery opportunities presented by expression considered odious, hateful, and offensive by the majority? After all, IHEs in this study resorted to hiding law enforcement officers to avoid potential chilling of protestor expression. How much more is examination and communication about controversial ideas stifled when executive messages telegraph socially acceptable and expected thinking on the topics before speech occurs?

Implications for future research are as broad and varied as are everchanging expressive campus activities and ideas. I suggest further study of the impacts of leadership messaging on educational opportunities offered by controversial expression, effects of institutional approaches for managing speech on student subgroups, and expanding knowledge of institutional management of speech through examination of documents filed in resulting litigation. I also propose employing an organizational learning lens to further study institutional approaches and expressive event decision-making.

### **Conclusion**

High-profile, controversial speakers on campus create a myriad of institutional risks. However, protecting such speech is critical to an IHE's educational mission and ensuring continued academic freedom at universities. This dissertation considered how IHEs visited by the Danger Tour prepared for, managed, and protected the campus and First Amendment Rights. The question was explored through a multi-case study of two R1 institutions experiencing

dramatically different outcomes from controversial expressive events of Danger Tour speakers Milo Yiannopoulos and Richard Spencer.

Mandates of the First Amendment, the educational mission of universities, and institutional culture influenced institutional decision-making and tactical implementation of plans for both TAMU and UCB. Tierney's institutional culture concepts of environment and mission, including the university's history, symbols, sagas, values, and political leanings of the campus and external community, shaped responses when learning of Yiannopoulos' or Spencer's expected expression. Further, these cultural elements, along with the remaining cultural terms in Tierney's framework – information, strategy, socialization, and leadership – aid in the sensemaking of UCB and TAMU experiences. Divergent cultures of the institutions may explain why UCB's first experience with Yiannopoulos erupted into violence when TAMU's experience with Spencer and an elaborate counter-speech event remained mostly peaceful.

Themes emerging from the comparison of the case studies demonstrate navigation of the speech controversies involved attention to legal and policy obligations, conforming to the decision-making strategy and information dissemination preferences of the institution's executive, security assessment and preparations, and reputation management. These factors largely overshadowed consideration of the impact of the expression on the student population, particularly for students from historically underrepresented groups. When each university determined it was ill-equipped to ensure campus safety, security concerns eclipsed all missional or legal obligations for protecting speech.

Returning to the primary research question, the experiences of the institutions studied to demonstrate the IHEs expended significant time, money, and personnel resources in strategizing, preparing, managing, and protecting the campus during visits from controversial speakers. UCB

and TAMU are merely microcosms of many varied institutional experiences with controversial expression. Given the educational importance and constitutional obligations to protect expression, IHEs should plan now for the eventuality of protecting expressive activity that challenges institutional values and creates tension with the campus community and constituents. The examples of UCB and TAMU discussed may aid other IHEs in developing an approach for managing expression while protecting the campus and perpetuating higher education as a marketplace of ideas.

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## APPENDIX A

### INTERVIEW PROTOCOL

I am studying university approaches to events where Milo Yiannopoulos or Richard Spencer planned to and perhaps did speak on campus. The following themes are of primary interest to the study:

#### **Background**

In less than two minutes, please share your higher education experience and any career path that led you to the position you held at the time of the Yiannopoulos and/or Spencer announced visit.

#### **Institutional Culture**

- How would you describe the university's mission?
- How does one learn about what is going on at the university? For instance, how did those not immediately involved with the Yiannopoulos/Spencer announced visit come to learn of it?
- How would you describe the political perspective of the majority of the people involved with the institution?

#### **The Danger Tour Incident**

- Yiannopoulos/Spencer announced a visit to your campus in month/year. I'd like to hear the story of the event from your perspective.

#### **Approach/Preparation**

- What can you tell me about how the university decided to handle and prepare for the Yiannopoulos/Spencer announced event?
- In your opinion, what were the primary factors influencing the university's decisions and actions regarding Yiannopoulos/Spencer's announced visit? (Possible discussion of free speech, costs, political climate, safety concerns, student/constituent relations, and historically underrepresented individuals)
- Please describe any resource expenditures you may be aware of that the university incurred related to the Yiannopoulos/Spencer announced visit.

#### **Feedback**

- Please describe any feedback the university received once its constituents began to learn about the Yiannopoulos/Spencer announced visit?
- After experiencing the Yiannopoulos/Spencer announced or actual visit, what would you, if the decision were up to you, do differently if another polarizing speaker announced a visit to the campus?
- In your opinion, what were the negative or positive outcomes of the management of the event?

#### **First Amendment**

- Did the challenges presented by Yiannopoulos/Spencer's announced visit further or impede freedom of thought, inquiry, and speech at the university?  
Who else do you suggest I talk with about the Yiannopoulos/Spencer event?