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Protecting speech: USU, campuses nationwide re-examine rights, safety, academics

Kevin Opsahl staff writer Aug 26, 2017



People walk through the USU campus during a protest in support of Anita Sarkeesian in this 2014 file photo.
Eli Lucero/Herald Journal

It was almost three years ago that Utah State University received brief national attention over a death threat that promised the "deadliest school shooting in American history."

In October 2014, feminist blogger Anita Sarkeesian was scheduled to speak when the threat was sent to numerous school officials. The university planned to continue with the lecture, but when Sarkeesian was told USU couldn't, under Utah law, bar people with firearms from entry, she cancelled her appearance.

Three years later, Ann Berghout-Austin, director of USU's Center for Women and Gender, which sponsored the feminist blogger's talk, believes the school could have found a way for Sarkeesian to speak in a secure environment.

Nonetheless, the way the events unfolded provided a powerful lesson for the campus community, Berghout-Austin said.

"I feel like the professors were already there, but our students have definitely learned from that — how important it (freedom of speech) is and how easily it can be abridged," she said.

A fresh round of discussion on the importance of freedom of speech is taking place on college campuses nationwide, and USU and other schools are re-examining their policies surrounding the issue.

That's likely owing in large part to the events earlier this month in Charlottesville, Virginia, where hate groups marched on the University of Virginia campus — and downtown the next day — to protest the city's decision to take down a statue of Confederate Gen. Robert E. Lee. Police declared an unlawful assembly following violent clashes among various groups of protesters and counterprotesters, and one woman was killed and several others were injured when a man suspected to be a Nazi sympathizer drove a car into a crowd.

Ari Cohn, a program director for the Foundation for Individual Rights in Education, a higher education watchdog group, said he was not surprised at the way many schools across the country responded to Charlottesville.

“There would predictably be a wave of calls for limiting free speech — and, of course, that did occur and is still occurring,” he said. “We certainly thought that, now more than ever, the importance of defending the free speech rights for those who say things that we abhor is especially important.”

Other higher education groups are speaking out on the Charlottesville tragedy, too. The American Council of Trustees and Alumni issued a statement condemning the hateful messages from the protests while recognizing “these repugnant views” are protected under the First Amendment and Bill of Rights.

“This year has tested the resolve of colleges and universities to remain places of open dialogue and free expression,” ACTA President Michael Poliakoff stated in a news release. “America’s colleges and universities must commit to remaining places of free speech, inquiry, and inclusive debate. The surest remedy against extreme speech is more speech and civil demonstration — and higher education must lead the way in elevating the dialogue.”

An organized answer

The events in Charlottesville come as USU is re-examining its policies around free speech — something USU President Noelle Cockett talked about extensively in a recent interview.

Free speech on campus will stand, but details about permitting, signage and safety protocols could change. Those policy modifications will be announced later this year.

“We’ve come to realize that we are not providing enough information on how to arrange for an event or presentation,” Cockett said.

Matthew LaPlante, a USU journalism professor, hopes USU is careful when considering such policy changes.

"President Cockett is a smart and capable administrator and I have full faith in her," he said. "But I will say this: We need to be especially careful about the things that we think we are doing to fine-tune, because what I see as fine-tuning, other people will see as a violation of their rights."

LaPlante said he would rather see USU "engage in education about responsible speech."

On that note, USU is organizing a panel discussion on free speech in September to provide clarity to the community on what free speech is and what the university's policies regarding it are.

LaPlante believes "everyone can use more education" on free speech.

"My hope is those kinds of reasonable responses to concerns that come out of things like what has happened in Charlottesville are the things we lean on," he said. "As opposed to trying to legislate into a world where people are more comfortable with the speech that surrounds them."

"The law of our country"

Cockett explained how free speech on campus can be a complex issue with a lot of legal nuance.

The public is welcome to come on campus any time, and when a group wants to speak or demonstrate on campus, the university would only intervene if something posed a threat to safety or significant interference with its academic mission.

"What we get to decide on is safety, not what the subject is about," Cockett said.

As far as interference with the school's academic mission, Cockett added: "What does that mean? Well, again, it's interference if they start blocking entrances or exits, they're blocking people moving, blocking events already scheduled, disrupting walking into a classroom."

Predicting whether something will interfere with the academic mission can be a challenge, said USU Police Chief Mike Kuehn.

"I don't know if you can ever really predict. There are a lot of variables," Kuehn said. "I certainly would think to gather as much information as you can on the subject and who the people are, but I certainly would follow the lead of our president. They certainly want people to express their opinion. There's no one that wants to put a lid on that."

To consider cancelling an event, USU spokesman Tim Vitale said the university would weigh free speech rights against safety of students and the community.

"We first and foremost champion the exercise of everyone's free speech rights, but we always would consider safety factors and any factors that might infringe on the academic mission of the university," he wrote in an email.

After Charlottesville, some schools did stop events before they happened. Texas A&M University and University of Florida both denied white supremacists the opportunity to march on campus, citing security concerns.

Crockett pointed out there is a "fine line" on the message imparted by a specific person or group on campus.

"The fine line on the topic is whether or not they threaten a specific individual. They can't do that," she said. "But the 1st Amendment does allow you to express opinion no matter how much we disagree with them or not."

Kuehn said respect for other viewpoints is important on a college campus.

"When you have protesters or people who want to voice their opinion, they want to be heard, so I think it's important for us to listen to them," he said.

A Utah House bill, signed into law by the governor earlier this year, sought to solidify free speech rights on Utah's college campuses. HB 54 states an outdoor space on campus is considered a "traditional public forum" and the school can only restrict free speech activities in those areas if such regulations are "narrowly tailored to serve a significant institutional interest."

"That's free speech"

With speakers, events and messages occurring on a large campus with so many people, sometimes misunderstandings about what is free speech and what is not can happen, Cockett said.

One example she pointed to was a paper tombstone placed in front of the Merrill-Cazier Library in January. The display stated, "RIP: In Memory of Bowling Green," a reference to a statement made by Kellyanne Conway, counselor to President Donald Trump, in an MSNBC interview a week prior. Conway alluded to the "Bowling Green massacre," a terrorist attack that did not happen.

"Someone contacted us and said, 'You need to get that down because it's criticism of Trump,'" Cockett said. "No, that's free speech."

Another time, it was USU administrators who dropped the ball when it came to allowing students to exercise their free speech rights.

In 2015, the university apologized to a group of students who were ordered by campus police to erase pro-life messages they drew in chalk on campus as part of as part of #WomenBetrayed National Day of Student Action.

"The heart of the matter is, we explicitly do not police the content of the message on any political spectrum; it was a mistake for anyone to comment at all on the content of the message," Vitale said at the time.

In last week's interview with The Herald Journal, Cockett reiterated the importance of free speech on campus, saying USU strives to follow the law.

"I come back to the First Amendment is the law, the law of our country," she said.

LaPlante said what happened in Charlottesville was a "worst-case scenario" and any campus community should not lose sight of "the broader view" when it comes to balancing free speech and safety.

"For college campuses, I think the important thing is to have actionable and constitutional action plans that deal with worst-case scenarios," he said. "But deal with them in the context that we can't curtail everyday speech and our basic constitutional rights because sometimes people abuse those rights."

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