Vincent Munoz (00:03):

I think what we need to do is explain how our principles of free speech, free inquiry, will help serve the cause of justice.

Betty Friedan (00:12):

The First Amendment, the constitutional freedom of speech and freedom of conscience, that is the bulwark of our democracy.

Bettina Aptheker (00:22):

There was a passion in what was being said, affirming what people considered a sacred constitutional right, freedom of speech and freedom of association.

Michelle Deutchman (00:32):

From the UC National Center for Free Speech and Civic Engagement, this is SpeechMatters, a podcast about expression, engagement, and democratic learning in higher education. I'm Michelle Deutchman, the Center's executive director and your host. Welcome to episode seven.

Michelle Deutchman (00:52):

For our back to school episode, we will be joined by the co-chairs of the Center's National Advisory Board, UC Irvine Chancellor Howard Gillman and Berkeley Law Dean Erwin Chemerinsky. They will discuss recent trends related to campus speech and academic freedom, as well as forecast what challenges lie ahead. But first, Class Notes: a look at what's making headlines.

Michelle Deutchman (01:17):

Class is now in session and with it comes the continuing conversation about balancing diversity and inclusion with robust expression and academic freedom. In the past decade, many graduate school admissions offices and faculty hiring committees have required applicants to write an essay explaining their commitment to diversity, equity, and inclusion and how they plan to advance those goals. At the end of last month, the Academic Freedom Alliance, a nonprofit dedicated to protecting faculty members' rights to speak, instruct, and publish without fear of sanction or punishment, released a public statement calling for an end to mandatory diversity statements in admissions and hiring. AFA argues that these requirements are antithetical to the values that govern academic life and will function as loyalty oaths.

Michelle Deutchman (02:08):

Proponents of these statements disagree, alleging that diversity in student bodies, faculties, and staff is critical in order for universities to fulfill their primary mission of providing a high quality education, and diversity statements are an important piece of that effort.

Michelle Deutchman (02:24):

Diversity and its value in the academy will be center stage at the Supreme Court this fall. On October 31st, the court will hear oral arguments in two cases focused on the use of race as a factor in admissions practices at Harvard College and at University of North Carolina. The stakes are high given the Supreme Court's conservative majority, which will be presented with an opportunity to overturn decades of precedent allowing the use of affirmative action in admissions.

Michelle Deutchman (02:52):

The dispute about the appropriateness of professors quoting racial slurs in class is back in the news. A Claremont McKenna College professor recently published a piece in the Wall Street Journal claiming the college violated his academic freedom by taking away some of his teaching responsibilities in response to a student complaint about his use of the n-word while discussing the history of censorship of The Adventures of Huckleberry Finn. This incident raises long-debated questions about how to balance the need for students to feel comfortable in the classroom with other pedagogical concerns. We're only at the beginning of September and already expression issues on campuses abound.

Michelle Deutchman (03:33):

Today, we have not one, but two special guests. They are the dynamic duo behind the must read book, Free Speech on Campus, and are renowned national experts on that topic. I'm proud to share that they are also co-chairs of the Center's National Advisory Board. However, each deserves his own introduction.

Michelle Deutchman (03:52):

Howard Gillman was appointed as the sixth chancellor of the University of California Irvine in September 2014. He is an award winning scholar and teacher with an expertise in the American Constitution and the Supreme Court. He holds faculty appointments in the School of Law, the Department of Political Science, the Department of History, and the Department of Criminology, Law and Society and every year he teaches an undergraduate seminar.

Michelle Deutchman (04:16):

Erwin Chemerinsky became the 13th dean of Berkeley Law in 2017 when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law. He is the author of 14 books, including leading case books and treatises about constitutional law, criminal procedure, and federal jurisdiction. He and chancellor Gillman recently co-authored The Religion Clauses: The Case for Separating Church and State. It is a pleasure and a privilege to have both of you together for our back to school episode. Thank you for joining us today.

Howard Gillman (04:46):

Thank you, Michelle. It's such a genuine pleasure to be with you.

Erwin Chemerinsky (04:49):

Likewise, wonderful to be with you, Michelle, and always great to be with Howard.

Michelle Deutchman (04:53):

All right, so let's kick it off. I think having sent off kids to back to school today, it's really hard to believe that we're at the tail end of summertime, and even harder to believe that we're approaching the Center's fifth year of championing expression, dialogue, and democratic learning. The two of you were named co-board chairs at the moment of the Center's inception. And you have been instrumental to its growth. Five years ago is also when you published Free Speech on Campus. And we just marked the five year anniversary of the Unite the Right Rally in Charlottesville, a gathering that reframed white supremacy and its ongoing role in American democracy.

Michelle Deutchman (05:30):

Although so much has transpired in the past five years with regard to campus speech and engagement, today's focus will just have to be on the past year, because we want to leave time to turn to face what's ahead in this upcoming academic year and beyond. 2022 has been chock full of interesting cases, controversies and questions regarding the First Amendment and speech. Top of the list has been academic freedom and threats to it. That has been a recurring theme as of late. In particular, there have been a number of situations in which academics have found themselves either under investigation or facing possible sanctions as a result of tweets or other comments made in the public sphere. So Chancellor, before we delve into your thoughts on this trend, I'm thinking that our listeners could use a quick refresher on the difference between free speech and academic freedom. Can you start us off there?

Howard Gillman (06:21):

Sure. So free speech is a general constitutional right protecting people against government censorship or punishment merely for the expression of an idea. There's a lot of things you can do with speech other than express ideas. You can harass people, and threaten them, and incite others to violence. And those acts aren't protected by free speech principles. But in general, you have a right to express viewpoints without government censorship or punishment.

Howard Gillman (06:48):

Free speech rights don't always extend into the workplace environment. And for a time in our history, professors would be fired for engaging in teaching or scholarship that college or university leaders didn't like. And so in the early 20th century, an association of university professors was formed and established modern principles of academic freedom. And essentially they hold that colleges and universities can't do what they're designed to do unless faculty members have freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. So long as they're acting within the boundaries of professional competence and professional ethics.

Howard Gillman (07:30):

And so unlike free speech principles, academic freedom principles allow other members of the academic community to judge whether a person's views and practices are competent and professional. And if peers believe your ideas are unsound, then there could be consequences. You can be denied tenure or denied promotion. So in general, a classroom is a place protected by academic freedom, but it's not an open forum for faculty to say whatever they want. And social media is generally protected by free speech principles, without regard for academic freedom concerns about professional competence and ethics.

Michelle Deutchman (08:08):

Great.

Erwin Chemerinsky (08:09):

I will add a couple of things to that. I mean, I think Howard does a terrific job of explaining the distinction between free speech and academic freedom. One thing that I'd add is when we talk about free speech, if we're speaking of the First Amendment, that applies only to the government. Private college universities don't have to comply with the constitution, but academic freedom applies to both

public and private universities. Also, I think it's useful to think of free speech and academic freedom in a Venn diagram sense is overlapping circles. There's certainly things that are protected by the First Amendment that are protected by academic freedom. We might find some things that protected by the First Amendment, but we wouldn't think of it as being about academic freedom. Howard just gave an example, but there might be things that are protected by academic freedom that aren't protected by the First Amendment.

Michelle Deutchman (09:04):

Great. That is a super helpful setting of the table. And sort of now that we've kind of laid everything out, I guess I want to go back to you Chancellor, and ask your thoughts about whether you think academic freedom is under siege in a different way than in the past, or perhaps whether we're just hearing more about the targeting of academics that's always taken place and maybe we just weren't aware of it. Or maybe it's some third option that I haven't yet considered.

Howard Gillman (09:30):

Well, we've seen some high profile cases recently involving faculty members in teaching settings who made statements or teaching choices that caused controversy mostly about how those choices might be inconsistent with principles of diversity, equity, and inclusion. And so for example, a San Diego State professor was suspended. He was an award-winning professor for teaching, but he mentioned a racial epithet in his class on philosophy, racism, and justice as part of a philosophical discussion of the use mentioned distinction that it's one thing to use a word. It's another thing to mention it. It's a practice he'd engaged in for more than 20 years without complaint. And he was suspended for that.

Howard Gillman (10:14):

There was a case of a law professor, Jason Kilborn, who was investigated by the University of Illinois Chicago, after he posed on a final exam in his civil procedure course, a hypothetical employment discrimination scenario, which included redacted references to racial and gender slurs, you know, "n...b...."

Howard Gillman (10:36):

And there are five or six examples like this over the last year, as well as examples of faculty expressing themselves in social media in ways that I think are clearly protected by free speech principles, such as Ilya Shapiro's unfortunate treatment by Georgetown University after he criticized Professor Biden's nomination of judge Ketanji Brown Jackson in a way that many found offensive. So I think it's important to note that it's completely appropriate for students and others to criticize choices made by faculty, and to request changes, and to criticize how faculty express themselves in social media. The problem in some of these cases was that the institutions took some reaction against these faculty members without due regard, I think, for academic freedom or free speech principles.

Erwin Chemerinsky (11:24):

I very much agree with that. I think there is an important distinction between instances in which college universities, sanction faculty or students for their speech, as opposed to the sense that speech is being chilled by the environment. And I think that this often gets conflated in stories. Howard rightly focused on the instances where faculty had been sanctioned in some way for their speech. And this should raise concerns both with regard to academic freedom and for freedom of speech. Now, a moment ago, I spoke of freedom of speech in the First Amendment context, supplying to the government, but we can

also talk about freedom of speech outside the First Amendment context. Most colleges and universities in their faculty and student handbooks pledge to observe principles of freedom of speech. And so we can speak of it in that way as well. But that's one thing to talk about, the sanctions that get imposed on people for their speech.

Erwin Chemerinsky (12:22):

The other is where people say they feel chilled from speaking. And there's some major news stories about whether or not the sense of being chilled has gone up. And this is a threat to academic freedom and freedom of speech. The difficulty I have with regard to this is we're all chilled in what we say and how we say it. From a young age we're taught not to say certain words, or to say certain things to people, that's a chilling of speech. And the question is, well, exactly what speech is being chilled under what circumstances? And there are instances where I would be very troubled by certain kinds of speech being chilled, even if it's not because of sanctions. And there's other instances where I say, if our faculty is chilled from using the N word or racial epithets, it's a good thing they're being chilled.

Michelle Deutchman (13:12):

I think that's a super important distinction, and I'm really happy that it ended up being raised because we see a lot of surveys about this issue of what many people call "self-censorship," which I think, Dean Chemerinsky, is what you were referring to. And I'm actually very pleased that our senior fellow at the Center this year is continuing to pursue her work on qualitative research about just those kinds of questions, about why is it that students might decide not to speak in the classroom and then layered on top of that, when is that something we want from students, and when is that something we don't want? But either way a question for both of you is as we move forward into this new school year, what kinds of things should university leaders and administrators be either thinking about or doing to further safeguard kind of academic freedom in its most traditional sense?

Howard Gillman (13:59):

Well, I think we should start by deepening the conversation on our campuses about the meaning and scope of academic freedom. The general concept people think they're oriented to, but what is included or not included in academic freedom isn't always self-evident. And so at UC Irvine, we've done extensive work with our Academic Senate to engage in workshops and seminars and conversations in advance of controversies to see whether or not we have a shared understanding. We've also done tabletop exercises with our deans and other university leaders. And fundamentally, I think the level of faculty knowledge about these principles is especially important, because ultimately academic freedom survives or not, depending on whether faculty are willing to understand it and defend it as necessary even in the midst of controversies. And in fact, within the University of California, the Academic Senate has primary responsibility for applying academic freedom principles. So deepening the conversation on campus is not just about general free speech principles, but about academic freedom principles seems like a very important thing, given how frequently these issues are arising on campuses around the country.

Erwin Chemerinsky (15:17):

I would add several things. I think it's important as we're talking about being back to school, that this is going to be a different year than the last couple, in terms of people being back on campus. Two years ago, we were almost entirely online at campuses all across the country. Certainly everything at Berkeley was done online. Last year, we were back to in-person classes, but I think there was less of a presence of

people on campus. My hope is that we get back to more of normal this year, but that will also mean more in person protests and more opportunities for all of the issues that they raise to come up.

Erwin Chemerinsky (15:56):

I think we're also dealing at a time when there's such deep divisions in our society, political polarization, that then creates the kind of environment that can create free speech crises and certainly free speech controversies. I also think, and it's laudable, that there's greater sensitivity on the part of many of our students and faculty to what's said and how it's said. And so there can be more objections that we hear to things that are being said and how they're being said.

Michelle Deutchman (16:27):

Absolutely. I guess it's not a surprise that I'm going to agree that education is really fundamental to all of this discussion and that's what the Center specializes in. And it's no surprise, but I'll share with both of you and with our listeners, that there was a recent Knight survey of high schoolers, and it ends up that the more you expose high school students to the First Amendment in their curriculum, the more that they show support for the First Amendment and the constitution when they're polled. This seems very obvious. So the more you learn and the more you understand, the more support that you can have, and I'm sure that is across the board about all different kinds of principles and democratic norms.

Michelle Deutchman (17:03):

Another thing that's really been taking up a lot of news bandwidth lately has been this idea and questions surrounding around institutional speech. And what's the appropriate role for the institution to speak. Most recently it was back in the news following the numerous and varied responses by different universities to the US Supreme Court Dobbs decision, which overturned the federal right to abortion. Dean Chemerinsky, I'll start with you. I know you've done thinking and writing about this issue. What are some of the guideposts that you rely on when deciding whether to speak as the Dean of Berkeley Law, and how to do that?

Erwin Chemerinsky (17:39):

What I'm always focusing on is what's best for the community. Is it a situation where my speaking can help the community? Can it reinforce principles of community? Can it lend support for those who are suffering under the circumstances? Can it perhaps respond to something that's hurtful within our community? Let me try to make this a little bit more concrete.

Erwin Chemerinsky (18:03):

We had an incident several years ago where Alan Dershowitz spoke at the law school and that afternoon, someone drew a swastika over a picture of Alan Dershowitz. I have to admit I'd not been in a building in a law school where somebody who had drawn a swastika on the wall. I immediately wrote a message to the entire community condemning this and expressing why such hateful speech is inconsistent with who we are. It seemed essential to do that.

Erwin Chemerinsky (18:32):

Or there was another incident a couple years ago where Ann Coulter was speaking on campus, and it wasn't at the law school, but people who went to hear her were assaulted, literally pushed, shoved, spit upon. And I sent a message to the law school community saying that on a campus, all ideas and views

can be expressed. It is certainly appropriate for people to protest against Ann Coulter, but as a law school committed to free speech, it's not appropriate for there to be assaults against those who are going to hear a speaker. I received a good deal of pushback from some of our students about that, but I thought it very important as an occasion to speak up in favor of freedom of expression.

Erwin Chemerinsky (19:13):

Or we had an instance where a justice in the Israeli Supreme Court was going to speak, and a student group, Students for Justice in Palestine, made clear that they were going to shout down the speaker. I sent a message to the entire community saying again, that we have to be a place where all ideas and views are expressed. And if there's disruption, disruptors would be punished, that if people object, they should have silent protests or protests elsewhere in the law school, or bring in their own speakers. And thankfully they took my advice, handed a leaflet to everyone coming, but they didn't disrupt the event.

Erwin Chemerinsky (19:50):

One more example, after the tragic death of George Floyd and the protests around all cities, I felt it very important to send a message to our community with regard to what was going on in the country and supporting of racial justice. So I think that not only do I have a speech right as an individual, but I think I have a speech duty as an administrator. There's no guideposts for this. I wish I could articulate criteria for you that are more specific than what I've said. I'm also mindful though that the more I speak, the less effective I'll be. So I need to pick my places where I think I can really say something that can help our community.

Howard Gillman (20:30):

And it won't surprise our listeners that if you're in a position as either a chancellor or a dean, there are lots of expectations that people convey about when you should speak about what. And you're never going to make decisions that are going to make everyone happy. There's always judgment calls.

Howard Gillman (20:48):

I think the easiest circumstances are when you're defending the fundamental values of the university. So when you're defending basic norms of free speech and academic freedom, that's consistent with your role as the caretaker of the mission of the university. If members of your community are under assault or otherwise are facing circumstances that are causing distress, I find it relatively easy to speak on behalf of the defense of members of our community. When the George Floyd murder was roiling the country, it was just not possible for a university leader not to speak out against something so fundamental. But beyond that, you do have to be careful about not being a running commentary on every controversial social and political event. Your job is to speak in a way that the academic community, the campus community feels as though is appropriate, given my role. And so you do have to show some restraint and especially, I think, it's not my role to share with everyone my personal views on every issue of interest or controversy in the country, but finding when you speak as appropriate, and when you think you need to stay silent or neutral is always going to be a bit of a judgment call.

Michelle Deutchman (22:12):

Well, and I think it's unfortunate that there have been too many opportunities for people in both of your positions to reach out in terms of the number of mass shootings and other tragic things that have taken place in society. And so, I don't know if either of you want to opine for a minute about the Kalven Report. I am going to just dive in a little deeply because that's what we do on this podcast.

Michelle Deutchman (22:36):

So it was 55 years ago when the U.S. was in the throes of the Vietnam War, that the University of Chicago was sort of caught in this dilemma. The university president being pushed to speak on behalf of the war, to speak against the war. And so they formed a committee to prepare a statement on the university's role in political and social action. And the result was called the Kalven Report. And what it concluded was that neither the University of Chicago nor its units should take official stands on social issues.

Michelle Deutchman (23:04):

And here we are, 55 years later still having a similar discussion. And as of late, there have been a number of institutions who have come out very directly and said, "We support the Kalven Report. We think that schools like ours should not make official statements." That it results in, Dean Chemerinsky what you were talking about, ultimately in the chilling of speech. And I guess my question is, as the world becomes increasingly interconnected, how do you anticipate universities will sort of continue to handle these decisions and handle this idea of from the Kalven Report of sort of neutrality and having no official position on social issues?

Howard Gillman (23:40):

The most famous line in the Kalven Report is, "The university is the home and sponsor of critics. It is not itself a critic." And the report claimed that the institution had to be officially neutral on these matters if it was going to fully protect the free speech and academic freedom of faculty and students. And the concern was that if the university took a strong view on the Vietnam War or abortion rights, that it would chill the expression of views that dissented from the official university view. And it was assumed that the most important role for university was to protect the widest possible diversity of viewpoints. And as I said, anyone in a position such as mine knows that we have to be careful about when to express views on controversial social or political matters.

Howard Gillman (24:27):

But as we mentioned already, I also think it's important to speak out in certain circumstances, especially in defense of the mission of the university or in defense of members of the campus community, or on issues that you simply can't ignore, because they're consuming the nation and the community in a way that demands someone to speak toward the issues. And I don't think it's wise or even possible any longer to assume that the university should always remain neutral on every controversial question. And it should be possible to protect academic freedom, even if every once in a while I say something that some members of my community disagree with, they don't seem all that shy about correcting me when they think I'm wrong.

Erwin Chemerinsky (25:11):

I agree with that. And again, I think a slightly different perspective. I think the Kalven Report was written in a different time for a different world. Today, if we were to write such a statement, we need to also emphasize the importance of equity, inclusion, and belonging. And there are times when campus officials need to make statements in order to reinforce that.

Erwin Chemerinsky (25:36):

Also, I think we recognize today in a way that we probably didn't then that silence isn't neutral. The Kalven Report talks about neutrality, but silence isn't taking a neutral position, and there are times where if you don't speak out, that's saying something that's very important, too.

Erwin Chemerinsky (25:54):

I would draw a distinction between the institution taking a position and individual campus leaders taking a position. The institution of the law school doesn't take a position. The law school doesn't take positions with regard to Supreme Court decisions. Individual faculty members can take positions and they can take them individually or collectively. Likewise I, as a dean, can take a position. I'm speaking as an individual, although obviously I have an institutional role. So when I spoke out after the tragic death of George Floyd, it wasn't the law school as an institution taking position, but I as an individual can speak out. And I think there's times where I as an individual have to speak out. I think one of the problems with that you point to in the Kalven Report is it doesn't draw this distinction.

Michelle Deutchman (26:49):

Thank you. And I think that's really important to note about silence. That sometimes we equivocate silence and neutrality, but that sometimes silence can also be seen as complicity. And so it's very complex and very layered. I'm sure that this school year and the years ahead will give both of you opportunities to think more about this.

Michelle Deutchman (27:07):

Certainly one thing that the University of California has spoken out about, and I know both of you feel very strongly about is what some say is the greatest threat, not only to academic freedom, but to higher education at large. And that's this spate of state legislation that is censoring subjects that can be taught, not only in elementary and secondary schools, but also in college and university classrooms, as well as banning books from schools and public library shelves. And I'm wondering if you can outline sort of the nature of this threat, not only to higher education, but also to speech rights and to democratic norms. And Dean Chemerinsky, why don't you start? And then Chancellor, you can follow up.

Erwin Chemerinsky (27:46):

I think you're right in pointing to this as a very grave threat to free speech. A number of state legislatures have adopted laws prohibiting the teaching of critical race theory. These laws are written in very vague terms. Sometimes they mention critical race theory. Sometimes they don't. Often they do things like say, you can't teach that one race is a victim, or you can't teach things about racial identity. You can't teach about white privilege and the like.

Erwin Chemerinsky (28:19):

Now the very fact that laws regulating speech are written in such vague and over broad terms should concern us, because everything we know about speech is that vague and over broad laws will chill speech. And that's the very goal of these laws. They're trying to discourage teaching of certain views in the schools.

Erwin Chemerinsky (28:37):

One of the core principles of freedom of speech is the government shouldn't engage in viewpoint discrimination, but the goal of these laws to stop certain viewpoints from being expressed in schools.

And there are instances around the country of teachers being disciplined for not complying with these laws. Many are directed at just K to 12, but some are directed at colleges and universities as well.

Erwin Chemerinsky (29:03):

You mention instances of taking books from the curriculum or books in the library that relate to gay, lesbian, and transgender students. Restriction in Florida and some other states, the 'don't say gay' that tries to limit the speech of teachers with regard to sexual orientation. We can look at the law that was passed in Georgia that makes it much easier to strip tenured faculty of their tenure, which is clearly about a threat to academic freedom, as well as free speech.

Erwin Chemerinsky (29:32):

I just want to take a second and put this in historical context. Throughout American history, probably throughout world history, there's been an impulse to try to stop the speech that those in power don't like. One of the greatest threats to academic freedom was in the late forties and early fifties into the 1960s as a result of the McCarthy Era, where there was an attempt to try to stop the teaching of ideas that were regarded as too close to communism or Marxism. People lost their jobs in academia just for being suspected of ties to Marxism or teaching about it.

Erwin Chemerinsky (30:08):

A lot of what I've seen in the last year or so with regard to critical race theory is remarkably similar that was done during the McCarthy Era.

Howard Gillman (30:16):

I agree completely - these legislative efforts, without question they represent the most serious threat to academic freedom at colleges and universities, since the McCarthy Era. And the scope of the assault, it pales in comparison to what gets a lot of attention, relatively insignificant and ad hoc controversies about students reacting to individual faculty members or invited speakers. This is not a spotty or ad hoc development. It is a well-organized and widespread political effort that will intensify. And it's a highly-coordinated effort across dozens of state legislatures as part of an overall commitment to regulating what happens in colleges and universities, because they have been pulled into the culture wars.

Howard Gillman (31:10):

And to point out some of the ironies is easy, but the same conservatives who not long ago insisted that campuses must defend the view that students be exposed to ideas they disagree with, that facts don't care about your feelings, that people have a right to express themselves on campus, even if those views are considered hateful or abhorrent, those same conservatives now insist that government should be able to prohibit expressions on campus of divisive views, with the government deciding what views are divisive. It is incredible, and it is incredibly dangerous. And I think there's not sufficient appreciation yet within the broader higher education community about how this may unfold and the challenges it will present to campuses. But my guess is that in the months and certainly the year to come, this is going to be a major issue that higher education leaders are going to have to address.

Michelle Deutchman (32:11):

And that's a perfect lead in to what I was going to ask next, which is a lot of our listeners are people who are aware of what's happening, but want to know what can they be doing in response to this disturbing

and destructive trend, especially as we all speak from this blue state, where maybe it doesn't feel like things are touching us as much. So I don't know from both of your vantage points, if you have any thoughts for folks who really want to try to combat this. How might they be able to do it in a way that is incremental and doable?

Erwin Chemerinsky (32:42):

Many things. I think we, as leaders in higher education have an obligation to make sure we're educating our students about principles of free speech and academic freedom. Our country does not do a very good job of civic education. I'm often stunned in teaching both college and law students the little understanding they have about the history of free speech or constitutional principles with regard to free speech. So I think a starting point is educating our students.

Erwin Chemerinsky (33:12):

I think next we've got to take responsibility for educating others. Maybe this is our taking time to go into the middle schools and high schools. Maybe it is about writing op-eds, going to talk to rotary and lions clubs. Third, I think it's about expressing those principles of freedom of speech. A number of academic senates around the country pass resolutions with regard to the importance of academic freedom and condemning the laws that outlaw teaching of critical race theory. I think this is a good thing. And finally, we need to use the organizations that exist; the AAUP is an example that exists to promote academic freedom. The ACLU, support for things like the Center for Free Speech and Civic Engagement that you head, Michelle. All of these organizations play a key role, because individuals always can be more effective when they work collectively.

Howard Gillman (34:05):

And I agree, we do need to speak out more. Erwin and I did an op-ed on this where after we had done a previous op-ed talking about how some students shouldn't disrupt certain speakers, the follow up was an op-ed that said, "You know what? Some of what these students do is bad, but what's happening in state legislatures is worse." And I think calling out the scope of this challenge, really the unprecedented, over a 70 year period nature of this challenge, people have to find their voice on it the same way that back five, six years ago, people were finding their voice about how to handle certain disruptive activities or an assault on free speech norms within the campus community. I think the Center has always done tremendous work, providing resources for higher education in general. And I know the Center will be focusing increasingly on this issue, as we learn more about what state legislatures are doing.

Howard Gillman (35:03):

The last thing that I think is interesting about this development and ties into earlier debates about campus free speech is that when we were trying to convey, especially to underrepresented students who sometimes felt that free speech wasn't their friend, why it was nevertheless important to protect free speech values, even for people who hate. One of the points that you make that we made was that ultimately censorship regimes are going to be controlled by the powerful and their interest is in silencing, especially silencing marginalized groups or groups that are asking questions or putting pressure on existing institutions. And we would say that don't think about it just in terms of whether this one speaker that you don't like should have a right to speak. Think about it in terms of, if you gave the government the power to silence speech that the government thought was dangerous or divisive, how would the government use that power?

Howard Gillman (36:13):

And is it more likely they would use it against the people that you are complaining about, or is it more likely that they will use it against you and this wholesale systematic assault on free speech and academic freedom in higher education by Republican legislatures is a perfect example of what happens when free speech norms in general are taken for granted, because the groups that they are trying to silence are the very groups that have been complaining about free speech norms and the groups that will most likely be the people who are most victimized by this erosion of free speech norms within higher education. And so linking this to larger debates about how we've been talking about free speech on campus the past few years, I think is another useful extension of the work that we've been doing over the last few years.

Michelle Deutchman (37:08):

I absolutely and wholeheartedly agree. One of the things I do find heartening when I go to speak to groups and that's groups of faculty, or administrators, or students, and people are unfamiliar with some of the fundamentals that we've discussed, I do feel like at the end of an hour or an hour and a half or two hours after we've talked about these kinds of situations and really posited the questions, Chancellor, the way you framed them is that people are able to see from a different perspective. And that always gives me hope that with more conversation and more dialogue, there's more opportunity for learning.

Michelle Deutchman (37:39):

And I want to pick up on a thread that you mentioned, which is connecting what's happening on campus to what's happening outside in society. And one of the things that I think makes the Center, there's many things that make the Center unique, and one is our focus on research geared towards problem solving and creating pragmatic resources for members of the higher ed community. Another distinct feature is our focus on the intersection between expression, engagement, and democratic learning. And Chancellor, you've talked a lot about this, how the stakes are much higher than five years ago, and really have emphasized the importance of connecting campus speech issues to democracy and democratic norms at large. And I was hoping that you and Dean Chemerinsky could talk a little bit about that today.

Howard Gillman (38:21):

Yeah, so five years ago, Erwin and I were really focused on kind of the lack of awareness among students and some campus leaders of basic principles of free speech and academic freedom. And so we thought it was important to lay out the arguments for why people shouldn't be censored or punished merely for expressing views that some don't like. And obviously we still believe it's important to make those arguments and encourage those debates. But now also both extremely concerned about assaults on our democratic processes. I mean, it's one thing to encourage people, to be willing to engage bad views with better views, rather than with censorship. It's another to point out that there is widespread and systematic effort to disrupt the voting process and to install, empower people who did not win elections. There is a creeping authoritarianism in both the United States and around the world that I think is genuinely frightening and requires serious responses from higher education. And we knew a few years ago that it's not always easy to explain why free speech was an important value to defend. Now, I think we're faced with also having to explain why democracy itself is an important value to defend.

Erwin Chemerinsky (39:36):

Howard is absolutely right. As he was speaking, I was thinking about the fact that we really wrote that book in 2016. Then I was reflecting on all that's happened since 2016. I've never been more afraid for the future of American democracy than I am right now. We came so close on January 6th to the first coup in American history, had Mike Pence just listened to Donald Trump and John Eastman, it would have been the end of democracy. We saw the first armed insurrection in the history of the United States at the Capitol.

Erwin Chemerinsky (40:12):

Just in the last few months, the Conservative Political Action Committee held its national convention in Hungary to celebrate Viktor Orbán, the authoritarian ruler there, and had Orbán then come to Texas, where he got the largest standing ovation. The rise of authoritarianism around the world and the tendency towards it in the United States is very scary. Our country is the most politically divided that it's been at any time since reconstruction. And if the country is going to survive as a democracy, then it's going to depend upon people understanding democratic principles and embracing them, and free speech will be crucial to this. So that's why I think that the work of the National Center for Free Speech and Civic Engagement has never been more important than it is right now.

Michelle Deutchman (40:58):

Thank you. We've really managed to cover a huge swath of the issues. Of course there's never enough time, but in addition to what we've already touched on, are there other things that you think campus leaders should either be anticipating or focusing on as we draw near to the start of the academic year?

Howard Gillman (41:15):

I think we should be prepared for increased student protests, some around abortions, some around ongoing political divisions, some of which will intensify because of the midterm elections and because of well-oiled social media outrage machines, which are encouraging people to be ever more angry and aggressive as they advocate their positions. So campus leaders should really double check that their free speech policies, events, policies, disruption policies are up to date and well understood by the campus community.

Howard Gillman (41:49):

I think they should be educating their community on academic freedom principles well before there's a controversy on a particular campus. And as we've been saying, I do hope the campus leaders focus more on threats to democracy. We've been spending a lot of time on issues of conversations across the divide, and whether people are willing to listen to people they disagree with. I think that was table stakes, but now we have entire universities where there's many faculty that have expertise in threats to democracy, what is necessary for democracy to thrive, what kinds of assaults undermined democracy. And I do hope that university leaders encourage their faculty and their student affairs divisions to do more programming on this very topic, as it relates both to developments in the United States and around the world.

Erwin Chemerinsky (42:45):

I agree with all of that. I agree that I think we're going to see more campus protests with all of the issues they raise. I think we're going to also see more efforts to disrupt speakers or the audience doesn't like them, the events yell, or the events at Hastings last winter and spring, I think are going to be repeated across campuses.

Erwin Chemerinsky (43:06):

I think we're also going to see constant issues arising because of social media. One of the things we haven't talked about during this particular segment is how social media has changed the nature of communications on and around campuses. And I think we're going to see constant issues with regard to that. The reality is the internet and social media are the most important tool for free speech since the development of the printing press. But they also can be a tool, including on campuses, for spreading false speech, for defaming people, for invading privacy, and campus officials are going to need to deal with that. And maybe most of all, what Howard and I agree with, campus officials need to be prepared for dealing with what they can't anticipate. There are going to be issues that come up over the course of the next year that we couldn't possibly imagine today.

Michelle Deutchman (43:53):

And that's exactly why I'm already thinking that we can make this back to school episode annual so that we can then talk about anticipating the unanticipated at the beginning of each school year.

Michelle Deutchman (44:05):

We've almost run out of time, but I always like to end my interviews with the same question, because I think it's very important to leave our listeners with some ideas for how to make a more immediate impact. And so my question for both of you is what's one thing that people can do today to advance free speech, civic engagement, and or democratic learning. And it can be something small, I don't know. Chancellor, why don't you start?

Howard Gillman (44:28):

Well to stay on the theme, I think the one thing is to take seriously the threats to our democracy. Follow the work of the January 6th committee, note the rise of political violence and stand against it. And if you're a college student, demand that your campus organize programs and activities that help you become more educated on these threats and challenges.

Erwin Chemerinsky (44:52):

I'm tempted to simply say, the one thing to do is support the UC Center for Free Speech and Civic Engagement. But what I'll say is I think that what we have to find that we haven't talked about is looking for opportunities for bipartisan support for free speech. Free speech shouldn't be an issue that's embraced by the left or the right. The left and the right should be able to come together and embrace the idea that all ideas and views can be expressed. And so what I'm hoping is there'll be more opportunities in my law school and my campus for both conservative and liberal groups to get together and hold forums for civil discourse and dialogue.

Michelle Deutchman (45:31):

Those all sound like wonderful things. Is there anything else either of you would like to add before I thank you and we close?

Howard Gillman (45:38):

Well, I want to thank you for your tremendous leadership of the Center. Erwin and I were lucky enough a number of years ago to recommend your appointment to the Center. You have done absolutely brilliant work, but what we didn't know is that we were also recommending the appointment of such a

great podcast host. So I want to also thank you for doing such a great job, expanding the work of the Center through this format.

Michelle Deutchman (46:05):

Well, you're very kind, but clearly it's all about the guests, and I'm grateful to both of you for sharing not only your expertise, but some of your very precious time. And like I said, I look forward to doing this again. And most importantly, I look forward to working with you and learning from both of you in the years to come. Dean Chemerinsky, I didn't mean to cut you off if you had a last word.

Erwin Chemerinsky (46:26):

I do. I echo everything that Howard just said with exclamation marks.

Michelle Deutchman (46:31):

All right, well, I'll leave it there to end. I hope people weren't expecting there to be too much of a disagreement between the two of you. Like I said, a very dynamic duo, and I'll thank you again. And we'll look forward to figuring out these dilemmas as they arise.

Michelle Deutchman (46:49):

Next up is a conversation with two journalists who cover the higher education beat: Elissa Nadworny from National Public Radio and Michael Powell from the New York Times. Also, mark your calendars for our next Fellows in the Field webinar on October 13th, Art and Porn on Campus, and be sure and check out our updated voting resources on our website.