

Vincent Munoz:

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 Friendan:

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

Bettina Apthekar:

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

Michelle Deutchman:

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.

After four criminal indictments, 91 felony counts, and countless news articles, blog posts and podcasts, it makes sense that many feel fatigue concerning the legal woes of our former president. And while I understand the desire to change the station or flip the page, in today's episode, we will ignore that urge. Rather, we're going to focus on how the First Amendment and freedom of speech are being used as a defense in some of these cases and what impact that's having on how Americans think about expression.

Today's guest is no stranger to the First Amendment. Ben Wizner has dedicated his legal career to safeguarding the rights that the First Amendment protects, and it's an honor to have him on the show. But before we formally introduce Ben, let's turn to class notes, a look at what's making headlines.

In response to the Israel Hamas war, there has been a proliferation of student protests on campuses across the country, including at George Mason University, University of North Carolina, University of Washington, and across University of California campuses. In some cases, tensions on campus impacted day-to-day activity. In anticipation of protests at Columbia University by Columbia Students for Justice in Palestine and Students Supporting Israel, last week, administrators decided to restrict access to the Morningside Campus to only Columbia ID holders. Stanford Law School, the interim dean announced that last Friday's classes would be held remotely in response to student concerns about perceived threats.

Making more headlines than the protests, however, were the statements or lack thereof by university leaders about Hamas' terrorist attack and the Israeli response. It appears very much like a damned if you do, damned if you don't situation. Those leaders that refrained from speaking in order to maintain institutional neutrality were lambasted for not speaking out about the brutality of the violence and the targeting of civilians. Those that did make statements were pilloried for the articulation of the issues at hand. In numerous cases, college presidents issued follow-up statements that further clarified or refined the language used in their original statement.

The issue of consistency came up repeatedly, with many arguing that universities should not be in the business of issuing these kinds of statements. However, if they choose to do so, they need to apply a uniform approach.

In a slight twist on the typical institutional statement conundrum, many college leaders were asked to address, and in many cases, condemn statements made by their own student groups. This adds an additional layer of complexity to an already thorny issue.

While there is more to say about the effect of current events on American universities, I also want to highlight that the first week of October was Banned Books Week sponsored by the American Library Association, otherwise known as the ALA. For almost 40 years, Banned Books Week has brought together librarians, teachers, booksellers, publishers, writers, journalists, and readers of all types, in shared support of the freedom to seek and to express ideas, even though some consider unorthodox or unpopular.

ALA's Office for Intellectual Freedom tracked 1,269 demands to censor library books and resources in 2022, the highest number of attempted book bans since ALA began compiling data about censorship and libraries more than 20 years ago. You can find the list of the 13 most challenged books in 2022 in the episode notes.

Now back to today's guest, Ben Wizner is the director of the ACLU Speech, Privacy, and Technology Project. For more than 20 years, he's worked at the intersection of civil liberties and national security, litigating numerous cases involving airport security policies, government watch lists, surveillance practices, targeted killing, and torture. Since July of 2013, he's been the principal legal advisor to NSA whistleblower Edward Snowden. Ben was a panelist during one of our speech spotlight live webinars on de-platforming. We are so glad to have you back, Ben. Thanks so much for joining us.

Ben Wizner:

Thank you. What a pleasure.

Michelle Deutchman:

So there's a dizzying number of criminal counts against former President Trump, and I'm going to narrow the field a little bit and ask you to focus on the two indictments that seem to implicate the First Amendment. And I believe that's the Georgia matter on election interference and the indictment pertaining to the events of January 6th.

But before we go into those, I'm going to ask you to set the table a little bit by talking about the relationship between the First Amendment and false speech. I think there's a lot of confusion about whether lies are protected. And if so, why? Can you start by talking us through that?

Ben Wizner:

Yeah, I'd be glad to. And I think there's some confusion, because it is genuinely confusing. So we could say as a general matter, that lies generally are protected by the First Amendment. And the main Supreme Court case that reaffirmed or established this incident was a case called *United States versus Alvarez*. Congress had passed a law that made it a crime to falsely claim that you had achieved certain military decorations. It was called the Stolen Valor Act, because there had been a series of scandals where people had claimed that they had won the Medal of Honor or other military honors, and this had gravely offended veterans, people in Congress, and they decided to use the criminal law in order to prohibit that.

And the Supreme Court says, "No, you actually cannot criminalize this. We don't want to put the government in a position of being the arbiter of truth and lies," generally. Lies have always been sort of part of our fractious democracy.

It doesn't mean that all lies are protected. Certainly commercial lies, which we ordinarily call fraud, would not be protected. If the government can connect the lie to some other concrete harm, I am lying to you about a product that I am selling so that you will buy my fake medicine, those lies can still be prohibited.

One way that I think that I would distinguish this is that, who do we trust and who do we not trust to distinguish between truth and lies? We don't trust political actors, because politics has always been about lies. But when we're talking about something like consumer protection, there's no partisan advantage to be gained by one side or the other in allowing consumers to be defrauded by someone.

So those kinds of traditional areas where the government protects citizens from those kinds of concrete harms, we're still going to allow lies to be prohibited. But political lies.

Is it a lie to say that if Joe Biden is elected, he's going to take your guns? Well, Joe Biden might say that's a lie. That's not part of his program to do that, but that's always been part of the rough and tumble of politics, to take what is another side's legitimate political position and to exaggerate it, even to distort it somewhat. And in general, we don't want to have policymakers or judges becoming the arbiters of what is true or false.

Michelle Deutchman:

That is really helpful, but I think it begets not just one but many more questions. So I think I'm going to kind of go down this rabbit hole for a minute while we're there. I think it begs the question to talk about misinformation as we go into another election season, though it feels like we're always in an election season, and how the First Amendment has any relationship to misinformation, especially as one might argue that the concrete harm impacts voting.

Ben Wizner:

So this is an interesting and important question. So we do have a Federal Trade Commission, for example, that regulates false advertisements, but its power is to regulate false commercial advertisements. If the Federal Trade Commission started attempting to regulate false political advertisements, it would run headlong into the First Amendment.

And so really, the government's tools for addressing the run-of-the-mill, what you might call political misinformation, the kind of lies that political parties tell about each other, is quite limited.

There is a category of false speech online, a category of disinformation, that I think probably is not protected. And that would be somebody going on the internet to say, "The election is Wednesday and not Tuesday. The polls close at 10:00 and not 6:00." So speech that is concretely false and intended to disenfranchise, intended to confuse voters about when the election actually is, where it actually is. That kind of speech, I would say even under the Alvarez precedent, probably can be proscribed.

I say probably because we don't have a lot of precedents involving these prosecutions. There have been a handful recently where there were organized disinformation campaigns that were intended to prevent people from voting, but those are not the standard lies. The standard lies would be attributing a position to a political adversary that she or he does not actually hold. In that regard, the government's tools are going to be quite limited.

There's been a big debate among the people who run the largest private platforms about what their policies should be on that. And of course, they're free to adopt whatever misinformation or disinformation policies they want for their platforms. The ACLU's position has been that they should adopt something close to neutrality when it involves political speech, because we don't have a lot more faith in their ability to make those distinctions than we do in the government's ability.

Michelle Deutchman:

I think it's really interesting that so much of it is about trust, and the question of, who do we want to be making these decisions? And it's not the government, I'm not sure that it's private platforms. And so it's problematic.

Ben Wizner:

This is something that we return to in every free speech question, which is what you might call the decision maker. People who think that these questions are easy tend to forget that they won't always be the decision maker, and that the decision maker will often be someone who sits at the opposite end of the political spectrum from them, and that they might actually benefit from a default to neutrality if they're worried overall about free speech rights being protected.

Michelle Deutchman:

And that's what I really emphasize, especially when I talk to administrators and students, and even faculty about hateful speech and ask them, "Do you want the government," fill in whatever administration you want to be deciding what is hateful, or offensive, or demeaning speech. And I think that when people have that question posed to them that way and they have more than 60 seconds to think about it, the answer usually is no.

Ben Wizner:

Well, I think that's right, and I think that the same is certainly true, at least is true when it comes to misinformation, where it will almost always be enforced by someone who has skin in the game, who has an interest in one side prevailing over the other. And the idea that a fair standard will be applied is so farfetched, that the courts have wisely said, "Let's not play this game."

Michelle Deutchman:

Or so far that's what they've said?

Ben Wizner:

Yeah, that's right.

Michelle Deutchman:

All right, so let's turn back to the indictments, and maybe you could just review the basics of the January 6th indictment and the Georgia one, with a focus on how Trump's legal team is using the First Amendment as a defense.

Ben Wizner:

Well, we'll see. I mean so far there's just been rhetoric. There haven't been that many filings that address legal questions. But broadly, the January 6th indictment charges that Trump and a handful of co-conspirators undertook a series of actions to overturn the results of a legitimate election.

Before I go further, I want to say I'm not a criminal lawyer. I don't have great familiarity with the particular statutes that Trump is charged under. In fact, in the January 6th case, they're not statutes that are used all that frequently. If you do want to take deep dives into the specifics, and ins and outs of all of

the Trump prosecutions, I would strongly recommend a website called Just Security, and there will be a link in the podcast materials I'm sure.

But I think the reason why the First Amendment has come up is that if you read the Georgia indictment, if you read the special counsel's January 6th indictment, you're going to read a lot about Trump lying. Now, didn't we just say that political lies are protected? So why are we reading dozens of pages about Donald Trump lying in the context of a criminal indictment?

And that's an argument that might have some superficial appeal. It's an argument that the Special Counsel Jack Smith certainly anticipated, and it's why he wrote expressly in the indictment right upfront, "Let's be clear that Donald Trump, like any other citizen, had a constitutional right to lie. He had a right to lie about the outcome of the election. He had a right to spread that lie to anybody that he wanted to. And if that was all that he did, there would not be a criminal case here."

And I think that's really an important exercise, is imagine if all that Trump had done is speak, if all he had done is speak publicly and say to his supporters and others, "I am the legitimate winner of this election," we would not be here. In fact, what Trump is accused of having done, and a lot of this evidence was compiled in the congressional investigation as well, was putting pressure on Republican legislators in seven states to use their legislative authority to overturn the outcomes in their states, helping to devise a scheme in which false slates of electors were stood up so that they could replace the legitimate state electors, and throw their votes to Trump rather than to Biden, pressure the senior leadership of the Department of Justice to announce that they had found widespread fraud, even though the opposite was true.

All of the things that I'm saying here involved words, involved speech, but they amounted to conduct. And what the prosecutors say is a pattern of criminal conduct. To say that that conduct was achieved through words does not make this a free speech issue, any more than someone who ordered a contract killing could mount a free speech defense.

Yes, I use my words to hire you, to kill my business partner, or I use my words sitting on this park bench to fix prices in an industry with one of my rivals. Lots of crimes involve words when those words are integral to a criminal offense. The First Amendment is not going to get you very far in defending against those charges.

And so I think that's really what Trump's lawyers have attempted to do is say, "Look, all he did is go out there and say what he believed to be true, which is that he won the election." And even if he didn't believe it to be true, his lies were protected as well. But those are not going to be particularly effective defenses to the conspiracy charges that Jack Smith and the district attorney in Georgia put forward.

Michelle Deutchman:

Thank you for that. I think that's a very helpful elucidation of this idea that it's words plus actions. And I think you sort of have covered, I was going to ask you about the piece that you and David Cole, the legal director at ACLU wrote, which was titled quote, We've defended Trump's 1st Amendment rights. But his latest claims about the Jan. 6 indictment are nonsense.

Ben Wizner:

Well I'll say, just a little context there. I mean I found the public assertion that this is a First Amendment case so nonsensical, that I argued to David Cole and others that we didn't need to write the piece. And he said, "Believe me, we're going to save ourselves a lot of time and trouble just by putting ourselves on the record once so we can point to it every time some knucklehead rises up and says this is an attack on Donald Trump's free speech rights."

I will say one more thing about that piece, and I know we're going to get here. We did indicate that not everything in the January 6th indictment is crystal clear, to the extent that that indictment includes, as it does, a discussion of Trump's public remarks on January 6th. Now not in the context of charging him independently with those, and we'll talk about this. Trump was not charged with inciting the mob violence, but his conduct and his words on January 6th were included in the pattern of conduct that the special counsel was asserting as part of Trump's broad election conspiracy.

I'm less comfortable with including, even relying on them in this way, those public comments. I think they're there for the world to see. I think Trump is a political leader. I think he's right that he can address his supporters. I don't think, and reasonable minds can differ here, but I don't think that his words on January 6th satisfied the strict incitement standard in Brandenburg. I do not think that had he been charged independently with incitement, even necessarily that a case like that should go to trial. And I think the special counsel was wise not to include an incitement charge, and instead to focus on Trump's private conspiring with other actors to overturn the election. Not his public political statements here.

But as I said, reasonable minds can differ here. Judge Amit Mehta in the federal District Court in Washington DC has analyzed the same words, and in his opinion they do meet the incitement standard. So I think it was a thoughtful analysis.

At the end of the day, I think particularly when we're dealing with political speech, calls to violence need to be explicit, not implicit. Everything Trump has ever said in his career can be read as a kind of dog whistle in hindsight. But if we're actually going to hold one person responsible for the actions of other people, there has to be a very, very explicit connection there.

Michelle Deutchman:

So you anticipated where I was headed, which is the Brandenburg test, and I think it might be valuable just to maybe do a quick review of what that test is, and again, reiterating what you were saying about why in your opinion, you don't think that it meets the test.

Ben Wizner:

I think the context here is remember that we're talking about when if ever, should we hold person A responsible for the actions of person B, just because of something that person A said. And the answer that the courts have given is very rarely. Not never, but very, very rarely. Ordinarily we're going to say if you decide to hop a fence, and run into the US Capitol, and pose at Nancy Pelosi's desk, we're going to hold you responsible for that. And we're not going to say that that's somebody else's crime. We're going to say that that's your crime.

Now the exception is incitement, incitement to violence. As the Supreme Court has defined this, it is a very stringent and narrow test, and properly so. You have to intentionally incite imminent violence. You have to intend it, and it has to be likely to occur.

And so of course, the paradigm would be a scenario like January 6th where you have a fired up crowd, where you have a demagogic leader. And certainly if Trump had said, "Go to the Capitol, break in, don't let those police stop you, use force," anything even approaching that level of specificity, I think this would be an easy incitement case.

What he said is, "Let them hear you." I think you could just as easily and just as reasonably interpret that as Trump intending that people go to the capitol and stand outside, and shout loud enough so that the members inside heard what they were saying. And of course, the intent was to slow down the proceedings that were going on inside. But I really do think it's too easy in hindsight for us to draw a straight line between what Trump said and what happened afterwards.

It was genuinely shocking that there were not enough law enforcement and police officers at the capitol to prevent a largely unarmed mob from being able to parade through and really maraud through the capitol.

Again, as I said, this is one of those... And I'm sure people will listen to this and say, "How is this not textbook incitement?" I would just say go back to the actual words themselves, and try to take out of your mind what happened later. Just read the speech itself. And if you do that without the knowledge of what followed, do we really want to be in a world where political leaders are personally liable, even criminally liable for the actions of supporters who they can't necessarily control?

Michelle Deutchman:

That's a very helpful convention to think about the words without the context, because it really is hard to separate what happened in that moment from what happened later. But I think it's an important reminder of what we're doing, which is thinking about, do we actually want to punish speech? So that's very helpful.

I'm sure you remember that at the end of the 2017-18 Supreme Court term, Justice Kagan accused the conservative wing of the court of, "Weaponizing the First Amendment." And this claim has been echoed and bandied about for the past five years. And a lot of people are now kind of saying that again, that the use of the First Amendment as a defense is just another example of the weaponization of the First Amendment.

And I'm wondering if you agree with this assessment. And more importantly, I guess, there's a lot of people, at least in my experience, who are losing faith in the First Amendment's ability to further social change. And I'm curious if you could talk a little bit about how you might respond to that allegation.

Ben Wizner:

So I think there's a few things here that we should take apart. I'm not a fan of the term weaponizing the First Amendment, but I do think that there's a legitimate critique of the way that the conservative Supreme Court majority has used the First Amendment as a tool against regulations that have been promulgated by Congress or administrative agencies.

And so the First Amendment, for example, makes it very difficult for Congress to pass privacy regulations because of the way that the Supreme Court has so broadly interpreted the First Amendment. Many people have criticized the Supreme Court's use of the First Amendment in the context of campaign finance regulation. I think some of those criticisms are a little bit off point, but I think that would be another example of where the court has been very clear that it is going to use a broad reading of the First Amendment, not just to protect the rights of say, protestors, or artists, or students in school, but also corporations who are grieved by burdensome, government regulations.

This idea that the Supreme Court saying corporations are people is an example of weaponizing the First Amendment I think is misguided. The ACLU is a corporation. The New York Times is a corporation. I don't think people would say that ACLU and the New York Times don't have important First Amendment rights. So I think that's a little bit of just a way that people have expressed their frustration with the way that they think that the law generally favors more powerful interests, which is true.

One thing that I hear more and more from progressives is you're arguing for a neutral First Amendment, but there's nothing neutral about what the First Amendment protects. It protects powerful entities more than it protects less powerful ones. And I think my response to that is, about what right could you not say the same thing? I mean, of course, every right is enjoyed more by powerful entities than it is by others. The Fourth Amendment is going to protect you much more if you live in a mansion than if you



live in a homeless shelter, and much more if you drive a Cadillac than if you're on a Greyhound bus. But we've never used that as an argument for why we shouldn't have a strong Fourth Amendment. We've used that as an argument for why we should have a more equal society.

I think the same is true for the First Amendment. Of course, people who have access to bigger megaphones are going to have louder voices than people who don't have that access. But to me, that's not an argument against the doctrine. That's an argument for trying to give more megaphones to more speakers who have been excluded from these kinds of conversations.

And so I think, again, when I hear these kinds of critiques from progressives and from young people, I don't know how useful it is to point this out, but there is no movement for social change in the history of this country that has not depended crucially on the right to say things that majorities found defensive at the time.

So while I kind of understand the general cynicism of people who are frustrated with a slow pace of change in some dimensions of our society, particularly with growing economic inequality and how difficult it has been to address that, I think laying the blame at the feet of a strong First Amendment misses the boat.

Michelle Deutchman:

Thank you so much. I think cannot be emphasized enough times, especially about the social movements. And at least my experience, has been is that a lot of folks in the younger generation, they aren't even familiar with those social movements. And so some of it is grounding it in actual history. They're 18 years old, and so their experience has been very limited. And so when you start to remind them that women's suffrage was considered a really dangerous idea, I think it helps to give perspective.

Ben Wizner:

Right. And you only need a First Amendment for ideas that are deemed dangerous by someone. Now of course, different ideas are going to be deemed dangerous by different groups, in different places, at different times. And I think this is the hardest part to convey, which is that defending the right to speak offensively on matters that you care about is going to require defending the right of others to offend you.

And there's just no way around that. There's no way that we can win arguments about free speech and say, "What you are offended by is not offensive, but what I'm offended by is," and we can draw a clear line prohibiting what I regard to be speech that dehumanizes, erases, disparages, and speech that you object to because of your own bigotry. There's really no way to promulgate and enforce a line like that, that could be coherent. And all will end up doing by giving judges that authority is putting more and more speech under government control.

Michelle Deutchman:

Right. It's not going to work to do free speech for me, but not for thee.

Ben Wizner:

Nope.

Michelle Deutchman:



While I have you with us as a guest, I do want to spend a little time asking you about some other things that are happening in the current zeitgeist. And now, everything right now is about artificial intelligence, and there's some people saying that the presidential election is going to be the AI election, and we already see candidates using AI generated content in their campaigns. And I'm wondering if you can talk a little bit about how, if at all, you see AI changing the democratic process, and what implications there are for speech. Because from some people's perspectives, the world is falling because of AI.

Ben Wizner:

Maybe these words will come back to bite me. I do think some of this concern is a little bit overblown. For one thing, I don't think that misinformation is particularly difficult to generate. I don't think that we've been waiting for ChatGPT finally to help us come up with persuasive misinformation. I think it's pretty easy. I don't think that... I mean of course, ChatGPT will make it easier to do it at scale, but I don't think that it's going to be a game changer.

The other thing is that when you talk to people about misinformation, they never really worry about being the victims of it themselves. They always assume that they will be able to see through it and know it's true. What they're worried about is those other people being confused by misinformation, and they imagine that the other party, whatever that is, is made up of people by the tens of millions who are arriving at their misguided views simply by having consumed misinformation or disinformation on the internet.

The studies of the 2016 and 2020 elections paint a different picture, and they show that the vast majority of the disinformation was consumed by a very, very small percentage of people who were already highly partisan, which suggests that it is at least as much a demand issue as a supply issue.

People love fake news. They're not going out there looking at it to decide what their position is. They're seeking it out because it reinforces their position, and they're sharing it because it's fun. And we see this on both sides of the political spectrum. We certainly saw it back in 2012 when Donald Trump was pushing the birther myth against Barack Obama, and neither he nor any of his supporters particularly cared whether it was true. They had decided that this was an illegitimate president, and so saying he was born in Kenya was a part of that exercise.

And I saw it with a lot of people in my social media timelines in 2017 during the early months of the Russiagate investigation, that any rumor or innuendo would be shared. And again, they didn't really care whether this particular detail was true or false, because they had already decided that Trump had been put in office by Vladimir Putin and the Russians, and this was just part of sharing that.

And I do think that that's a critical part of how people consume this, is that it is already people who are highly partisan, who are sharing this as their political activity, not going out and being brainwashed by it.

I think the other thing is that there is way too much focus on social media. And if we're really worried about where people have been getting false information in our media ecosystem over the last generation, I would say Rupert Murdoch is a lot more responsible than Mark Zuckerberg for that. But we all understand the First Amendment protections that go with broadcast media, so that's been less of a focus.

I do think that there's a tech-centric part of this debate where people assume technology is the root of the problem, it must be the heart of the solution, and don't really appreciate the broader context in which our system has been awash in misinformation, not just in the last few years, but really for all of our history.

Michelle Deutchman:

That's an interesting and important perspective. And certainly, there has been and will continue to be Congress trying to play a role in legislating some of the ground rules, especially as it comes to artificial intelligence. And I'm curious if maybe this is too broad of a question, what you think about the role of Congress in trying to legislate around cutting edge technology.

Ben Wizner:

I think it's going to be limited when it comes to speech. I think we need to think about ChatGPT and large language models as a tool, but a tool that is controlled and manipulated by people. If I task this tool with writing a first draft for me, can we say that that speech is not constitutionally protected because it was made by a machine, and not by me, when I tasked it?

So I think it's going to be tricky. I think that where you're going to see the first attempts to do this will be in the context of deep fakes, where technology is being used to confuse people about the identity of a speaker, to impersonate, where I think that there's already plenty of law that essentially says I can lie, but I can't impersonate you with an attempt to generally confuse somebody about that. So there already are such kind of lines there. I think there will be attempts to draw more.

But more important than law, since law will never be able to keep up, enforcement will never be able to keep up here. Even if every entity that is in the United States is bound by this law, the internet is global, and people will move overseas, and most of the misinformation and disinformation will be generated overseas where it's outside the reach of our law enforcement.

Really, we're just going to have to change the way that we consume information, and it won't be the first time we've had to do that. When it became possible to change photographs, a technology that has existed now for decades, we all had to learn at that point that we had to look outside the four corners of what we were looking at, at the context.

And so if you see on Facebook a realistic looking picture of Trump and Putin kissing, you don't assume it's true, you assume it's parody. But if you saw that on the cover of the Washington Post, you would do a double take, because you have come to trust that the Washington Post is going to be a gatekeeper and is not going to post false information.

And so I think we're going to have to retrain that instinct. If you see something in your social media feed, which is an image or a video, it may take a few clicks to figure out whether it's a source that you trust.

I think people make these adjustments intuitively. I think they will make them more. I think people who care about the truth will be able to figure out if things are valid or not. But again, I think so much in a highly polarized environment of what people are doing here is not neutrally receiving this information, but sharing it as a partisan activity. And for them, they won't mind, or particularly care whether it's true or false.

Michelle Deutchman:

So we've covered a wide range of things, including indictments, and incitement, and artificial intelligence, and misinformation. And you're speaking mostly to an audience of folks who are in higher education higher. And I'm wondering if you have any thoughts as we go into this school year and preparing for next school year when there will be the actual election, if there are things that you think higher education should be doing, like you said, to retrain instincts, or media literacy, or really on any of these topics. And that can be administrators, or faculty, or students.

Ben Wizner:

Yeah. I think this job has never been more difficult for administrators at colleges and universities in higher education. And the reason for that is that it used to be possible to essentially form your own community of values, your own speech community, with your own rules and norms.

That is extremely difficult right now when people are on social media 10 hours a day for you to say, "This is how we're going to do it in Chicago." Even if they do it differently at Yale or Harvard. The students are likely getting their cues not from somebody down the hall, but someone who may be far away and communicating through social media. So it's hard to do.

Nonetheless, it's important to do. It's important for colleges and universities to have certain norms around speech and neutrality, to communicate those, and to enforce them. There's a lot of punching down at students in these conversations. "What's wrong with them? How come they don't care about free speech anymore? Why are they always trying to de-platform people they don't like?" I'll tell you, when I was a college student, if I could have de-platformed people I didn't like, I would have done it, but it wasn't really on the menu. I knew that I could protest outside, and I knew that I would be disciplined if I actually tried to prevent somebody from speaking.

And so I do think that... And there's an element of a collective action problem here, because no school wants to be the one that is branded as unsafe or inhospitable to student activists, or to diversity, or the like.

And so I would hope that, look, students on campuses are going to do a lot of things. One of the things they're going to do is test the power that they are acquiring as young adults. And they realize pretty quickly that in a university, they have power. They're not powerless. It's different than the family in some ways.

And it's really the responsibility of adults, of administrators, of professors, of college presidents to say, "Please exercise that power, test those limits. But here are lines that can't be crossed." And our commitment to pluralism and our commitment to being a place where people are challenged and confront things that are not the things that they want to confront necessarily means that you can't take away someone else's right to free speech.

What I would say to the students, having just addressed the administrators, is if you want to do something like I do, which is have a career trying to protect and defend rights and advance social justice, you're going to have to learn how to persuade. And learning how to persuade means speaking to people who profoundly disagree with you. If you're going to do it as a lawyer, you're going to be doing that in a quite hostile arena where most of the judges are quite conservative. Creating an environment on campus where you're not challenged, where you don't have to defend, where you don't have to argue, is going to deprive you of the chance to develop skills that will be really, really vital to you later on if you want to be an effective leader in a social justice movement justice.

Michelle Deutchman:

Couldn't be better said. Is there anything else you want to add we might not have touched on? I mean, I feel like that's a very perfect note to end on.

Ben Wizner:

I think it would be a good note to end on too. Yeah.

Michelle Deutchman:

Okay. Well then let me thank you so much for taking your time and sharing your insights with us. I know you have privacy and speech to protect.

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Ben Wizner:

And yeah, I thank you.

Michelle Deutchman:

So that's a wrap. Thanks again to Ben for joining us. Please check out the episode notes for links to Ben's article we referenced and to the indictments we discussed. Don't forget to register for next Tuesday's Fellows in the Field workshop on social media and expression. And in your free time, pick up a banned book at the library or your local bookstore. Talk to you next time.