FREE SPEECH FOR STUDENT ACTIVISTS:

A First Amendment workshop for campus leaders

ACLU

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I. INTRODUCTION

As a 2019-2020 fellow at the University of California National Center for Free Speech and Civic Engagement (UC National Center), I implemented a yearlong project to enhance campus activists' understanding of the First Amendment. The centerpiece of the project, a "Free Speech for Student Activists" workshop, brought together a dozen student activists from a variety of organizations at the University of California San Diego (UCSD) for a series of three learning sessions about how to navigate common free speech situations on campus. Each session lasted two and a half hours, included guided discussions and actionable information for student leaders, and featured a guest speaker from the ACLU of San Diego and Imperial Counties (ACLU-San Diego). The workshop was rated "very good" or "excellent" by every participant.[2]

The first session introduced key ideas and common controversies surrounding the First Amendment and free speech on campuses. The second session featured a simulation where students, in character as campus leaders, crafted their rapid response plans after a fictionalized racist incident on campus. The third session further developed the simulation, focusing on practical questions they are likely to face in the short to medium term, including how to respond to national media coverage and unexpected developments [Spoiler: POTUS sets his sights on UCSD!]. ACLU-San Diego Legal Director David Loy, Senior Staff Attorney Mitra Ebadolahi, and Lead Organizer and UCSD recent alum Graciela Uriarte served as informative and inspiring guest speakers.

In addition to the workshop, my fellowship included a variety of other interventions at UCSD, collaborations with other fellows, and events hosted by the UC National Center. Over the course of three separate visits to UCSD (a fourth was cancelled because of COVID-19), I was able to build a strong collaborative relationship with Cynthia Davalos, former Chief of Staff for the UCSD Vice Provost for Student Affairs, and make connections with key faculty, administrators, and student leaders. All of the legwork was necessary, and thankfully it paid off. I learned an enormous amount about campus speech and UCSD and shared my expertise on free speech and activism. The ongoing support from the UC National Center has been invaluable as we work to shift the narrative regarding campus speech towards empowering and encouraging activists to make positive change.

II. BACKGROUND

While some observers have argued that these incidents are symptoms of a free speech crisis on today's university campuses,[3] the research does not support this idea.[4] Notwithstanding numerous high-profile incidents, most universities are home to a variety of student groups and speakers on a daily basis and

community members engage in vigorous debate and protest without resorting to violence or de- platforming. But that's not to say that difficult challenges with regard to free speech do not arise on campus. Today's students are increasingly engaged in activism, especially aimed at promoting equity, diversity, and inclusion on campus. At the same time, civic education has been virtually eliminated from schools and students arrive on campuses without ever having learned about the First Amendment guarantees of free speech and assembly.[5] It should not be surprising that students struggle to understand how our Constitution protects speech.[6]

UCSD is no stranger to racist incidents. Nearly everyone that I spoke to referenced the "Compton Cookout" in 2010 where a mostly white fraternity held a Compton-themed party full of offensive racial caricatures and stereotypes. A decade later, the incident and the fallout afterwards continues to hang over the campus.[7] Students of color complain that the administration is still too hesitant to act against bigotry on campus. Meanwhile, administrators have been scarred by the crisis, overwhelmed by student's continuing demands for more equity and inclusion work while also being frustrated that the First Amendment precludes decisive action against hateful speech.[8] Anecdotal reports indicate that hateful incidents have increased since 2016, with white supremacist stickers, flyers, and flags appearing on campus at least once or twice per year. Just this past fall, a graduate student hung a noose outside their window at Halloween before taking it down and apologizing for invoking lynching imagery.

Many UCSD administrators expressed their earnestness in trying to improve the climate on campus. Since 2010, seven community resource centers have been created to support Black, Latinx, women, Indigenous, LGBT, and Asian/Pacific Islander/Middle Easter/Desi students.[9] And UCSD has tried more creative approaches including creating a Graffiti Art Park where students can express themselves on a designated wall.[10] Despite these efforts, the sentiment was universal that there is ample room for improved dialogue and understanding around free speech and racial justice on campus.

III. APPROACH

The idea for this project was borne out of frustration. In campus speech debates, the binary choice between punishing offensive expression and doing nothing in the name of "neutrality" is a false one. Many schools have hosted talks, workshops, and other one-off events addressing campus speech.[11] However, there are not currently resources or programming specifically targeting student activists who are likely to be important decision-makers after racialized or other hateful incidents on campus. It is rare for free speech events to both hold racial justice as an explicit aim, while also standing firm on robust protections for free speech. This project sought to fill that void.

The "Free Speech for Student Activists" workshop was designed to encourage and empower student leaders by sharing the ways in which the First Amendment protects their right to speak up and help them understand why school officials so often say that their hands are tied because of that same First Amendment. The goal was to impart knowledge, make room for difficult discussions, and apply general principles in practical scenarios through engaging exercises. The workshop curriculum provides a replicable template for future iterations at UCSD, other UC campuses, and other universities.

IV. THE WORKSHOP

a. Recruitment and logistics

The "Free Speech for Student Activists" workshop was designed to include a small but diverse group of student leaders. We were aiming for 12-15 students because with that size group, robust plenary discussion can take place as well as small group break out activities. It was imperative that participants represent the leadership of important student groups that are likely to be at the center of any response to a hateful incident on campus. Based on previous experience facilitating events at other schools, we knew that significant effort would need to be devoted to recruitment and relationship-building in order for the workshop to be successful.

To that end, I traveled to UCSD once before the fall semester began to introduce the project to key administrators and once during the fall semester to guest lecture a class and host an informal roundtable. During these trips I learned a great deal about the UCSD campus culture and built a strong working relationship with Cynthia Davalos, my primary on-campus contact. During the fall semester, we worked together to identify organizations and individuals that might benefit from the workshop and Cynthia sent invitations in late November. She continued to follow up with student groups and their advisors all the way up until the workshop was held January 21-23, 2020. RSVPs were slow at first, but through Cynthia's tireless efforts, a phenomenal group of students participated.[12]

The workshop took place over three mid-week evenings from 6-8:30p at the Price Center at the heart of UCSD student life. This location and time were chosen to be as convenient as possible for students, based on discussions with campus contacts. While not every student was able to participate in all three nights, we always had a critical mass. We offered dinner to participants to encourage their attendance and to foster the communal feeling of eating together. The room was fully outfitted with audio/visual capabilities which I used to project PowerPoint slides and it was large enough to fit everyone around a large table or circled up in groups of 3-4. Student facilities staffers were helpful at every step to ensure the event ran seamlessly.

b. Day 1: Introducing Key Ideas

The first session on the first night focused on personal introductions, setting group norms, and giving a roadmap of the sessions ahead.[13] We also took a few minutes to set group goals for the workshop that were entirely generated by students and written on the whiteboard throughout the workshop. Because we dove relatively quickly into thorny issues of identity, belonging, and hateful speech, it was critical that students first felt comfortable and fully seen in the workshop space. It is worth noting here that while participants came from a variety of backgrounds and organizations, they were all generally politically progressive. Conservative student leaders were also invited, but they declined to participate. Building trust and candor among a more ideologically diverse group would likely have been much more difficult.

After goal-setting, I led a lecture and discussion introducing key ideas regarding free speech and the First Amendment. We began with the text of the First Amendment, noting that it is aimed at restricting government's ability to regulate speech. We then discussed content- and viewpoint-based regulations on speech and how courts essentially never allow speech to be punished purely based on the views expressed. We discussed why that principle is important for individual liberty and the protection of unpopular ideas. Next, we talked about the particular contours of free speech on college campuses – colleges are breeding grounds for new and sometimes controversial ideas, while also being students' home, school, workplace, and social

community. We ended the opening discussion by talking about the narrow categories of speech that are not protected by the First Amendment, such as harassment, defamation, and true threats. We then reviewed University of California and UCSD policies and procedures regarding speech on campus, evaluating the existing rules in light of the constitutional principles that had just been introduced. Students were able to identify provisions in the policy that were required by the First Amendment, and others that they thought went too far or not far enough in regulating speech.

For the latter half of the evening, we welcomed our first guest speaker, David Loy, the Legal Director at the ACLU-San Diego.[14] He discussed his long career defending First Amendment rights, highlighting his representation of the *Koala* newspaper in an ongoing lawsuit against UCSD.[15] After David's presentation, we continued our group discussion about the costs and benefits of robust protections for speech, especially offensive or hateful speech. The *Koala* controversy is relatively far removed from current student's minds, so we were able to have a vibrant discussion that felt relevant without invoking raw emotions that can make these kinds of doctrinal discussions difficult. At the end of the discussion, I reserved a few minutes for quiet reflection and writing to help students process the big and complicated ideas with which we had been wrestling.

c. Day 2: Rapid Response Simulation

The second day began with a recap of the first day's content, a roadmap update, and personal check-ins before introducing the simulation exercise. In part one of the simulation, students were given a fictionalized fact pattern involving a group of individuals that were overheard shouting racial epithets in front of Marshall College, seemingly as part of a game.[16] In the simulation, a professor then recounted the story in class, using the epithet, and it was captured on video and posted on social media. Students then divided into three groups: the Graduate Students Association (GSA), the Black Resource Center (BRC), and Triton Voice, a new student group devoted to civic dialogue. Each small group included people who were actually in that organization and others who were not. They were asked to craft a rapid response to the incident, in character, including what communications and actions need to be taken in the first days after the incident came to light. The differences in approach were illuminating. The GSA prioritized leveraging its institutional power to push the administration toward productive action, the BRC's primary focus was creating a safe space for the black community on campus to be together, and Triton Voice decided that it should support others efforts at this initial phase with the goal of promoting dialogue once things calmed down a bit.

Halfway through the exercise, a fictionalized UCSD administration response was introduced as well as news that the people accused of saying the epithet were being criminally charged. The fictional UCSD response focused on how public universities are precluded from disciplining students based on their viewpoints, while the criminal charges were criticized by the fictional ACLU-San Diego who promised to challenge the underlying law. Moving from rapid response to short term planning, students went back into their small groups and worked through how they should adjust their approach in light of these latest developments. GSA decided to try to meet with senior administrators, BRC decided to hold a public protest against the insufficient response from the university, and Triton Voice decided to start planning a public forum on free speech and belonging at UCSD. By the end of the session, students were enthusiastically in role and thinking through practical questions around what to do, what to ask for, who to engage with, and what their desired outcome would look like.

The second day closed with another guest speaker, ACLU-San Diego Senior Staff Attorney Mitra Ebadolahi, who focused on the ways in which the First Amendment impacts her work. She litigates cases to protect peoples' rights at the US-Mexico border, an important advocacy issue on UCSD campus. Mitra talked about how troubling the legal landscape is at the border, highlighting the targeted surveillance of journalists and activists by CBP. She and her colleagues have made First Amendment arguments that the government is trying to silence criticism of its immigration policy in violation of the Constitution. Mitra is an inspiring speaker who gave students insights from the frontlines. We again closed the evening with quiet personal reflection. Students' appreciated the practicality of the simulation as well as hearing from such an impressive litigator.

d. Day 3: The Unwelcome Visitor Simulation

The final day of the workshop began with our third guest speaker, Graciela Uriarte, an ACLU-San Diego organizer and UCSD recent alum. She shared advice based on her experience as a UCSD student activist and how one can pursue a career in organizing. Workshop participants were excited to hear from someone early in their career who has intimate knowledge of UCSD. After a break, students began the final session of the workshop which was part two of the simulation exercise. I reminded students of the racist incident in question, the initial response from the university, the state, and the ACLU-San Diego. I then introduced a new set of facts wherein President Trump, seeking to capitalize on national attention to the controversy at UCSD, decides to hold a rally on campus in a few weeks.

Students again divided into three groups, this time it was the GSA, BRC, and College Democrats. Each organization was encouraged to think in detail about what communication and actions they would undertake internally and externally. Students reported that this part of the simulation felt entirely plausible[17] and the dry run was informative. The GSA decided to think creatively about the ways it might be able to block the rally on procedural or administrative grounds, while the BRC planned mass mobilizations and media statements to make sure the broader public understood that the president and his supporters are not welcome on campus. The College Democrats were eager to respond forcefully, but they were sensitive to the fact that any restriction on political events on campus might negatively affect them. The difference in approaches taken by each groups was noteworthy to all participants.

The workshop closed with group reflection and feedback. In order to allow plenty of time for in-person sharing, I decided to distribute the written feedback form via email a few days later. Students reported that the final feedback and reflection session was not as useful as the substantive exercises. This may have been because the discussion needed to be more structured, but it also may be a result of having had reflection interwoven throughout the workshop. In any case, the workshop ended on an upbeat note, with participants expressing their gratitude to each other and the facilitators and speakers for taking the time to engage with these important and challenging issues in practical terms. Students expressed interest in keeping in touch and I promised to check in later in the spring term to see how things were going.

e. Follow-up

In the weeks and months after the workshop, I have provided specific resources and advice to nearly half of the workshop participants to help them address issues within their organizations and communities. I have also shared relevant news articles, podcasts, and documents via email with the entire group. I had planned to visit UCSD one more time in April to check in with everyone on how and if they had put any of their knowledge into practice, but the trip had to be cancelled because of COVID-19. Instead, we convened via Zoom and nearly

everyone was able to join. We talked about how we were holding up during lockdown and how different aspects of student activism had been affected. In general, students reported that their organizations continued to meet and communicate online with relatively little disruption, but cancelling in-person events had made recruitment and campus visibility much more difficult. Notably, some students said that their work had actually benefited from everything moving online in some ways. For example, San Diego City Council meetings are being live streamed and they are now more accessible to students who had trouble getting from La Jolla to downtown on a weekday morning. Graduating students expressed particular unease about the implications of the pandemic, but most people were in relatively good spirits and happy to reconvene.

V. OTHER ACTIVITIES

The workshop for student activists was the centerpiece of the fellowship, but it was far from the only activity undertaken. Over the course of the year, I wrote to, spoke with, and met approximately 100 professors,[18] alums,[19] students,[20] and staff.[21] Most significantly, I facilitated a 90 minute session for students serving as RA/HAs in residential colleges on campus. I provided a brief overview of relevant First Amendment principles and reviewed relevant university policies, but the majority of the time was dedicated to answering students' specific questions. Nearly every question addressed RA/HAs' unique dual roles as students and government representatives. They were unsure how to navigate expressing their own free speech rights and respecting other students' rights in the residential university context. Their questions were insightful and their attention was fixed, but the group was large –about 40 students -- so deep discussion was challenging. Unfortunately, many students left the session without having had their questions answered.

Aside from my work at UCSD, I have engaged broadly with the UC National Center community. I have participated in fellowship-related public events by Executive Director Michelle Deutchman,[22] and fellows Lara Schwartz[23] and Jon Friedman.[24] Rebecca McKinnon interviewed me for her fellowship project and I was also interviewed for the "Activist in Training" podcast which is supported by a UC National Center Voice grant.[25] I've had the pleasure of working with former fellow and ACLU alum Ellis Cose.[26] My predecessor as a fellow at UCSD Carlos Cortes and I are in frequent touch and he is now a dear friend.

VI. LESSONS LEARNED

It takes a great deal of time and energy to prepare for a successful short, intensive workshop. I had no prior connections to UCSD, so it took me numerous conversations and trips to campus before I built the relationships necessary to attract the right students. None of the workshop activities would have been possible without the exceptional work of Cynthia Davalos. Her commitment to the fellowship and the principle of free speech made executing the fellowship possible. In consultation with Cynthia, I realized that my initial proposal to hold the workshop in the fall semester at UCSD and at another school in the spring was not feasible. By August, I had adjusted my project timeline to include additional UCSD interventions to build relationships with faculty, staff, and students, and piloted the workshop in January. Preparation time was time well spent.

VII. NEXT STEPS

The world seems to have changed so much since I was at UCSD in January. The global pandemic has transformed our understanding of a college campus and a whole new host of free speech scenarios are playing out online, from Zoom bombing to offensive comments on class message boards. Harder still are questions about when students can and should face punishment for their "off-campus," but online, speech. I will continue to work with UCSD faculty, staff, and students after my fellowship, as needed. I've already been approached to help provide resources for training next year's RA/HAs.

The campus speech team at the ACLU hopes to offer the workshop on free speech for student activists at least one campus during the 2020-21 academic year, most likely virtually. The workshop at UCSD was so well-received[27] that we are eager to work with more students and spread our message.

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[1] Special thanks to ACLU National colleagues Adeline Lee for her thought-collaboration, Nicolas Aramayo and Daniela Wertheimer Del Rosario for their research and logistical help, and Ben Wizner and Anthony D. Romero for their advice and encouragement. And deepest gratitude to the ACLU-San Diego team that contributed enormously to the fellowship project. This project would not have been possible without the support of Michelle Deutchmann and Brenda Pritcher at the UC National Center and Cynthia Davalos and Kirby Knipp at UCSD Student Affairs.

[2] The participant feedback form asked "Overall, how would you rate the event?" and the options were "Excellent" (10 votes), "Very good" (2 votes), "Good" (0 votes), "Fair" (0 votes), or "Poor" (0 votes). The full feedback dataset is available at https://www.surveymonkey.com/results/SM-HX55GR537/.

[3] For example, Haidt, J. and Lukianoff, G. (2018). The Coddling of the American Mind. Penguin Books.

[4] Sachs, J. A. (January 25, 2019). The "Campus Free Speech Crisis" Ended Last Year. Retrieved from https://niskanencenter.org/blog/the-campus-free-speech-crisis-ended-last-year/.

[5] See Howard Gellman and Erwin Chemerinsky, Free Speech on Campus, Yale University Press (2017) and Howard Gillman, Lightning Talk. Speech presented at #SpeechMatters at UC, Washington Center, Washington, DC (March 21, 2019).

[6] Chokshi, N. (March 12, 2018). What College Students Really Think About Free Speech. Retrieved from https://www.nytimes.com/2018/03/12/us/college-students-free-speech.html.

[7] https://ucsdguardian.org/2020/01/05/remembering-the-compton-cookout-analyzing-our-coverage/.

[8] During the fellowship, I met with a handful of faculty members, upwards of 20 administrators, and nearly 100 students.

[9] UCSD Community Centers: https://diversity.ucsd.edu/centers-resources/community-centers.html.

[10] UCSD Art Park: https://universitycenters.ucsd.edu/about/Art-Park.html.

[11] By the ACLU's informal count, at least 10 major events on campus free speech have been held each month of 2019.

[12] See attached registration list. This list is not for distribution as it includes contact information and demographic details.

[13] See attached agenda and .ppt presentation for more details about the run of program and content covered.

[14] ACLU-San Diego bios for all guest speakers: https://www.aclusandiego.org/about-us/board-and-staff- information/.

[15] ACLU-San Diego press release for Koala v. Khosla (June 1, 2016) https://www.aclu.org/press-releases/defending-freedom-speech-everyone-aclu-sues-ucsd-enforce-first-amendment-rights.

[16] The hypothetical was loosely based on an incident at University of Connecticut. https://www.washingtonpost.com/nation/2019/10/22/uconn-video-white-students-arrested-yelling-n-word/.

[17] Earlier in the school year, the real UCSD College Democrats had invited several presidential candidates to campus, so the issue of campaign rallies struck a familiar chord. In future iterations of the workshop, the fact pattern will be tailored to the particular university.

[18] For example, Prof. Jorge Mariscal (Literature and Chicano Studies), Prof. Dana Nelkin (Philosophy), Prof. Amy Binder (Sociology), and Prof. Robert Horwitz (Communications).

[19] For example, Graciela Uriarte and Jonathan Markovitz of ACLU-San Diego, Niall Twohig, and Gabe Schneider.

[20] I guest lectured a "Law and Society" class (about 25 students), hosted an informal roundtable (about 7 participants), and held advertised "office hours" in a campus café (5 students).

[21] I was a featured guest at meetings of the interdepartmental Sensitive Issues Response Team and Free Expression Working Group. I also spoke with UC Berkeley staff Dan Mogulof (Office of Communications and Public Affairs) and Marissa Celine Reynoso (Leadership, Engagement, Advising, and Development Center).

[22] UC National Center webinar on "The Shifting Landscape: What will speech and activism look like in higher education?" (June 10, 2020) https://freespeechcenter.universityofcalifornia.edu/programs-and-resources/webinar- the-shifting-landscape/.

[23] American University's Project on Civil Discourse hosted a lunch talk on "Free Speech, Student Activism, and Racial Justice: An ACLU lawyer's perspective" (February 28, 2020) https://www.american.edu/spa/civildiscourse/events.cfm.

[24] PEN America and the Communications Studies Program at Borough of Manhattan Community College presented "Negotiating Difficult Conversations: When Free Speech is in the Job Description" (May 2, 2019) https://pen.org/campus-free-speech-conversation/.

[25] Episode 2: "Protest in a Pandemic" (May 23, 2020) https://anchor.fm/activistinprogress.

[26] Brooklyn Historical Society virtual program: "Democracy, If We Can Keep It: The ACLU's 100-year fight for rights in America" (July 8, 2020) https://www.brooklynhistory.org/events/virtual-program-democracy-if-we-can- keep-it-the-american-civil-liberties-union-at-100/.

[27] Fellowship project featured in InsideHigherEd.org "When Free Speech and Racist Speech Collide" (June 23, 2020) https://www.insidehighered.com/news/2020/06/23/first-amendment-response-first-response-racism-campus.