

# Notes

## Chapter 1

1. “Black Lives Matter” website, <http://blacklivesmatter.com>.
2. “African American Policy Forum #SayHerName” website, <http://www.aapf.org/sayhername>.
3. “The Demands” website, <http://www.thedemands.org>.
4. Alex Garcia, “Why Diversity in Media Matters in Making Free Speech Really Free,” *Medium*, [https://medium.com/@Alex\\_Garcia/why-diversity-in-media-matters-in-making-free-speech-really-free-a25cb760bd80#.zay4kev7j](https://medium.com/@Alex_Garcia/why-diversity-in-media-matters-in-making-free-speech-really-free-a25cb760bd80#.zay4kev7j).
5. “Saddam Wins ‘100% of Vote,’” *BBC News*, October 16, 2002, <http://news.bbc.co.uk/2/hi/2331951.stm>.
6. University of Chicago Office of LGBTQ Student Life Safe Space website, <https://lgbtq.uchicago.edu/page/safe-space>.
7. For an alternative view, see Arao and Clemens, “From Safe Spaces to Brave Spaces.”

## Chapter 2

1. Scott Jaschik, “U Chicago to Freshmen: Don't Expect Safe Spaces,” *Inside Higher Ed*, August 25, 2016, <https://www.insidehighered.com/>

news/2016/08/25/u-chicago-warns-incoming-students-not-expect-safe-spaces-or-trigger-warnings.

2. Roger Pilon, "The University of Chicago Has No Room for Crybullies," *Cato at Liberty* (blog), August 25, 2016, <http://www.cato.org/blog/university-chicago-has-no-room-crybullies>.

3. Jay Michaelson, "University of Chicago's P.C. Crackdown Is Really about Keeping Right-Wing Donors Happy," *The Daily Beast*, August 26, 2016, <http://www.thedailybeast.com/articles/2016/08/26/university-of-chicago-s-p-c-crackdown-is-really-about-keeping-right-wing-donors-happy.html>.

4. Scott Jaschik, "The Chicago Letter and Its Aftermath," *Inside Higher Ed*, August 29, 2016, <https://www.insidehighered.com/news/2016/08/29/u-chicago-letter-new-students-safe-spaces-sets-intense-debate>.

5. Angus Johnston, "A Map of American Student Activism 2014–15," *Student Activism* (blog), December 2, 2014, <https://studentactivism.net/2014/12/02/a-map-of-american-student-activism-2014-15>.

6. Susan Svrluga, "U. Missouri President, Chancellor Resign over Handling of Racial Incidents," *Washington Post*, November 9, 2015, <https://www.washingtonpost.com/news/grade-point/wp/2015/11/09/missouris-student-government-calls-for-university-presidents-removal>.

7. "Yale Launches Five-Year, \$50 Million Initiative to Increase Faculty Diversity," Yale University website, November 3, 2015, <http://news.yale.edu/2015/11/03/yale-launches-five-year-50-million-initiative-increase-faculty-diversity>; Conor Friedersdorf, "Brown University's \$100 Million Inclusivity Plan," *The Atlantic*, November 24, 2015, <http://www.theatlantic.com/politics/archive/2015/11/brown-universitys-100-million-plan-to-be-more-inclusive/416886>.

8. Patrick Maines, "Campus Protests and Blatant Attacks on Free Speech," *The Hill* (blog), November 25, 2015, <http://thehill.com/blogs/pundits-blog/education/261259-campus-protests-and-blatant-attacks-on-free-speech>.

9. Greg Lukianoff and Jonathan Haidt, "The Coddling of the American Mind," *The Atlantic*, September 2015, <http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356>.
10. "History of Hillel," Hillel International, <http://www.hillel.org/about/hillel-story>.
11. "The Safe Space Ally Network," LGBTQ Student Life, University of Chicago, <https://lgbtq.uchicago.edu/directories/table/safe-space-ally-network>.
12. Alex Morey, "U. Chicago's 'Academic Freedom' Letter a Win for Campus Speech [Updated], FIRE (Foundation for Individual Rights in Education) website, August 25, 2016, <https://www.thefire.org/u-chicagos-academic-freedom-letter-a-win-for-campus-speech/>.
13. Beth McMurtrie, "One University Asks: How Do You Promote Free Speech without Alienating Students?," *Chronicle of Higher Education*, October 23, 2016, <http://www.chronicle.com/article/One-University-Asks-How-Do/238146/>.
14. "The Colliding of the American Mind," *The Economist* website, June 4, 2016, <http://www.economist.com/news/international/21699905-university-protesters-believe-they-are-fighting-justice-their-critics-think-free>.
15. Alexander, *New Jim Crow* (see especially chapter 3, "The Color of Justice," for references to numerous studies demonstrating the differential rates of incarceration among races in the United State); Kennedy, *Race, Crime, and the Law*; Stevenson, *Just Mercy*.
16. *Chronicle of Higher Education, The Almanac of Higher Education 2016–17* (Washington, DC: *Chronicle of Higher Education*, 2016), <http://www.chronicle.com.ezp-prod1.hul.harvard.edu/interactives/almanac-2016>.
17. *Ibid.*
18. National Center for Educational Statistics, "Race/Ethnicity of College Faculty: Fast Facts," <https://nces.ed.gov/fastfacts/display.asp?id=61>.
19. Guinier, *Tyranny of the Meritocracy*.

20. "The Quiet Discrimination of Microinequities: A Q&A with Adjunct Professor Mary Rowe," MIT Sloan website, February 3, 2016, <http://mitsloan.mit.edu/newsroom/articles/the-quiet-discrimination-of-microinequities-a-qa-with-adjunct-professor-mary-rowe/>.
21. Steele, *Whistling Vivaldi*.
22. Adam K. Raymond, "The Alleged Offenses of 2014's Disinvited Commencement Speakers," *New York Magazine* website, May 15, 2014, <http://nymag.com/daily/intelligencer/2014/05/disinvited-graduation-speakers-alleged-offenses.html>.
23. Ask a Librarian, Harvard Law School Library, "What Are the Origins of the Harvard Law School Shield That Was Retired in 2016?," <http://asklib.law.harvard.edu/faq/115307>.
24. "Harvard Corporation Agrees to Retire HLS Shield," *Harvard Law Today*, March 14, 2016, <http://today.law.harvard.edu/harvard-corporation-agrees-to-retire-hls-shield>.
25. Annette Gordon-Reed and Annie Rittgers, "A Different View," March 2016, [https://today.law.harvard.edu/wp-content/uploads/2016/03/Shield\\_Committee-Different\\_View.pdf](https://today.law.harvard.edu/wp-content/uploads/2016/03/Shield_Committee-Different_View.pdf).
26. John Fabian Witt, Chair, et al., Yale University, "Letter of the Committee to Establish Principles on Renaming," [http://president.yale.edu/sites/default/files/files/CEPR\\_FINAL\\_12-2-16.pdf](http://president.yale.edu/sites/default/files/files/CEPR_FINAL_12-2-16.pdf).
27. Yussef Robinson, "Oxford's Cecil Rhodes Statue Must Fall—It Stands in the Way of Inclusivity," *The Guardian*, January 19, 2016, <https://www.theguardian.com/commentisfree/2016/jan/19/rhodes-fall-oxford-university-inclusivity-black-students>.
28. Gabriel Fisher, "Princeton and the Fight over Woodrow Wilson's Legacy," *New Yorker*, November 25, 2015, <http://www.newyorker.com/news/news-desk/princeton-and-the-fight-over-woodrow-wilsons-legacy>.
29. Jesse Singal, "Why the University of Chicago's Anti-'Safe Space' Letter Is Important," *New York Magazine* website, August 26, 2016, <http://nymag.com/daily/intelligencer/2016/08/the-university-of-chicagos-anti-safe-space-letter-matters.html>.

30. Dautrich, *Future of the First Amendment* (2004, 2011, 2014, 2016); Dautrich and Yalof, *Future of the First Amendment* (2006, 2007); Dautrich, Yalof, and López, *Future of the First Amendment* 2008.
31. *Free Speech on Campus*, Knight Foundation website, April 4, 2016, <http://www.knightfoundation.org/reports/free-speech-campus>.
32. *National Undergraduate Study*, sponsored by the William F. Buckley, Jr. Program at Yale and conducted by McLaughlin & Associates, October 26, 2015, posted online at <https://www.dropbox.com/s/sfmpoeytvqc3cl2/NATL%20College%2010-25-15%20Presentation.pdf?dl=0>.
33. Howard Gillman and Erwin Chemerinsky, "Don't Mock or Ignore Students' Lack of Support for Free Speech. Teach Them," *Los Angeles Times*, March 31, 2016, <http://www.latimes.com/opinion/op-ed/la-oe-chemerinsky-gillman-free-speech-on-campus-20160331-story.html>.
34. "Free Speech on Campus."
35. For ideas, see, e.g., Haynes et al., *The First Amendment in Schools*.

### Chapter 3

1. Amy Howe, "Finally! The *Fisher* decision in Plain English," *SCOTUS* (blog), June 24, 2013, <http://www.scotusblog.com/2013/06/finally-the-fisher-decision-in-plain-english>.
2. Chicago-Kent College of Law at Illinois Tech, "*Fisher v. University of Texas*," Oyez website, <https://www.oyez.org/cases/2012/11-345>.
3. *Brown v. Board of Education of Topeka*, Opinion, May 17, 1954; Records of the Supreme Court of the United States, Record Group 267, National Archives.
4. Chicago-Kent College of Law at Illinois Tech, "*Grutter v. Bollinger*," Oyez website, <https://www.oyez.org/cases/2002/02-241>; Chicago-Kent College of Law at Illinois Tech, "*Gratz v. Bollinger*," Oyez website, <https://www.oyez.org/cases/2002/02-516>.

5. Banaji and Greenwald, *Blindspot*.
6. Steele, *Whistling Vivaldi*.
7. *Ibid.*, 6.
8. Kennedy, *Race, Crime, and the Law*; Alexander, *New Jim Crow*; Stevenson, *Just Mercy*.
9. Martha Minow, *In Brown's Wake: Legacies of America's Educational Landmark* (Oxford: Oxford University Press, 2010), 158–159.
10. Alicia Garza, "A Herstory of the #BlackLivesMatter Movement by Alicia Garza," *FeministWire.com*, October 7, 2014, <http://www.thefeministwire.com/2014/10/blacklivesmatter-2>.
11. Giovanni Russonello, "Most Americans Hold Grim View of Race Relations, Poll Finds," *New York Times*, July 13, 2016, <http://www.nytimes.com/2016/07/14/us/most-americans-hold-grim-view-of-race-relations-poll-finds.html>.
12. Pew Research Center, "On Views of Race and Inequality, Blacks and Whites Are Worlds Apart," June 27, 2016, <http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart>.
13. Page, *Diversity and Complexity*, 6.
14. *Fisher v. University of Texas*, 579 U.S. \_\_\_\_ (2016), 16.
15. Mina Huang, "Diversity Matters: The Beauty and Power of Difference," *Pearson Higher Education Blog*, June 19, 2015, <http://www.pearsoned.com/education-blog/diversity-matters-the-beauty-and-power-of-difference>.
16. Thomas Jefferson, "The Declaration of Independence," National Archives ed., 1776, [http://www.archives.gov/exhibits/charters/declaration\\_transcript.html](http://www.archives.gov/exhibits/charters/declaration_transcript.html).
17. Ta-Nehisi Coates, "The Case for Reparations," *The Atlantic*, June 2014, <http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631>.

18. Pettigrew and Tropp, "Intergroup Contact"; Goldsmith, "Shaping Race Relations"; Sidanius, *Diversity Challenge*.
19. Jeremy C. Fox, "Babson College Student Appears to Apologize for Wellesley Incident," *Boston Globe*, November 13, 2016, <https://www.bostonglobe.com/metro/2016/11/12/babson-student-apologizes-for-wellesley-incident/DfB9lp4Ec30BO6KlqXz35I/story.html>.
20. William Frey, "Diversity Defines the Millennial Generation," *The Avenue*, Brookings Institution, June 28, 2016, <http://www.brookings.edu/blogs/the-avenue/posts/2016/06/28-diversity-millennial-frey>.
21. William Frey, "New Projections Point to a Majority Minority Nation by 2044," *The Avenue*, Brookings Institution, December 12, 2014, <http://www.brookings.edu/blogs/the-avenue/posts/2014/12/12-majority-minority-nation-2044-frey>.
22. Pew Research Center, "10 Demographic Trends That Are Shaping the U.S. and the World," March 31, 2016, <http://www.pewresearch.org/fact-tank/2016/03/31/10-demographic-trends-that-are-shaping-the-u-s-and-the-world>.
23. *Fisher v. University of Texas*, 579 U.S. \_\_\_\_ (2016), 16, originally in the University of Texas at Austin's submissions to the Court at Supp. App. 23A.

## Chapter 4

1. *Abrams v. United States*, 250 U.S. 616 (1919).
2. *Ibid.* The cases the Supreme Court Justices had in mind included *Schenck v. United States*, 249 U.S. 47 (1919), and *Frohwerk v. United States*, 249 U.S. 204 (1919). See also "*Abrams v. United States*" on the website of the Chicago-Kent College of Law, <https://www.oyez.org/cases/1900-1940/250us616>.
3. *Ibid.*, 630–631.
4. Healy, *Great Dissent*.

5. Milton, *Areopagitica*.
6. Douglass, "Plea for Free Speech."
7. Erasmus, *Education of a Christian Prince*.
8. U.S. Const. amend. I.
9. *Marsh v. Alabama*, 326 U.S. 501 (1946); *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).
10. Fish, *There's No Such Thing*.
11. Stone, *Perilous Times*, 8.
12. Bollinger, *Tolerant Society*. For a critique of Bollinger's General Tolerance Theory, see Paul Brest, "How Free Do We Want to Be?," *New York Times*, June 8, 1986, <http://www.nytimes.com/1986/06/08/books/how-free-do-we-want-to-be.html>.
13. Douglass, "Plea for Free Speech."
14. William Lloyd Garrison to William James Potter, Oct. 11, 1873, call no. Ms.A.1.1 v.8, p.30B, Boston Public Library.
15. Ruth Tenzer Feldman and Bettina Aptheker, "The Free Speech Movement: 50th Anniversary," *Kidlit Celebrates Women's History Month* (blog), March 24, 2014, <http://kidlitwhm.blogspot.com/2014/03/the-free-speech-movement-50th.html>.
16. John Perry Barlow, "Declaration of Independence of Cyberspace," Electronic Frontier Foundation, 1996, <https://www.eff.org/cyberspace-independence>.
17. *Ibid.*
18. Ryan Girdusky, "New Anti-Hillary Hashtag Shows Bernie Supporters Aren't Going Quietly," Red Alert Politics website, May 24, 2016, <http://redalertpolitics.com/2016/05/24/new-anti-hillary-hashtag-shows-bernie-supporters-arent-going-quietly>.
19. Janell Ross, "What an Anti-Hillary Hashtag Tells Us about Sexism in the 2016 Campaign," *Washington Post*, January 26, 2016, <https://www>



.washingtonpost.com/news/the-fix/wp/2016/01/26/wordthatmightdesc  
ribetheamericanvoter.

20. Bird, Taylor, and Kraft, "Student Conduct," 183–205.

## Chapter 5

1. "Spotlight on Speech Codes 2017: The State of Free Speech on Our Nation's Campuses," FIRE's website, <https://www.thefire.org/spotlight-on-speech-codes-2017>.

2. *Oxford English Dictionary*, online entry for "hate speech," <http://www.oed.com.ezp-prod1.hul.harvard.edu/view/Entry/84550?redirectedFrom=hate+speech#eid21206310>.

3. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). The *Chaplinsky* opinion may be accessed in a reliable form online at Cornell's Legal Information Institute website, <https://www.law.cornell.edu/supremecourt/text/315/568>.

4. *Chaplinsky* itself deserves much more discussion on several fronts. Some legal scholars believe the decision should be overturned. See Caine, "Trouble with 'Fighting Words,'" 443–562, <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1026&context=mulr>. Others find the *Chaplinsky* opinion problematic insofar as the Court's decision focused on the statute and not on what *Chaplinsky* said to the marshal. The words *Chaplinsky* used are political speech that would almost certainly enjoy First Amendment protection if tested on their merits today. It is hard to imagine that what *Chaplinsky* did would in fact have incited violence against the marshal; from what we know of the facts, it is much more likely that he was the one at risk of harm, not so much the government official. For further discussion, see also FIRE's website for an analysis of *Chaplinsky* and other Supreme Court decisions relevant to campus speech at <https://www.thefire.org/misconceptions-about-the-fighting-words-exception>.

5. David L. Hudson Jr., "'Fighting Words' Case Still Making Waves on 70th Anniversary," the First Amendment Center website at

Vanderbilt University and the Newseum, March 9, 2012, <http://www.firstamendmentcenter.org/fighting-words-case-still-making-waves-on-70th-anniversary>.

6. *Virginia v. Black*, 538 U.S. 343, 359 (2003).

7. *Ibid.*, 360.

8. Mass. Gen. Laws ch. 71, § 37O (2016).

9. Mass. Gen. Laws ch. 71, § 37O(d)(3) (2016).

10. Faris et al., "Harmful Speech Online."

11. See "Policy Statement Supporting Diversity and Free Speech" on the website of the Office of the University Provost at Arizona State University, <https://provost.asu.edu/committees/cci/policies>.

12. *Ibid.*

13. Greg Lukianoff and Jonathan Haidt, "The Coddling of the American Mind," *The Atlantic*, September 2015, <http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356>; Lukianoff and Haidt, *Coddling of the American Mind*.

14. FIRE, "Spotlight on Speech Codes 2017."

15. University of Chicago, Office of the Provost, *Report of the Committee on Freedom of Expression*, January 2015, <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>.

16. Columbia University, Office of Communications and Public Affairs website, "President Lee C. Bollinger's 2016 Convocation Address: Learning from Freedom of Expression," August 29, 2016, <http://news.columbia.edu/content/1272>.

17. Kermit L. Hall, "Free Speech on Public College Campuses Overview," the First Amendment Center website at Vanderbilt University and the Newseum, September 13, 2002, <http://www.firstamendmentcenter.org/free-speech-on-public-college-campuses>. See also "Free Speech, Public Universities, and State Actors as First Amend-

ment Speakers,” *PrawfsBlawg* (blog), February 10, 2006, [http://prawfsblawg.blogs.com/prawfsblawg/2006/02/free\\_speech\\_pub.html](http://prawfsblawg.blogs.com/prawfsblawg/2006/02/free_speech_pub.html).

18. Schauer, “Between Speech and Action.”

19. University of Chicago, *Report of the Committee on Freedom of Expression*.

20. “Private Universities,” FIRE website, <https://www.thefire.org/spotlight/public-and-private-universities/>.

21. FIRE, “Spotlight on Speech Codes 2017.”

22. Geoffrey Stone, “Remembering the Nazis in Skokie,” *Huffington Post*, May 20, 2009, [http://www.huffingtonpost.com/geoffrey-r-stone/remembering-the-nazis-in\\_b\\_188739.html](http://www.huffingtonpost.com/geoffrey-r-stone/remembering-the-nazis-in_b_188739.html). See also *National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977).

23. Popper, *Open Society*, 581.

24. For one side of the debate, framing some of the key issues involved, see “Hate Speech on Campus,” American Civil Liberties Union (ACLU) website, <https://www.aclu.org/other/hate-speech-campus>.

## Chapter 6

1. Noland D. McCaskill, “Poll: Majority of Voters Believe Media Biased against Trump,” *Politico*, October 19, 2016, <http://www.politico.com/story/2016/10/poll-media-bias-against-donald-trump-229998>.

2. Ben Collins, “Student: Jerry Falwell Jr. Axed Anti-Trump Story from Liberty University’s School Newspaper,” *Daily Beast*, October 10, 2016, <http://www.thedailybeast.com/articles/2016/10/18/jerry-falwell-axes-anti-trump-story-from-liberty-university-s-student-newspaper.html>.

3. Terrell Jermaine Starr, “There’s a Good Reason Protesters at the University of Missouri Didn’t Want the Media around,” *Washington Post*, November 11, 2015, [https://www.washingtonpost.com/posteverything/wp/2015/11/11/theres-a-good-reason-protesters-at-the-university-of-missouri-didnt-want-the-media-around/?utm\\_term=.6a6b107c0ec3](https://www.washingtonpost.com/posteverything/wp/2015/11/11/theres-a-good-reason-protesters-at-the-university-of-missouri-didnt-want-the-media-around/?utm_term=.6a6b107c0ec3).

See also the press release from the School of Journalism at University of Missouri, “Dean David Kurpius Comments on Student’s Coverage of Protest on Carnahan Quad,” November 10, 2016, <https://journalism.missouri.edu/2015/11/dean-david-kurpius-comments-on-students-coverage-of-protest-on-carnahan-quad>; Krishnadev Calamur, “What’s Happening at the University of Missouri?,” *The Atlantic*, November 9, 2015, <http://www.theatlantic.com/national/archive/2015/11/whats-happening-at-the-university-of-missouri/414870>.

4. Austin Huguelet and Daniel Victor, “‘I Need Some Muscle’: Missouri Activists Block Journalists,” *New York Times*, November 9, 2015, <http://www.nytimes.com/2015/11/10/us/university-missouri-protesters-block-journalists-press-freedom.html>.

5. *Free Speech on Campus* (Miami: Knight Foundation, April 4, 2016), Knight Foundation website, <http://www.knightfoundation.org/reports/free-speech-campus>.

6. See “Right to Peaceful Assembly: United States” on the Library of Congress website, last modified August 24, 2016, <https://www.loc.gov/law/help/peaceful-assembly/us.php>.

7. *Free Speech on Campus*, Knight Foundation.

## Chapter 7

1. McEwan, *Nutshell*.

2. Franklin D. Roosevelt, “Message for American Education Week,” September 27, 1938, online by Gerhard Peters and John T. Woolley, The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=15545>.

3. Chris Sweeney, “How Liberal Professors Are Ruining College: In New England, They Outnumber Conservatives 28 to 1. Why That’s Bad for Everyone,” *Boston Magazine*, January 2017, <http://www.bostonmagazine.com/news/article/2016/12/20/liberal-professors>. See also “The Heterodox Academy” website, <http://heterodoxacademy.org>.

4. Steve Wyche, "Colin Kaepernick Explains Why He Sat during National Anthem," NFL website, August 27, 2016, <http://www.nfl.com/news/story/0ap3000000691077/article/colin-kaepernick-explains-why-he-sat-during-national-anthem>.
5. Clarke and Antonio, "Rethinking Research."
6. Garton Ash, *Free Speech*.
7. Chang, *We Gon' Be Alright*.
8. William Frey, "New Projections Point to a Majority Minority Nation by 2044," *The Avenue*, Brookings Institution, December 12, 2014, <http://www.brookings.edu/blogs/the-avenue/posts/2014/12/12-majority-minority-nation-2044-frey>.
9. Jelani Cobb, "Race and the Free Speech Diversion," *New Yorker*, November 10, 2015, <http://www.newyorker.com/news/news-desk/race-and-the-free-speech-diversion>; Conor Friedersdorf, "Free Speech Is No Diversion," *The Atlantic*, November 12, 2015, <http://www.theatlantic.com/politics/archive/2015/11/race-and-the-anti-free-speech-diversion/415254/>.

