

2007

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Repository Citation

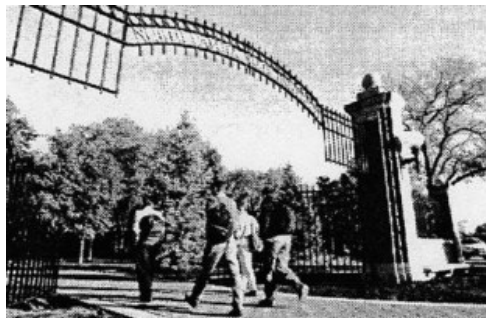
Zick, Timothy, "Campus Speech in the “Post-Virginia Tech World”" (2007). *Popular Media*. 200.
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Campus Speech in the "Post-Virginia Tech World"

Posted By [Timothy Zick](#) On October 18, 2007 @ 1:48 pm In [Uncategorized](#) | [2 Comments](#)

The April 16 massacre at Virginia Tech, along with other recent gun-related violence on campus, will produce some thorny free speech problems for college and university officials. As someone who works on a campus where the threat of gun violence [recently manifested itself](#) ^[1], I am well aware of the extraordinary safety considerations facing today's campus administrators. Tragedies like this can also, as I think the example of September 11 shows, sometimes lead to over-reactions and consequent civil liberties violations. Colleges and universities have a decidedly mixed track record when it comes to reacting to new and perceived threats to order, safety, and pedagogy. Many policies enacted after the unrest that swept campuses in the 1960s severely restrained campus expression. Campus speech codes, which flamed out in the courts (but in many cases [survive in campus codes of conduct](#) ^[2]), sought to restrict expression that was racist, or sexist, or otherwise offended sensibilities.



As Justice Frankfurter said in [Sweezy v. New Hampshire](#) ^[3]: "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment, and creation." In the "post-Virginia Tech world," the First Amendment challenge will be to maintain the sort of openness that ought to characterize places of higher learning, while keeping learning communities as safe as possible. Places of higher learning have responded to Virginia Tech and other incidents of gun violence by altering certain policies and practices. Some of these reactions have been salutary. Colleges and universities have networked campuses such that university communities can more rapidly and effectively communicate with regard to possible threats and safety protocols. While tragic, these incidents have also sparked a debate about important matters like gun control, university duties, campus community, and students' mental health. The primary threat to expression will likely come from policies aimed at expression that administrators believe falls within two rather amorphous First Amendment categorical prohibitions — speech that incites others to unlawful action or conveys a "true threat." The First Amendment protects mere advocacy of violence, so long as it is not directed at producing imminent lawless action and is not likely to do so. The true threats category encompasses statements by which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. As the Supreme Court stated in [Virginia v. Black](#) ^[4], the speaker need not actually intend to carry out the threat. Rather, as the Court explained in [Black](#), a prohibition on true threats "protects individuals from the fear of violence and the disruption that fear engenders, as well as from the possibility that the threatened violence will occur."

In the immediate aftermath of the Virginia Tech shootings, schools were understandably quite sensitive to what they perceived to be threatening student expression. There were [several reported incidents](#) ^[5] of discipline for expression that, in the pre-Virginia Tech era, might not have raised the same level of concern. The Virginia Tech massacre has occasionally affected pedagogical matters as well. For example, a San Jose State University lecturer [opted to stop teaching a creative writing course](#) ^[6] when he received a disturbing student paper (written prior to the Virginia Tech shootings) in which a character modeled on the lecturer was killed by a vampire. According to the lecturer, in the post-Virginia Tech world this story created "an atmosphere of conflict" in the classroom. Colleges and universities across the country continue to grapple with the delicate balance between safety and students' freedom of expression. Some schools, like the University of Colorado, have [enacted policies requiring mental health screening](#) ^[7] for students and others who make violent threats. Colorado's policy states that campus officials "may refer individuals accused of making threats of violence for an assessment of the likelihood that they will act on a threat of violence." Hamline University has apparently [suspended a graduate student](#) ^[8] for sending two sharply worded (as well as racist and sexist) emails to school administrators in which he supported gun rights — including the right to carry a concealed weapon on campus. Pursuant to university policy, the student must undergo a mental health evaluation. There may be more to the Hamline story than has been publicly reported (privacy laws preclude dissemination of some of the underlying facts). But if the substance of the emails are indeed as reported, the student's expression does not constitute unprotected incitement or threats. The emails convey (somewhat inartfully) positions on campus security and the right to bear arms.

I intend neither to minimize the danger associated with truly threatening expression, nor to overstate the danger to civil liberties in the "post-Virginia Tech world." As is the case in the "post-September 11 world," both dangers are clearly present. The challenge will be to maintain, both inside and outside the classroom, an "atmosphere which is most conducive to speculation, experiment, and creation" even when presented with speech that addresses guns, violence, or both.

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[1] recently manifested itself: <http://query.nytimes.com/gst/fullpage.html?res=9C03E5D81731F934A1575AC0A9619C8B63>

[2] survive in campus codes of conduct: <http://www.thefire.org/speechcodereport.php>
PHPSESSID=e0b99f3fb9ae63314117b17ff4e49cc2

[3] Sweezy v. New Hampshire: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=354&invol=234>

[4] Virginia v. Black: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=01-1107>

[5] several reported incidents: <http://chronicle.com/news/article/2173/bombs-threats-and-other-incidents-fill-the-post-virginia-tech-landscape>

[6] opted to stop teaching a creative writing course: <http://insidehighered.com/news/2007/05/17/writing>

[7] enacted policies requiring mental health screening: <http://www.thefire.org/pdfs/eab023d1e0d1c4297ecd3cd95dbb6faa.pdf>

[8] suspended a graduate student: <http://www.thefire.org/pdfs/dd6c16436bd1838a0dfad1527c8f2f9e.pdf>

[9]: <http://www.youtube.com/watch?v=RfU9puZQKBY>

[10]: <http://www.petitiononline.com/TScreen/petition.html>

[11]: http://thomas.loc.gov/home/gpoxmlc110/h2387_ih.xml

[12]: <https://www.usconcealedcarry.com/>

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