

INFORMATIONAL HEARING
JOINT LEGISLATIVE COMMITTEE ON EMERGENCY MANAGEMENT

When Free Speech Crosses the Line: Protecting Public Safety in California

November 15, 2017
1:30 p.m.
CSU Chancellor's Office
Dumke Auditorium
401 Golden Shore, Long Beach

Background Paper

Introduction

On August 11th of this year, a group of white supremacists marched through the main quadrangle of the University of Virginia campus in a torch-lit procession to protest a decision by the City of Charlottesville to remove a statue of Confederate General Robert E. Lee from a downtown city park. The statue of Lee had become a rallying point for white supremacists in recent months, serving as the chosen site of an earlier white supremacist led torch-lit rally in May and a Ku Klux Klan rally in July. As August's evening march at the university concluded, city leaders braced for a series of expected confrontations over the coming days as thousands of people traveled to Charlottesville to protest or participate in a "Unite the Right" rally organized by white nationalists for the following afternoon. City police reported to media outlets that they were prepared for possible unrest, and the Virginia National Guard released a statement saying that it was monitoring the situation. Charlottesville's mayor contacted his counterparts in

other cities seeking advice on how to “be prepared to make sure people can assemble and express themselves freely,” and the University of Virginia Medical Center cancelled all elective surgeries to prepare for the possible influx of mass casualties. (Hawes Spencer and Sheryl Gay Stolberg, *White Nationalists March on University of Virginia* (Aug. 11, 2017) New York Times <<https://www.nytimes.com/2017/08/11/us/white-nationalists-rally-charlottesville-virginia.html>> [as of Nov. 11, 2017].)

Despite these preparatory efforts, violent clashes broke out at the “Unite the Right” rally, leading ultimately to the death of a 32 year old counter-protester named Heather Heyer and injuries to at least 34 other people. Troublingly, video footage of confrontations released shortly after the event showed a man fire a handgun toward a crowd of counter-protesters while around a dozen armed Virginia State Police officers stood nearby, leading witnesses to question why police failed to immediately intervene to protect public safety in that incident and in other fights involving heavily armed people. (Francis Robles, *As White Nationalist in Charlottesville Fired, Police ‘Never Moved’* (Aug. 25, 2017) New York Times <<https://www.nytimes.com/2017/08/25/us/charlottesville-protest-police.html>> [as of Nov. 11, 2017].)

The tragedy that unfolded in Charlottesville prompted California’s leaders to call for an immediate examination of whether our communities are ready to protect public safety during controversial speech events while at the same time preserving the right of free speech. This hearing of the Joint Legislative Committee on Emergency Management entitled “When Free Speech Crosses the Line: Protecting Public Safety in California,” is the last in a three-part series focusing on California’s readiness for handling free speech events that could become violent.¹

Intelligence and Threat Assessment

A key task before planning how best to protect public safety and the rights of speakers at any particular event is first determining which events could become violent. Local communities, universities, public facilities, and private venues host countless events on a variety of topics – some controversial or divisive – every year, and the vast majority of these events pose no threat to public safety. Through the use of intelligence gathering

¹ Information on the first hearing in this series, “Combating Hate While Protecting the Constitution,” can be found on the Senate Judiciary Committee’s website (<http://sjud.senate.ca.gov/content/2017-2018-informationaloversight-hearings>), and information on the second hearing, “Violent Protests and Police Response,” can be found on the Senate Public Safety Committee’s website (<http://spsf.senate.ca.gov/content/2017-2018-informational-oversight-hearings>).

and threat assessment, public safety personnel are able to identify the small fraction of events where violence could erupt and, consequently, where additional planning and public safety resources may be needed to prevent violence from occurring.

Simply put, intelligence gathering and threat assessment is the process of collecting, analyzing, and drawing conclusions from raw data that allow an organization, like a city, to forecast behavior and develop plans in anticipation of that expected behavior. It could be something as simple as a city clerk using the internet to research the identity of an unknown group seeking permission to use a public facility, or a much more sophisticated process involving professional intelligence agencies and the synthesis of multiple intelligence sources.

In the context of assessing potential threats associated with speech events, most intelligence gathering and assessment is done using “open source intelligence” or information gathered from public sources. Open source intelligence includes information obtained from the media (foreign and domestic newspapers, radio, television), the internet (websites, discussion groups, user uploaded videos, and social media sources like Facebook and Twitter), and government and commercial data that is publicly accessible and that may be used openly and freely. To assist with intelligence gathering and threat assessment, California hosts six “fusion centers” that operate as the focal point for the receipt, analysis, gathering, and sharing of threat-related information between federal, state, local government, and private sector entities. While the primary role of a fusion center is to detect, prevent, and investigate criminal and terrorist activity, they also disseminate relevant intelligence to local governments and help them act on other threats to public safety, like indications that opposing groups may be preparing for a violent confrontation during a public event.

This hearing will feature witnesses from California’s fusion centers and intelligence community, as well as intelligence end users, who will explain how their work together helps identify and prevent violence during speech events, while simultaneously preserving the fundamental privacy rights and civil liberties guaranteed to all Californians.

Pre-Event Planning and Mitigation

Once it has been determined that circumstances surrounding an event may pose a threat to public safety, administrators and public safety officials begin planning how best to mitigate that threat and allow the event to proceed in a peaceful manner.

Mitigation measures cannot be so burdensome as to impede a speaker's right to speak, but government actors may lawfully impose reasonable limitations on a speaker's time, place, and manner of speech. These limitations will necessarily vary by event and circumstance, and could take a variety of forms such as prohibiting attendees from bringing backpacks or glass bottles into an event, or moving an event from an outside venue to an inside venue in order to control routes of ingress and egress. In the wake of the violence witnessed in Charlottesville, some jurisdictions have proactively imposed specific mitigation measures related to speech events including a Laguna Beach emergency ordinance that prohibits protesters from possessing metal pipes, metal beverage containers, containers with bio-hazards, lumber, bricks, rocks, pepper spray or ice picks at rallies or political assemblies at a city park or beach. (Erika Ritchie, *Laguna Beach OKs Emergency Ban of Items Perceived as Weapons at Political Rallies* (Sep. 13, 2017) Orange County Register <<http://www.ocregister.com/2017/09/13/laguna-beach-oks-emergency-ban-of-items-perceived-as-weapons-at-political-rallies/>> [as of Nov. 11, 2017].)

Time, place, and manner restrictions imposed by a local entity may include restrictions related to other governmental purposes beyond public safety, such as the closing of certain areas in a state park to speech events during the nesting season to protect wildlife resources, or prohibiting the use of sound-amplifying devices in close proximity to classrooms during school hours to prevent interference with pupil education. Jurisdictions will also mitigate potential hazards associated with a speech event through means other than time, place, and manner restrictions, such as training public safety personnel to know when to intercede to prevent violence, and coordinating public safety resources among jurisdictions before an event to ensure that an appropriate level of first responders are available should their services be needed.

This hearing will feature panelists from local governments, universities, and state agencies who will explain how they use restrictions on the time, place, and manner of speech, as well as permit conditions, resource coordination, training, and other practices, to mitigate threats to public safety posed by violence at speech events.

Response and Recovery

After a speech event where violence could occur gets underway, public safety officials monitor both the physical event site and open source intelligence assets like Facebook and Twitter to detect emerging altercations and respond as needed. On-site personnel

must balance the safety of the public against the right of a speaker to speak and the right of an audience to hear a speaker's message. These personnel can use a variety of strategies to maintain public safety short of evacuating an event, including direct intervention to de-escalate violent encounters, and maintaining control over the movement of participants to keep protesters and counter-protesters physically separated. Should circumstances deteriorate during an event, public safety personnel and response partners can execute pre-formulated response plans that have been tailored to the unique circumstances of the event, its participants, and venue. Today's hearing will feature testimony by representatives of law enforcement, universities, and other agencies who will discuss the operational objectives and key players involved when responding to the outbreak of violence at an event. This hearing will also focus on how California's mutual aid system can bring additional resources to quell violence should it overwhelm available local resources, and how the capacities of the Military Department provide an ultimate backstop to the development of widespread violence and civil unrest.

Finally, planning for and responding to free speech events where violence could break out has proven, in recent years, to be extremely costly. In September of this year, administrators at the University of California at Berkeley dedicated approximately \$1 million to cover security expenses related to the staging of a "Free Speech Week" featuring prominent conservative activists. Many local agencies do not have significant resources to fund large-scale security operations of this nature, and this hearing will examine whether funding challenges undermine the ability of these agencies to guarantee public safety at these events.

Conclusion

Detecting, preparing for, and responding to potential violence at marches, political rallies, and protests requires a high degree of coordination and planning by public officials. While many areas of the country have seen failures in coordination and planning lead to violence and injury, including in California, this hearing will help educate members of the Joint Committee and the public on current efforts to learn from past mistakes and keep the public safe while guaranteeing the fundamental right of free speech.