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### Instituting Protest (FILM)

Joshua Eisenberg  
*CUNY Hunter College*

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**“Instituting Protest (FILM)”**

**By**

**Joshua E. Eisenberg**

Submitted in partial fulfillment  
Of the requirements for the degree of  
Master of Fine Arts Integrated Media Arts, Hunter College  
The City University of New York

2018

THESIS SPONSOR:

\_\_\_\_ 5/8/18 \_\_\_\_\_  
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**Abstract:**

Freedom of Speech and the right to Life, Liberty and the Pursuit of Happiness are accepted and guaranteed as Unalienable to all Americans by our Founding Fathers in the Declaration of Independence and in the Constitution (First and Fourteenth Amendments). But can anyone say anything, at any time, to anyone, anywhere without recourse? Is free speech an unlimited right? The answer is no. While the First Amendment grants free speech; the speech cannot be destructive or lead to or cause violence.

The Fourteenth Amendment was ratified in 1868. It was written after the Civil War and was intended to ensure that the newly created citizens (freed slaves) had the same rights and protections under the laws as others. In doing so it forced the state governments to adhere to the same rules as the federal government. It guaranteed the same due process and protection under the law to all citizens no matter where they resided.

Because of this guarantee, individuals have sued the states when they felt they were discriminated against or denied their rights- Brown vs the Board of Education (1954) on racial discrimination, Roe vs Wade on abortion (1973), are just two of the cases based on the Amendment. Brown vs The Board of Education is one of the cases later discussed in the project.

Recent protests in many US cities have caught my attention. Examples of freedom of expression can be seen daily on television news or read online or in print media. As a current college student living in today's tumultuous political climate, I became curious about student protests, both historic and current. Are students allowed the protection of the 1<sup>st</sup> and 14<sup>th</sup> Amendments when voicing their opinions on campus? Were their rights protected in the past and are they protected today?

To explore this, I visited several colleges and universities where protests have occurred, where the right to free speech was limited, where the curtailment not only limited speech but

took lives, where violence lead to deaths and where free speech tested the boundaries of inciting hatred and property damage.

This documentary, "Instituting Protest" will look at my alma mater, Towson University (Towson, MD), University of Mississippi (Oxford, MS), Kent State University (Kent, OH) and the University of California at Berkeley (Berkeley, CA). The time period examined is from 1962 to current day and will focus on each campus during "its time under the spotlight" during that time span. It will also look to the future of student protest by observing the current students approaching university entry from Parkland, Florida, the site of a recent fatal AR-15 rifle attack and their successful organization of, and participation in, protests across the nation.

### **Project Description:**

As I was contemplating this thesis, there was a beginning wave of anti-Nazism on college campuses and students protesting against the far right. In Charlottesville, Virginia (Home of the University of Virginia), there was a major protest where one person died and others were injured by a car mowing down innocent bystanders. Later, I came to find out that the person who drove the car was a member of a flock of racists led by a fellow Towson University alum Matthew Heimbach. Matthew is the leader of the Traditionalist Worker Party. After some discussion with fellow alums, my original mission was going to be a documentary called, "Josh versus the Neo-Nazis". It was a quest to see if someone could have their diploma revoked for breaking the rules of the college after attending the school and receiving a degree. After much debate with friends and family, a few realities came to mind.

1. Pestering a white supremacist when I am a Jewish guy is probably not a good idea.
2. There is a larger idea at hand than taking down a powerful white supremacist, which is to understand what rights students have to protest.

After some soul searching, I became far more interested in protest rights in academia. I still would use the Heimbach case as part of the documentary, but it would not specifically focus on removing his diplomas as much as making it just a case study. The bigger idea was to look at what rights the students had to exercise free speech and/or peacefully protest vs the rights of the public and private educational Institutions where these events occurred. Specifically, the idea was to see if institutions overreached when they would attack their own students and arrest them for acts that seemed protected under the law.

Also, in the original process when I was exploring the original, "Josh vs. The Neo-Nazis" idea, I thought it would have a lighter feel. Upon further research, I realized that was not an appropriate tone for the documentary. These were tragic events that happened and to make light of them would unprofessional and insensitive.

As I was researching the project, I found myself collecting many interviews from actual witnesses to history or persons who had general knowledge of protests at colleges and universities across the United States. The Berkeley Riots and the Kent State Massacre are 2 parts of my traditional documentary form which I present as a historical look through time in road and plane trips across the United States.

The one thing I did not totally expect when I began this mission, is seeing where the future of student protest is heading. I had no idea that serious student protests would move from college campuses to high schools thanks to the Parkland Stoneman-Douglas High School students. When talking to the people from Berkeley Free Speech Movement (especially Anita Medal), it became distinctly evident that these kids, who led the March for Our Lives, are the future of campus protest, as they graduate and head to college in the near future.

## Project Analysis:

All in all, the style of the piece, *Instituting Protest*, is somewhat based on a documentary by Ken Burns, specifically *The Vietnam War*, in which Burns utilized a ton of interviews, and it included a section on Kent State. However, there are some differences as I utilize cutaways similar to Michael Moore's style of shooting. The only difference is that I tend not to take the spotlight in most cases, and let the people speak the story along with the b-roll while I remain a narrator to drive the story's premise of the road trip along.

Across the years that I have been at Hunter College in the IMA-MFA program, it seems that I have been putting myself in a lot of my work. The clearest example of this is my production of a 5-minute self-reflexive piece called *Showered in Ideas* where I said nothing verbally, but it was me in a shower narrating my thought pattern through words on a screen. It became comfortable and natural for me to narrate my own thesis film.

Some would say it's my self-centered nature, but in the end, it was Veronique Bernard's *Producing the Non-narrative Film* class I took at Hunter, where it was advised on this project to not just look at this from a distance, but people want to know what makes this issue personal. This is fortunate and unfortunate at the same time. It was very hard to not make the Neo-Nazi angle personal being from Matthew Heimbach's alma mater and being Jewish. I had to find a way to avoid having my personal position in favor of revoking Heimbach's diploma be at the center of the documentary. In the end, it was better to just do a case study of Matthew's time at Towson and pose the question of whether it is possible to remove a diploma without actively pursuing a way to do it. The question for the section on Heimbach was now: "is it okay for a white supremacist or equally offensively minded person to have their earned diploma revoked by a university for actions done while in or out of school, if these actions are detrimental to the higher education institution's reputation?"

As for the project itself, there was quite a bit of research completed to create this documentary. When this film was about Matthew Heimbach as a whole, I had to know everything there was to know about White Supremacy. I had to also know about Matthew Heimbach the man himself, get phone numbers and locations, and also find out everything I could about the man. Quite frankly, I was obsessed with him and it was unhealthy. I would realize that later, but when starting researching I started with the Southern Poverty Law Center's description of Matthew. It can be found here:

<https://www.splcenter.org/fighting-hate/extremist-files/individual/matthew-heimbach>.

From there, I kept digging with article after article about Matthew Heimbach. I was pleasantly surprised to find out that the leader of the Traditionalist Worker Party has his own weekly radio show that he does from home like a hate blog on archive.org. When you type in his name there, this is all the work you get from him:

<https://archive.org/search.php?query=matthew%20heimbach>.

At first, when the piece was about Matthew Heimbach and solely about the revocation of his diploma, I needed to find out whether it is legal to remove it and whether has it ever happened in the past. To do this, I looked up the legality issues. At first, it was talking about Bill Cosby having his honorary degree revoked:

<https://www.usatoday.com/story/life/people/2017/06/23/bill-cosby-loses-honorary-degree-university-missouri-after-mistrial/103137946/>.

Cosby's diploma was honorary, so therefore I needed to find a regular four year degree that was revoked. Then I found the Andrey Bezrukov story in the Harvard Crimson:

<http://www.thecrimson.com/article/2010/7/16/school-degree-kennedy-name/>

He was found guilty of being a spy for Russia and therefore had his diploma repealed by the school for breaking school rules, stating that he enrolled with a false name, so he should not keep his degree.

But was it legal to revoke that diploma and any other? For that, I did a lot of research in several different legal educational publications. The first one came from one of the people I interviewed, Donna Gurley. She wrote the paper, “The Right of Educational Institutions to Withhold or Revoke Academic Degrees” along with her co-authors Mary Ann Connell and Mayo Mallette.

The paper, which can be found here:

<http://www.stetson.edu/law/conferences/highered/archive/2005/RevokeDegrees.pdf>, is a scorching look at education and the trials that have come from schools attempting to revoke diplomas.

In part II part B, Gurley and the other authors explain the answer using examples. They state:

“One of the earliest cases in the United States discussing the revocation of a degree is *Waliga v. Board of Trustees of Kent State University*. In *Waliga*, the Ohio Supreme Court addressed a single issue: whether the university had authority to revoke a degree it determined had been improperly granted. The court began its analysis by noting that Ohio statutes provided that Ohio’s universities had the power to “confer such . . . academic degrees as are customarily conferred by colleges and universities in the United States” and to “do all things necessary for the proper maintenance and successful and continuous operation of such universities.”

(*Stetson*, page 6)

Knowing that schools could revoke diplomas legally was helpful in my exploration but the problem now was that it gave me a concrete answer but would not supply depth to the project. It would have been a quick answer to a quick question and not at a deeper level.

I wanted to delve deeper. I checked out an *ESPN 30 for 30* Documentary directed by Fritz Mitchell called, *Ghosts of Ole Miss*

<http://www.espn.com/30for30/film?page=ghosts-of-ole-miss>). The film centers on the perfect season that Ole Miss football had in 1962, which coincidentally coincided with the integration of the University of Mississippi. It led me to the idea of how the first amendment and one's right to education can be taken away by others. Taking away James Meredith's right to education equal to that of a white counterpart led to massive riots.

When transitioning away from the overall Matthew Heimbach whole documentary, I went to the Whitney Museum in lower Manhattan. During Autumn 2017, they had an exhibition of their curated work entitled *An Incomplete History of Protest: Selections from the Whitney's Collection, 1940–2017*. The works (which have a write up here:

<https://whitney.org/Exhibitions/AnIncompleteHistoryOfProtest>) were my first introduction to the art that went around with the times of protest, especially the works that happened involving Kent, Ohio on May 4, 1970. The section of the floor titled "STOP THE WAR" Protest art section captures the horror of the Vietnam War and the images that appeared on walls of student protesters, "similar to the student memes of today." When I saw this, I knew that Kent State had to be covered.

In fact, the Kent State section of the documentary, was centered around the filming of the May 4 Visitors Center (<https://www.kent.edu/may4>), which I visited for part of the documentary. Also as part of the research, they allowed us use of all the photos in their collection found here:

<https://www.library.kent.edu/special-collections-and-archives/kent-state-shootings-may-4-collecti>  
[on](#). The Special Collections section at Kent State University Library also gave us access to the school radio station's audio reports and the police radio recordings from the weekend leading up to and including May 4, 1970.

Towson University's student run newspaper, *The Towerlight* keeps their collections at the Albert S. Cook library and the archives are found online (<http://library.towson.edu/digital/collection/stunews>). I used some articles of research especially around Jeremy Bauer-Wolf and his coverage of Matthew Heimbach and the protests surrounding the Time, Place and Matter policies.

### Thesis Production Process:

In researching, I started with the people at The Foundation for Individual Rights in Education (TheFire.org). I needed to know the facts of how many people were affected by schools oppressing students' first amendment rights. I reached out to Joe Cohn, who was my first interview for the documentary. Starting out with them turned out to be a good beginning as I became aware of a book online that everyone who goes to college should read at some point. The book, "FIRE's Guide to Free Speech on Campus", tells what the legal definitions of "speech", "free speech" and "obscenity" are.

For example, we know what the first amendment says, but legally courts have changed the difference between "speech" and "communication":

*"However, the Supreme Court has consistently held the First Amendment to protect much more than mere "words." As the Court noted in the previously discussed case of Cohen v. California (1971), the amendment protects not just speech but "communication." In that case, an antiwar protester wore a jacket in the Los Angeles County Courthouse with "Fuck the Draft" emblazoned on it, protesting the Vietnam War. The State of California prosecuted the protester for "maliciously and willfully disturb[ing] the peace or quiet of any neighborhood or person ... by ... offensive conduct." The Court rejected California's argument that it was merely regulating the protester's conduct and noted that "the only 'conduct' which the State sought to punish is the fact of communication. Thus, we deal here with a conviction resting solely upon 'speech.'"*

[https://www.thefire.org/first-amendment-library/special-collections/fire-guides/fires-guide-to-free-speech-on-campus-3/fires-guide-to-free-speech-on-campus-full-text-2/#\\_RefHeading\\_2638\\_2128351051](https://www.thefire.org/first-amendment-library/special-collections/fire-guides/fires-guide-to-free-speech-on-campus-3/fires-guide-to-free-speech-on-campus-full-text-2/#_RefHeading_2638_2128351051) )

This would be something I would need to keep in mind as court cases might be rapidly changing what first amendment rights are and it was necessary for me to stay informed.

Since I already knew that I did not want to totally give up the angle of Matthew Heimbach and the overall revocation of diplomas, my curiosity led me to Donna Gurley, who worked at Ole Miss University (The University of Mississippi). She is the person who co-wrote the paper on whether it is possible for post-graduate diploma revocation. It was actually on the flight down to Mississippi to discuss diploma status with Ms. Gurley that I did some research and, coincidentally, discovered “The Battle of Oxford” and James Meredith’s integration battle in 1962. I adjusted some of the questions to focus not just on revocation, but also on the protests on the days in question.

Her responses turned my whole documentary around. I knew it was now a road trip across the country to find out for sure how different schools are dealing with first amendment rights on campus.

After researching student protests, I had a wide span of schools to consider. Columbia University, Jackson State, Berkeley’s People’s Park riot and Harvard University were considered but they didn’t make the cut. I had originally planned interviews with people from Columbia University’s Students for Democratic Society (SDS) including documentarian Tom Hurwitz. Due to Columbia University not allowing me to film on their campus, shooting there became impossible. I already had an interview shot with Ron Lipton who was part of the Columbia riots of 1968.

I had a similar situation with Jackson State University, who never returned my phone calls. I did go to Jackson to interview Mississippi’s ACLU head (who is featured in the documentary) but Jackson State did not allow me to shoot on campus as well. Lastly, Harvard University did not allow me anywhere near the campus and shut me down. Originally, I still was planning to make a trip to Cambridge to shoot just outside their campus. However, due to lack

of time for the segment in question, where I would be asking students questions and allowing them to make protest signs, I had to scrap the Cambridge filming.

While I was researching, I came across Kent State University and Jerry M. Lewis, a retired University professor who was willing to give an interview. He recommended that I come to Kent, the suburb just outside of Akron, and visit the May 4 Center. Everyone there including the library were really interested in helping the documentary and were more than forthcoming with using their materials.

Towson, my alma mater, was nowhere near as helpful as I thought they would be. However, the individuals whom I interviewed for the piece were quite helpful. The people who worked there wanted nothing to do with the subject, because they felt like this would be negative press for them, and in some ways it was. I offered them the chance to speak multiple times and they never responded affirmatively. Rather, they always were questioning the situation.

Easily the most open and excited people to be in this documentary were the people from Berkeley's Free Speech Movement Archive ([www.fsm-a.org](http://www.fsm-a.org)). I contacted them on a whim, and five people responded gung-ho. All I needed to do was just get on a plane and fly to California. It was convenient because I also had one interview left of a Kent State survivor now living in California, named Jerry Persky. Jerry was actually my parents' neighbor's brother-in-law and he and his wife opened their door quite willingly. Meanwhile, in California, I was also able to interview Anita Medal, Gar Smith, Lee Feldenstein (The FSM Archive President), Barbara Garson, and Bettina Apetheker. While I interviewed and filmed them all, budget constraints and documentary length led me to cut the section on the People's Park Riots. This documentary covers Berkeley during 1964 only.

The budget was a major issue. I was working from home in New York for a lot of the process, editing on my MacBook Pro and renting equipment from school except for a camera which I owned and I actually bought a microphone for interviews, so the rentals were less and less. In that sense, it was not as expensive as it could have been. Where it did get costly was travel to and from interviews, as well as in post production where I needed to use music and b-roll and I bought a bunch of pond5.com archival for the video visuals of places that I could not get to.

For example, one piece of music cost \$500 for two years' clearance.

If I had to do it all again, I would raise even more money than I did, which was about \$3,500 from various sources. Flights were mostly covered with earned United Miles. Also, I would plan my time better. As it turned out, I was fortunate to have secured a 2 week collaborative residency in South Korea doing media/journalism coverage for the Wheelchair Sports Federation for the 2018 Paralympic Games in PyeongChang in order to complete my graduate requirements. perhaps I would have done another collaborative residency earlier to have given myself more thesis time. This is also in addition to the time I was spending teaching MEDP 150. This all kept me busy, but it helped to pay my bills.

**Audience and Exhibition:**

The intended audience for this piece skews to the people going to college or eventually going to college or in the higher education circuit. It deals with subject matter that is pertinent to knowing when someone enters the realm of higher education. Therefore, after I send the film to several festivals for documentary, I will try to submit this to a program to be shown in collegiate settings. For example, The Mid Atlantic Arts Foundation's On Screen/In Person Program (<http://www.midatlanticarts.org/grants-for-artists-on-screenin-person/>). The program allows filmmakers a grant and the opportunity to travel with the film allowing for a question and answer session around the country's Mid-Atlantic corridor.

On a similar note, I would like to apply to several different universities including the ones mentioned in the documentary and book screenings at the colleges so that they can see all the hard work that went into the film. These colleges include: University of Mississippi, Towson University, Kent State University, and University of California at Berkeley. In addition, since I went to Hunter College, I would try to screen it at a separate occasion other than the thesis show. I also have connections to Princeton University where I grew up as well as Montclair State in New Jersey where a relative taught so I might show it there as well if the option is open.

In screening parts of the documentary for some friends and family during the creative process, it was interesting that there was a previously not considered audience with Baby Boomers who had lived through the tumultuous 60's and could relate to the Kent State and Berkeley footage. Their responses led me to consider that there might be other outlets, as well.

As for publicizing the thesis, I plan on getting as much word of mouth from festivals as I can get (if and when I am accepted) and applying for as many screenings as I can with this project. I also intend to apply the film to POV on PBS and hope that it gets in. If and when that

ends, I plan on possibly hiring a marketing and distribution team to show the film at different venues.

Last but not least, I have already purchased the domain, "InstitutingProtest.com" and intend on getting word out on my webpage, which I will link to my film production company's website, "FridgeFilms.com" as well as start a Twitter social media account as well as a Facebook page. I plan on these sites not only fighting the good fight to get people to watch the film, but also updating people on protests that happen in colleges and high schools around the nation.

When it comes to clearances, I have cleared all images in the film with the owners of the materials including music, stills and video. Some of the video is unlicensed from archives.org, and some of the stock footage is from pond5.com or Shutterstock and I have secured the rights to the materials. In the section about Ole Miss, I actually recorded slide guitar played by myself under the section to give it a valid soundtrack. The song, "The Letter" by the Box Tops is featured at one point during the film as well, which was cleared by WB Music. To conclude: everything featured in this documentary is either original or has been licensed in some way.

**Conclusion:**

The documentary, "Instituting Protest" is primed for release and in the process of making the film I learned that the First Amendment and the Fourteenth Amendment are valuable on every college campus around the nation. Protest is what makes colleges liberal places of thought as well as the place for open discussion. However, there are some folks out there in the collegiate arena who don't feel the same way, and see protests as a disruption to everyday campus life. For those who believe in freedom of speech, some of them would pay the price by either getting expelled, shot at or worse. But in the end, the degree of speech blows in the wind similar to the political climate. What is good one day, may not be the next day. Speech is all a game of politics on every level and people in college need to know how to navigate the world around them.

Freedom of Speech is a hot button issue for today's students and academic institutions. As Erwin Chemerinsky and Howard Gillman noted in "Free Speech on Campus", "*The issue of free speech on campuses is as old as universities and as current as the daily news.*" (p.xi) Our Founding Fathers fought for this freedom and I feel an obligation to carry on their message.

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