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First Amendment Doesn't Protect White Supremacists Behind Violent Charlottesville Rallies

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“Jews will not replace us!!!” On Friday August 11 and Saturday August 12, 2017, the Ku Klux Klan, neo-Nazi organizations, and prominent white supremacists led two violent “Unite the Right” rallies in Charlottesville, Virginia, in which 30 people were seriously injured and Heather Heyer was killed.

In November 2021, two dozen of the rally organizers were back in Charlottesville, this time facing a civil lawsuit, *Sines v. Kessler*, brought by nine counter-protesters who had been injured during the rallies, and supported by Integrity First for America, a nonprofit, civil rights organization. The claims were brought against both individual and organizational defendants, and were based on federal and state statutes barring intimidating and violent conduct, as well as conspiracies to violate civil rights.

After a four-week trial, which meticulously documented the defendants’ specific actions to plan and carry out violence and intimidation, the jury unanimously found all the defendants liable on the state law claims (while deadlocking on the federal claims), and imposed a total of \$26 million in damages upon them.

Distinctions between protected and punishable speech and protest

The defendants argued that they were simply engaged in lawful, if unpopular, political protest, and thus that the First Amendment barred plaintiffs' claims. As former presidents of the ACLU of Southern California and the national ACLU, respectively — speaking here for ourselves and not for the ACLU — we champion robust protection of First Amendment rights and have defended free speech rights for people and groups espousing hateful and odious ideologies.

We also agreed with federal judge Glen Conrad's August 11, 2017 decision overturning Charlottesville officials' last-minute withdrawal of the previously granted permit for the Unite the Right rally in Emancipation Park as violating the rally organizers' First Amendment rights. At that point there was no evidence of planned violence or that the Charlottesville police would be unable to protect against any public safety threats that might materialize. To the contrary, there was evidence that the withdrawal was prompted by officials' disapproval of Unite the Right's ideas, thus violating the First Amendment's core command that government may never restrict speech for such a "viewpoint-discriminatory" reason.

In light of the tragic events on August 11-12, and subsequent in-depth investigations, including by plaintiffs' legal team, we now know that key factual predicates for that 2017 ruling were wrong. The rally organizers and participants did plan and carry out violent actions that are not protected by the First Amendment right "peaceably to assemble," and law enforcement officials were not able to protect public safety.

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While we still agree with Judge Conrad's 2017 ruling, as consistent with the facts then before the court, we also agree with the July 9, 2018 ruling of federal judge Norman Moon in the *Sines* case, which rejected the rally organizers' First Amendment claims. Specifically, defendants argued that the First Amendment barred the *Sines* lawsuit. Thanks to the enormous investigative work that plaintiffs' legal team had undertaken, the factual record before Judge Moon was very different from the one before Judge Conrad a year earlier. Both federal judges applied the same First Amendment principles, but in dramatically different factual contexts.

As Judge Conrad had done, Judge Moon also recognized that peaceful picketing and marching constitute expressive activities that contribute to the "marketplace for the clash of different views and conflicting ideas," and hence are shielded by the First Amendment, no matter how reprehensible the protesters' ideas might be, to no matter how many citizens or officials. Moreover, Judge Moon recognized that the First Amendment even protects the "abstract" advocacy of violence. However, Judge Moon emphasized that the plaintiffs' complaint was "replete with specific allegations" about plaintiffs' expression and conduct "that extend beyond" such "mere abstract" advocacy." As the Supreme Court has held, if defendants "have formed or are engaged in a conspiracy against the public peace and order," that "transcends the bounds of the freedom of speech."

Similarly, in his post-trial instructions to the jury, Judge Moon explained that the “fact that an agreement to engage in illegal conduct necessarily takes the form of words also does not confer upon it, or upon the underlying conduct, protection under the First Amendment.” The First Amendment sensibly distinguishes violent rhetoric — which may not be punished solely because of its message, standing alone — from words and action that may be punished when, considered in context, they further a conspiracy to commit violent or illegal conduct.

The Supreme Court has recognized that speech that could not be punished solely due to its disfavored message may nonetheless constitute evidence of an illegal conspiracy. In planning and carrying out the rallies, the *Sines* defendants used vicious racist and anti-Semitic epithets, which demonstrated the racial animus underlying their planned and actual violence. It bears underscoring that defendants’ reviled views would not alone suffice to find them liable, but rather only constituted evidence that defendants’ unlawful, violent conduct was prompted by their anti-Semitic, anti-Black animus. In sum, the First Amendment did not bar jurors from considering defendants’ racist and violent rhetoric insofar as it evidenced and facilitated their planned and consummated violence and intimidation.

Even more clearly, the First Amendment did not bar holding defendants liable for their intimidating and violent actions. As Judge Moon explained, such conduct is “not by any stretch of the imagination expressive conduct protected by the First Amendment.” In an important 1982 decision, the Supreme Court stated (quoting an earlier opinion): “Certainly violence has no sanctuary in the First Amendment, and the use of weapons. . . may not constitutionally masquerade under the guise of ‘advocacy.’”

For the foregoing reasons, the First Amendment does not bar the *Sines* plaintiffs’ recovery of damages for injuries that the defendants conspired to inflict upon them. As the jury concluded, the evidence introduced at trial substantiated the allegations in plaintiffs’ complaint, proving that defendants crossed the line between protected and unprotected conduct, even though some of their conduct was expressive. To illustrate the substantial, detailed evidentiary basis for the jury’s conclusion — which underscores that the defendants were *not* penalized for their ideas, expression, or peaceful association and protest — we will summarize some of this evidence below. First, though, we provide the general factual background for these specific details by summarizing the violence that occurred, consistent with defendants’ plans, and the injuries that plaintiffs suffered.

Defendants’ intimidating, violent conduct and plaintiffs’ injuries

At the Friday rally, the Unite the Right marchers kicked and punched the counter-protesters. One defendant shouted, “The heat here is nothing compared to what you’re going to get in the ovens!” A photo shows one defendant spraying a counter-protester with pepper spray. The next day, defendants entered Emancipation Park in military formations, armed like paramilitary forces. As the complaint alleged and the evidence established, they “brought with them semi-automatic weapons, pistols, mace, rods, armor, shields, and torches.” As the military formations entered the park, they assaulted and knocked over multiple counter-protesters, including two plaintiffs, with shields, flags, and fists.

Defendant Michael Tubbs ordered members of defendant League of the South to “Charge!,” whereupon the group streamed past him to attack counter-protesters. While passing a synagogue, some marchers went beyond yelling anti-Semitic and Nazi slogans, to make threatening statements. One defendant carried a banner that read, “Gas the kikes, race war now!” And an anonymous demonstrator threatened to “torch those Jewish monsters.” At 1:40 p.m., defendant Alex Fields drove his car into the downtown crowd, killing Heyer and injuring dozens of others. After the event, several defendants posted messages celebrating Fields’s car attack and Heyer’s murder.

All the plaintiffs testified about the injuries they suffered at the rallies while engaged in nonviolent counter-protesting. Two UVA students, one of whom is Black, were harassed and assaulted. Others were injured when Fields drove his car into the crowd of counter-protesters. Two plaintiffs witnessed the car attack or narrowly escaped being hit by the car and consequently suffered severe emotional distress and shock. Plaintiff Seth Wispelwey, a minister who led an ecumenical organization, was assaulted by one of the defendants.

Evidence establishing defendants' conspiracy to engage in intimidating, violent conduct

The evidence demonstrated that the defendants carefully planned the Unite the Right rallies with the specific intent of causing the horrific violence. The plaintiffs' team obtained hundreds of leaked screen shots from multiple chat threads revealing the defendants' planning, most of which occurred online, often using the "invite only" "Discord" platform.

Evidence concerning lead organizer Jason Kessler, including his own trial testimony, spotlighted his and his co-defendants' intimidating, violent plans and actions. On Discord, Kessler posted that it was time for a "Battle of Berkeley situation" in Charlottesville. "Bring in the alt-right," he wrote, "and let's fight this sh*t out in the streets."

Kessler texted alt-right leader Richard Spencer: "We're building an army, my liege. For free speech, but the cracking of skulls if it comes to it." Kessler recruited violent co-defendants to build up the "army," specifically asking them to promote the event to their followers and to recruit far-right skinhead groups. Defendant Jeff Schoep, leader of the country's largest neo-Nazi group, pledged to bring "men who are battle-tested in the streets."

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Through Discord chats, texts, phone calls, and in-person meetings, Kessler coordinated with co-defendants every day. He recommended "free speech tools" – such as flagpoles — that could double as weapons for bludgeoning counter-protesters. He laid out strategies for making clashes with "antifa" more likely. He misled the police (and also Judge Conrad, the ACLU, and other participants in the pre-rally judicial proceedings) on the expected number of Unite the Right attendees. And he directed others to create fake social media accounts to try to goad "antifa" into confrontations.

Along with many other defendants, Kessler moved quickly after the rallies to destroy evidence of the conspiratorial and violent conduct. For example, he immediately texted Elliot Kline to delete the Discord server where much of Unite the Right was planned. He testified that he wanted the server deleted because it contained offensive jokes about Heather Heyer. Yet Kessler had tolerated months of similarly offensive content on that server, and he himself had issued a tweet mocking Heyer and calling her death "payback time."

Similarly specific evidence was presented about each and every defendant, which is why the jury held all of them liable and imposed substantial damages on all of them. We cite some typical examples below.

- At the behest of lead organizer Jason Kessler, **Matthew Heimbach** recruited skinhead groups known for rampaging violence. He supplied shields to members of defendant Traditionalist Worker Party, which were used in the beating of counter-protesters. Video showed a smiling Heimbach shouting, “Shields up!” just before those shields were used to charge into counter-protesters. Prior to the rally, Heimbach tweeted to Unite the Right demonstrators that, if counter-demonstrators blocked their path, they should “#HitTheGas.” After James Fields had been convicted and imprisoned for doing just that, thereby murdering Heather Heyer and injuring dozens of others, Heimbach sent him a letter stating: “You, my friend are a martyr for our folk.:
- Neo-Nazi **Robert “Azzmador” Ray** worked closely with the other organizers on recruitment and planning. “I just got done with an hours long chat with some of the event organizers,” Ray wrote on Discord. “The plan is . . . [g]as the k**es...” In another post, he said he had spent 50 hours in three days networking with other groups ahead of the event. In response to a question about weapons, he said that his “guys would be bringing lots of nifty equipment,” and instructed in a Discord channel that “our guys need to get a grip on the fact that they’re gonna have to physically fight these people.”
- **Elliot Kline** (aka Eli Mosley) acknowledged that he was organizing for Unite the Right full-time in the months before the event. He detailed weekly Discord voice chats with multiple defendants and other co-conspirators, and said he spoke even more regularly with defendants Spencer (nearly daily) and Kessler (4-5 times a week). Kline referred to the organizers as a “resistance fighting force” and admitted to writing a number of Discord messages endorsing and predicting violence, including one post advising that “impaling people is always the best option...” In his trial testimony, Kline tried to dismiss such messages as “just humor,” but his former girlfriend Samantha Froelich testified, “It’s not jokes. It’s cover.” A former member of Kline’s group who has since left the white power movement, Froelich testified that Kline viewed Unite the Right as the “first battle” of a “racial holy war.” believing it was his chance to lead the white race into battle. She also revealed that Identity Evropa members, at a meeting in Spencer’s apartment in the lead up to the “Battle of Charlottesville,” discussed the legality of hitting protesters with cars



- **Michael Hill**, president of defendant League of the South, acknowledged promoting the violent event, including by tweeting, “Antifa, BLM, et al will be there to greet us. It will be fun!” After he denied that the tweet had anything to do with confrontation, plaintiffs’ counsel countered that denial with another statement he had written: “We wanted a public confrontation in Charlottesville for the world to see and we got it.” League of the South members were at the center of the August 12 violence, and video showed Hill instigating various violent confrontations, including by leading a column directly into counter-protesters. After the deadly and violent rallies, Hill said he “wouldn’t change a thing” about them, and that his “warriors had acquitted themselves as men.”
- **Michael Chesny**, a neo-Nazi, gave advice to co-defendants and other conspirators about the most effective weapons to bring and where to buy them. Chesny not only posted memes about ramming protesters, but also asked if Virginia law allowed it. Serving as the transportation coordinator for Unite the Right, Chesny frequently communicated with event organizer Kessler.
- **Dillon Hopper**, former commander of defendant Vanguard America, testified that it had been obvious in advance that violence was “more than likely” at Unite the Right, comparing the white supremacist participants to sharks and counter-protesters to surfers. The deaths and injuries, he said, “shouldn’t be a surprise to anyone.” On August 12, he posted, “Commies died. That’s good enough for me.” Asked what he meant by “commies,” he said he considered any counter-protester a communist.
- **Jeff Schoep** was the leader of the largest neo-Nazi organization in America at the time of Unite the Right, the National Socialist Movement, and he created the Nationalist Front umbrella group, which also included multiple other defendant organizations. In July, Schoep wrote to Kessler: “I would like you to see what we bring to the table, besides experience and men who are battle-tested in the streets.” In an earlier speech, Schoep referred to those “battle-tested” men as “shock troops for the white race.” When the Nationalist Front groups arrived at Unite the Right on August 12, they parked at a distance from the rally site, planning to march in formation with shields through areas where counter-protesters were congregating. Videos showed the resulting assaults on protesters, including Schoep punching a man in the face. Afterward, Schoep boasted on Twitter that he’d “knocked out an antifa scumbag,” and texted co-defendant Heimbach, “your men and the League fought well. We’re finally fu**ing winning. And that’s because we are all basically on the same page.”
- **Matthew Parrott**, of the defendant group Traditionalist Worker Party, testified that the group planned to “have our shields at the front and push through antifa into the park.” During his trial testimony, he initially claimed that the shield march was a contingency if he and his group encountered “antifa,” but he admitted under questioning that they began the push with no knowledge of who was between them and the park. Parrott also testified about communications with the defendant group Identity Evropa during these violent encounters, confirming that Identity Evropa sent a “detachment of fighters” to assist the Nationalist Front groups and “relay intelligence” to Kessler.
- **Michael Tubbs** was a member of defendant League of the South, who was praised by the group’s leader for being “everywhere the chaos was” on August 12. Video showed Tubbs yelling “Charge!” and leaving the rally site to engage in more violence, belying his claims of self-defense. Tubbs testified: “It was also the proudest moment of my life on the streets of Charlottesville that day. I have no regrets about it.” Nor did he have any regrets about that day’s murderous car attack, tweeting at least six times afterwards: “James Fields did nothing wrong.”

- **James Fields**, who is already in prison for life for murdering Heather Heyer and injuring dozens, closely conspired with other defendants. In a private message before the rallies, he sent a picture of a car driving into a crowd with the caption, “when I see protesters blocking.” On August 10, he sent his mother a meme that Spencer had posted of a Black Charlottesville official in a net with the caption, “it’s afraid.” The next day, when Fields’s mother told him to be careful, he sent her a photo of Hitler and said, “We’re not the ones who need to be careful.” Multiple other defendants praised Fields’ murderous, maiming actions.
- **Christopher Cantwell**, a podcast host, said that a purpose of his podcast was to make people as angry as he could so they will be moved to “slaughter their enemies.” He boasted that his listeners included many extremists, who would engage in whatever violence he asked of them. On his podcast, he hosted a number of co-defendants, including Kessler, to promote Unite the Right. Four days before the rallies, he said: “I’m willing to risk a lot for our cause, including violence and incarceration. But I want to coordinate and make sure it’s worth it for our cause.” Spencer responded: “to me, it’s worth it.” Cantwell pleaded guilty to two acts of assault and battery. In jail, he hugged James Fields and gave him a Nazi salute.
- **Richard Spencer** tried to separate himself from the other defendants, presenting himself as a genteel intellectual with little more than a speaking role at Unite the Right. But phone and text records showed that Spencer was deeply involved in the planning, execution, and celebration of violence in Charlottesville, showing that he contacted other organizers far more than he had initially admitted. He was in near-daily contact with full-time organizer and defendant Elliot Kline, exchanged 88 texts with defendant Christopher Cantwell, and hosted parties at his apartment — known as the “fash [short for “fascist”] loft” — attended by Unite the Right organizers in the lead-up to the violence. In one text, Spencer predicted a “violent summer.” During questioning about the August 11 torch march, Spencer admitted that the marchers surrounded UVA students, including two of the plaintiffs, and refused to let them go as a deliberate show of “dominance.” Even after the murder of Heather Heyer and all the injuries to counter-protesters, Spencer described Unite the Right as “amazing” and a “moral victory in terms of the show of force.”



The right to peacefully protest – and counter-protest — deserves full protection and support by all government officials, judges and juries, and members of the public, regardless of whether we agree or disagree with the cause or grievance involved. But far from exercising their rights to peacefully protest, the Sines defendants instead violently obstructed plaintiffs’ exercise of their rights to peacefully counter-protest.

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