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The Centrality of Ongoing Relationships

*Jacob Appelsmith**

Should anyone feel positive after a day of discussing the First Amendment in the context of threats to American universities and colleges from Nazis, white supremacists, anarchists, and others using the campus as the staging ground for disruption and violence? Yes, because it was clear from the Center for the Study of Dispute Resolution' ("CSDR") Symposium, at the University of Missouri School of Law, that the evolution in thought over the past year on how institutions of higher education should handle these challenges is truly remarkable.¹ The speakers as a body demonstrated that if an institution is thoughtful in its approach, and diligent in its preparation, the institution can emerge stronger and can significantly minimize risks to the well-being of its community, its long-term reputational interests, and its financial and legal interests. In short, the institution can be successful if it focusses on the centrality of its ongoing relationships with its community, i.e., its students, faculty, staff, alumni, and supporters.

In the past year, I have attended many meetings and conferences focused on the recent reemergence of heated, potentially violent disputes on campuses, and I have presented to groups in person and in national webinars on topics ranging from "Campus Unrest and Crisis Management" to "Controversial Speakers" to "Charlottesville Aftermath." The evolution of thought in myself, my fellow presenters, and our audiences is marked. The presentations at the CSDR Symposium in Columbia, Missouri, were confident, well-informed, and inspiring, and the questions from and discussion among the audience members were characterized more by thoughtful exchanges than by frustration, fear, or confusion.² The changes on our campuses have been dramatic; fortunately, our institutions have adjusted by increasingly focusing on our relationships with our campus communities, and by doing so we have become more adept at meeting these challenges.

I. THE TIMES REALLY HAVE CHANGED

The campus unrest we have witnessed in the past year is, as measured by the dissent and potential for violence it has exhibited, unlike anything we have experienced since the early 1970s. This unrest has been characterized by a disrespect for the rights of the competing participants in campus debates to disagree with each other. The First Amendment is commonly viewed as protecting speech we do not

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1. Symposium, *The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes* (Oct. 27, 2017) (The video recording of the Symposium is accessible at the following link: <https://livestream.com/accounts/13547932/events/7865962>).

2. See generally *id.*

like, as Professor Christina Wells correctly stated in her opening remarks,³ but many of the combatants in the campus debates of today do not view it that way at all.

As Dr. Baishakhi Banerjee Taylor noted in her presentation, when Charles Murray (author of the *The Bell Curve*⁴) spoke at Middlebury College in Vermont in 2008, it was an event little noticed outside of the 30-40 students and other community members who attended.⁵ When he spoke in March of this year, by contrast, hundreds appeared, a substantial contingent of audience members disrupted the event such that it could not effectively proceed, and the faculty sponsor was physically assaulted by protestors as she escorted Dr. Murray to the car transporting him off campus.⁶

When I spoke on a panel at the National Association of College and University Attorneys in February, my fellow panelist, President Walter Kimbrough of Dillard University, an historically black college, talked about a controversial speaker series he had hosted at another historically black college, Philander Smith, in Little Rock, Arkansas.⁷ Between 2009 and 2012, President Kimbrough invited Charles Murray, Ann Coulter, and others to campus as part of his “Bless the Mic” series in an effort to expose his college community to people with whom they had traditionally disagreed. There was animated discussion and arguments between the audience and these speakers, but there were no disruptive protests, speakers were allowed to speak, and the police were not called. In 2017, protestors on campuses across the country were determined to stop Mr. Murray, Ms. Coulter, and other speakers primarily identified with conservative political views from appearing.⁸

The dialogue has been one of intolerance to expression, where opponents of speakers have contended those speakers have no right to speak, and some protestors have gone so far as to contend that the speakers should be silenced by any means, including violence. This intolerance is important for us to understand as university officials who must manage our campuses and serve our schools’ missions, but also as educators who must consider how to encourage critical thinking and dialogue among the students of today and their views on the First Amendment. And it is crucial for us to consider the particular context in which this intolerance arises on our respective campuses, what it says about our community, and how we react to it in recognition of the centrality of our ongoing relationship with that community.

3. Christina E. Wells, Enoch H. Crowder Professor of Law, University of Missouri School of Law, Opening Remarks at the Center for the Study of Dispute Resolution Symposium: The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes (Oct. 27, 2017).

4. Baishakhi Banerjee Taylor, Dean of Students and Assistant Professor, Middlebury College, Narratives and Outcomes Panel at the Center for the Study of Dispute Resolution Symposium: The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes (Oct. 27, 2017).

5. *Id.*

6. *Id.*

7. See generally Jennifer Barneet Reed & Max Brantley, *Coulter, others to ‘Bless the Mic’ at Philander*, ARK. TIMES (Sep. 1, 2005), <https://www.arktimes.com/arkansas/coulter-others-to-bless-the-mic-at-philander/Content?oid=864713>.

8. See generally Walter M. Kimbrough, *When Debate Dies, Who Loses?*, THE CHRON. OF HIGHER EDUC. (Mar. 23, 2017), <https://www.chronicle.com/article/When-Debate-Dies-Who-Loses-/239563>.

II. CONTEMPORARY CHALLENGES OF THE FIRST AMENDMENT

Today's students do not revere the First Amendment to the degree students did decades ago. It was, after all, the First Amendment that students cited during the Free Speech Movement of the 1960s as their authority for the right to speak out on college campuses.⁹ And a forceful part of their argument was that everyone, regardless of viewpoint, had the right to speak.¹⁰ But today many students believe the interest in not-being-offended is of equal or greater value than the interest of free expression, and many also believe that civil disobedience is a right that shields them from discipline and arrest.

As Dr. Taffye Clayton and Julie Huff from Auburn University noted in their presentations, which recounted their institution's experience with Richard Spencer speaking on campus, the event created a "forced tension" that pitted a variety of interests that ideally are harmonious: Free speech; diversity and inclusion; community and engagement.¹¹ Although the right of free speech drove the event forward, courtesy of a court order that compelled Auburn to allow the speech on First Amendment grounds, the real work of the campus was to engage its community on Auburn's mission, and how the institution and its community should build on its mission in response to a controversial event on campus. In this context of an institution permitting unpopular speech on campus, the First Amendment poses a challenge for institutions across the country, not the traditional cornerstone of the university as the public square in which the free exchange of ideas is central.

As Dean Jennifer Brown of Quinnipiac University noted in her presentation (and from whose phrase I borrowed the title of this article), this "forced tension" can run too deep, and there may not be common ground on which we can reconcile the competing interests.¹² Although we must continue to hold close to the rights and principles of the First Amendment, and they should inform our thinking about campus debate, the First Amendment is unlikely, as Professor Wells noted, to provide us answers in conflict resolution.¹³ Or as Professor Robert Post argued during his keynote address, as a matter of Constitutional law, the First Amendment does not bind public or private universities unless they choose to be bound.¹⁴ Although virtually all institutions have made the choice to be bound, they can still consider what the terms of their obligations are, and how those terms fit with their missions and communities.

9. Mario Savio, Political Activist, Sit-in-Address on the steps of Sproul Hall (Dec. 2, 1964) (recording available in the Pacifica Radio Archives).

10. See Robert Cohen, *What Might Mario Savio Have Said About the Milo Protest at Berkeley?*, THE NATION (Feb. 7, 2017), <https://www.thenation.com/article/what-might-mario-savio-have-said-about-the-milo-protest-at-berkeley/>.

11. Taffye Clayton & Julie Huff, Vice President and Associate Provost for Inclusion and Diversity & Office of the Provost, Auburn University, Narratives and Outcomes Panel at the Center for the Study of Dispute Resolution Symposium: The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes (Oct. 27, 2017).

12. Jennifer Gerarda Brown, Dean and Professor of Law, Quinnipiac University School of Law, Dispute Resolution Perspectives Panel at the Center for the Study of Dispute Resolution Symposium: The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes (Oct. 27, 2017).

13. Wells, *supra* note 3.

14. Robert C. Post, Sterling Professor of Law, Yale Law School, Keynote Remarks at the Center for the Study of Dispute Resolution Symposium: The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes (Oct. 27, 2017).

III. WE REALLY ARE BETTER OFF THAN THIS TIME LAST YEAR

What Dean Brown also noted, and which was a theme that ran throughout the presentations from Middlebury, Auburn, and Evonnia Woods from the University of Missouri, is the imperative of focusing on the centrality of ongoing relationships.¹⁵ The disputes of the past year have existed in emotional, societal, and political contexts of the moment, and any institution that acts primarily in reaction to those contexts, i.e., without a view centered on the relationships it has with its community and its mission, is bound to suffer in reputation and institutional integrity.

The University of Virginia's message to its community in the days preceding the conflicts in September over Confederate monuments and white supremacists did not effectively communicate that the administration understood that its relationship with its community, and the relationships among its community members, were the university's primary concerns.¹⁶ Instead, the messages focused on safety issues in light of the event's potential for violence.¹⁷ What the administration missed in crafting its message was incorporating an understanding of the university's historical struggle with issues of race, the fact that the two most prominent organizers of the white supremacists were in fact Virginia graduates, and the painful symbolism the marchers and their cause presented to the university community. As one recent graduate who protested against the white supremacists explained, she disregarded the university's calls to avoid the event based on safety concerns, because staying away was acquiescing in the intolerable principle that a neo-Nazi rally could go unimpeded on the grounds of her alma mater. Instead of remaining at home, she faced the torch-bearing marchers at the foot of Thomas Jefferson's statue. The administration was powerless to prevent much of the violence that occurred, but it could have done far more to connect with its community, to communicate its abhorrence to what the First Amendment gave the marchers a right to do.¹⁸

At the University of Florida in October, by contrast, the university's message was clear that it valued free speech, but that its community condemned the type of racism and intolerance Mr. Spencer preached. The university created a meticulous website that anticipated the frustration and anger its community would feel: the website endeavored to identify and answer all questions pertaining to Mr. Spencer's appearance on campus, from legal issues, to university policy, to alternative events, to resources for those affected by the event.¹⁹ And to enforce its message that the university was focused on its relationships with its community in how it was handling the situation, Florida's President Kent Fuchs emphasized that although the university was legally obligated to allow the speech to go forward, he did not stand with Mr. Spencer, but with those who deplored his "vile and despicable" message.²⁰

15. Brown, *supra* note 12.

16. See Frank M. Conner, III, Rector, Univ. of Va., Remarks to the Univ. of Va. Bd. of Visitors (Sept. 14, 2017) (transcript available at <https://news.virginia.edu/content/rector-addresses-universitys-history-and-its-place-current-events>); Teresa A. Sullivan, President, Univ. of Va., Remarks to the Univ. of Va. Bd. of Visitors (Sept. 14, 2017) (transcript available at <https://news.virginia.edu/content/sullivan-stresses-safety-urges-focus-defending-values-addresses-1921-kkk-pledge>).

17. *Id.*

18. *Id.*

19. FREE SPEECH & CONTROVERSIAL SPEAKERS, <https://freespeech.ufl.edu/>.

20. W. Kent Fuchs (@PresidentFuchs), TWITTER (Oct. 19, 2017, 10:35 AM), <https://twitter.com/PresidentFuchs/status/921067366271864833>; see Letter from Kent Fuchs, President, Univ. of Fla., to Univ.

Throughout CSDR's Symposium, the presenters explored this overarching theme of the centrality of ongoing relationships. Evonnia Woods explained how the University of Missouri took a deep dive into its policies on freedom of expression with the view that it should be a community project, and with the goal that the result should be policies that not only reflected the institution's values, but policies the university's community could read and understand as such.²¹ Dr. Clayton and Ms. Huff explained Auburn's ongoing efforts to engage its community in understanding the university's mission and the indispensable role all of its members played in the success of that mission.²²

And the final panel, the Stakeholders Roundtable, explored how the practitioner-panelists (police, attorneys, academics, civil libertarians) would handle a variety of hypotheticals and scenarios.²³ These panelists presented a common viewpoint that although campus disputes may sometimes get out of hand, and may have negative security and legal consequences no matter what an institution does, an institution that focusses on the long-term success of its mission will be successful in its handling of the impacts of the crisis. A year ago these same panelists—myself included—would have presented with far less confidence regarding how institutions should prepare for and react to the types of First Amendment issues we have witnessed on college campuses. There would have been frustrated questions from the audience and far fewer satisfactory responses from the panel. If any institution remains unclear about how to address these types of disputes on campuses, a review of the symposium would be a great place to start.

In the Winter and Spring quarters of 2017, the University of California, Davis, where I was the Chief Counsel at the time, had a series of controversies regarding the appearance of Milo Yiannopoulos on campus, as well as other events that presented controversial political and social issues.²⁴ The administration did many things well and learned many lessons for those things it did not do as well. After the tragedy at the University of Virginia, Davis' Chancellor, Gary May, issued a powerful, personal statement to the Davis community that addressed the multitude of issues he knew would be triggered for the Davis community.²⁵ Toward the end of his message, he quoted Dr. Martin Luther King, Jr. (who himself was paraphras-

of Fla. Cmty. (Oct. 10, 2017) (on file at <http://statements.ufl.edu/statements/2017/10/personal-message-from-president-fuchs.html>).

21. Evonnia Woods, Ph.D. Candidate, University of Missouri, Department of Sociology; Member, MU Ad Hoc Joint Committee on Protest, Public Spaces, Free Speech, and the Press, Narratives and Outcomes Panel at the Center for the Study of Dispute Resolution Symposium: The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes (Oct. 27, 2017).

22. Clayton & Huff, *supra* note 11.

23. Stakeholders Roundtable at the Center for the Study of Dispute Resolution Symposium: The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes (October 27, 2017).

24. See Kristine Phillips, *Protests Derail UC Davis Event with Breitbart's Milo Yiannopoulos, 'Pharma Bro' Martin Shkreli*, WASH. POST (Jan. 14, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/01/14/protests-derail-uc-davis-event-with-breitbart-s-milo-yiannopoulos-pharma-bro-martin-shkreli/?utm_term=.c546e011e8f6; Ben Poston & Shelby Grad, *UC Protestors shut down Milo Yiannopoulos talk, sparking free speech debate*, L.A. TIMES (Jan. 15, 2017), <http://www.latimes.com/local/lanow/la-me-milo-yiannopoulos-uc-davis-20170115-story.html>.

25. Dave Jones, *Chancellor May: 'Intolerance Will Not Win'*, DATELINE UC DAVIS (Aug. 22, 2017), <https://www.ucdavis.edu/news/chancellor-may-intolerance-will-not-win/>.

ing Theodore Parker, the 19th century transcendentalist): “The arc of the moral universe is long, but it bends towards justice.”²⁶ Dr. King understood the long view, and Chancellor May echoed its importance in the centrality of our institution’s ongoing relationships.

26. *Id.*