

2018

## Four Questions About Free Speech and Campus Conflict

Jennifer Gerarda Brown

Follow this and additional works at: <https://scholarship.law.missouri.edu/jdr>



Part of the [Dispute Resolution and Arbitration Commons](#)

---

### Recommended Citation

Jennifer Gerarda Brown, *Four Questions About Free Speech and Campus Conflict*, 2018 J. Disp. Resol. (2018)

Available at: <https://scholarship.law.missouri.edu/jdr/vol2018/iss2/11>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Journal of Dispute Resolution by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact [bassettcw@missouri.edu](mailto:bassettcw@missouri.edu).

# Four Questions About Free Speech and Campus Conflict

*Jennifer Gerarda Brown*<sup>1</sup>

## I. INTRODUCTION

As I ponder the issues raised by free speech conflicts on university campuses and the difficult balance that must be achieved between the preservation of a respectful learning community and free and open discourse (especially when that discourse includes ideas that are racist, sexist, homophobic, Islamophobic, anti-Semitic, or otherwise hateful), I am humbled to realize that much of what I think I know about dispute resolution may have limited applicability to this new context. I enter the discussion with some trepidation because I am painfully aware of my own lack of objectivity or neutrality. I'm a law school Dean, so I can easily adopt the perspective of administrators trying to keep students, faculty, and staff feeling safe and welcomed in an inclusive learning community, even if that means shutting down some forms of expression. I am a left-leaning, feminist, anti-racist, gay-rights activist, so it is easy for me to see the threat in speakers who would express views contrary to my own. I am also aware of my privilege as a white, cis, heterosexual woman who is educated, affluent, and reasonably secure in my world. I know that so many of the people most deeply affected by campus free speech controversies do not share my privilege.

As a law school Dean, I try to be aware of my privilege and I make efforts to listen to and stand with members of my community who are marginalized and historically underrepresented in educational institutions: People of color, immigrants (documented or not), LGBTQIA+ folks, people with disabilities, religious minorities, women, and people for whom these identities intersect. When I think about campus free speech, I can't really remove myself from the alliances I feel to them. Thus I begin this Essay with disclosure and some transparency about my position in the larger conversation. I am not neutral.

Rather than presenting theories or truths about free speech and campus conflict, this Essay instead offers four questions—derived from lessons I have learned as a

---

1. Dean and Professor of Law, Quinnipiac University School of Law.

teacher, scholar, and practitioner of dispute resolution—that might shed some light on best practices in campus free speech disputes. These are considerations one might want to take into account before deciding *who* may speak, *what* they may say, and *how* those questions ought to be answered in any given situation. The four questions are these:

- What is the context for this dispute?
- Do the parties have an ongoing relationship?
- Is it fair to ask for compromise and could the search for common ground do harm?
- Are the parties to this conflict members of a shared community?

In this Essay, I will examine each of these considerations in turn.

## II. CONTEXT MATTERS

Managing conflicts that arise from speech disputes on campus requires case-by-case analysis; absolute rules or rigid processes may lead to trouble. Frank Sander recognized the centrality of context nearly 40 years ago when he introduced the idea of the “Multi Door Courthouse,”<sup>2</sup> and since then dispute resolution theory and practice have been devoted to “fitting the forum to the fuss.”<sup>3</sup> A cottage industry has arisen in dispute resolution scholarship offering various taxonomies of conflict, isolating elements of disputes that must be weighed and synthesized in order to prescribe the optimal process for resolution. Sometimes the taxonomies emphasize the substantive law involved, such as Commercial Law, Partnerships and Corporations, Intellectual Property, or Tort law. Other taxonomies focus on the nature of the relationship between the parties involved, recognizing that processes appropriate for people who know each other well might be ineffective in relationships that are more temporary, attenuated, or hostile. Such taxonomies would highlight the nature of the relationships involved in conflicts, and might look something like this:

- Family
- Business
- Community/Public
- Strangers
- Parties Unknown or Difficult to Identify

Where do free speech disputes on college campuses fit into these (admittedly broad) relationship categories? I would argue that the category of conflict we consider in this Symposium potentially bears characteristics of some *or all* of these types of relationships.

**Family:** Universities are in loco parentis with respect to their students; students live in dormitories or “entryways” as quasi-families, led by resident assistants and sometimes deans or “heads” of the residences who have parent-like relationships

---

2. Address by Frank E.A. Sander at the National Conference on the Causes of Dissatisfaction with the Administration of Justice (Apr. 7-9, 1976), reprinted in Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976).

3. Frank Sander & Stephen Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 NEGOT. J. 49 (1994).

with the students in their care. Universities create “public squares” in which students must act as citizens striving for civil discourse, but they also run residence halls, where students form relationships, build expectations, and interact with staff and fellow students in a home-like, private space.

**Business:** Students are customers (as are their parents). In exchange for tuition, they reasonably expect both an educational product and ancillary services. Some universities focus on operational excellence with customer service in mind, seeking an elusive balance between quality and efficiency in areas such as registration, bill collection, or food service. These approaches can underscore the commodification of higher education and highlight the student as customer.

**Public:** Universities are communities and discrete spaces with a public life that needs sustenance through dialogue and transparency. Just as cities, counties, and other local governmental bodies employ deliberative democracy or consensus building to manage conflict over issues such as transportation or land use, universities might seek to identify stakeholders and create fora to discuss issues of local importance to university communities.

**Strangers:** Some campus free speech disputes are more like car crashes than family disputes. The parties in contention have never met before and will not interact in the future if they can avoid each other. They simply require help allocating rights and responsibilities because they have collided in ways that could be harmful to them or to third parties.

**Unknown or Difficult to Identify:** In some cases, it is difficult for a college or university to identify the disputants or to know who has an interest in the conflict, and this makes the relationships at stake very difficult to characterize. People who are not members of the college community, who have no interest in sustaining that community and who, indeed, wish to disrupt or weaken the college’s community bonds, may spark or foment conflict. They may conceal their identities in ways that prevent the college from making contact with them to negotiate ground rules for speech and engagement. What does the institution owe such people? Even if they can be identified, can or should they be brought to some metaphorical or actual “table” for negotiation when a potentially offensive speech event is planned?

Viewing campus free speech disputes in a way that clarifies the nature of the relationships at stake may increase understanding about participants’ goals and capacity for participation in dispute resolution.

To illustrate this, consider an incident that many have cited as evidence that college students are unable or unwilling to engage in civil discourse. In the fall of 2015, undergraduate students at Yale were filmed in a heated exchange with Nicholas Christakis, who at the time served as head of Silliman College on campus.<sup>4</sup> Christakis was defending his wife Erika Christakis, who sparked controversy when she criticized a letter from Yale administrators that discouraged students from wearing culturally appropriate or offensive Halloween costumes. Erika argued that the Yale administrators were being unduly paternalistic and, rather than discouraging offensive costumes, the university should encourage and trust students to confront their fellows when speech is offensive (including culturally appropriate or stereotyped Halloween costumes).

---

4. *Yale Students Confront Administrator over Halloween E-mail Response*, WASH. POST (Nov. 9, 2015), [https://www.washingtonpost.com/video/national/yale-students-confront-administrator-over-halloween-email-response/2015/11/09/f45fe516-86fb-11e5-bd91-d385b244482f\\_video.html](https://www.washingtonpost.com/video/national/yale-students-confront-administrator-over-halloween-email-response/2015/11/09/f45fe516-86fb-11e5-bd91-d385b244482f_video.html) (depicting the climax of this confrontation).

Many students on campus were offended by Erika's letter because they felt that her *laissez-faire* attitude about offensive costumes unduly burdened students whose cultures were mocked or appropriated by the costumes, requiring them to explain to fellow students the error of their ways and undermining the university's attempt to set norms of decency and inclusion. In the video, a student tells Christakis that Erika's email and his defensive attitude were creating an unsafe space for students of color within Silliman.<sup>5</sup> "In your position as master it is your job to create a place of comfort and home," the student says. "By sending out that email, it goes against your position." When Christakis responds, "No, I don't agree with that," the student explodes in anger, "then why the f\*\*k did you accept the position?" As the video went viral on social media, many decried the student's behavior, calling her a "cry-bully," and describing the student group as "snowflakes" and spoiled children unwilling to undertake the hard work of civil discourse.

But this is where cell phones and social media may have misled, sowing confusion about the *kind* of conversation we were watching. The exchange, filmed outdoors on one of the Yale quads, looks like a debate in the public square. It would be easy to expect the participants to exchange ideas and arguments with detachment and objectivity, working together to find an optimal solution to a policy question about Halloween costumes. But what if this is more like a family dispute, one that would normally play out over the dinner table or in the living room rather than the public square? The outraged student's take down of Christakis makes clear that this is her view of the relationship, as she excoriates Christakis's failure to "create a place of comfort and home" for the students of Silliman. Christakis imagined that he and the students could discuss offensive Halloween costumes as an intellectual matter; his error was in failing to see that fulsome civil discourse in the *public* square is enabled (perhaps, only possible) when people are safe at *home*. He thought he was a Professor, but to the students he was something like a Parent. As a parent—or something like it—he betrayed them, exposed them to racism and white supremacy *in their own home*, and worse, he wouldn't hold himself accountable for that harm.

The video looks different if we see it not as a public debate between emotionally detached fellow citizens on an even playing field, but instead as an emotionally wrenching confrontation between a young adult and a dysfunctional parental figure who has exposed the child to harm. A public debate was not the right dispute resolution technique for this conflict; perhaps mediation in the family living room between Christakis and the students of Silliman College would have more effectively facilitated this cathartic confrontation. The video does not show the failure of free expression on Yale's campus so much as it suggests how poor Christakis's judgment was about the process and how tone deaf he was to the emotional tenor of the conversation he and his spouse had initiated.

This example illustrates the difference that context can make. Because the relationship between universities and the students they educate is complex, we should pause within any planning process to think about the elements of the relationship most salient in the given situation, and then consider dispute resolution techniques

---

5. *Id.* She also shouts, "Be quiet!" when Christakis attempts to cut her off mid-sentence. Some viewers may have been jolted by this student's assertion of her own right to speak without interruption, and the lack of deference she showed to an elder and professor. Other viewers were no doubt frustrated by Christakis's failure to hear her out before jumping in with his own position, and may have applauded the way she demanded her right to speak without interruption.

most appropriate for those relationships—whether family, commercial, political, or some combination of these.

### III. ONGOING RELATIONSHIPS MATTER

A crucial question to consider in conflicts around free speech on campus is whether the conflict involves an ongoing relationship. Will the parties to the conflict continue to interact after this encounter? We know that in many disputes, the presence of an ongoing relationship creates incentives to cooperate because the parties must “live with each other” in one way or another. In many divorces, shared custody and child support will require party cooperation. In business disputes, a contract may have been breached, but the parties may have several other deals together that they wish to preserve even as they manage the fallout from the breach. The fact that the parties must deal with each other in the future can create incentives in the present to handle the conflict efficiently and fairly for the sake of the larger relationship.

I came to understand this point in a particularly powerful way in the spring of 2006, when I taught an ADR class at Georgetown Law. Bongekile Nxumalo, an LLM student from Swaziland enrolled in the class, shared her experience in her home country designing victim-offender dialogue when perpetrators of sexual assault prepared to return to their villages after trial or incarceration. Because the communities were very small, the perpetrators’ and survivors’ families almost always knew each other, and disassociation was not an option in village life. Therefore, the parties had particularly strong incentives to engage in dialogue, if only to set the ground rules for their ongoing coexistence in a shared community. Ms. Nxumalo’s experience was a strong antidote to the skepticism the class had been expressing about mediation in criminal cases (a skepticism I had fueled, based upon my own scholarship related to victim-offender mediation in the United States).<sup>6</sup> Nxumalo helped to remind me and the rest of the class that an ongoing relationship—especially one embedded in a community of families and neighbors—can create strong incentives to negotiate the terms of coexistence, even when the parties must overcome violence and the violation of fundamental human rights in order to forge that agreement.

Moreover, the presence of an ongoing relationship can create options for resolution because whatever happened in the past that violated *rights*, the parties can craft an agreement for the future that protects and furthers their *interests*—if they can find a way to balance and reconcile those interests. Thus, university officials facing a free speech controversy may have greater success in convening a meeting for planning and problem solving between the parties to that controversy if those parties expect to live and work side by side in the future. If, on the other hand, one or more of the parties to the controversy see themselves as “one shot” players with no stake in future interactions, negotiated agreements are much more challenging to achieve.<sup>7</sup>

---

6. See generally Jennifer Gerarda Brown, *The Use of Mediation to Resolve Criminal Cases: A Procedural Critique*, 43 EMORY L. J. 1247 (1994) (arguing that “as currently structured and administered, victim-offender mediation disserves the interests of victims, offenders, and the state.”).

7. But even outsiders to a University might see themselves as something other than “one shot” players. They may have plans to return, with incentives to conduct themselves in the present in a manner that preserves future options for interaction. See *infra* at Section V.

This advises a kind of humility about the applicability of dispute resolution techniques to all campus free speech controversies. When a speaker (or those who would disrupt a speaker) have no expectation of or desire for future relationships with the university or the members of the university community, negotiated agreements or mediated remedies are unlikely to succeed. We should also recognize that for some speakers, given their history, their aims, or their relationship with institutions, rebellion will be the process they choose. Such speakers and groups may choose to exit approved processes and express themselves through civil disobedience or speech outside of approved boundaries, precisely because their point is to critique the approved processes. Resort to law—help from law enforcement or the courts—may be necessary. This is especially so because, as I will discuss in the next Section of this Essay, asking community members to compromise with some speakers may be so problematic that it is unwise even to ask it of them.

#### IV. COMPROMISE AND “COMMON GROUND” CAN BE COMPLICATED

When “one shot” outsiders come to a campus to delegitimize members of the community or disrupt the learning process, negotiating terms for their appearance will often be inappropriate. “Compromise” can be a dirty word for many participants in this sort of dispute, and looking too hard for “Common Ground” can distract from the core disagreement in ways that can be destructive, especially for historically oppressed or disempowered people. Hours, days, or months of constructive conversation may fail to change the individual hearts and minds of hateful speakers, and even if such conversations were successful, those who resist white supremacy, misogyny, homophobia, or anti-Semitism (to name but a few offensive messages proffered by some campus free speech promoters) might argue that they are more concerned with large scale, systemic change than with eliminating hatred, one bigot at a time.

Academic communities depend upon a bedrock understanding that all students have an equal entitlement to the education offered there. When a speaker undermines the identity, legitimacy, or safety of a group of students based upon personal characteristics like race, sex, religion, or sexual orientation, how can we possibly expect the undermined students to negotiate, and what could we expect them to concede? Speakers like Richard Spencer, Milo Yiannopoulos, and even Charles Murray wish to deliver messages that attack the very entitlement of some community members to inhabit the academic space as the speakers question the intelligence, work ethic, or morality of particular demographic groups (e.g., Women, African Americans, Jews, Muslims, or Immigrants). How do we “negotiate” with such speakers? Sometimes, negotiations are dangerous, both strategically and morally.

Take, for example, the controversy that arose when Hawk Newsome, an activist with Black Lives Matter of Greater New York, was protesting a pro-Trump rally and was, surprisingly, called up to the stage to address the crowd. His speech, caught on video, went viral (with more than 45 million Facebook views on the

“Now This” page).<sup>8</sup> Newsome sought to create common ground with his pro-Trump audience. For example, he insisted “I am an American. And the beauty of America is that when you see something broke in your country, you can mobilize to fix it.” This statement drew cheers from the crowd. He also said, “We are not anti-cop—we are anti *bad cop*.”<sup>9</sup> After his speech, audience members hugged him and took photographs with him, leaving Newsome to reflect on the power of conversation as a complement to protest. He earned praise from across the political spectrum<sup>10</sup> and international media attention.<sup>11</sup> However, he also attracted trenchant criticism from fellow Black Lives Matter activists and other analysts. Ijeoma Oluo, for example, wrote, “Let’s stop allowing ourselves to not only be distracted, but to be derailed by feel-good narratives that have us begging for the hearts and minds of individual racists instead of fighting the system that empowers them.”<sup>12</sup> Oluo argued that Newsome conceded too much even to be heard by the rally crowd:

[T]hey are having to showcase a certain set of behaviors in order to even be seen as human. They are having to highlight how they aren’t “like other black people” in order to even be heard. They have to be proud Americans, Christians, eloquent speakers, willing to shake hands with White Supremacists—all while White Supremacists in the audience scream that Eric Garner was a criminal who deserved to die.<sup>13</sup>

Oluo criticizes Newsome for wasting the opportunity he had to address an audience that has supported many policies and practices that sustain White Supremacy. She asks:

Is this what we’re fighting for? For individual racists to want to be our friends and give us hugs? It’s sure as hell not what I’m fighting for. I’m fighting for the destruction of the system of White Supremacy. I’m fighting to make it so that, even if you hate me because of the color of my skin, you don’t have the power to ruin my life because of it.<sup>14</sup>

Although this rally and Newsome’s speech did not occur on a college campus, it is a sobering reminder of the dangers that befall campus administrators who seek only to create common ground or compromise between controversial speakers, their supporters, and the students or others who might disrupt the events.

---

8. *Black Lives Matter Protesters Invited onto Stage at Pro-Trump Rally*, NOW THIS (Sept. 18, 2017), <https://nowthisnews.com/videos/politics/black-lives-matter-activist-speaks-at-pro-trump-rally>, for an edited version of the speech.

9. *See id.*

10. *See, e.g.*, Joe Cunningham, *Black Lives Matter Invited on MAGA Rally Stage*, REDSTATE (Sept. 19, 2017, 12:30 PM), <https://www.redstate.com/joesquire/2017/09/19/watch-black-lives-matter-invited-maga-rally-stage/> (“What happened on that stage is a very human movement, where good people made connections with other good people. This is the most positive moment we’ve had in our political culture in years . . .”).

11. *See, e.g.*, *Anti-Racism Activist ‘Spoke with Love’ at Trump Rally*, BBC NEWS (Sept. 29, 2017), <http://www.bbc.com/news/av/world-41448504/anti-racism-activist-spoke-with-love-at-trump-rally>.

12. Ijeoma Oluo, *Stop Trying to Feel Good About Trump Supporters and Get to Work*, THE ESTABLISHMENT (Sept. 19, 2017), <https://theestablishment.co/stop-trying-to-feel-good-about-trump-supporters-and-get-to-work-b408c07b095d>.

13. *Id.*

14. *Id.*



V. COMMUNITY MAKES A DIFFERENCE—IF ONLY AN ONGOING  
“COMMUNITY OF CONTENTION”

Precisely because Compromise and Common Ground are complicated—sometimes distracting and sometimes destructive, depending on the way speakers put students’ identities or legitimacy at stake—campus administrators should be mindful of their goals in even proposing a dispute resolution process to address a free speech controversy. If the goal is to maintain a safe and welcoming learning community for students, faculty, and staff, then it becomes necessary to determine who is, or who ought to be, a member of that community.

What are the shared values and alliances that would give disputants a basis for negotiating the terms of an agreement about a particular speaker’s event—both its medium and its message? The shared sense among disputants that “We’re all Americans” or “We’re all Human Beings” may not be sufficiently specific or focused to create the incentives or the opportunities for a deal. In contrast, “We all live on Frat Row” or “I will see you on Monday in Chemistry class” or “No one is anonymous on a campus of 1,000 students” may be enough to remind disputants of their shared environment—an environment they all have a stake in preserving as a community for learning, respect, and growth. Not all disputants in free speech controversies will feel a stake in that community, and when they don’t, it could be a sure sign that dispute resolution techniques are doomed to failure.

But we should not conclude that “community” is easy to define when it comes to free speech controversies. It is not always as simple as looking up the enrollment roster, the list of employees, or the tax payers within the town that houses a college or university. Sometimes “outsiders” become members of a community—at least what I would call a “community of contention”<sup>15</sup>—because they are repeat players who wish to preserve their rights to engage with the community in the future. This is admittedly a more ephemeral sense of community, but it can be very real both for those who are inside traditional definitions of the campus community and for those “outsiders” who wish to engage.

For example, when I was a law student at the University of Illinois, a certain “fire and brimstone” preacher would stand on a walkway outside the Student Union at lunch time and, in his own contentious way, attempt to save the souls of the students who passed through or gathered nearby.<sup>16</sup> Often students would engage with him to debate the sinfulness of, say, rock music or women wearing trousers. He was not a university student, professor, or staff member, but over time, he gained a kind of membership in this conversational community. Don’t get me wrong: he was obnoxious. I know I heard him say things that were sexist and homophobic, and I do not doubt that he would also have said things offensive to Jewish and Muslim students (not to mention many Christians). I suspect that few, if any, students

15. In research for this essay, I discovered that Leon Wieseltier has also used this phrase, and in a strikingly similar way. See Leon Wieseltier, *The Argumentative Jew*, JEWISH REV. OF BOOKS (Winter 2015), available at <https://jewishreviewofbooks.com/articles/1491/the-argumentative-jew/> (“The parties to a disagreement are members of the disagreement; they belong to the group that wrestles together with the same perplexity, and they wrestle together for the sake of the larger community to which they all belong . . . . A quarrel is evidence of coexistence.”).

16. It is possible that this preacher’s name was Jed Smock. On the other hand, I might have heard Jed’s predecessor; the genre is timeless. See Meral Aycicek, *Brother Jed May Give Preaching a Bad Name*, THE DAILY ILLINI (Oct. 24, 2016), <https://dailyillini.com/features/2016/10/24/brother-jed-gives-preaching-bad-name/>.

found their way to God through his ministrations. But he found a way, consistent with his beliefs, to address his audience within certain boundaries, and as far as I know, he was never chased off of the campus. Perhaps because he wished to return to campus on a daily or monthly basis, he gained a sense of investment in the campus community and thus, may have been amenable to negotiations with university administrators over medium (where to stand, or whether to use a megaphone) and even message (no threats of physical violence or condemnation of specific students in his presence).<sup>17</sup>

In a similar way, some anti-gay protesters have become sufficiently regular in their appearances at Pride parades and festivals that they, too, have become repeat players with whom cities and festival organizers can negotiate. As I have argued elsewhere, mediation may offer some benefits in cases purporting to pit “religious liberty” against “gay rights,” especially when potentially disruptive speakers are identifiable and terms exist that are subject to negotiation, such as location, duration, or sound amplification.<sup>18</sup> Indeed, the Community Relations Service (CRS) of the US Department of Justice has managed to “reduce tension and the likelihood of violence” in free speech situations fraught with danger, such as the planned 1978 march by Neo-Nazis in the Chicago suburb of Skokie.<sup>19</sup> In such cases, the goal is not to resolve the underlying disagreements between speakers and audience members, but to negotiate time, place, and manner of offensive speech in ways that prevent the conflict from escalating into violence. As Richard Salem has explained, however, even mediators as skilled as those in the CRS are challenged when interested parties refuse to negotiate or “bystanders” to the speech, difficult to identify and therefore not amenable to negotiation, are the ones most likely to erupt in violence.<sup>20</sup> In the Skokie case, disaster was averted when, through the intervention of the CRS, the Nazi group decided to move its march to alternative venues and away from Skokie, where the threat of violence was greatest. In some campus free speech cases, similar deals may be struck. In part, the success of these measures will turn on whether offensive speakers feel any sense of investment in the community they wish to address, and whether they have incentives to negotiate constraints on their event in order to preserve options for future interactions.<sup>21</sup> Thus, in some way, they

---

17. Actually, it is unlikely that such a preacher would agree to forego condemnation of specific students in his presence; this is their stock in trade. *See generally* THE CAMPUS MINISTRY USA, <http://www.brojed.org/cms/> last visited Mar. 26, 2018) (Brother Jed embraces “Confrontational Evangelism” and “open rebuke;” banner on website includes Jeremiah 48:10, “Cursed be he that doeth the work of the Lord deceitfully, and cursed be he that keepeth back his sword from blood”). *See* Brother Micah Armstrong, Friday September 15, 2017- University of Illinois - Champaign, Illinois, BROTHER MICAH (Sept. 23, 2017, 5:55 PM), <https://brothermicah.wordpress.com/2017/09/23/friday-september-15-2017-university-of-illinois-champaign-illinois-by-brother-micah-armstrong/>, for a recent account of preaching at Illinois from one Pentecostal minister.

18. *See* Jennifer Gerarda Brown, *Peacemaking in the Culture War Between Gay Rights and Religious Liberty*, 95 IOWA L. REV. 747, 816 (2010) (“Because the City, the event organizers, and the preacher-protesters must continue to deal with each other in this state of [constitutional] uncertainty, each may have some incentive to negotiate before future events transpire.”).

19. *See* Richard Salem, *Mediating Political and Social Conflicts: the Skokie-Nazi Dispute*, 10 SOC. PRAC. 151, 152 (1992).

20. *See id.* at 152, 154-56 (for moral and political reasons, none of the other parties would negotiate with Nazis and outside groups announced plans to travel to Skokie to confront the Nazis).

21. Even in the horrifying case of Charlottesville, Virginia, where a White Nationalist march in August 2017 resulted in the death of Heather Heyer, some repeat play was at work, as the White Nationalists returned to town eight weeks later for an abbreviated march and protest, and announced their plans to return in the future. Because these speakers plan to repeat their interactions with Charlottesville, they

may become—for limited purposes—members of a community of contention that can create opportunities for dispute resolution.

## VI. CONCLUSION

Even as I am inspired by Ijeoma Oluo’s commitment to eradicating systems that perpetuate White Supremacy and sobered by her admonition that attempting to change bigoted hearts and minds can be a waste of time that distracts from the larger enterprise, I am also moved when people provide models for the kind of conversation that opens understanding. Dylan Marron’s podcast, “Conversations with People Who Hate Me,” provides one such inspiring model.<sup>22</sup> Marron has posted a series of satirical YouTube videos called “Unboxing,” covering topics such as Privilege, Islamophobia, and Gun Violence.<sup>23</sup> Some of these videos have attracted extremely negative comments. In response, Marron has contacted people who post the most vitriolic comments and invited them to join him in recorded telephone conversations. In these conversations, even as he engages with and humanizes his adversaries, he will not just “agree to disagree” or let them off the hook. He surfaces their disagreements and asks questions to create understanding—explains his view and asks if they understand him. He is taking a free speech forum—comments on the internet, anonymous and trollish—and using technology to model what constructive conflict looks like, one on one, human to human.<sup>24</sup>

As I have listened to the “Conversations with People Who Hate Me” podcasts, it has struck me how quickly, in most cases, the strident, hostile comment writer is transformed into a thoughtful, sensitive (even if misguided) human being in the face of Marron’s openness and curiosity. David Brooks has also observed this phenomenon:

A lot of the fanaticism in society is electron-thin. People in jobs like mine get a lot of nasty emails, often written late at night after libations are flowing. But if we write back to our attackers appreciatively, and offer a way to save face, 90 percent of the time the next email is totally transformed. The brutal mask drops and the human being instantly emerges.<sup>25</sup>

---

may have some incentives to stay within the bounds of peaceful – albeit reprehensible – discourse. See Susan Svrluga, ‘We Will Keep Coming Back:’ Richard Spencer Leads Another Torchlight March in Charlottesville, THE WASHINGTON POST (Oct. 9, 2017), [https://www.washingtonpost.com/news/grade-point/wp/2017/10/07/richard-spencer-leads-another-torchlight-march-in-charlottesville/?utm\\_term=.84f17e525977](https://www.washingtonpost.com/news/grade-point/wp/2017/10/07/richard-spencer-leads-another-torchlight-march-in-charlottesville/?utm_term=.84f17e525977).

22. Dylan Marron, *Conversations with People Who Hate Me*, NIGHT VALE PRESENTS, <http://feeds.nightvalepresents.com/ConversationsWithPeopleWhoHateMe> (last visited Mar. 26, 2018).

23. Dylan Marron, *Unboxing with Dylan Marron*, YOUTUBE, [https://www.youtube.com/playlist?list=PLPGwHnW-HgFmsoN9ed2M9\\_ioZ0RwTOnBU](https://www.youtube.com/playlist?list=PLPGwHnW-HgFmsoN9ed2M9_ioZ0RwTOnBU) (last visited Mar. 26, 2018).

24. In his most recent *Conversations* podcast, Marron has assumed the role of mediator, facilitating a conversation between two guests who have “clashed online.” This new format may prove even more instructive for those of us in the dispute resolution field. See Dylan Marron, *Conversations with People Who Hate Me: Bigot Scum*, NIGHT VALE PRESENTS (Feb. 12, 2018), <http://feeds.nightvalepresents.com/ConversationsWithPeopleWhoHateMe>.

25. David Brooks, *How to Engage a Fanatic*, NEW YORK TIMES (Oct. 23, 2017), <https://www.nytimes.com/2017/10/23/opinion/engaging-fanatics.html>.

It is hard to know just who is listening to Dylan Marron or reading David Brooks, receptive to their messages of hope and reconciliation. Marron is taking an inherently retail-level project—dismantling stereotypes through one-on-one conversation—to a wholesale level by broadcasting the conversation to thousands of listeners. Through this amplification, perhaps Marron is finding a sweet spot between Ijeoma Oluo’s systemic anti-racist enterprise and Hawke Newsome’s individual persuasion. Certainly Marron gives thousands of listeners new ideas about ways to engage in civil discourse, even in the wake of hateful, insulting, or bigoted speech.

Back on campus, however, administrators must continue to look for ways to keep their communities safe, respect and honor members of those communities whose legitimacy may be questioned or threatened by controversial speakers, and (if they are public institutions) navigate the complex constitutional framework for free speech explored in this Symposium. The challenges are many. This Essay suggests four questions that, when answered, might guide the design of dispute resolution processes in these free speech conflicts:

- What is the factual and relational context for this conflict?
- Will the parties have an ongoing relationship?
- Is it fair to ask for compromise, and could the search for common ground do more harm than good?
- Are the parties to this conflict members of a shared community, if only a Community of Contention?

The answers to these questions will not complete the dispute resolution design process, but they might shed light on whether that design project is worth pursuing.