Controversial Social Media Activity
When Free Speech Causes Controversy
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What We’ll Cover Today

• Possible responses (both options and limitations) when dealing with offensive social media posts by students, admitted students, faculty and staff
  – Including the importance (and content/tone) of timely messaging in response to a social media incident

• Brief case studies mixed in illustrating the challenges posed depending upon content and context

When the Offensive Social Media Post is Made by a Student

“...I'm going to stand my ground tomorrow and shoot every black person I see.”

“...Some of you are alright. Don’t go to campus tomorrow.”

“We're waiting for you at the parking lots. We will kill you.”
Barber posted the videos on Instagram, one of them shared on the Monday holiday honoring Martin Luther King Jr. In the first, she is at a sink where she turns off the water, explaining, "We do not waste water...because of the poor people in Syria. We don't waste water. I love how I act like I love black people because I (expletive) hate (n-word) so that's really interesting but I just saved the (expletive) (n-word) by shutting that water off."

In a second video, Barber addressed the growing backlash and apparent threats to turn her into her sorority officials. "(N-word) (n-word) (n-word). I don't care if it's Martin Luther King Day. I'm in the south now (expletive) so everybody can (expletive) off. I'm from New Jersey so I can say (n-word) as much as I want."
"The impulse to punish Ms. Barber in response to what she said in that video is understandable as an emotional reaction. But if the First Amendment allows the state to punish someone for ugly remarks that are profoundly offensive, as in this case, then it acquires the power to do the same for other speech that is offensive to those in power.

In the 1960s, for example, Malcolm X and Eldridge Cleaver offended many by their characterizations of white people. Could a student praising, or re-circulating their views, have been expelled for deeply offending white people? If you can do one legally, you can do the other.

The standard of 'offensive' as a criterion for banning speech or punishing speakers always depends on who is deciding."

New York Civil Rights Coalition letter to University of Alabama President Stuart Bell — January 18, 2018
**POLL QUESTION:**
Should Ms. Barber have been summarily expelled by the University of Alabama?

- [ ] Yes
- [ ] No
Cyberbullying

Virginia Code § 18.2-152.7

Harassment by Computer

“If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten an illegal or immoral act, he is guilty of a Class 1 misdemeanor.”

Virginia Code § 18.2-186.4

Use of a person’s identity with the intent to coerce, intimidate, or harass

“It shall be unlawful for any person, with the intent to coerce, intimidate, or harass another person, or harass another person, to publish the person’s name or photograph along with identifying information as defined elsewhere or identification of the person’s primary residence address. Any person who violates this section is guilty of a Class 1 misdemeanor.”
POLL QUESTION:
Does the institution have a duty to protect students identified in social justice “vigilante” social media posts?

- Yes
- No

Applicants and Admitted Students Who Have Not Yet Matriculated

- Clearly state that offers of admission are conditioned upon honesty and no intervening evidence of inappropriate behavior
  - Harvard’s reservation of the right to rescind if “an admitted student engages in behavior that brings into question his or her honesty, maturity or moral character.”
- Clearly state your institutional values in the application and/or offer
- An applicant often has less of a “property interest” in the relationship than a matriculating student
  - The amount of due process required to terminate the relationship
Jimmy Galligan was in history class last school year when his phone buzzed with a message. Once he clicked on it, he found a three-second video of a white classmate looking into the camera and uttering an anti-Black racial slur.

Ms. Groves had originally sent the video, in which she looked into the camera and said, “I can drive,” followed by the slur, to a friend on Snapchat in 2016, when she was a freshman and had just gotten her learner’s permit. It later circulated among some students at Heritage High School, which she and Mr. Galligan attended, but did not cause much of a stir.
POLL QUESTION:
Do you favor the approach taken by the University of Tennessee or by Northwest Missouri State University?

[ ] University of Tennessee
[ ] Northwest Missouri State University
Now it’s time for a short break.
When the Offensive Social Media Post is Made by an Employee

A public employee’s interest as a private citizen in making public comment on a matter of public concern is balanced against the employer’s competing interest “in promoting the efficiency of the public services it performs through its employees.”

Pickering v. Board of Education (U.S. 1968)

When the challenged speech is made pursuant to the public employee’s official duties, and not made as a private citizen, no balancing test is applied.

Garcetti v. Ceballos (U.S. 2006)

On April 4, 2008, Michael Miller, Editor-in-Chief of the Toledo Free Press, wrote an editorial titled “Gay rights and wrongs.” In this piece, Miller implicitly compared the civil-rights movement with the gay-rights movement:

“As a middle-aged, overweight white guy with graying facial hair, I am America’s ruling demographic, so the gay rights struggle is something I experience secondhand, like my black friends’ struggles and my wheelchair-bound friend’s struggles.”

Crystal Dixon, Interim Associate Vice President for Human Resources at the University of Toledo, responded to Miller with her op-ed column “Gay rights and wrongs: another perspective.” Dixon did not identify her official position at the University. She rejected the comparison made by Miller between the gay-rights and civil-rights movements:

“As a Black woman who happens to be an alumnus of the University of Toledo’s Graduate School, an employee and business owner, I take great umbrage at the notion that those choosing the homosexual lifestyle are ‘civil rights victims.’ Here’s why. I cannot wake up tomorrow and not be a Black woman. I am genetically and biologically a Black woman and very pleased to be so as my Creator intended. Daily, thousands of homosexuals make a life decision to leave the gay lifestyle evidenced by the growing population of PFOX (Parents and Friends of Ex Gays) and Exodus International just to name a few . . . .”
"The public position you have taken in the Toledo Free Press is in direct contradiction to University policies and procedures as well as the Core Values of the Strategic Plan which is mission critical. Your position also calls into question your continued ability to lead a critical function within the Administration as personnel actions or decisions taken in your capacity as Associate Vice President for Human Resources could be challenged or placed at risk. The result is a loss of confidence in you as an administrator."

Termination Letter from University President Lloyd Jacobs to Interim Associate Vice President Crystal Dixon, May 8, 2008

Faculty generally have greater expressive freedom than staff/administrators
- Academic freedom (faculty)
- Policy enforcement (staff/administrators)

At private institutions, terms of a contract or institutional policy will govern
- Although these may be relevant at a public institution as well

Generally, the more responsibility one has, the greater the limits on expressive freedom

Court Upholds Firing of College Official Over Op-Ed Against Gay Rights

By Peter Schulte | October 9, 2007

A federal appeals court has upheld the University of Toledo's decision to fire a high-level human resources administrator who wrote a newspaper opinion column challenging the idea that gay people deserve the same civil rights protections as members of racial minority groups.

In a ruling handed down Monday, a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit held that the administrator's column, "immediately the very policies she was charged with creating, promulgating, and enforcing," and cannot be construed as merely a statement of her own views as a private citizen. The panel affirmed a lower court's decision to dismiss the administrator's lawsuit accusing the public university of violating her constitutional rights by firing her.
POLL QUESTION:

Did Dean Riley’s social media posts compromise his ability to perform his job duties as Dean of Students?

- Yes
- No

POLL QUESTION:

Would your response to the previous poll be different had Dean Riley made these social media posts while employed as Dean of Students?

- Yes
- No
The Philadelphia Inquirer

Another of McKelvey’s tweets read: “They did keep me from going to lecture with my students and they ‘consoled’ their classes with me this week.”

Later, Penn released a statement from Steven Fishbane, dean of the School of Arts and Sciences, saying that “contrary to some reports, the graduate student has not been removed from the program and we have and will continue to respect and protect the graduate student’s right to due process.”

“We are looking into the current matter involving a graduate student teaching assistant to ensure that our students were not subjected to discriminatory practices in the classroom and to ensure that all of our students feel heard and equally engaged.”

The Cavalier Daily

Lecturer who compared Black Lives Matter with KKK “has agreed to take leave”

Douglas Muir to issue separate statement to community

Students speak out against U.Va. lecturer’s comments

Muir has since “taken leave” from U.Va.

Muir breaks silence on Black Lives Matter comment

Lecturer apologizes for comparing movement to KKK

Muir returns to classroom after leave of absence

Decision to take leave was his own, lecturer says
POLL QUESTION:
Was Lecturer Muir’s social media post private conduct unrelated to his classroom teaching?
☐ Yes
☐ No

POLL QUESTION:
Was graduate Teaching Assistant McKellop’s social media post private conduct unrelated to her classroom teaching?
☐ Yes
☐ No

Hamzeh Daoud
3 hrs · 🌖
im gonna physically fight zionists on campus next year if someone comes at me with their "israel is a democracy" bullshit. :) and after i abolish your ass i’ll go ahead and work every day for the rest of my life to abolish your petty ass ethnosupremacist settler-colonial state
POLL QUESTION:
Did the student Resident Advisor’s Facebook post compromise his ability to perform his job duties for the university?

- Yes
- No

POLL QUESTION:
If the student was not a Resident Advisor, but merely a matriculating student, would disciplinary action through the student conduct process warranted?

- Yes
- No

When a Public Statement is Needed
In interviews, other UC National Fellows agreed with Friedman who said he is concerned that “ways of thinking and speaking are not only being criticized, but penalized on some campuses, where it is really needed to be.”  Many campuses are “frustrated, understanding, and penalize.”  UCLA’s Nohel Gaya, whose fellowship focused on helping student affairs staff respond appropriately to inciting incidents on campus, observed that when staff apply rules and general guidelines about what to do in response to different types of situations, the result can often lead to conflicts and division that leads towards the students.  It is not about rules and knowing what to do when it happens,” Gaya said.  “It’s about leadership.  How you protect and speak up for the people you’re trying to serve.”  The key is for campus leaders to actively foster conversations about the impact of speech, educating people about how their speech affects others.”  As former Editor-in-Chief of the ACD, he said, “You may have a First Amendment right to say something racist but people also have the right to call you a jerk.”  And leaders committed to free speech, an obligation to do so if the speech in question has harmed others (even demeans or vilified), etc. All agree that better guidance and training is needed to help campus leaders encourage productive discourse about tough issues.  Spero Johnson, Professor of Communication Studies at University of North Carolina, Greensboro, believes that leadership is key.  “People need to come out and say “I’m going to say something” to assert or counter an incident of harassment, have their back.  Jump in.”  Students and faculty need better education on very intentional tactics for “how to speak up and support one another.”  

- Be concise and speak in clear language
- Directly address the offending social media post
- Do not shy from using firm language in calling out/condemning messages of hate
  - “racist” / “deeply offensive” / “hateful”
  - “divisive” / “unfortunate” / “disappointing”
- Acknowledge the pain caused by the post
- Affirm institutional values
- Move swiftly / utilize social media channels
Resources and References

• Reclaiming Free Speech for Democracy and Human Rights in a Digitally Networked World, University of California National Center for Free Speech and Civic Engagement (2019-20 Fellows Research),
  https://freespeechcenter.universityofcalifornia.edu/fellows-19-20/mackinnon-
  research/

• Speaking Truth and Acting with Integrity: Confronting Challenges of Campus Racial Climate, American Council on Education (2018),
  https://www.acenet.edu/Documents/Speaking-Truth-and-Acting-with-
  Integrity.pdf
Now it's time for today’s key takeaways.

1. Offensive social media posts by students, faculty and staff are now a fact of life
2. Institutions need to reinforce core values and educate students (and others) on the impact of speech on others, especially the most marginalized
3. A public statement in response must be issued swiftly, be posted where students and others will quickly see it, and use clear, firm language in calling out hateful words
4. Institutions generally have more leeway when dealing with applicants and admitted (but not yet matriculating) students
5. Faculty have academic freedom, but it's not limitless
6. Administrators/staff have less expressive freedom, particularly the more responsibility they exercise

Now it's time for the Q&A.

Q&A Session

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Please take a brief survey about this webinar: [https://www.surveymonkey.com/r/ZLZH3GF](https://www.surveymonkey.com/r/ZLZH3GF)

If you have any additional feedback, please email us at info@paper-clip.com.

Thank you for your participation,