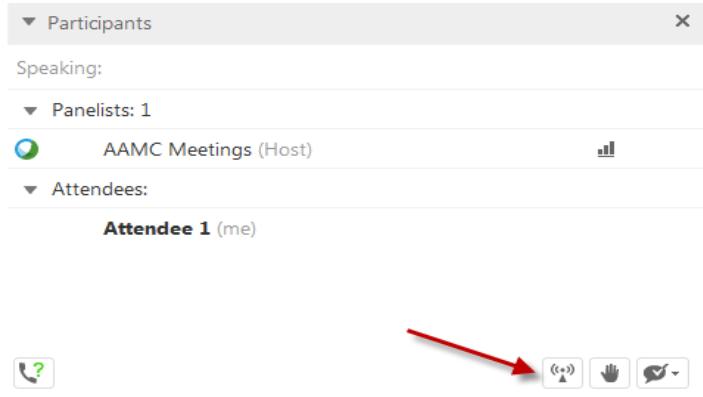


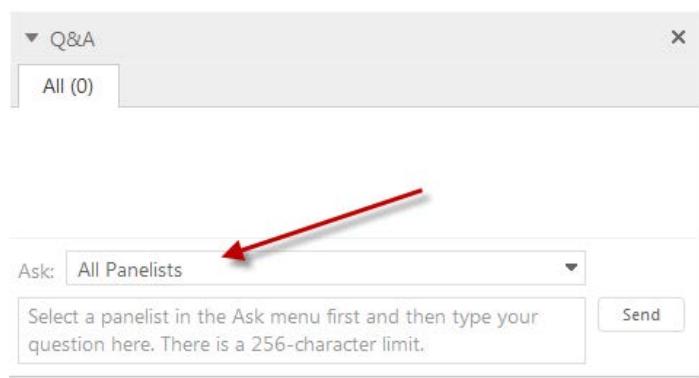
# Housekeeping

## Audio:

- You will not hear audio until the webinar begins.
- Please make sure your computer speakers are on and the sound is turned up to hear the audio.
- If you still have no sound once the webinar starts, please click on the audio broadcast icon (  ) located in the Participants Panel on the right hand side of your screen.



## Questions:



- Please use the Q&A panel located on the right side of your screen to submit questions during the webinar. Send to "All Panelists".

If you experience technical or audio issues, please send a message through the Chat panel to "AAMC Meetings".



Tomorrow's Doctors, Tomorrow's Cures

---

Learn

---

Serve

---

Lead

# Free Speech in the Landscape of Diversity

July 18, 2017



Association of  
American Medical Colleges

# Panelists

David McIntosh, Ph.D. (Moderator)

Associate Dean for Urban Health and Chief Diversity Officer

University of Louisville School of Medicine

Cynda Johnson, M.D, MBA

President and Founding Dean

Virginia Tech Carilion School of Medicine

Dan Wilkerson, J.D.

AAMC Legal Consultant

Vice President, University Counsel and Secretary, Board of Regents

University of Colorado, 2007-2012

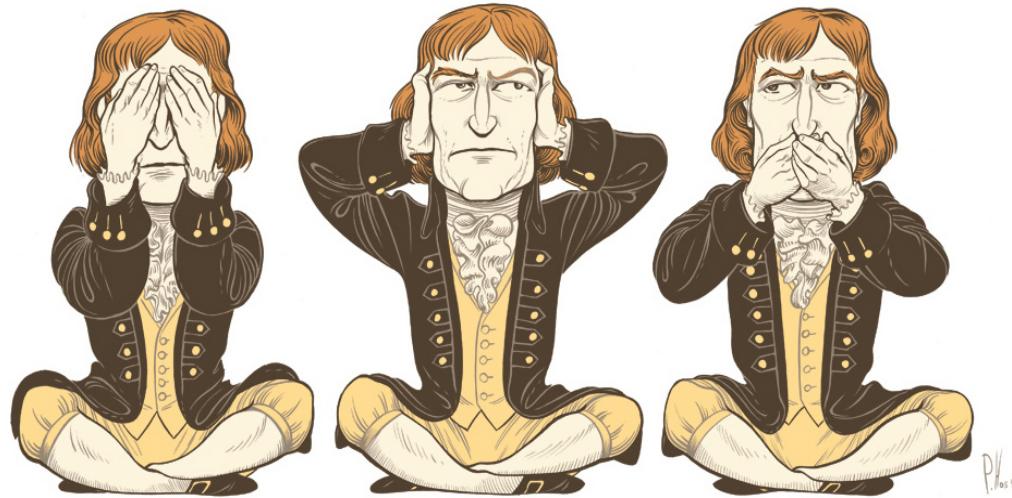
# Free Speech on Campus Incidents

- Oklahoma State University (twice in a week) and Northern Arizona University (white students post a picture to social media wearing blackface)
- Indiana University, University of Oklahoma, Southern Methodist University, University of California – San Diego, University of Texas – Austin, American University, and several other institutions (white supremacist and/or anti-Muslim, Anti-Semitic posters, graffiti, and symbols (such as a noose) appear on campus)
- University of California – Berkeley (1500 students protest of Milo Yiannopoulos)
- Middlebury College (400+ students protest of Charles Murray, author of the 1994 The Bell Curve)
- Texas A&M University (hundreds protest Richard Spencer and thousands attend an alternate event and alternate speakers)

# **Questions that Leaders Must Confront**

- Are there limits to free speech? What does this mean for public/private medical schools?
- What can institutional leaders do legally to ensure a safe and equitable environment for all?
- What should institutional leaders do to prepare for a free speech crisis?

# FREE SPEECH IN THE LANDSCAPE OF DIVERSITY



# **LEGAL CONCEPTS OF FREE SPEECH UNDER THE FIRST AMENDMENT**

**AND**

**FREEDOM FROM DISCRIMINATION  
BASED ON RACE, COLOR OR NATIONAL ORIGIN**

**Daniel J. Wilkerson J.D.**

# THIS IS NOT EASY . . .

- FIRST AMENDMENT LAW IS COMPLEX AND DYNAMIC, ESPECIALLY IN A UNIVERSITY CONTEXT
- NON-DISCRIMINATION UNDER THE CIVIL RIGHTS ACT OF 1964 IS ALSO COMPLICATED AND NUANCED



# First Amendment

To the U. S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the government for a redress of grievances.

# SCHOOL AND UNIVERSITY FREE SPEECH CASES



# *Tinker v. Des Moines Independent Community School District (1969)*

“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate . . . . [S]chools may not be enclaves of totalitarianism.”



# *Parish v. Bd. Of Curators of the University of Missouri (1973)*



. . . the mere dissemination of ideas -- no matter how offensive to good taste -- on a state university campus may not be shut off in the name alone of "conventions of decency."

# *R.A.V. v. City of St. Paul (1992)*

Hate speech statute prohibited speech or conduct which “arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender . . . .” Although speech which constitutes “fighting words” is not protected by the First Amendment, this statute does not ban all fighting words, but only certain words because of their content.



# SPEECH CODES ARE HARD TO DEFEND UNCONSTITUTIONALLY VAGUE AND OVERBROAD

- University of Michigan: 1989
- University of Wisconsin: 1991
- Shippensburg State University: 2003
- San Francisco State: 2007
- Temple University: 2008



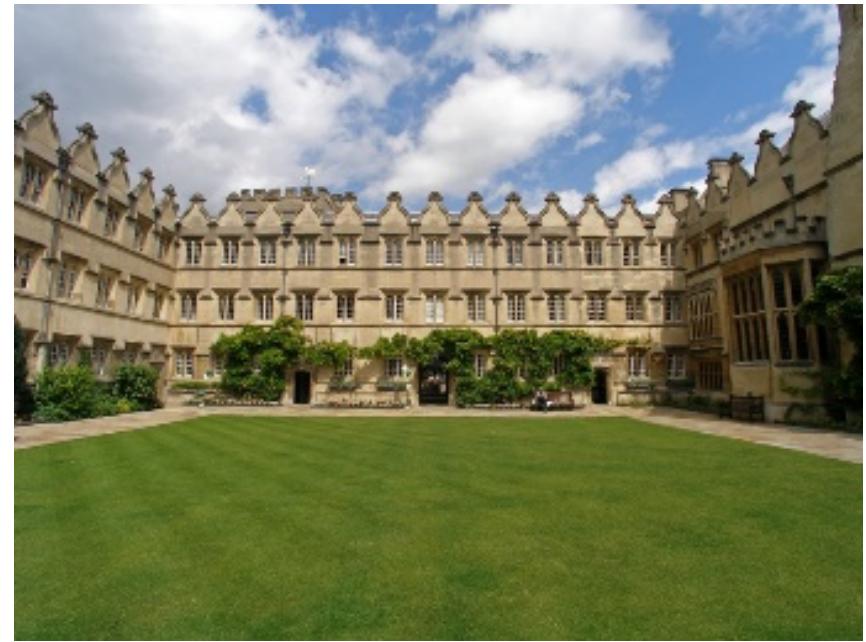
# FREE SPEECH ZONES:FORUM MATTERS



Photo Credit: Luke Gattuso (CC BY-NC 2.0).

# TRADITIONAL PUBLIC FORUM

- Public parks and sidewalks, places for “time immemorial” held in trust for the public.
- University Quad or Flagpole
- Strict Scrutiny: Time, place and manner restrictions narrowly tailored to a significant governmental interest



# LIMITED OR DESIGNATED PUBLIC FORUM

- Areas not traditionally public forums, may become a limited or designated public forum if opened up for that purpose, like a town hall.
- University Auditorium
- Intermediate Scrutiny: Time, place and manner restrictions must serve a compelling governmental interest



# NON-PUBLIC FORUM

- Military bases and airports, where the government acts as a proprietor, managing its internal operations.
- University Laboratory
- Reasonable Interest: Restrictions on access and content of speech must only be reasonable to advance a governmental interest.



# THE FIRST AMENDMENT IS DIFFICULT ON A PUBLIC UNIVERSITY CAMPUS

- Forum Analysis is a challenge because most universities have all types
- Courts are inconsistent in application of forum analysis
- Different tests apply to student speech versus non-student speech
- Universities are inconsistent in application of their own policies



# CIVIL RIGHTS ACT OF 1964

## TITLE VI



No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (42 U.S.C. Section 2000d)

# OFFICE FOR CIVIL RIGHTS (OCR) U.S. DEPARTMENT OF EDUCATION



# HOSTILE ENVIRONMENT HARASSMENT

- Harassing conduct based on race or national origin
- Harassing conduct is sufficiently severe, pervasive or persistent to deny or limit the ability of an individual to participate in, or benefit from the services, activities, or privileges provided by the school



# WHAT IS HARRASSING BEHAVIOR?

- Verbal, written or graphic abuse:
  - Racial slurs, taunts, jokes, insults, demeaning or stereotyping comments or cartoons, pictures
- Threats
- Physical Assaults



# ACCORDING TO OCR:

- Title VI is intended to protect students from discrimination, not regulate the content of speech.
- Title VI regulations are interpreted consistent with the requirements of the First Amendment and all actions taken by the OCR must comport with the First Amendment.



# THE DETERMINATION OF WHETHER CONDUCT CONSTITUTES A HOSTILE ENVIRONMENT IS BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

- Context
- Nature (Physical, verbal, etc.)
- Scope
- Frequency
- Duration
- Location
- Persons Involved



# SCHOOL'S RESPONSIBILITIES

- Exercise reasonable care to ensure that students are not subject to racial discrimination including racial harassment
- Once on notice, a school has a legal duty to take reasonable steps to eliminate discrimination and/or harassment
  - Reasonableness, timeliness, effectiveness
  - Redress specific problems experienced
  - Calculated to prevent recurrence
  - Designed to prevent retaliation



# WALKING THE TIGHTROPE



# YOUR JOB AS A MEDICAL SCHOOL LEADER

Balance Constitutionally protected Free Speech with Statutorily guaranteed freedom from discrimination and/or harassment

- Know your policies on Free Speech and Non-Discrimination/Harassment
- Involve your University Counsel early and often
- There is no textbook solution
- Silence from leadership is almost never the right response to problematic speech



# FREE SPEECH IN THE LANDSCAPE OF DIVERSITY





- Unique public-private partnership
- Addresses the need for research-competent physicians who can translate research from bench to bedside and community
- Four *value domains* interwoven throughout 4-year curriculum: basic science, clinical science, research, and interprofessionalism
- Patient-centered learning
- Small class size—42 students

**Are there strategies for handling difficult  
free speech issues (problematic/hostile  
signs, statements, or speakers) that  
reaffirm and support underrepresented  
students while not violating the  
First Amendment?**

## **1. Acknowledge the negative impact of insensitive, bias-related speech and incidents.**

- M1, M3 orientations
- Diversity Development Institute
- Student Wellness Program

## **2. Ensure swift response from school leadership.**

- Statement from VTCSOM Leadership
- Statement from Virginia Tech President Tim Sands

## **3. Provide opportunities for constructive debate.**

- Merits of different viewpoints
- Diversity of perspectives is essential to advancement of knowledge.

## **4. Empower students to speak up.**

- Open Forums, #VTCUnfinished, conversations about difference and identity
- Lunch and Learns

## **5. Publicize ways to report mistreatment, unprofessional behavior or other climate-related concerns**

- One45, evaluation system for students to academic affairs dean
- The BEACON, anonymous submission to vice dean
- Blackboard, anonymous submission to student affairs dean
- Dean's Learning Environment Advocacy Committee

**What can medical school leaders do to  
ensure that those who exercise their First  
Amendment rights are not harming  
members of the community  
(explicitly or implicitly)?**

## **1. Promote proactive communication**

- Core Values
- Professionalism

## **2. Promote inclusion**

- Educate community on various perspectives, opposing views; incorporate issues related to difference and health disparities into curricula; inclusive recruitment, admission and hiring practices; establish safe spaces on campus

### **3. Facilitate civil discourse and engagement**

- Interprofessionalism Domain helps students learn to serve, work with and respect others' roles in health care.

### **4. Encourage & challenge multiple perspectives**

- Encourage an environment that facilitates expression of many viewpoints without implying agreement or endorsement ; yet,
- Speak up when perspectives do not align with core values of school and medical profession.



# Virginia Tech Carilion School of Medicine

## Embraces Diversity



### EXPRESS YOURSELF

but always be  
Courteous and Respectful.

**What is diversity? Diversity is differences in:**

*age, gender, race, gender identity, ethnicity, education, religion, language, sexual orientation, ability, income*

**Why diversity? Because diversity fosters  
Improved Healthcare Outcomes.**

# Case Study #1

Your institution undergoes a campaign to print a series of signs, poster, decals, etc., that have the message “You Belong.” These messages are distributed throughout the medical school and are warmly received by seemingly everyone.

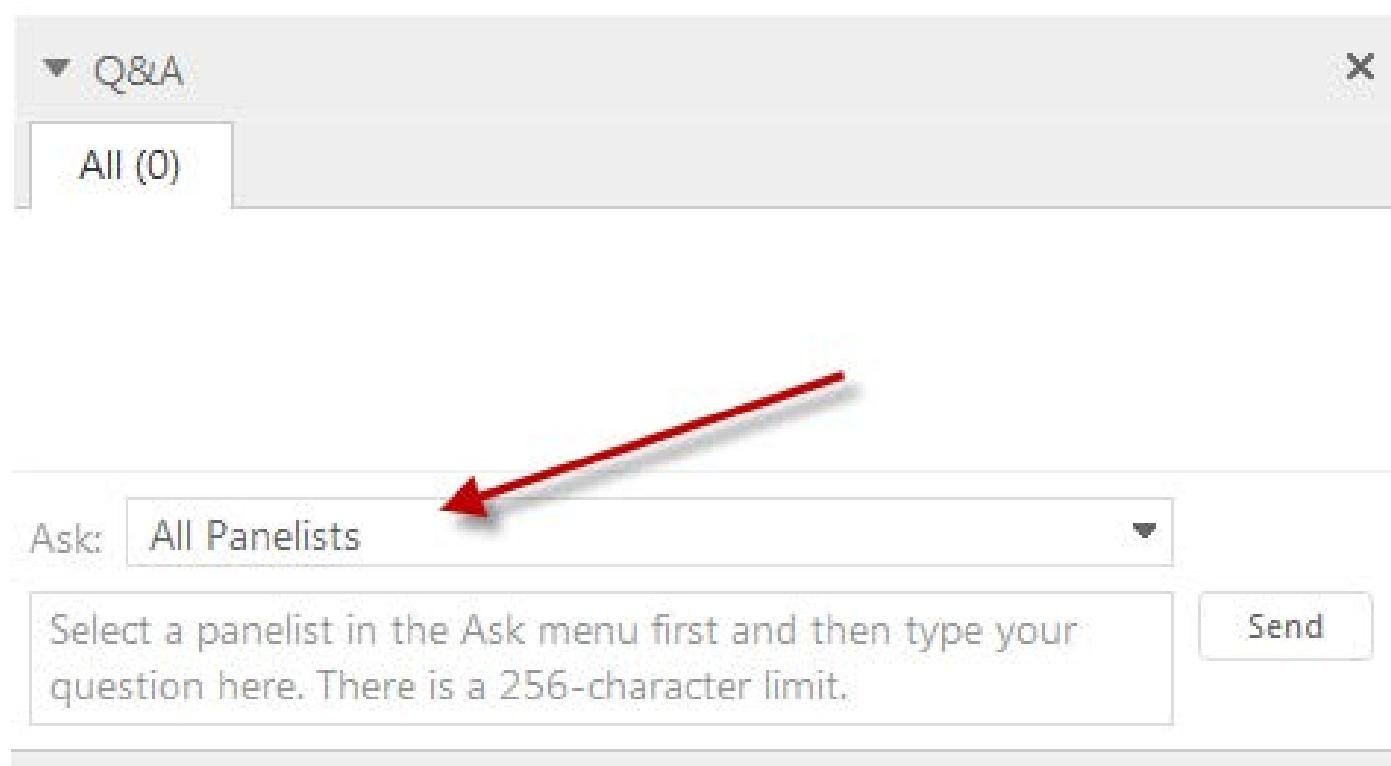
However, after the initial launch of the campaign, a white pride student group forms and starts to put signs alongside your posters. Their signs are not threatening, but create a chilly climate by violating the core values of the organization and the spirit of the campaign. What can institutional leaders do to respond to ensure this is an inclusive space?

## Case Study #2

A faculty interest group forms and goes through the recognition process so that they can host events on campus. The first event is a speaker that speaks critically of LGBTQ+ people. In particular this speaker describes the dangers to “traditional family values” when LGBTQ+ people have children and families. The LGBTQ+ students and faculty are feeling deeply marginalized by this message happening where they work/go to school. What can institutional leaders do to respond to ensure this is an inclusive space?

# Questions

Please use the **Q&A panel** located on the right side of your screen to submit your questions.  
Send to “All Panelists”.





Tomorrow's Doctors, Tomorrow's Cures

---

Learn

---

Serve

---

Lead

Association of  
American Medical Colleges