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VOICES ON CAMPUS

Academic and Free Speech in the Digital Age

Lawrence Friedman

New England Law | Boston professor and constitutional law expert Lawrence Friedman visited Bridgewater State on February 6, 2018, to lead a workshop among faculty members and administrators on the thorny subject of academic and free speech in today's digital age. Professor Friedman's presentation was organized by the Office of the Provost. His timely remarks are reproduced below.

Universities today are awash in speech. Social media platforms like Facebook and Twitter allow for more speech to be seen and heard by more members of a university community than at any time in history. Students, children of the digital age, have become expert in speech proliferation, both in creating content and sharing it. And professors have begun to appreciate the ways in which social media can be used to enhance teaching and promote scholarship.

We are also living in a time in which students express emotional sensitivity regarding many controversial issues. Where in years past faculty might reasonably assume that students would engage in the give and take of classroom discussions in the spirit of intellectual inquiry, today a wide range of topics have become fraught. Neither are students immune from the extreme political partisanship by which Americans now distinguish themselves from one another. The Internet can supply students with as much confirmation bias as they care to consume, even as faculty make efforts to instill in them an appreciation for perspectives other than their own.

These phenomena – speech proliferation, heightened sensitivities, hyper-partisanship – intersect in ways that pose challenges to institutions of higher education. Their intersection increases

the possibility that students may be alienated by academic discussions and scholarly opinions that just a few years ago would have seemed unremarkable. And to the extent these students broadcast their disenchantment via

social media channels, they may attract attention from individuals and groups outside the university who target particular professors to score political points with their allies.

Such targeting has never been easier. In addition to enabling speech proliferation, digital communication diminishes the distance between public and private information. There are few places today where any of us can go and remain unobserved: we leave digital pieces of ourselves everywhere, and the courts have long adhered to the principle that no reasonable expectation of privacy lies in information voluntarily communicated. Somewhere on the Internet is personal information about each of us – including, perhaps, that intemperate political statement posted or tweeted years ago, just waiting to be found and, potentially, exploited. The professoriate is particularly vulnerable. As Megan Condis, who teaches English at Austin State University, put it in a 2016 piece in *The Chronicle of Higher Education*, in a sense all professors are “public intellectuals” now: the multiplying effect of digital publication allows us to connect with a wider audience, but it also makes us more likely to be found by those who take issue with something we've said.



This brings us back to the students. Neither I nor any of my colleagues at New England Law has been targeted through social media for our academic speech – at least not in a way that has attracted attention from the outside world. Not too long ago, though, in the days before Facebook and Twitter were ubiquitous, some students in my constitutional law class objected to a hypothetical I derived from the infamous Supreme Court decision, *Korematsu v. United States*. The Court in *Korematsu* upheld, on questionable grounds, the

experience: professors seeking to train professionals to deal with individuals facing real-world problems must expose their students to those problems. Students later expressed surprise at this statement. This says something about their approach to learning in an environment ostensibly devoted to the critical interrogation of arguments, and I have little doubt that, had all of this transpired today, the students would have used social media outlets to voice their frustrations.

note that many students will likely have strong political and personal feelings about them. I urge students to try and set aside those feelings, to think critically about what the Supreme Court has done in each case and why, because purely emotional reactions may one day inhibit their ability to understand the law and therefore undermine the effective representation of their clients.

By striving to be clear about my intention to situate classroom discussions, wherever they may lead, within the school's educational mission, I hope to avoid alienating students who disagree with something one of their classmates or I has said. I hope as well that they see me as considering the merits of the contributions they make to discussions, and not as filtering those contributions through the lens of my own personal and political opinions. If these efforts are successful, my students may be better able to contextualize their own learning experiences—to understand that particular discussion points are not intended to antagonize them. And, by creating space in the classroom for students to be heard and respected, they may be less inclined to vent through Facebook or Twitter.

As university-level teachers, we enjoy the privilege of academic freedom and working in an environment where a diversity of viewpoints and ideas is expected and welcomed. Given both the possibilities and risks associated with speech in the digital age, exercise of this privilege may require more thinking about how we go about our teaching and writing than it has in the past. Quite understandably, that realization troubles many in the professoriate. In the end, time devoted to this thinking seems a small price to pay in fulfillment of our continuing obligation to further the educational mission of whatever institution of higher education we call home.

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constitutionality of the quarantine of Japanese-American citizens during World War II. The decision is still good law. I asked whether it could have been used to justify quarantining Americans of Middle Eastern descent after September 11, 2001. A few students took offense to both the hypothetical and the response of others in the class to it, which led them to organize a school-wide program on inflammatory speech in the classroom. They invited a law professor from another school to address the issue, and he concluded his remarks by declaring that students should accept that uncomfortable hypotheticals are a necessary part of the law school

In thinking about how to conduct discussions about difficult material in the digital age, I begin from the understanding that pursuit of a school's educational mission would be meaningless if we sought to avoid all controversy. And I have come to the view that, with some forethought, discussions can be managed so as minimize the risk of student resentment. It requires a conscious effort to speak, as a teacher and as an academic, in ways that reflect respect for the pluralistic communities in which I teach and write. And it requires being transparent about my aims. At the beginning of each new semester of constitutional law, for example, I preview some of the issues to be covered and