

# ESSAYS

## CURATING CAMPUS SPEAKERS

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### INTRODUCTION

Controversial campus speakers trigger debates about free speech on campus.<sup>1</sup> Those who support allowing all controversial speakers to speak on campus tend to be treated as pro-free speech warriors. Those who support preventing some controversial speakers from speaking on campus tend to be painted as anti-free speech. That framing is not particularly helpful, as it may quickly lead to a debate on censorship and the First Amendment.<sup>2</sup> Censorship is not an issue unless the controversial speaker is barred from speaking. A campus speaker's speech can be discouraged before it is given, and that discouragement may lead the speaker to self-censor, but actual censoring very rarely occurs. In addition, the First Amendment is rarely relevant to a campus speaker's speech unless a public college or university silences the speech.<sup>3</sup> Private colleges and universities generally can regulate speakers on their

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1. See AM. COUNCIL ON EDUC., CAMPUS INCLUSION AND FREEDOM OF EXPRESSION: CONTROVERSIAL SPEAKERS 1–3 (2018), <https://www.acenet.edu/news-room/Documents/To-The-Point-Controversial-Speakers.pdf> [<https://perma.cc/NWX8-NAS6>] (noting that controversial speakers call upon universities to strike a balance between “the preservation of a respectful learning environment and the academic values of free inquiry and freedom of expression”).

2. For a discussion about moving the campus speech dialogue forward and the value of specifying the debate, see Heidi Kitrosser, *Free Speech, Higher Education, and the PC Narrative*, 101 MINN. L. REV. 1987 (2017).

3. Public universities are bound by the First Amendment. See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 822 (1995).

campuses.<sup>4</sup> General speech principles may be relevant, but the First Amendment is not at stake.<sup>5</sup>

The debate over controversial campus speakers should be explicitly about academic values rather than free speech because the free speech debate is a poor proxy for a real debate about academic values. Though support for controversial campus speakers tends to be equated with supporting academic values, and opposition to controversial campus speakers tends to be viewed as antithetical to academic values, neither is necessarily true. Refocusing the debate onto academic values rests on considering a simple question: Is inviting or allowing the controversial campus speaker at issue to speak consistent with the university's mission to foster the robust and free exchange of ideas in service of discovering truth and advancing knowledge? Rather than treating disputes about controversial campus speakers as battles in free speech and censorship, the disputes are better thought of as opportunities to discuss campus values and the university's mission to find truth and disseminate knowledge.<sup>6</sup>

The discussion of controversial campus speakers, campus values, and the university's mission should occur through the lenses of curation and economics. Curation addresses what works should be selected or discarded when structuring a project; economics addresses the allocation of goods under circumstances of scarcity.<sup>7</sup> When considering whether a controversial speaker should be or should have been invited to speak on campus, the broader curation/economics question is: Given the limited number of good and productive speaking engagements any school or campus can absorb in a given semester, and the disruption that a controversial speaker may cause, does having the speaker visit campus provide a strong opportunity for the campus to become educated about an important

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4. See ROBERT M. O'NEIL, *FREE SPEECH IN THE COLLEGE COMMUNITY*, at xiv (1997) (discussing speech values on college campuses); Cass R. Sunstein, *Academic Freedom and Law: Liberalism, Speech Codes, and Related Problems*, in *THE FUTURE OF ACADEMIC FREEDOM* 93, 101 (Louis Menand ed., 1996) (noting private universities are not bound by the First Amendment).

5. See MARTIN P. GOLDING, *FREE SPEECH ON CAMPUS*, at viii (2000) (noting the links and nonlinks between free speech on campus and the First Amendment).

6. See O'NEIL, *supra* note 4, at vii ("The very mission of a college or university depends upon broad latitude for viewpoints in the pursuit of truth and understanding.").

7. See Mark A. Lemley, *IP in a World Without Scarcity*, 90 N.Y.U. L. REV. 460, 461 (2015) ("Economics is based on scarcity."); John M. Newman, *The Myth of Free*, 86 GEO. WASH. L. REV. 513, 515 (2018) ("Standard economics takes as a central principle the scarcity of resources. Given scarcity, the allocation of resources becomes the fundamental problem of economics.").

issue in a way the school thinks proper? For some, this may look like an invitation to engage in censorship; it is not. It is an invitation to engage in good stewardship of the university's resources—human, intellectual, and financial.

The curatorial aspect of the discussion is key. When curating a display including controversial or offensive objects, a curator should ask the following questions: What value does the offensive object or component add to the display? Is there a less offensive object that brings the same value? If the offensive object provides a specific value in the context in which it is presented, has sufficient information been provided about the offensive object so people can learn from, rather than merely be offended by, the object? In answering those questions, if the offensive object (with a suitable explanation) helps make the best display, keep it; otherwise, dump it. The same is true of controversial campus speakers.

Curation—the picking and choosing of materials for pedagogical reasons—regularly occurs on college campuses both inside and outside of the classroom. This brief essay explains that curation in two contexts. Part I discusses the curation of courses inside the classroom. Part II discusses the curation of campus speakers outside the classroom. Though applied to different topics, the process of curation is similar in both contexts. Considering both forms of curation can help illuminate and resolve some of the most important issues underlying the debate regarding controversial campus speakers.

## I. CURATING THE CLASSROOM

Professors must curate their courses and their classrooms.<sup>8</sup> Only so much information can fit into a semester, and students have limited time. Consequently, professors must carefully pick and choose the topics to cover in a course, the materials students must read to prepare for class, and what will be tested during the course.

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8. Similarly, we curate our law school curriculum by defining what students must study in the first year of law school and what additional requirements students must meet before graduation. We decide how many hours a first-year course will contain, necessarily constraining choice and leaving other topics for a student's second or third year, or not at all. Some schools may require students take a clinic. Some of these choices necessarily limit other classes or experiences our students would otherwise have. All of these choices reflect curation based on pedagogical aims and values. We ought not shy away from structuring our campuses and campus speakers consistent with our aims and values. See GOLDING, *supra* note 5, at 36–37 (noting that a university must pick and choose the topics worthy of being taught and learned on its campus).

In addition, limited classroom time demands that class discussions be curated to ensure students *learn* from a classroom discussion rather than merely *have* a classroom discussion. Different professors may curate their classes differently, but each must do so. A professor who does not curate a course disserves enrolled students.

### A. *Curating Sexual Assault*

When curating a course, a professor must decide whether to cover specific controversial topics. When covering particularly controversial material, professors must curate carefully. For years, I did not cover sexual assault in my first-year criminal law class.<sup>9</sup> I was not convinced the pedagogical value of covering sexual assault was worth its possible downsides, particularly given that criminal law is a required class and students are a captive audience. This is not because sexual assault is barely worthy of coverage in a criminal law course. Various aspects of sexual assault law—the explicit focus on the victim of the crime, quirky definitions embedded in the crime of sexual assault, unusual doctrines of legal mistake embedded in the crime, and the historical underpinnings of the crime itself—make it quite worthwhile to study in a criminal law course.

However, the potential drawbacks of studying sexual assault in a first-year criminal law course are serious. First, teaching sexual assault risks harming the overall criminal law class experience for those who may have been intimately affected by sexual assault. Those students could quickly lose focus on learning criminal law; that is a problem. Surely, I could lecture about sexual assault or tightly scripted a discussion of sexual assault that attempted to minimize the offense or upset students might feel during the discussion. However, such a presentation would differ significantly from the more typical vibrant, open-ended discussion I encourage in my criminal law class. More important, the lecture might not be worth giving if students were not required to discuss and engage the material critically. Second, I had to consider the opportunity cost of covering sexual assault, including what other criminal law topics I could not cover by addressing sexual assault.<sup>10</sup> There is

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9. Of course, whether and how to teach rape and sexual assault in criminal law courses has been a difficult subject for years. See Susan Estrich, *Teaching Rape Law*, 102 YALE L.J. 509, 509–16 (1992); Debra Cassens Weiss, *Is Teaching Rape Law Too Risky?*, ABA J. (Dec. 16, 2014, 7:24 AM CST), [http://www.abajournal.com/news/article/is\\_teaching\\_rape\\_law\\_too\\_risky\\_some\\_law\\_profs\\_drop\\_the\\_subject\\_amid\\_distres](http://www.abajournal.com/news/article/is_teaching_rape_law_too_risky_some_law_profs_drop_the_subject_amid_distres) [https://perma.cc/D256-PW4E].

10. For a discussion of opportunity costs and opportunity cost neglect, see Gary M. Lucas, Jr., *Behavioral Public Choice and the Carbon Tax*, 2017 UTAH L. REV. 115, 132 (2017).

never enough time to teach all of the important issues in a first-year criminal law course. Covering sexual assault would have exacerbated the problem. For years, I concluded that covering sexual assault was not worth the risks.

My mind has been changed. In the last few years, I have included a section on sexual assault in my criminal law course. That decision came after conversations with colleagues, students, lawyers, and judges. The overwhelming sentiment expressed in those conversations was that sexual assault should be covered in a criminal law course, even with the potential pitfalls. After the discussions and self-reflection, I concluded that the pedagogical value of covering sexual assault was likely higher than I had thought, and the downside of covering sexual assault—if I was particularly careful about it—was probably lower than I had thought. Sexual assault would be covered in my class.

The decision to cover sexual assault triggered a second curation issue—*how* to cover sexual assault. That included considering what cases and other materials to use. Any material regarding sexual assault may cause harm to resurface in those intimately affected by sexual assault.<sup>11</sup> Curating reading materials to get the greatest pedagogical benefit with the lowest chance of causing harm required recognizing that shocking cases with the most upsetting descriptions of sexual assault need not be chosen when teaching sexual assault law.<sup>12</sup> Though cases involving sexual assault always have the potential to trigger harm, there is no need to choose cases that are most likely to trigger harm. It is more sensible to choose the cases that will allow for a good discussion of the legal issues that need to be addressed but are least likely to cause potential harm. That is the most intense curation of materials I do for my classes, and it is the most important.

The curation is not finished once materials are chosen. How controversial and difficult material is presented matters. Sensitivity matters. Before my class discusses the sexual assault material, I

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11. The discussion about trigger warnings in the context of sexual assault discussions is ongoing. See Kim D. Chanbonpin, *Crisis and Trigger Warnings: Reflections on Legal Education and the Social Value of the Law*, 90 CHI.-KENT L. REV. 615, 631–32 (2015); Terri R. Day & Danielle Weatherby, *Speech Narcissism*, 70 FLA. L. REV. 839, 856–57 (2018).

12. Of course, trigger warnings may be appropriate in a variety of settings when course materials may trigger harm. For a discussion of trigger warnings and other relevant topics, see Alexander Tsesis, *Campus Speech and Harassment*, 101 MINN. L. REV. 1863, 1868–72 (2017).

explain why I teach sexual assault, inviting questions and comments about my approach. I lecture through introductory material and material that I think is most likely to cause or retrigger harm. Then I open the discussion on sexual assault statutes, cases, and doctrine. We close with a discussion about campus sexual assault policies, focusing on the difficulty in drafting campus sexual assault policies and sexual assault statutes in general. All the while, I watch for upset and distress in my students. Comments I have received from students suggest that many appreciate the approach. My approach is undoubtedly imperfect, but it reflects a professor's honest attempt to serve pedagogical goals while covering sensitive and potentially disturbing material.

The curation process continues when considering how to test material. Though I may test my students on sexual assault doctrine someday (though not yet), I doubt I will ever use a sexual assault fact pattern in an exam question. The pedagogical purpose of my exam is to discover what a student has learned during my course. I do not want the additional stress and upset that may accompany reading a sexual assault fact pattern to affect or deform the pedagogical point of the exam, particularly when the exam is graded on a curve. Maybe someone can change my mind on this at some point before I retire, but I doubt it.

#### B. *Curating Harassment*

The curation of sexual and racial harassment materials in my employment discrimination class is similar to my sexual assault curation, but is somewhat less intense. First, the class is an elective class. Second, understanding harassment is indispensable to understanding employment discrimination in a way sexual assault is not as indispensable to understanding criminal law. Harassment must be covered in depth in an employment discrimination course. Students must have a good grounding in multiple cases and the range of workplace conduct that triggers such cases, even though such material may upset some students. Nonetheless, I try to lessen my students' discomfort when we discuss those important, but disturbing, topics.

American workplaces remain full of sexually and racially harassing behavior.<sup>13</sup> I can choose from many cases containing troubling fact patterns.<sup>14</sup> Rather than choose the most distressing fact patterns, I tend to choose cases with fairly typical troublesome fact patterns that illustrate key pedagogical points.<sup>15</sup> I then tell the students that there are fact patterns even more awful in other cases, if they choose to explore those cases on their own.<sup>16</sup> Though I do not feel the need to be quite as sensitive to my students' feelings in this area as in the sexual assault arena, I choose what I expose my students to with care. For example, I am aware that the plaintiffs in most of the cases we discuss in employment discrimination are members of marginalized groups. I am aware that for students from marginalized groups, a steady stream of cases in which the person harmed is from a marginalized group can be demoralizing. For students not from marginalized groups, a steady stream of cases in which the person harmed is outside their group or the person discriminating is inside their group can be problematic for other reasons. I keep all of my students in mind when curating my employment discrimination class and choosing employment discrimination materials for them to read.

Curation inside the classroom focuses on making hard choices about what to include and exclude in our courses consistent with meeting our pedagogical goals. Law schools curate their curricula, requiring students take some courses and declining to require others. Professors curate their courses, requiring students to study some material and declining to require students study other material. If covering controversial and potentially upsetting material is necessary for students to learn the subject area, it should be covered. However, once a professor decides to address controversial material, it should be covered in a manner most likely to serve the professor's educational goals and least likely to harm students. Professors need not choose the most controversial or outrageous

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13. See *Charges Alleging Sexual Harassment, FY 2010–2018*, EEOC, [https://www.eeoc.gov/eeoc/statistics/enforcement/sexual\\_harassment\\_new.cfm](https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm) [https://perma.cc/3GPG-YB63] (last visited Apr. 1, 2019) (showing sexual harassment charges filed with the EEOC between 2010 and 2018); *Charges Alleging Race and Harassment, FY 1997–2017*, EEOC, [https://www.eeoc.gov/eeoc/statistics/enforcement/race\\_harassment.cfm](https://www.eeoc.gov/eeoc/statistics/enforcement/race_harassment.cfm) [https://perma.cc/974T-4VE3] (last visited Apr. 1, 2019) (showing race-based harassment charges filed with the EEOC between 1997 and 2017).

14. See, e.g., *Okoli v. City of Baltimore*, 648 F.3d 216, 217 (4th Cir. 2011).

15. Unfortunately, some United States Supreme Court cases with particularly troubling fact patterns must be covered. For example, see *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 60 (1986).

16. See, e.g., *Adams v. Austal*, 754 F.3d 1240, 1245 (11th Cir. 2014).

materials to teach different subjects. Though I am not a particularly touchy-feely or sensitive professor, considering my students' emotions when considering how best to teach them is sensible, fair, and obligatory. I consider what I want students to learn in my course, and I consider my students' emotions and feelings when determining how they will learn best. Good curation requires choosing the best materials to serve one's pedagogical goals.

Curation outside the classroom arguably should be less intense than curation inside the classroom. However, the distinction may not be as stark as some might suggest. A university presumably seeks to educate in all locations where students are supposed to learn. All decisions that affect learning should be based on pedagogical aims and values. We should structure our campuses—all parts of our campuses—consistent with those aims and values. Curation principles should apply to campus speakers. Indeed, focusing on curation rather than free speech may resolve many of the problematic issues that surround controversial campus speakers.

## II. CURATING CAMPUS SPEAKERS

Campus speakers should be curated. They should be invited to campus primarily to advance the university's pedagogical mission—to discover truth and disseminate knowledge.<sup>17</sup> To facilitate that, the university and its constituents should think systematically about whether a campus speaker advances that mission. Curating campus speakers requires two arguably controversial steps. First, a campus must identify its values, and let its stakeholders know what those values are. Second, the group inviting the speaker (or the university as a whole) should consider what a potential speaker's visit offers in support of the campus' values. Whether a speaker should be invited to speak on campus may depend on the quality (and academic bona fides) of the speaker, the topic of the speech, and the structure of the visit. If those factors suggest the visit will advance the institution's academic mission, the speaker

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17. The university's mission can be conceived in various similar ways. See, e.g., Barbara K. Bucholtz, *On Canonical Transformations and the Coherence of Dichotomies: Jazz, Jurisprudence, and the University Mission*, 37 U. RICH. L. REV. 425, 468 (2003) ("What we have come to call the academic 'culture wars' are, in fact, the dialogic processes through which the university mission—to expand human knowledge and understanding—is accomplished."); Maureen Ryan, *Fair Use and Academic Expression: Rhetoric, Reality, and Restriction on Academic Freedom*, 8 CORNELL J.L. & PUB. POL'Y 541, 543 (1999) ("The article argues that importing this view into value judgments made in the university context will impoverish the diversity of viewpoints essential to the university's mission of advancing knowledge.").

can reasonably be invited; if not, the speaker should not be invited. Free speech issues arise primarily when a speaker does not appear to meet a high standard of curation. What an institution and its constituents should do if a speaker whose visit does not comport with the institution's mission has already been invited to speak is a separate question.

### A. *Identifying a University's Values*

Identifying campus values can be difficult. Even if a university's stated mission is to discover truth and disseminate knowledge, universities may operationalize values in different ways. For example, a university could claim its values require the free exchange of ideas.<sup>18</sup> Alternatively, a university could deem itself a free speech zone, at least with respect to campus speakers.<sup>19</sup> However it defines itself, a university should be honest about its values.

A campus that claims to maximize free speech is likely sloganeering.<sup>20</sup> Classrooms are not typically free speech zones and should not be. A classroom is a place where learning occurs. It can be structured to provide space for students to speak freely about issues and in ways that move students toward the pedagogical goals the professor has for the class. However, free speech rarely should be the value. It is the means to serve the underlying purpose of educating students, and the larger goal of uncovering and creating knowledge and truth.<sup>21</sup> Certainly, there may be places on a campus where speech is freer than in other places, but a serious campus speaker should trigger an atmosphere more akin to a classroom than to a public place, such as a quad. Nonetheless, some universities may claim to value free speech for its own sake. Those universities should claim that value and curate (or decline to curate) campus speakers based on that value.<sup>22</sup>

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18. Others agree. See GOLDING, *supra* note 5, at vii (“[T]he free expression of ideas and opinions, and their critical examination, are central to the work of the university.”).

19. Even universities that pride themselves on welcoming free speech have reasonable limits on speech. See *University of California, Berkeley Statement on Free Speech*, BERKELEY, <https://sa.berkeley.edu/free-speech> [<https://perma.cc/75P6-ME9G>] (last visited Apr. 1, 2019).

20. Even schools that claim to be free speech zones may not be so for staff and other employees.

21. See RICHARD DELGADO & JEAN STEFANCIC, *MUST WE DEFEND NAZIS?* 35–36 (2018) (discussing the importance of speech and the free exchange of ideas as necessary to support a campus climate in which all can flourish).

22. If free speech without ramifications is consistent with the university's values, so be it. Usually, the speaker's free speech will be protected, while a protester's speech will not be

Once the university claims its values, it should make certain its constituents know what those values are. The university's policies should support the values it claims. That may require the university develop policies that encourage campus constituents to act according to those values, and rethink policies that do not. For example, a university that claims to be a maximal free speech zone should consider what policies would promote the free speech of all, not just the free speech of an invited campus speaker. That could lead the university to embrace a culture of free exchange rather than adhere to the slogan of being a broad free speech zone. Only after a university reaffirms and announces its policies can a university fairly hold constituents responsible for falling short of those values.

### B. *Speakers Who Arguably Should Not Be Invited to Speak*

Speakers whose speech does not support a university's mission of searching for truth and disseminating knowledge should not be invited to speak on campus. Two types of speakers may not be engaged in a serious search for truth: speakers who peddle untruths and speakers who are polemicists. The former should not be brought to campus; the latter may be invited to campus under certain circumstances. Some speakers should not be invited to speak on campus under any circumstances. The content of what they have to say is so antithetical to truth that inviting them to speak is a debasement of a university's values. A Holocaust denier is an example. Inviting a Holocaust denier to speak at a college campus is pointless. Some suggest that debunking falsifiable claims is part of finding truth.<sup>23</sup> Often, that is true. However, debunking already falsified claims wastes the university's most precious resources—the intellectual capacity and time of its constituents. The university's resources should be used on issues that can be reasonably and honestly debated or on topics on which a speaker can shed new

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protected. See, e.g., Todd Richmond, *University of Wisconsin Approves Free Speech Policy That Punishes Student Protesters*, CHI. TRIB. (Oct. 6, 2017, 8:19 PM), <https://www.chicagotribune.com/news/nationworld/midwest/ct-university-of-wisconsin-protest-punishment-20171006-story.html> [https://perma.cc/82ZQ-KGVA].

23. See GOLDING, *supra* note 5, at 44 (“We do of course pay a price for the university’s marketplace of ideas. Falsehoods and unacceptable ideas inevitably do get aired, and it is the job of the critical community of scholars, operating in a marketplace of ideas, to expose them as such in order to advance knowledge.”).

light. This is not about ignoring unpopular ideas or supporting orthodoxy, whether conservative or liberal. It is about serving the university's mission.

Reasonable people can and will draw the line between what is contestable and worthy of discussion and what is not contestable and unworthy of additional discussion in different places. However, a line should be drawn between the contestable and the uncontestable, with the recognition that the uncontestable should not occupy time on a college campus. College communities do not have the time to discuss and debate all contestable issues worthy of discussion. Campuses should not be intentionally distracted by discussing uncontestable issues. Curating campus speakers involves the difficult job of choosing who will speak about contestable topics that are particularly worthy of discussion.

Whether a polemicist should or should not be invited to speak is a different question. The answer depends on the content of the academic exchange that will occur during the visit. The academic exchange depends on academic engagement, which depends on the quality of the speaker and the style of the presentation. If the speaker is an academician, the speaker's visit will likely create an academic exchange that supports the university's mission and values. A visit by a controversial and polemical academic who gives a serious lecture on a serious topic that raises issues worthy of discussion is likely consistent with the university's mission, particularly if the lecture is accompanied by vigorous questioning. The less academically inclined the speaker, the less likely a polemical speech will serve the university's mission. For example, the visit of a polemical non-academic speaker who gives a polemical speech primarily to sell a polemical book is likely inconsistent with the school's mission. The school has little or no reason to support that campus visit. However, a visit from a polemical non-academic could be structured to provide an academic exchange. A visit structured to require the polemical speaker to discuss and debate the speaker's opinions may yield a serious academic exchange that is consistent with the school's values and mission. If a speaker's visit is structured properly and the topic is worthy of some discussion, few speakers fail to meet a minimum threshold for an invitation to speak.

The last and most difficult curation question is: How should the university and its constituents respond to a speaker who meets the minimum threshold for invitation, but brings more offense and dislocation than necessary? I return to my curation of sexual assault

and harassment. That speaker is like a case that describes, in too much detail, the most troubling course of sexual assault or harassment. The case could be used, but can be easily discarded in favor of an example that is just as good, but less troublesome.

*C. Considering Speakers Who Have Already Been Invited to Speak*

Speakers who do not meet the minimum standard for invitation to speak on campus may yet get invited to speak. Many groups may have the power to invite speakers to a campus.<sup>24</sup> The decentralization of the process of inviting speakers to campus has great value. Allowing small groups to invite speakers of interest to them is important. Consequently, decisions regarding a speaker's value will likely occur at the level of the small group that issues the invitation rather than at the central administration or dean's level. That is why the university's values should be clearly and boldly disseminated. If the campus has fairly communicated its ideals regarding the importance of robust and serious academic exchange to campus stakeholders, the possibility or likelihood a speaker's visit will fall short should be relatively clear.

Fortunately, the issuance of an invitation does not end the conversation about whether a speaker should have been invited. The campus, its constituents, and its leaders have the right and obligation to evaluate whether a speaker's visit will likely meet the minimum threshold of supporting the university's mission to use robust academic exchange to discover truth and disseminate knowledge. Having a discussion at an administrative level before a clearly controversial speaker is invited may be preferred, but having a productive discussion after an invitation has been issued may lead to productive discussions before the speaker visits and before any other controversial speaker is invited. The discussion, if sufficiently open, also educates those inside and outside of the university about the university's mission, and why the university does what it does.

When speakers whose visits are not consistent with the university's values, ideals, and principles have been invited to campus,

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24. Speakers invited by student groups may trigger the most contentious speech issues. See Erica Goldberg, *Competing Free Speech Values in an Age of Protest*, 39 CARDOZO L. REV. 2163, 2201-02 (2018) (discussing the Berkeley Republicans' invitation of Milo Yiannopoulos to speak on campus).

the campus has an opportunity to react and reaffirm its values and ideals. Campus constituents can be made aware that the group that invited the speaker appears to have disregarded campus values. The group should be given the opportunity to explain and defend its position. If the group's explanations are unconvincing, the group should be encouraged to understand that it has squandered an opportunity to advance the university's mission—the search for truth and dissemination of knowledge. This is not a call for the punishment of or retaliation against the group. It is a suggestion that all should recognize the lost opportunity, the waste of intellectual time, and, when applicable, the squandering of university money.<sup>25</sup> This should occur whether the invitation was issued by students, staff, faculty, administrators, or a combination of those groups.

#### D. *Protests of Speakers*

The last issue to consider is how to respond to speakers who do not advance the university's mission and who should not have been invited to speak. How should a university and its constituents treat a campus speaker whose visit runs directly contrary to the school's mission? Any invited campus speaker should be treated civilly and should not be shouted down.<sup>26</sup> However, the speaker's visit should be treated honestly. A campus speaker who—because of the speaker's message or the nature of the visit—does not provide an opportunity for serious academic exchange arguably treats the university's pedagogical aims disrespectfully. Reacting to that is appropriate.

Students, staff, and faculty have at least three options: ignore the speaker, protest the speaker, or counterprogram against the speaker. Each has benefits and drawbacks. Ignoring the speaker risks legitimizing the speaker. The lack of a protest may suggest that the university community is not bothered by the visit or believes that the speaker's visit is consistent with the university's search for truth. Protesting the disrespect shown to the university's values by the speaker and the group that invited the speaker

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25. Controversial speakers may trigger extra security costs and other costs. See Catherine J. Ross, *Campus Discourse and Democracy: Free Speech Principles Provide Sound Guidance Even After the Tumult of 2017*, 20 U. PA. J. CONST. L. 787, 803–04 (2018) (discussing University of California, Berkeley's security costs for Milo Yiannopoulos' visit).

26. Some may disagree, but unless the university administration stops the speaker from speaking, allowing the speaker to speak is the proper response to a speaker who has been invited to campus to speak.

is reasonable. Protesting the event reminds or alerts the university community that the visit is inconsistent with the university ideals, but protesting comes with costs and risks. However, protesting a campus speaker involves time and intellectual capacity that could be used on other matters. Furthermore, if the protest is deemed disruptive, disciplinary action may follow.<sup>27</sup> As important, if the campus speaker speaks out against marginalized groups, the cost of protest may be borne more heavily by students from those marginalized groups who may already be marginalized in the classroom.<sup>28</sup> Counterprogramming may educate (though possibly on an uncontested topic) and may avoid the risk of discipline, but it likely will use more time than protesting the speaker directly. That may be a misuse, or an inefficient use, of the students' time and the university's intellectual capacity.

There are no perfect solutions. However, the university administration's response to a campus speaker who should not have been invited to speak may be important. If the administration believes the speaker should not have been invited to speak on campus, it can and should explicitly disassociate itself from the visit. If the university administration believes the speaker's visit is antithetical to the university's values and says so, students and others may feel less pressure to respond to the speaker. In light of the university administration's response, ignoring the speaker would not send a message that the university community deems the speaker's visit acceptable. The university administration is not required to do anything, but it is a key guardian of university values. A refusal to respond to a speaker whose visit disrespects those values would speak volumes about how much or how little the university cares about its values.

## CONCLUSION

This essay calls for the curation of campus speakers. It briefly sketches a very basic structure for determining when a speaker

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27. For a discussion of the University of Wisconsin's speaker disruption policy, see Parker Schorr, *UW Defines Acceptable, Unacceptable Protest in Recently Updated Guidelines*, BADGER HERALD (Sept. 12, 2018), <https://badgerherald.com/news/2018/09/12/uw-defines-acceptable-unacceptable-protest-in-recently-updated-guidelines/> [https://perma.cc/9KR9-94Y9].

28. See DELGADO & STEFANCIC, *supra* note 21, at 24 (noting that language that "demoralizes and distracts minorities" can make it harder for members of those groups to get a full education).

falls below a minimum standard for academic exchange and unquestionably should not be invited to speak. However, it does not fully address a larger curation question: How much higher than the minimum standard should a speaker rise to merit an invitation to speak on campus? Curation and economics suggest that only those who best advance the university's mission should be invited to speak, and groups should only invite speakers who can engage the university community at a high level. Consequently, the answer to the bigger curation question depends on the number of speakers the university can comfortably absorb over a semester or year. The fewer the number of speakers who can be productively brought to campus, the higher the opportunity cost of bringing a speaker who does not engage the university community and help further its mission and pedagogical goals. These are not easy issues, but they have no chance to be addressed seriously if the issue surrounding controversial campus speakers devolves into a free speech debate.