

SPEAKER: So I'm going to talk today a bit about freedom of speech. As Warren mentioned, I chaired the committee that produced the university statement on free expression and free inquiry two years ago. We had a committee that included faculty, staff, a Board of Visitors member, a student representative, several alumni, basically every constituency of the university.

And this group was diverse along just about every dimension you could imagine. We were charged by President Ryan with producing a statement, which we did unanimously. And it was then approved by President Ryan and by the Board of Visitors unanimously. The statement links our commitment to free expression, to our institutional history, our status as a public institution, and our identity as an academic university.

It's fairly brief, but I'm going to make it briefer today and just highlight one section. We endorse principles of free expression and free inquiry not because every idea is equally good. Academic commitment to free inquiry reflects the view that every idea must be heard so that it may be subjected to the rigorous scrutiny necessary to advance knowledge.

This process requires deep critical engagement as well as humility and the recognition that many commonly accepted views have proved mistaken while many ostracized views have illuminated the path toward truth.

Now, more recently, I've been working with President Ryan and the provost on making the values of free expression and free inquiry more accessible and salient, recognizing all the ways that these values already manifest across grounds, and building up the skills, support, and resources that university members need to realize these values in their own work.

And today I want to talk with you about three parts of that, three points about free inquiry and free expression in the university context and particularly in the context of our law school. The first point will be broad. The second will be much more focused. And then the third will step back again to a broader perspective.

So first, principles of free expression and free inquiry pervade nearly every aspect of our endeavors here. They're at the heart of a university's mission in so many ways that it can be difficult to offer a comprehensive account. But I see three overarching themes.

Free expression and free inquiry advance the search for truth, foster the self-development of individuals and communities, and undergird democracy and deliberation. So first, truth. Free inquiry and academic freedom are at the heart of our research mission, our quest to advance knowledge.

Self-development. These values are also foundational to our teaching mission and to everything we do inside and outside the classroom to educate our students and to help them become self-aware and fulfilled people and professionals. Here are just a few of the amazing statistics that the law school can provide on the type of process and educational support we try to give our students.

And I'd be remiss if I didn't recognize the connection between freedom of speech and democratic values. Theorists and practitioners have long recognized the relationship between free speech and the democratic process, including that the absence of one typically indicates the absence of the other.

As lawyers, we have special duties to uphold the Constitution and the rule of law. And we seek to prepare our students to be wise and ethical citizens and leaders. Now, in discussions about particular issues within the broad realm of free speech, it's possible to lose sight of a simple but powerful fact.

Free expression and free inquiry pervade our work because they relate so closely to so many of our core functions as a university and as a law school. For a moment though, I'm going to narrow in and focus on one strand of that tapestry. And that's free expression in the context of speaking events at universities.

You may have seen news items related to this from institutions around the country. I'm not here to rehash those but to focus in on the principles and goals of a state institution like the law school. The first thing to say-- and I'll come back to it later-- is that the law school hosts a truly astounding number of events every year with speakers and topics of all persuasions and viewpoints.

The events calendar is simply too big and voluminous for me to be able to depict it. So here's just a week and a half that I would say represents about a medium level of activity at the law school. So there's a lot to celebrate here, but it's worth taking a moment to go over some background.

The law for public institutions in this area is fairly straightforward. In the context of student events, student groups are generally not state actors, which means that they're to be treated by the government the same as any private individual. This means that a public university may not disinvite a speaker or cancel an event hosted by a student group for reasons having to do with the viewpoint of the speaker.

Likewise, a public university may not suppress or interfere with the speech of protesters or demonstrators because of their viewpoint. And all of this remains true regardless of whether the university has subsidized the speech activities in question in some way. For instance, by providing student activities funds to a student group or space for an event or some other resource.

The Supreme Court's made this very clear in a long line of cases, including one involving this institution. Providing resources for student speech does not empower institutions to discriminate by viewpoint.

The job of a school is to ensure that any scheduled event or demonstration occurring on its property proceeds safely and successfully. This may involve content-neutral regulations to ensure that events proceed safely and don't interfere with normal operations, normal use of facilities, ingress and egress, and so forth. And reasonable content-neutral regulations like these are permissible. What a state cannot-- what a school cannot do is interfere with speech because of its viewpoint.

Groups and speakers have a right to be heard but not to be free of counterdemonstrations or criticism. Counterdemonstrators have a right to speak but not to interfere within events proceeding on schedule or with anyone else's ability to see or hear a speaker. Basically, I say the goal is that everybody gets heard and nobody gets hurt.

We have and have long had at UVA policies that say as much. So university policy says that no person may disrupt an invited or permitted speaker or hinder the ability of other attendees to see or hear a speaker. It also says that the university may implement content-neutral time, place, and manner regulations to ensure compatibility with safety and normal operations.

And the university has content-neutral policies about certain things like amplified sound, chalking, and posting. So these are the relevant policies, but it's equally important to communicate these policies and the underlying values. That happens in a variety of ways.

I already mentioned the statement on free expression and free inquiry, which can serve as a touchstone explaining the basics and the underlying principles of free inquiry and academic freedom.

The university has a free speech website, which is what you're looking at here, which includes the free speech statement, a collection of the relevant policies, an FAQ section, and a mechanism for reporting concerns about infringement of speech rights, which all public universities are required to have by Virginia law.

The same information is also included in the online undergraduate and graduate student handbooks. And all new and returning students also must read and acknowledge an enrollment module on freedom of speech before gaining access to the student information system. This module explains the basics of protection of speech at a public university as well as our norms and aspirations regarding respect for others.

And much more communication happens at the school level. We, at the law school, have a synthesis of the relevant policies that we maintain on our website and distribute through various means, including through the event handbook that gives guidance to all student organizations on planning events.

And perhaps most important is talking about policies and values in person, and we try to create many opportunities for that. For example, Reece and I released a workshop for the speech policy document with students. We cover speech policies and principles with student leaders, such as the community fellows that are in everyone else section and leaders of student organizations.

We have sessions at orientation and elsewhere. For example, this fall, we had a panel at orientation that included my colleagues Andrew Hayashi and Julia Mahoney and myself where we spoke to the entire 1L class about the ability to listen and engage with opposing viewpoints as an important part of legal education.

Outside the law school, President Ryan and I both spoke to the importance of these values with the incoming UVA first-year class at their convocation. And perhaps most importantly, there's one-on-one conversation. Faculty and staff work to make themselves available to students as they navigate these principles as applied to real-life situations.

And our student services colleagues, particularly the student affairs team, works closely with student organizations on events and have their doors open to all students who are working through these issues in organizations, or individually, or within social groups.

Within a law school community, we can also have personal conversations about the relationship between First Amendment principles and the professional obligations that our students will have as members of the bar.

We can talk about the fact that even though they and their peers may have very different views on very many issues, they're also part of the same community and lifelong professional colleagues. And they have the opportunity here to build the kind of community that they want to live in and they want to help create wherever they go after here.

So we can celebrate that we've hosted public officials of all ranks and all persuasions from Vice President Pence on main grounds to our local representatives. We've hosted any number of judges with a wide array of jurisprudential approaches, religious leaders, attorneys from every kind of private and public practice, and discussions and panels on any number of topics all without incident, safely and smoothly, without losing the rigor and thoughtfulness that have long characterized this community.

But this also brings me to my final point where I'd like to step back a bit. It's easy to focus on high-profile events because they are an important part of what we do. But if they were all we did, we wouldn't be a law school. We'd be an accredited speaker series.

There's so much more that we do that is at least as important, if not more so, both for legal education and for cultivating open discussion and free expression. From a First Amendment perspective, it is sufficient to offer everyone an opportunity to talk and to get out of the way.

And on some level, that's what state institutions must do. We cannot control the conversation in order to create more space for some and less for others. But we can foster norms that approach free speech less as a cage match and more as a community endeavor. We can suggest that what matters as much as an event is the conversations in the run-up and the aftermath.

We can model that the best approach is involve more listening and unflinching respect for every member of the community. And in this regard, this law school has much to offer. Many of you who went here will recognize this place as one that has community at its center.

When I speak to my new tort students, right after they've arrived, I ask, what brought you here? And so many of them say something like, when I visited, this seemed like a real community, or people seem happy here, or it seemed like, here, I could be not just a law student but a human being.

I've said that so much of what we do relates to free expression, and this does too. Much of the work of having real discussions involves building trust, building relationships, and seeing yourselves as part of a common endeavor and a shared community. And if we find fewer spaces like that out in the real world, it becomes more challenging but all the more important to try to create them here.

So everything else matters along with events. It's important to teach principles of the First Amendment and free expression and give students the opportunity to live and practice them. It's important to help turn students into lawyers. We teach them the adversarial process and train them to represent their clients. This, by the way, is a photo of our students winning the international tax court competition in Belgium--

[APPLAUSE]

--under the instruction of our colleague Ruth Mason. This was the first American team ever to win. And they now win or-- they now win or place every year, including three years in a row winning it. Is that right? They're champions.

And this is what one student said about that experience. They said, I found the rebuttal and surrebuttal parts of the arguments incredibly exciting. I realized just how much I had learned when I could quickly respond to the challenges raised by the other side and bolster my position in the process.

But as important as the adversarial process is, there are many other reasons to learn to listen and communicate effectively. Sometimes it's to negotiate or reach a compromise. Sometimes it's simply to understand. Sometimes it's not even to understand so much as to recognize the humanity and good faith of other people.

It's important to cultivate all these modes and organize discussions in groups and in all the ways faculty engage with students inside and outside the classroom. This, to the left, is a classroom shot of Kimberly Robinson who won the All-University Teaching Award this year.

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And on the right is Caleb Nelson delivering the charge to the class of 2023 last week, a wonderful talk that I urge everyone to listen to. They both and all of my colleagues, yes.

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And they both embody, as all my colleagues do, faculty wisdom, guidance, and trust building and action. And let's not forget the simple unmediated act of students treating each other as colleagues and friends, whether it's small sections, or peer advisors, or softball leagues, or student activities, or, dare I say, Libel Show and Dandelion.

I'm getting into increasingly dicey territory as a faculty member. But as a former student, I know whereof I speak. However we do it, bringing people together matters. It doesn't create agreement nor is it meant to. But it can build trust, it can build bridges, and it can bring out the best of humanity.

From here, our students will go on to do all sorts of amazing things in all sorts of places just like all of you have done who are graduates. We hope to prepare them to do so with sound ethics, with judgment, and skill.

We hope that wherever they go, they will demonstrate that humane and respectful treatment is not reserved only for those who agree with you. And we hope that this can be a place where that approach is easy to learn and even joyful. I thank you very much.

[APPLAUSE]