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2017 Constitution Day Essay Contest Honorable Mention--On the Consequences of "Free Speech"

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Constitution Day, created in 2004 by an act of Congress, mandates that all publicly funded schools provide educational programming on the history of the U.S. Constitution, which was adopted by delegates to the Constitutional Convention on Sept. 17, 1787. This year's Constitution Day at UK is Monday, September 18th (see <http://www.uky.edu/studentacademicsupport/constitution-day>). Under direction from the Office of the President and the Provost, the Office of Academic Excellence partnered with the College of Arts & Sciences to lead a cross-campus gathering of support for offering Constitution Day activities at the University of Kentucky. Staff and faculty work with many different student organizations and units on campus to develop a campus-wide approach to the celebration of our rights and responsibilities as citizens of the U.S. and to develop habits of citizenship in a new generation of Americans. The general thematic topic this year is focusing on "I Am Kentucky: The Commonwealth and Our Common Future."

An essay contest for undergraduates is sponsored by the UK Scripps Howard First Amendment Center, the Office of the President and the Provost's Office of Academic Excellence. The essays are blind-judged by former UK journalism students who are lawyers, UK professors and media law professors at other universities. The entries are scored on the following criteria: historical and legal accuracy of the content, the strength and logic of the argument, the original ideas presented, the organization of the argument, including the thesis, and the quality of the writing. The winners are announced the First Amendment Celebration, 6:00 p.m. Thursday, Sept. 28, in the Auditorium of the W.T. Young Library.

The essay, which cannot exceed 750 words, addressed this writing prompt:

Donald J. Trump is not the first U.S. president to confront the news media over its reporting on him, his policies, and his administration. (Jefferson, Jackson, Lincoln, Grant, Truman, Nixon, and George W. Bush, among others, were subjected to often harsh press coverage). While the First Amendment to the Constitution guarantees journalists the right to publish information without government interference -- except in special cases, particularly those involving national security -- it also ensures that the president and other government officials are free to criticize the news media.

Essays must address this question: When President Trump disparages the news media by talking about "fake news," "the failing @nytimes," the press as the "enemy of the American people," does he strengthen the First Amendment by engaging in a lively debate about an important subject, or does he weaken freedom of the press by attempting to persuade people that most journalists cannot be trusted?

Duncan Barron – Honorable Mention

On the Consequences of “Free Speech”

As she left her New York office on election night, 2016, Wall Street Journal graphics editor Stephanie Stamm walked briskly past a group of spectators gathered outside the headquarters of Fox News. “Upon leaving office (we share with Fox) I was already assaulted with two 'I'll grab you by the pussy' quotes,” Stamm tweeted. “Nope. Not kidding. Crying on 6th avenue. Hope everyone is super happy.” (Gold) Journalists have been the subject of political critiques for decades, though the current sociological climate that many have been forced to endure is none other than the direct result of the current Presidential administration. Presidents have long used the bully pulpit of their office to advance their own agendas, though few have been known to utilize the position with such disregard for the institutions of American democracy than Mr. Trump. Likewise, Trump does nothing to promote a just conversation regarding the merits of the free press and largely diminishes the influence of the Constitution’s first amendment.

It is evident, given the parameters of our first amendment, that causing significant harm through the utilization of rhetoric is, in and of itself, and offense which would be directly contrary to its intention. Professor Erica Goldberg, a Climenko Fellow and Lecturer on Law at Harvard Law School, states as much in a summation on the concept of free speech and its consequences. “Under current doctrine, courts determine if speech can be regulated using various forms of free speech consequentialism, such as weighing whether a particular kind of speech causes harms that outweigh its benefits, or asking whether the government has especially strong reasons for regulating particular kinds of speech.” (Goldberg, Pg. 687) Operating under the guise of ‘free speech consequentialism’, it can be summarily said that Trump’s statements toward the media corps are far from Constitutionally permissible. It is not difficult to ascertain a case in which Mr. Trump’s rhetoric towards the press has not been harnessed by his most ardent of followers, and to that end inflicted some form of harm upon others. Throughout the duration of the election cycle, prominent journalists endured the slings and stones of misguided (and frankly disturbed) individuals. In April, Julia Ioffe received numerous death threats and was the subject of anti-Semitic vitriol for authoring a critical profile of Melania Trump, while Newsweek’s Kurt Eichenwald was sent a video that triggered epileptic seizures. (Gidda, Schonfeld) Where Mr. Trump fails to follow through, in accordance with the law, is in actively condemning and attempting to prevent the violent acts of those who take his rhetoric seriously. As evidence indicates, the verbal missives of the person occupying the Oval Office cannot be dismissed as mere signs of ‘locker room talk’, nor should said person be applauded for rattling an empty scabbard in the faces of adulate white supremacists. As these actions have and likely will continue to occur, we must come to understand the relationship political gamesmanship plays with the conversation surrounding the first amendment.

In order to fully grasp the current administration’s assault upon the press, one must understand the how the current leadership came to possess the trappings of political power. Toying with a bitter partisan divide, and playing to the most divisive elements of his own faction, Trump utilized media attacks not as a mechanism for a greater debate. Rather, the then-candidate saw this element of attack as a crucial piece of campaign strategy. According to a recently published poll analyzed by TheHill “an overwhelming

69 percent of Republican voters believe the news media poses a greater threat to the United States than white supremacists.” (Bowden) It should be noted that, in collecting this data, pollsters found that an alarming 70% of respondents also believe that Mr. Trump hates the media more than outspoken proponents of white supremacy. (Bowden) Eventually however, with the seizure of political power, there comes a time in which the executive must wield it.

In this final consideration, we turn towards the fact that, eventually, the man behind the Resolute Desk will eventually have to deliver to his most extreme of supporters, for fear that those who awarded him a tenuous electoral college victory may fail to appear in the next cycle. Mr. Trump has reportedly investigated the possibility of dismantling critical protections originally inspired by the first amendment, including the altering of libel laws to his direct advantage. Since departed staff members have confirmed that this is the case, and that these laws are likely still in the process of being review by administration officials. “Former chief of staff Reince Priebus and press secretary Sean Spicer have [also] indicated the administration was investigating ways to review the First Amendment laws protecting press freedom.” (Porter)

In conclusion, to characterize this executive’s primal aggressions as part of a greater debate upon the issue of free speech and its relationship with the modern media would be an egregious mistake, and one that will carry drastic consequences.

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